

**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
S.B.C. 2004, c. 42
AND**

**IN THE MATTER OF
DESERT AIRE REALTY (1994) INC. dba
DESERT AIRE REALTY**

**AND
CAROL YVONNE YOUNGBERG**

CONSENT ORDER

RESPONDENTS:	Carol Yvonne Youngberg, Managing Broker, Desert Aire Realty (1994) Inc. dba Desert Aire Realty
	Desert Aire Realty (1994) Inc. dba Desert Aire Realty, Brokerage
DATE OF REVIEW MEETING:	September 26, 2012
DATE OF CONSENT ORDER:	October 23, 2012
CONSENT ORDER REVIEW COMMITTEE:	M. Cowe (Chair) M. Leslie D. Rishel M. Ziegler
ALSO PRESENT:	R. Fawcett, Executive Officer J. Gossen, Legal Counsel J. Worton, Legal Counsel for the Real Estate Council

PROCEEDINGS:

On September 26, 2012 the Consent Order Review Committee resolved to accept the Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver executed by Desert Aire Realty (1994) Inc. dba Desert Aire Realty and Carol Yvonne Youngberg as submitted. It is therefore ordered that Desert Aire Realty (1994) Inc. dba Desert Aire Realty be reprimanded and Carol Yvonne Youngberg's managing broker's licence be suspended twenty-one days, but that she be immediately eligible to be licensed as an associate broker or representative. It is

also ordered that Ms. Youngberg successfully complete the Broker's Remedial Education Course as provided by Real Estate Division, Sauder School of Business at the University of British Columbia in the time period as directed by the Council. Further, it is ordered that Desert Aire Realty (1994) Inc. dba Desert Aire Realty and Carol Yvonne Youngberg be jointly and severally liable to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,000.00 within sixty (60) days from the date of this Order.

WHEREAS an Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver was executed by Desert Aire Realty (1994) Inc. dba Desert Aire Realty, Carol Yvonne Youngberg and the Real Estate Council of British Columbia ("Council"), a copy of which is attached hereto.

NOW THEREFORE, the Council has made the following findings and orders the following penalties based on the Agreed Statement of Facts and Proposed Acceptance of Findings:

1. Desert Aire Realty (1994) Inc. dba Desert Aire Realty be reprimanded as it committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*:

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- (a) in relation to the transfer of the management of certain strata's to another brokerage, and in relation to the provision of strata management services to the stratas, or any one of them, it contravened section 8-10 of the Council Rules, by failing to retain the records of the brokerage, and in particular, the records relating to the stratas, or any one of them, for at least 7 years after their creation when no shorter period was authorized by the Council;

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- (b) by contravening section 7-7(1)(b) of the Council Rules in that it failed to file an Accountant's Report with the Council for the year ending August 31, 2011 on or before December 31, 2011.

2. Carol Yvonne Youngberg's managing broker's licence be suspended for twenty one (21) days but that she be immediately eligible to be licensed as an associate broker or representative, as she committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*:

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- (a) by contravening sections 35(1)(d) of the *Real Estate Services Act*, and sections 3-4 and 5-1(1-5) of the Council Rules in respect of the management of rental property located in, Osoyoos, B.C. (the "Property") and a

Residential Tenancy Office Dispute Resolution Order dated March 4, 2011 (the "Order") in that she:

