Bureau of Real Estate 320 West 4th Street, Suite 350 Los Angeles, California 90013-1105

## FILED

JAN 1 5 2014

BUREAU OF REAL ESTATE

By Johnsh

# BUREAU OF REAL ESTATE STATE OF CALIFORNIA

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In the Matter of the Accusation of

HOMESMART REALTY and LOUIS WILLIAM)
PALAFOX, individually, and as
designated officer of Homesmart
Realty,

Respondents.

CAL BRE No: H-38793 LA

OAH NO: 2013050706

STIPULATION AND AGREEMENT

It is hereby stipulated by and between Respondent LOUIS WILLIAM PALAFOX, represented by GHASSAN O. HASAN, and the Complainant, acting by and through James A. Demus, Counsel for the Bureau of Real Estate, as follows for the purpose of settling and disposing of the Accusation filed on April 2, 2013, in this matter:

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondent at a formal hearing on the Accusation, which hearing was to be held in accordance with the provisions of the Administrative

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Procedure Act ("APA"), shall instead and in place thereof be submitted solely on the basis of the provisions of this Stipulation and Agreement ("Stipulation").

- 2. Respondent has received, read and understands the Statement to Respondent, the Discovery Provisions of the APA and the Accusation filed by the Bureau of Real Estate in this proceeding.
- 3. Respondent timely filed a Notice of Defense pursuant to Section 11506 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent acknowledges that he understands that by withdrawing said Notice of Defense he thereby waives the right to require the Commissioner to prove the allegations in the Accusation at a contested hearing held in accordance with the provisions of the APA and that he will waive other rights afforded to him in connection with the hearing such as the right to present evidence in his defense of the allegations in the Accusation and the right to cross-examine witnesses.
- 4. This Stipulation is based on the factual allegations contained in the Accusation. In the interest of expedience and economy, Respondent chooses not to contest these allegations, but to remain silent and understands that, as a result thereof, these factual allegations, without being admitted or denied, will serve as a prima facie basis for the disciplinary action stipulated to herein. The Real Estate Commissioner shall

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not be required to provide further evidence to prove said factual allegations.

- 5. This Stipulation is made for the purpose of reaching an agreed disposition of this proceeding and is expressly limited to this proceeding and any other proceeding or case in which the Bureau of Real Estate ("Bureau"), the state or federal government, or any agency of this state, another state or federal government is a party.
- Estate Commissioner may adopt this Stipulation as his Decision in this matter thereby imposing the penalty and sanctions on Respondent's real estate license and license rights as set forth in the "Order" herein below. In the event that the Commissioner in his discretion does not adopt the Stipulation, it shall be void and of no effect and Respondent shall retain the right to a hearing and proceeding on the Accusation under the provisions of the APA and shall not be bound by any stipulation or waiver made herein.
- 7. The Order or any subsequent Order of the Real Estate Commissioner made pursuant to this Stipulation shall not constitute an estoppel, merger or bar to any further administrative or civil proceedings by the Bureau of Real Estate with respect to any matters which were not specifically alleged to be causes for Accusation in this proceeding but do constitute a bar, estoppel and merger as to any allegations actually contained in the Accusation against Respondent herein.

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8. Respondent understands that by agreeing to this Stipulation, Respondents agree to pay, pursuant to Business and Professions Code Section 10148, the cost of the audit which led to this disciplinary action. The amount of said cost is \$5,514.16.

9. Respondent has received, read, and understands the "Notice Concerning Costs of Subsequent Audit." Respondent further understands that by agreeing to this Stipulation, the findings set forth below in the Determination of Issues become final, and the Commissioner may charge Respondent for the cost of any subsequent audit conducted pursuant to Business and Professions Code Section 10148 to determine if the violations have been corrected. The maximum cost of the subsequent audit will not exceed \$5,514.16.

