

1 2. Respondents have received, read, and understands the Statement to
2 Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department in
3 this proceeding.

4 3. Respondents filed a Notice of Defense pursuant to Section 11505 of the
5 Government Code for the purpose of requesting a hearing on the allegations in the Accusation.
6 Respondents hereby freely and voluntarily withdraw said Notice of Defense. Respondents
7 acknowledges and understands that by withdrawing said Notice of Defense they will thereby
8 waive their right to require the Real Estate Commissioner (Commissioner) to prove the
9 allegations in the Accusation at a contested hearing held in accordance with the provisions of the
10 APA and that they will waive other rights afforded to them in connection with the hearing such
11 as the right to present evidence in defense of the allegations in the Accusation and the right to
12 cross-examine witnesses.

13 4. This Stipulation is based on the factual allegations contained in the
14 Accusation. In the interest of expediency and economy, Respondents choose not to contest these
15 factual allegations, but to remain silent and understands that, as a result thereof, these factual
16 statements will serves as a prima facie basis for the "Determination of Issues" and "Order" set
17 forth below. The Commissioner shall not be required to provide further evidence to prove such
18 allegations.

19 5. It is understood by the parties that the Commissioner may adopt the
20 Stipulation as his Decision and Order in this matter, thereby imposing the penalty and sanctions
21 on Respondents' real estate licenses and license rights as set forth in the below "Order". In the
22 event that the Commissioner in his discretion does not adopt the Stipulation, it shall be void and
23 of no effect, and Respondents shall retain the rights to a hearing and proceeding on the
24 Accusation under all the provisions of the APA and shall not be bound by any admission or
25 waiver made herein.

26 6. This Decision and Order or any subsequent Order of the Commissioner
27 made pursuant to this Stipulation shall not constitute an estoppel, merger, or bar to any further

1 ORDER

2 THE ISMART REALTY & INVESTMENTS INC

3 All licenses and licensing rights of ISMART REALTY & INVESTMENTS INC,
4 under the Real Estate Law are suspended for a period of one hundred and twenty (120) days from
5 the effective date of this Order; provided, however, that:

6 1. Sixty (60) days of said suspension shall be stayed, upon the condition that
7 iSRII petition pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant to
8 Section 10175.2 of the Code at a rate of \$25 for each day of the suspension for a total monetary
9 penalty of \$1,500.

10 (a) Said payment shall be in the form of a cashier's check made payable
11 to the Department of Real Estate. Said check must be delivered to the Department of Real
12 Estate, Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective
13 date of this Order.

14 (b) No further cause for disciplinary action against the real estate licenses
15 of iSRII occurs within two (2) years from the effective date of the decision in this matter.

16 (c) If iSRII fails to pay the monetary penalty as provided above prior to
17 the effective date of this Order, the stay of the suspension shall be vacated as to iSRII and the
18 order of suspension shall be immediately executed, under this Order, in which event that iSRII
19 shall not be entitled to any repayment nor credit, prorated or otherwise, for the money paid to the
20 Department under the terms of this Order.

21 (d) If iSRII pays the monetary penalty and any other moneys due under
22 this Stipulation and if no further cause for disciplinary action against the real estate license of
23 said iSRII occurs within two (2) years from the effective date of this Order, the entire stay hereby
24 granted in this Order, as to iSRII only, shall become permanent.

25 2. Sixty (60) days of said suspension shall be stayed for two (2) years upon
26 the following terms and conditions:

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1 (a) iSR II shall obey all laws, rules and regulations governing the rights,
2 duties and responsibilities of a real estate licensee in the State of California; and,

3 (b) That no final subsequent determination be made, after hearing or upon
4 stipulation, that cause for disciplinary action occurred within two (2) years from the effective
5 date of this Order. Should such a determination be made, the Commissioner may, in his
6 discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed
7 suspension. Should no such determination be made, the stay imposed herein shall become
8 permanent.

9 PHONG THAI HUYNH

10 All licenses and licensing rights of PHONG THAI HUYNH, under the Real Estate
11 Law are suspended for a period of one hundred and twenty (120) days from the effective date of
12 this Order; provided, however, that:

13 3. Sixty (60) days of said suspension shall be stayed, upon the condition that
14 HUYNH petition pursuant to Section 10175.2 of the Code and pays a monetary penalty pursuant
15 to Section 10175.2 of the Code at a rate of \$25 for each day of the suspension for a total
16 monetary penalty of \$1,500.

17 (a) Said payment shall be in the form of a cashier's check made payable to the
18 Department of Real Estate. Said check must be delivered to the Department of Real Estate, Flag
19 Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this
20 Order.

21 (b) No further cause for disciplinary action against the real estate licenses
22 of HUYNH occurs within two (2) years from the effective date of the decision in this matter.