- (i) contravened section 22 of the *Manufactured Home Park Tenancy Act*, when she failed to ensure the tenant's right to quiet enjoyment of her rental unit on the Property by permitting other tenants to hold a four day party as set out in the Order;
 - (ii) contravened section 27(1)(b) of the *Manufactured Home Park Tenancy Act* by failing to carry out emergency repairs that were deemed necessary for the health and safety of the tenant, or of anyone, or for the preservation or use of property, in the manufactured home park, by failing to remove certain trees that were deemed to pose a hazard to the property as they were unstable and presented a fire risk as set out in the Order;
 - (iii) failed to comply with the terms of the Order, made against the said licensee, against Desert Aire Property Management [a division of Desert Aire Realty (1994) Inc.], and against the Owner of the property, whom were all ordered to comply with the *Manufactured Home Park Tenancy Act* with regards to a tenants' right to quiet enjoyment of her rental unit, and to carry out emergency repairs and ensure two trees on the tenants' site were removed or made safe within 14 days of receiving the decision; and
- (b) by contravening sections 5-1(1-5) of the Council Rules in that in providing rental property management services to either or both Owners, in that she failed to ensure that a written rental property management service agreement was in place between Desert Aire Realty (1994) Inc. and the Owners, that satisfied all of the requirements of section 5-1(1-5) of the Council Rules.

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- (c) Carol Yvonne Youngberg, as managing broker for Desert Aire Realty, in relation to the transfer, sale, or assignment of the written service agreements between Desert Aire and three Stratas to another brokerage, which occurred between approximately July 1, 2010 to October 31, 2010 (the "Transfer"), and in relation to the provision of strata management services to the Stratas, or any one of them, by not fulfilling her responsibilities as a managing broker for the performance of the duties imposed on the brokerage by its license within the meaning of section 6(2)(b) of the *Real Estate Services Act* and by contravening section 3-1(1)(b) of the Council Rules in that she failed to ensure:

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- (i) that Desert Aire acted in the best interests of the Stratas, and acted only within the scope of the authority given by the Stratas, or any one of them, by failing to obtain the Stratas' written authorization to transfer, sell, or assign the Stratas' respective written service agreements to another brokerage, prior to transferring the Stratas' written service agreements to the other brokerage, and by permitting the other brokerage, or a representative of it, to provide strata management services to the Stratas, or any one of them, while Desert Aire still had active service agreements in place with the Stratas contrary to section 3-3(1)(a), 3-3(1)(c) and/or 3-4 of the Council Rules; and
 - (ii) that Desert Aire retained the records of the brokerage, and in particular, the records relating to the Stratas or any one of them, for at least 7 years after their creation when no shorter period was authorized by Council, contrary to section 8-10 of the Council Rules;

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- (d) Carol Yvonne Youngberg, committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act* by not fulfilling her responsibilities as managing broker for the performance of the duties imposed on the brokerage by its licence within the meaning of section 6(2)(b) of the *Real Estate Services Act* and by contravening sections 3-1(1)(a) and (b) and 3-1(3) of the Council Rules in that she failed to ensure that the said Accountant's Report was filed with the Council on or before December 31, 2011.
3. Carol Yvonne Youngberg is ordered to successfully complete the Broker's Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia in the time period as directed by the Council.
 3. Desert Aire Realty (1994) Inc. dba Desert Aire Realty and Carol Yvonne Youngberg are ordered to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,000.00 within sixty (60) days from the date of this Order.

If Desert Aire Realty (1994) Inc. dba Desert Aire Realty and Carol Yvonne Youngberg fail to comply with any of the terms of the Order set out above, the Council may suspend or cancel their licences, without further notice to them pursuant to sections 43(3) and 43(4) of the *Real Estate Services Act*.

Dated this 23rd day of October, 2012 at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

“Marshall Cowe”

M. Cowe, Chair
Consent Order Review Committee

Attch.

File #10-363, 10-140 and 11-348

**IN THE MATTER OF THE REAL ESTATE SERVICES ACT
S.B.C. 2004, c. 42**

IN THE MATTER OF

**CAROL YVONNE YOUNGBERG
(019318)**

AND

**DESERT AIRE REALTY (1994) INC.
(X024847)**

**AGREED STATEMENT OF FACTS,
PROPOSED ACCEPTANCE OF FINDINGS AND WAIVER**

The following agreement has been reached between Carol Yvonne Youngberg (“Ms. Youngberg”) Desert Aire Realty (1994) Inc. (“Desert Aire”) and the Real Estate Council of British Columbia (the “Council”).

- A. Ms. Youngberg hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that her managing broker’s licence be suspended for twenty-one (21) days, but that she be immediately eligible to be licensed as an associate broker or representative, that she successfully complete the Broker’s Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia within the time period as directed by the Council.
- B. Ms. Youngberg on behalf of Desert Aire hereby consents to an Order to be made pursuant to sections 41 and 43 of the *Real Estate Services Act* that it be reprimanded.
- C. Further, Ms. Youngberg and Desert Aire agree to be jointly and severally liable to pay enforcement expenses of this Consent Order to the Council in the amount of \$1,000.00 within sixty (60) days from the date of the Order herein.
- D. Ms. Youngberg and Desert Aire further consent to an Order that if they fail to comply with any of the terms of the Order set out above, a Discipline Hearing Committee may suspend or cancel their licences without further notice to them pursuant to section 43(3) and 43(4) of the *Real Estate Services Act*.

E. As a basis for this Order, Ms. Youngberg and Desert Aire acknowledge and agree that the facts set forth herein are correct:

1. Desert Aire was licensed as a brokerage and has been so licensed since June 30, 1995.
2. Ms. Youngberg was at all relevant times licensed as a managing broker with Desert Aire. Ms. Youngberg has been licensed since 1973. Ms. Youngberg states that her husband was diagnosed with a terminal illness on December 5, 2009 and he ultimately passed away in January of 2012. Ms. Youngberg states that these personal circumstances significantly affected her ability to work.
3. Ms. Youngberg's licensing history is as follows:

<u>Start Date</u>	<u>End Date</u>	<u>Brokerage</u>	<u>Licence Level</u>	<u>Licence Category</u>
2006/01/16	Present	Desert Aire Realty (1994) Inc. (X024847)	Managing Broker	Trading, Rental, Strata
1999/06/30	2006/01/16	Desert Aire Realty (1994) Inc. (X024847)	Managing Broker	Trading, Rental
1996/10/04	1999/06/30	DESERT AIRE REALTY (1994) INC. (X025635)	Managing Broker	Trading, Rental
1995/06/30	1996/10/04	Desert Aire Realty (1994) Inc. (X024847)	Managing Broker	Trading, Rental
1995/01/12	1995/06/30	Nrs Desert Aire Realty Inc. (X014844)	Managing Broker	Trading, Rental
1990/11/02	1995/01/12	Nrs Desert Aire Realty Inc. (Osoy) (X017483)	Representative	Trading, Rental
1990/10/06	1990/11/01	*** Unlicensed ***		
1988/10/06	1990/10/05	Nrs Desert Aire Realty Inc. (Osoy) (X017483)	Representative	Trading, Rental
1987/12/09	1988/10/05	*** Unlicensed ***		
1984/03/26	1987/12/08	Caldwell Agencies Ltd. (X000482)	Representative	Trading, Rental

1980/06/30	1983/06/15	Dynamic Realty (1981) Ltd.	Representative	Trading
1978/08/08	1980/05/16	Dynamic Realty Ltd.	Representative	Trading
1973/10/02	1978/08/08	Lakeland Realty Ltd.	Representative	Trading

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4. At all relevant times, Ms. Youngberg acted as the rental property manager for a manufactured home park in Osoyoos, BC.
5. During the long weekend in May of 2010, a resident had a large graduation party that lingered throughout the long weekend and was very disruptive to the other tenants at the manufactured home park. Ultimately the police had to be called.
6. The Complainant, a tenant, complained on more than one occasion in writing to Ms. Youngberg about the May long weekend noise, in the manufactured home park.
7. The Complainant also raised a safety concern to Ms. Youngberg regarding certain trees on her rental site that posed a hazard to herself and her neighbours. The Complainant put her concerns in writing, and provided Ms. Youngberg with an estimate of the costs for removing the trees. Ms. Youngberg initially did not respond to the Complainant's letter, and did not address the safety concern.
8. Ultimately the Complainant took her concerns to the Residential Tenancy Branch, and obtained an order dated March 4, 2011, ordering the landlord (Spratt Resource Landing Corporation and Desert Aire Property Management – Carol Youngberg) to comply with the Manufactured Home Park Tenancy Act with regard to the tenants' right to quiet enjoyment of her rental unit, and further ordered the landlord to carry out emergency repairs and ensure the two trees on the Complainants site were removed or made safe within 14 days of receiving the decision (the "Order").
9. Ms. Youngberg did not remove or deal with the trees on the property as set out in the Order. Ultimately one of the trees was removed. As a result of a communication error, the second tree was not removed, but some of the dead branches were removed.
10. Ms. Youngberg states that she clarified with the Residential Tenancy Branch that the equipment required to take out the second tree would not be available until June, when second tree was finally removed.

11. Ms. Youngberg did speak to and issued written notice to the resident who held the May long weekend party, warning him that should the incident repeat he would be issued a notice to evict.
12. Since the Order was issued, the Complainant has complained of other parties being held at the manufactured home park, which she states have not been dealt with in an appropriate manner.
13. Ms. Youngberg did provide written notices to three other tenants regarding parties and excessive noise levels in the park subsequent to the Order.
14. A written service agreement is in place between Desert Aire Realty (1994) Inc. and the owner of the property, however the agreement does not include all of the content requirements specified in the Council Rules including: the amount of remuneration, a provision respecting the use and disclosure of personal information, a termination clause, the scope of authority of the brokerage, the timing frequency and nature of accounting statements to be provided by the brokerage to the owner, how security deposits are to be dealt with, or a description of the records to be kept by the brokerage on behalf of the owner.

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15. Ms. Youngberg was at all relevant times licensed as a managing broker with Desert Aire Realty (1994) Inc. (Desert Aire). Ms. Youngberg is also the sole owner of Desert Aire.
16. On November 9, 2009 Ms. Youngberg agreed with the managing broker ("Managing Broker B") of a different brokerage ("Brokerage B") to merge Desert Aire with Brokerage B. Ms. Youngberg states that the Parties intended for the merger to complete in stages such that:
 - a) Brokerage B would open a new licensed branch office with Ms. Youngberg becoming the managing broker;
 - b) Desert Aire's trading services portfolio would be transferred to Brokerage B by December 1, 2009;
 - c) Desert Aire's strata property management portfolio would be transferred to a newly licensed branch office of Brokerage B; and
 - d) Desert Aire's rental property management portfolio would be transferred to the newly licensed branch office at the same time that Ms. Youngberg would move to the new branch office, upon completion of the merger.

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17. The agreement between the parties was not reduced to writing.
 18. It soon became apparent to Ms. Youngberg that the economy was declining significantly, and it became obvious that a new branch office would not be financially viable. Desert Aire's strata property management portfolio would have to move directly to Brokerage B and not to a new branch office.
 19. Ms. Youngberg states that the merger was not able to complete because the agreement to merge became frustrated, and that at the same time her husband became seriously ill, and required continuing care.
 20. In early May of 2010, Ms. Youngberg and Managing Broker B decided that Desert Aire's strata property management portfolio would finally move to Brokerage B and not to proceed with the opening of the branch office. This occurred on July 1, 2010. Ms. Youngberg would also move to Brokerage B and would continue to act as the associate broker with respect to the strata management portfolios. In addition, the stratas would have had their Annual General Meetings ("AGM") by that time, and all notifications could be made during their respective AGMs.
 21. In June of 2010, Desert Aire's strata manager announced that he was retiring effective July 1, 2010.
 22. Ms. Youngberg states that she spoke with her strata manager and discussed the procedure for notifying the strata owners and councils of the transfer to Brokerage B, and further states that it was determined that her strata manager would draft all of the announcements and would schedule meetings with the respective strata councils with Desert Aire and Brokerage B.
 23. Announcements were written and were received by the strata councils by June 20, 2010. In addition, Managing Broker B attended and was introduced at the AGMs by Desert Aire's strata manager (another licensee), and the strata councils were advised of the process of transferring files.
 24. Ms. Youngberg did not ensure that Desert Aire had obtained the stratas' written authorization to transfer, sell, or assign the stratas' respective written service agreements to Brokerage B; prior to transferring the written service agreements to Brokerage B, or prior to permitting Brokerage B to provide management services to the Brokerages.
 25. On July 1, 2010 the licence of Desert Aire's strata manager was terminated.
 26. Ms. Youngberg states that the boxes of records of the strata's were in impeccable order and were organized in binders with the accounting records on discs. As

Ms. Youngberg was preparing to move out of her space in August, she asked Managing Broker B if he would store the records for her in his office space which was across the street. Ms. Youngberg states this was logical as she was planning to move to Brokerage B's offices shortly, and once she finally moved to the premises they could place the boxes of records they did not need to access daily in the basement storage.

27. Ms. Youngberg states that Managing Broker B agreed, and stated that he would confirm in writing with the stratas that the records would be available to them at any time. The strata's records were sent to Brokerage B at the beginning of July 2010.
28. Ms. Youngberg did not ensure Desert Aire retained copies of the records that were transferred to Brokerage B.
29. On July 26, Ms. Youngberg was contacted by her former strata manager who advised that one of the strata's had contacted him directly and asked him to continue to manage one of the properties. The strata manager agreed to become licensed again with Brokerage B, in order to continue to manage the strata. Ms. Youngberg states that she thought the arrangement was terrific as the clients were very happy to have their strata manager working with them again.
30. Ms. Youngberg states that Managing Broker B then advised her that he had rented a small office space in the same building as Brokerage B, and that she would move to this space. This small office space was to be temporary until the space Brokerage B was in could be renovated to accommodate Desert Aire. Ms. Youngberg agreed to the arrangement and made final arrangements to transfer phone lines, and to advise all relevant parties of the address change, effective August 31, 2010.
31. On August 30, 2010, Managing Broker B advised that he was no longer interested in pursuing the arrangement as Desert Aire's strata portfolios were not profitable, and it would not be a good business decision.
32. On August 31, 2010 Ms. Youngberg made arrangements to continue with Desert Aire, and advised that she contacted the Council in this regard.
33. In mid-October, Ms. Youngberg states that she had a confidential conversation with her former strata manager who advised her that he would like to return to Desert Aire with the stratas he was managing.
34. On October 22, 2010 Ms. Youngberg requested that Brokerage B return all of the strata's records at Brokerage B. Ms. Youngberg also notified all of the stratas and offered them the opportunity to remain with Brokerage B or to return to Desert Aire. If the stratas chose to return to Desert Aire, Ms. Youngberg

requested that the stratas authorize Brokerage B to return their records to Desert Aire.

35. Between October 26 and October 28, Desert Aire received all of the records from the stratas that authorized Brokerage B to return them to Desert Aire. On October 26, 2010 the strata manager was re-licensed with Desert Aire.
36. Between August 1, 2010 and October 28, 2010 Brokerage B was providing strata management services to the three stratas without having provided proper written authorization for Brokerage B to provide such services. Ms. Youngberg permitted Brokerage B to provide strata management services to the stratas when she had active service agreements in place with the stratas.

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37. The fiscal year end of Desert Aire was August 31 2011. The Accountant's Report was due to be filed with the Council on December 31, 2011.
38. A letter was sent from the Council to Desert Aire dated September 9, 2011 advising that the Accountant's Report, and Brokerage Activity Report (collectively the "Accountant's Report Filing") were due to be received by the Council on or before December 31, 2011.
39. A letter was set from the Council to Desert Aire dated January 5, 2012 advising that if the Accountant's Report Filing was not received within 30 days of the due date a Notice of Discipline Hearing will be issued.
40. On January 25, 2012, Ms. Youngberg sent a letter to Council requesting a one month extension to submit the Accountants Report Filing, as her husband had passed away very recently.
41. On February 3, 2012 the Council sent a letter to Ms. Youngberg confirming receipt of the January 25, 2012 letter and advising that the extenuating circumstances would be taken into consideration upon receipt of the Accountants Report Filing.
42. On March 30, 2012 a Notice of Discipline Hearing was sent to Desert Aire and Ms. Youngberg.
43. On May 16, 2012 the Council received an Accountant's Report, Financial Statements subject to a Review Engagement, and the Brokerage Activity Report. All reports were received in acceptable form from the brokerage.

Previous Discipline History

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44. On October 21, 2004 Ms. Youngberg received a letter of warning advising her to ensure that as managing broker for the stakeholder brokerage she was obliged to ensure that deposits were received into her brokerage's trust in accordance with the terms of a contract and in the event that the deposit was not received, as set out in the contract, the seller was notified of the deficiency of deposit, notwithstanding that in the instance that gave rise to the complaint the provisions for a deposit in the new Contract differed from those set out in the earlier Contract.
45. On June 19, 2009 Ms. Youngberg received a letter of warning cautioning her to review documentation submitted by licensees, particularly Disclosure of Interest in Trade forms, to ensure that they are completed in accordance with the Council Rules.
46. On August 19, 2010 Ms. Youngberg entered into a Consent Order with the Council in which it was agreed that Ms. Youngberg committed professional misconduct within the meaning of section 35(1)(a) of RESA, as managing broker of Desert Aire Realty (1994) Inc. dba Coldwell Banker Desert Aire Realty by:
- (i) contravening section 25 of RESA and section 8-3(b)(iii) of the Council Rules by failing to ensure that the reconciliations for the Brokerage's rental property services pooled trust account reflected the date the reconciliations were prepared on the monthly trust liability listings;
 - (ii) contravening section 8-6 of the Council Rules during December 2008 and January 2009 by failing to ensure that the Brokerage retained copies of all residential tenancy agreements entered into on behalf of the Brokerage;
 - (iii) contravening section 27(2)(a) of RESA between May 2008 and September 2008 by failing to ensure that all funds submitted to the Brokerage in respect of rental property services provided to the client Georgia Laine Developments were deposited into the Brokerage's rental property management brokerage trust account;
 - (iv) contravening section 30(1) of RESA by failing to ensure that bank service charges in connection with the Brokerage's rental property management trust account were withdrawn from the Brokerage's general operating account rather than being withdrawn from the Brokerage's rental property management trust account;
 - (v) contravening section 5-1(1)(b) of the Council Rules by failing to ensure that all rental property management service agreements entered into on behalf of the Brokerage satisfied all of the requirements of sections 5-1(2), 5-1(3), 5-1(4), 5-1(5), and 5-1(6) of the Council Rules;

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- (vi) contravening section 5-1(1)(c) of the Council Rules by failing to ensure that all strata property management service agreements entered into on behalf of the Brokerage satisfied all of the requirements of sections 5-1(1), 5-1(2), 5-1(3), 5-1(4), 5-1(5.1), and 5-1(6) of the Council Rules;
 - (vii) contravening section 7-5(1) of the Council Rules by allowing the Brokerage to make payments out of the Brokerage's property management trust account which rendered the Brokerage's property management trust account into a negative balance;
 - (viii) failing to be actively engaged in the management of the Brokerage in accordance with section 6(2) of RESA and section 3-1 of the Council Rules;
 - (ix) failing to ensure that the business of the Brokerage was carried out competently and in accordance with the Act, Regulations, Rules and/or Bylaws as required by with section 6(2) of RESA and section 3-1 of the Council Rules; and
 - (x) failing to ensure that there was an adequate level of supervision for related associate brokers and representatives in accordance with section 6(2) and 3-1 of the Council Rules.

47. Ms. Youngberg was suspended for seven (7) days, ordered to successfully complete the Real Estate Trading Services Remedial Education Course and pay enforcement expenses to the Council in the amount of \$1,000.00 within sixty (60) days of the date of the Order herein.

F. Proposed Acceptance of Findings and Waiver

1. Based on the Agreed Statement of Facts as outlined herein, and without making any admissions of liability, Carol Yvonne Youngberg and Desert Aire Realty (1994) Inc. are prepared to accept the following findings if made against them by the Council's Consent Order Review Committee:

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- (a) Carol Yvonne Youngberg committed professional misconduct within the meaning of section 35(1)(a) of RESA by contravening sections 35(1)(d) [incompetence] of RESA, section 3-4 of the Rules [reasonable care and skill] of the Rules, and sections 5-1(1-5) of the Council Rules [written service agreements required] in respect of the management of rental property located at 33-9330, 202nd Avenue, Osoyoos, BC (the "Property") and a Residential Tenancy Office Dispute Resolution Order dated March 4, 2011 (the "Order") in that she contravened section 35(1)(d) [incompetence] of RESA and/or section 3-4 [reasonable care and skill] of the Council Rules in that she:

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- (i) contravened section 22 of the *Manufactured Home Park Tenancy Act*, when she failed to ensure the tenant's right to quiet enjoyment of her rental unit on the Property by permitting other tenants to hold a four day party as set out in the Order;
 - (ii) contravened section 27(1)(b) of the *Manufactured Home Park Tenancy Act* by failing to carry out emergency repairs that were deemed necessary for the health and safety of the tenant, or of anyone, or for the preservation or use of property, in the manufactured home park, by failing to remove certain trees that were deemed to pose a hazard to the property as they were unstable and presented a fire risk as set out in the Order;
 - (iii) failed to comply with the terms of the Order, made against the said licensee, against Desert Aire Property Management [a division of Desert Aire Realty (1994) Inc.], and against Sprott Resource Landing Corporation[sic], whom were all ordered to comply with the *Manufactured Home Park Tenancy Act* with regards to a tenants' right to quiet enjoyment of her rental unit, and to carry out emergency repairs and ensure two trees on the tenants' site were removed or made safe within 14 days of receiving the decision; and
- (b) Carol Yvonne Youngberg contravened sections 5-1(1-5) of the Council Rules in that in providing rental property management services to either or both of, Georgia Laine Developments Ltd., or Sprott Resource Landing Corporation (together the "Owners"), in the management of the Willow Beach Mobile Home Park in that she:
- (i) in that she failed to ensure that a written rental property management service agreement was in place between Desert Aire Realty (1994) Inc. and the Owners, or either of them, of Willow Beach Mobile Home Park, that satisfied all of the requirements of section 5-1(1-5) of the Council Rules.

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- (c) Carol Yvonne Youngberg, as managing broker for Desert Aire, committed professional misconduct within the meaning of section 35(1)(a) of RESA in relation to the transfer, sale, or assignment of the written service agreements between Desert Aire and Strata Plan KAS-2622 (Luna Rosa), Strata Plan KAS 2860(Casa Del Mila Ora), and Strata Plan KAS-9734 (La Vista Estates) (collectively the "Stratas") to BC Strata Management, which occurred between approximately July 1, 2010 to October 31, 2010 (the "Transfer"), and in relation to the provision of strata management services to the Stratas, or any one of them, by not fulfilling her responsibilities as a

managing broker for the performance of the duties imposed on the brokerage by its license within the meaning of section 6(2)(b) of RESA and by contravening section 3-1(1)(b) of the Council Rules in that she failed to ensure:

- (i) that Desert Aire acted in the best interests of the Stratas, and acted only within the scope of the authority given by the Stratas, or any one of them, by failing obtain the Stratas' written authorization to transfer, sell, or assign the Stratas' respective written service agreements to BC Strata Management, prior to transferring the Stratas' written service agreements to BC Strata Management, and by permitting BC Strata Management, or a representative of it, to provide strata management services to the Stratas, or any one of them, while Desert Aire still had active service agreements in place with the Stratas contrary to section 3-3(1)(a), 3-3(1)(c) and/or 3-4 of the Council Rules; and
 - (ii) that Desert Aire retained the records of the brokerage, and in particular, the records relating to the Stratas or any one of them, for at least 7 years after their creation when no shorter period was authorized by Council contrary to section 8-10 of the Council Rules;
- (d) Desert Aire has committed professional misconduct within the meaning of section 35(1)(a) of RESA in relation to the Transfer, and in relation to the provision of strata management services to the Stratas, or any one of them, in that it contravened section 8-10 of the Council Rules, by failing to retain the records of the brokerage, and in particular, the records relating to the Stratas, or any one of them, for at least 7 years after their creation when no shorter period was authorized by Council;

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- (e) Desert Aire has committed professional misconduct within the meaning of section 35(1)(a) of RESA by contravening section 7-7(1)(b) of the Council Rules in that it failed to file an Accountant's Report with the Council for the year ending August 31, 2011 on or before December 31, 2011;
- (f) Carol Yvonne Youngberg committed professional misconduct within the meaning of section 35(1)(a) of the RESA by not fulfilling her responsibilities as managing broker for the performance of the duties imposed on the brokerage by its licence within the meaning of section 6(2)(b) of the *Real Estate Services Act* and by contravening section 3-1(1)(a) and (b) and 3-1(3) of the Council Rules (managing broker

responsibilities) in that she failed to ensure that the said Accountant's Report was filed with the Council on or before December 31, 2011.

2. Ms. Youngberg and Desert Aire hereby waive their right to appeal pursuant to section 54 of the *Real Estate Services Act*.
3. Ms. Youngberg and Desert Aire acknowledge that they have a right to seek independent legal advice before signing this Agreed Statement of Facts, Proposed Acceptance of Findings and Waiver.
4. Ms. Youngberg and Desert Aire acknowledge and are aware that the Council will publish the Consent Order and penalty herein in its Report from Council newsletter, on the Council's website, and on CanLII, a website for legal research.
5. Ms. Youngberg and Desert Aire acknowledges and are aware that the Superintendent of Real Estate has the right, pursuant to section 54 of the *Real Estate Services Act*, to appeal any decision of the Council, including this Agreed Statement of Facts, Proposed Acceptance of Findings, and Waiver and Consent Order.
6. The Agreed Statement of Facts and Proposed Acceptance of Findings contained herein are made for the sole purpose of resolving a complaint being considered by the Council and for that purpose only. Such agreed statement of facts and proposed acceptance of findings cannot be used in any other proceeding of any kind.

"Joni R. Worton"
**Joni R. Worton, Legal Counsel
Real Estate Council of British Columbia**

**As to Part E only (Agreed Statement of
penalty, Facts)**

Dated 24 day of July, 2012

"Carol Yvonne Youngberg"
Carol Yvonne Youngberg

**As to Parts A, C, D, E, and F
proposed penalty Agreed Statement of
Facts, Proposed Acceptance of Findings
and Waiver)**

Dated 19th day of July, 2012
"Carol Yvonne Youngberg"
**Carol Yvonne Youngberg on behalf of
Desert Aire Realty (1994) Inc.**

**As to Parts B, C, D, E, and F (proposed
Penalty Agreed Statement of Facts,
Proposed Acceptance of Findings and
Waiver
Dated 19th day of July, 2012**