## DETERMINATION OF ISSUES

By reason of the foregoing, it is stipulated and agreed that the following determination of issues shall be made:

The conduct of LOUIS WILLIAM PALAFOX, as described in Paragraph 4, hereinabove, is in violation of Business and Professions Code Sections 10145, 10085.6 and 10176(e), and provides a basis for discipline of his license and license rights pursuant to Business and Professions Code Sections 10176(e) and 10177(h).

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### ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I.

All licenses and licensing rights of Respondent LOUIS
WILLIAM PALAFOX under the Real Estate Law are revoked; provided,
however, a restricted real estate broker license shall be issued
to Respondent pursuant to Section 10156.5 of the Business and
Professions Code if Respondent makes application therefor and
pays to the Bureau of Real Estate the appropriate fee for the
restricted license within 90 days from the effective date of this
Decision. The restricted license issued to Respondent shall be
subject to all of the provisions of Section 10156.7 of the
Business and Professions Code and to the following limitations,
conditions and restrictions imposed under authority of Section
10156.6 of that Code:

- 1. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate

  Commissioner in the event of Respondent's conviction or plea of nolo contendere to a crime which is substantially related to Respondent's fitness or capacity as a real estate licensee.
- 2. The restricted license issued to Respondent may be suspended prior to hearing by Order of the Real Estate

  Commissioner on evidence satisfactory to the Commissioner that Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.

3. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor for the removal of any of the conditions, limitations or restrictions of a restricted license until two years have elapsed from the effective date of this Decision.

II.

Pursuant to Section 10148 of the Business and

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Professions Code, Respondent shall pay the Commissioner's reasonable cost for: a) the audit which led to this disciplinary action and b) a subsequent audit to determine if Respondent has corrected the trust fund violations found in the Determination of Issues. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel costs, including mileage, time to and from the auditor's place of work and per diem. Respondent shall pay such costs within 60 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may, in his discretion, vacate and set aside the stay order, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the Respondent and the Commissioner. The vacation and the set aside of the stay shall remain in effect until payment is made in full, or until

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Respondent enters into an agreement satisfactory to the Commissioner to provide for payment.

III.

All licenses and licensing rights of Respondent LOUIS
WILLIAM PALAFOX are indefinitely suspended unless or until
Respondent provides proof satisfactory to the Commissioner, of
having taken and successfully completed the continuing education
course on trust fund accounting and handling specified in
paragraph (3) of subdivision (a) of Section 10170.5 of the
Business and Professions Code. Proof of satisfaction of this
requirement includes evidence that respondent has successfully
completed the trust fund account and handling continuing
education course within 120 days prior to the effective date of
the Decision in this matter.

IV.

Respondent LOUIS WILLIAM PALAFOX shall within six (6) months from the effective date of the Decision herein, take and pass the Professional Responsibility Examination administered by the Bureau including the payment of the appropriate examination fee. If Respondent LOUIS WILLIAM PALAFOX fails to satisfy this condition, the Commissioner may order suspension of Respondent LOUIS WILLIAM PALAFOX's license until Respondent passes the examination.

DATED: 12 (20 /13

TAMES A. DEMUS, Counsel for the Bureau of Real Estate

#### EXECUTION OF THE STIPULATION

I have read the Stipulation and discussed it with my counsel. 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.

Respondent can signify acceptance and approval of the terms and conditions of this Stipulation by faxing a copy of its signature page, as actually signed by Respondent, to the Bureau at the following telephone/fax number: James A. Demus at (213) 576-6917. Respondents agree, acknowledge and understand that by electronically sending to the Bureau a fax copy of Respondent's actual signature as it appears on the Stipulation, that receipt of the faxed copy by the Bureau shall be as binding on Respondent as if the Bureau had received the original signed Stipulation.

DATED: 12-20-13
LOUIS WILLIAM PALAFOX, Respondent

 GHASSAN O. HASSAN, Actorney for Respondent The foregoing Stipulation and Agreement is hereby adopted as my Decision as to Respondent LOUIS WILLIAM PALAFOX and shall become effective at 12 o'clock noon on FEB 05 2014 IT IS SO ORDERED Commissioner