23 (c) If HUYNH fails to pay the monetary penalty as provided above prior to
24 the effective date of this Order, the stay of the suspension shall be vacated as to HUYNH and the
25 order of suspension shall be immediately executed, under this Order, in which event that
26 HUYNH shall not be entitled to any repayment nor credit, prorated or otherwise, for the money
27 paid to the Department under the terms of this Order.

1 (d) If HUYNH pays the monetary penalty and any other moneys due under
2 this Stipulation and if no further cause for disciplinary action against the real estate license of
3 said HUYNH occurs within two (2) years from the effective date of this Order, the entire stay
4 hereby granted in this Order, as to HUYNH only, shall become permanent.

5 4. Sixty (60) days of said suspension shall be stayed for two (2) years upon
6 the following terms and conditions:

7 (a) HUYNH shall obey all laws, rules and regulations governing the
8 rights, duties and responsibilities of a real estate licensee in the State of California; and,

9 (b) That no final subsequent determination be made, after hearing or upon
10 stipulation, that cause for disciplinary action occurred within two (2) years from the effective
11 date of this Order. Should such a determination be made, the Commissioner may, in his
12 discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed
13 suspension. Should no such determination be made, the stay imposed herein shall become
14 permanent.

15 5. All licenses and licensing rights HUYNH are indefinitely suspended
16 unless or until HUYNH provides proof satisfactory to the Commissioner, of having taken and
17 successfully completed the continuing education course on trust fund accounting and handling
18 specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Code. Proof of
19 satisfaction of these requirements includes evidence that HUYNH has successfully completed the
20 trust fund account and handling continuing education courses, no earlier than 120 days prior to
21 the effective date of the Decision and Order in this matter. Proof of completion of the trust fund
22 accounting and handling course must be delivered to the Department of Real Estate, Flag Section
23 at P.O. Box 137013, Sacramento, CA 95813-7013 or by fax at 916-263-8758, prior to the
24 effective date of this Decision and Order.

25 THE ISMART REALTY & INVESTMENTS INC and PHONG THAI HUYNH

26 6. Pursuant to Section 10148 of the Code, Respondents shall, jointly and
27 severally, pay the sum of \$3,548.96 for the Commissioner's cost of the audit which led to this

1 disciplinary action. Respondents shall pay such cost within sixty (60) days of receiving an
2 invoice therefore from the Commissioner. Payment of audit costs should not be made until
3 Respondents receive the invoice. If Respondents fails to satisfy this condition in a timely manner
4 as provided for herein, Respondents' real estate licenses shall automatically be suspended until
5 payment is made in full, or until a decision providing otherwise is adopted following a hearing
6 held pursuant to this condition.

7 7. Pursuant to Section 10148 of the Code, Respondents shall, jointly and
8 severally, pay the Commissioner's reasonable cost, not to exceed \$4,436.20 for an audit to
9 determine if Respondents have corrected the violations found in the "Determination of Issues".
10 In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the
11 estimated average hourly salary for all persons performing audits of real estate brokers, and shall
12 include an allocation for travel time to and from the auditor's place of work. Respondents shall
13 pay such cost within sixty (60) days of receiving an invoice therefore from the Commissioner.
14 Payment of the audit costs should not be made until Respondents receive the invoice. If
15 Respondents fails to satisfy this condition in a timely manner as provided for herein,
16 Respondents' real estate licenses shall automatically be suspended until payment is made in full,
17 or until a decision providing otherwise is adopted following a hearing held pursuant to this
18 condition.

19 8. All licenses and licensing rights of Respondents are indefinitely suspended
20 unless or until Respondents, jointly and severally, pay the sum of \$1,573.75 for the
21 Commissioner's reasonable cost of the investigation which led to this disciplinary action. Said
22 payment shall be in the form of a cashier's check made payable to the Department of Real Estate,
23 Flag Section at P.O. Box 137013, Sacramento, CA 95813-7013, prior to the effective date of this
24 Stipulation.

25 12/22/21

26 DATED

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MEGAN LEE OLSEN, Counsel
DEPARTMENT OF REAL ESTATE

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I have read the Stipulation and Agreement in Settlement and Order and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509 and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges. I further agree to mail the original Stipulation no later than five days after signing it to: Department of Real Estate, Legal Section, P.O. Box 137007, Sacramento, California 95813-7007. I understand that failure to mail the original back may result in this matter going to hearing.

12/10/21
DATED



ISMART REALTY & INVESTMENTS INC
Respondent
By: PHONG THAI HUYNH
Designated Officer

12/10/21
DATED


PHONG THAI HUYNH
Respondent

The foregoing Stipulation and Agreement In Settlement and Order is hereby adopted by the Real Estate Commissioner as his Decision and Order and shall become effective at 12 o'clock noon on APR 19 2022

IT IS SO ORDERED 3-16-22


DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER