

1 MARY ANN SMITH
Deputy Commissioner
2 JUDY L. HARTLEY (CA BAR NO. 110628)
Senior Corporations Counsel
3 Department of Corporations
320 West 4th Street, Ste. 750
4 Los Angeles, California 90013-2344
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5 Attorneys for Complainant

8 BEFORE THE DEPARTMENT OF CORPORATIONS
9 OF THE STATE OF CALIFORNIA

10
11 In the Matter of the Accusation of THE) File No.: 963-0855
CALIFORNIA CORPORATIONS)
12 COMMISSIONER,) SETTLEMENT AGREEMENT WITH
13) CRESTA VERDE ESCROW, INC. AND
Complainant,) SHIRLEY LEWIS
14)
15 vs.)
16 CRESTA VERDE ESCROW, INC., SHIRLEY)
LEWIS, and KIMBERLY M. DEBERG,)
17)
18 Respondents.)

19 This Settlement Agreement is entered into between Respondents Cresta Verde Escrow, Inc.,
20 (“Cresta Verde”) and Shirley Lewis (“Lewis”) on the one hand, and Complainant the California
21 Corporations Commissioner (“Commissioner”) on the other hand, and is made with respect to the
22 following facts:

23 **RECITALS**

24 A. Cresta Verde is a corporation in good standing, duly formed and existing pursuant to
25 the laws of the State of California, and authorized to conduct business in the State of California.

26 B. Cresta Verde is an escrow agent licensed by the Commissioner pursuant to the
27 Escrow Law of the State of California (California Financial Code § 17000 et seq.). Cresta Verde has
28 its principal place of business located at 27500 Marguerite Parkway, Suite 5, Mission Viejo,

1 California 92692. Cresta Verde also has a branch location at 28780 Front Street, Suite B4,
2 Temecula, California 92390.

3 C. Lewis is, and was at all times relevant herein, the president and sole shareholder of
4 Cresta Verde.

5 D. On December 5, 2012, Cresta Verde and Lewis were personally served by the
6 Commissioner with a Notice of Intention to Issue Order to Revoke Escrow Agent’s License and To
7 Issue Orders Pursuant to Section 17423 (Bar from Employment, Management or Control of an
8 Escrow Agent), Accusation and accompanying documents dated December 3, 2012. Cresta Verde
9 and Lewis have filed a Notice of Defense with the Commissioner on the above-referenced matter.

10 E. It is the intention and desire of the parties to resolve this matter without the necessity
11 of a hearing and/or other litigation.

12 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
13 forth herein, the parties agree as follows:

14 **TERMS AND CONDITIONS**

15 1. This Settlement Agreement is entered into for the purpose of judicial economy and
16 expediency, and to avoid the expense of a hearing, and possible further court proceedings.

17 2. Lewis, without admitting or denying any of the allegations contained in the
18 Accusation described in paragraph E above (“Accusation”), hereby agrees to the issuance by the
19 Commissioner of an order suspending Lewis from any position of employment, management or
20 control of an escrow agent for a period of one year. The suspension order shall become effective
21 upon approval, if any, of the change of ownership application described in paragraph 7 below, but no
22 later than 150 days after execution of this Settlement Agreement. A copy of the suspension order is
23 attached and incorporated herein as Exhibit A.

24 3. Lewis acknowledges her right to an administrative hearing under Financial Code
25 section 17423 in connection with the suspension and hereby waives that right to a hearing, and to
26 any reconsideration, appeal, or other rights which may be afforded pursuant to the Escrow Law, the
27 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
28 provision of law in connection with this matter herein.

1 4. Lewis additionally agrees that upon completion of the suspension described in
2 paragraph 2 above she shall not undertake any position as an escrow manager, corporate officer,
3 director, trustee or stockholder, or act in any such capacity, and/or apply for any such position, with
4 any escrow agent licensed by the Commissioner or seeking licensure with the Commissioner.

5 5. Lewis further agrees that if the Commissioner finds that Lewis has violated any of the
6 provisions of Paragraph 4, the Commissioner may immediately issue an Order barring Lewis from
7 any position of employment, management or control of any escrow agent and the allegations set
8 forth in the Accusation shall be deemed to have been admitted by Lewis as to this matter only, but in
9 that event, the admissions would not be binding or admissible Lewis in any other action.

10 6. Lewis hereby waives her right to any reconsideration, appeal or other right to review
11 in connection with any finding by the Commissioner or any bar order issued pursuant to Paragraph 5
12 above which may be afforded pursuant to the Escrow Law, the California Administrative Procedure
13 Act, the California Code of Civil Procedure, or any other provision of law in connection therewith.

14 7. The Commissioner hereby agrees that Lewis shall be allowed 120 days within which
15 to sell Cresta Verde. The Commissioner further agrees to extend the 120 day period up to a further
16 30 days in order for Lewis to complete any sale of Cresta Verde, or good faith negotiations to sell
17 Cresta Verde, that may be pending at the end of the initial 120 day period, which period shall
18 commence upon execution of this Settlement Agreement. Lewis agrees to immediately surrender the
19 escrow agent’s licenses of Cresta Verde to the Commissioner in the event there is no sale or good
20 faith negotiations to sell Cresta Verde pending at the expiration of the initial 120 days, or if Lewis is
21 unable to complete any sale of Cresta Verde within any extension granted by the Commissioner
22 pursuant to this paragraph.

23 8. Cresta Verde and Lewis hereby acknowledge that pursuant to Financial Code Section
24 17213, the sale of Cresta Verde as an ongoing independent escrow agent business must be approved
25 by the Commissioner through the filing of an Application for Change of Ownership (“Application”).

26 9. Cresta Verde and Lewis understand that if Cresta Verde is sold as an ongoing
27 independent escrow agent business, Cresta Verde must be in compliance with the Escrow Law, to
28 include net worth and liquid asset requirements, annual audit reporting, and books and records

1 maintenance prior to approval of any such Application.

2 10. Except as otherwise provided in paragraph 9 above, the Commissioner hereby agrees
3 to process any Application filed with the Commissioner pursuant to the contemplated sale of Cresta
4 Verde described in paragraph 7 above in an expeditious manner, which shall include prompt notice
5 to such applicant of any deficiency in the completeness of the Application or of any potential
6 problems with the applicant. Lewis agrees that in the event that the Commissioner abandons or
7 denies any Application described in paragraph 8 above as provided by the Escrow Law, and the time
8 set forth in paragraph 7 above has passed, Lewis shall immediately surrender the escrow agent's
9 licenses of Cresta Verde to the Commissioner.

10 11. Cresta Verde and Lewis agree, that in the event that Cresta Verde is sold to an exempt
11 entity, as that term is defined in Financial Code section 17006, to immediately notify the
12 Commissioner of the name, address and telephone number of such exempt entity and the location of
13 all records pertaining to closed escrow files. Cresta Verde and Lewis additionally agree to
14 immediately surrender the escrow agent's licenses of Cresta Verde in accordance with the provisions
15 of the Escrow Law.

16 12. Cresta Verde and Lewis agree that if Cresta Verde's escrow agent's licenses are not
17 surrendered to the Commissioner as required by paragraphs 7, 10, and/or 11 above within 15 days
18 after written notice to Cresta Verde and Lewis at their addresses last provided to the Commissioner
19 with a copy to their attorney, Greg Mortensen, Esq., the license shall be automatically revoked, and
20 any rights to a hearing regarding such revocation, and to any reconsideration, appeal, or other rights
21 which may be afforded pursuant to the Escrow Law, the California Administrative Procedure Act,
22 the California Code of Civil Procedure, or any other provision of law in connection therewith are
23 hereby waived.

24 13. Cresta Verde and Lewis hereby acknowledge and understand that Financial Code
25 Section 17600(b) requires a closing audit report to be filed with the Commissioner within 105 days
26 of the written notice to the Commissioner of the surrender of Cresta Verde's escrow agent's licenses.
27 Cresta Verde and Lewis agree that if they fail to file the closing audit as required by Section
28 17600(b), any surrender of Cresta Verde's escrow agent's licenses as provided for in paragraphs 7,

1 10 or 11 above shall not become effective and the escrow agent’s licenses of Cresta Verde shall be
2 automatically revoked, and any rights to a hearing regarding such revocation and to any
3 reconsideration, appeal, or other rights which may be afforded pursuant to the Escrow Law, the
4 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
5 provision of law in connection therewith are hereby waived.

6 14. Except as otherwise provided herein, the parties agree that this Settlement Agreement
7 shall have the effect of dismissing that portion of the Notice of Intention relating to the revocation of
8 Cresta Verde’s escrow agent’s licenses. The dismissal shall become effective upon either (i) the
9 approval of any Application described in paragraph 8 above, or (ii) the surrender of Cresta Verde’s
10 escrow agent’s licenses as provided for in paragraphs 7, 10, or 11 above.

11 15. The parties hereby acknowledge and agree that this Settlement Agreement is intended
12 to constitute a full, final and complete resolution of this matter. The parties further acknowledge and
13 agree that nothing contained in this Settlement Agreement shall operate to limit the Commissioner’s
14 ability to assist any other agency, (county, state or federal) with any prosecution, administrative,
15 civil or criminal, brought by any such agency against Cresta Verde, Lewis, and/or DeBerg or any
16 other person based upon any of the activities alleged in this matter or otherwise.

17 16. Each of the parties represents, warrants, and agrees that it has received independent
18 advice from its attorney(s) and/or representatives with respect to the advisability of executing this
19 Settlement Agreement.

20 17. Each of the parties represents, warrants, and agrees that in executing this Settlement
21 Agreement it has relied solely on the statements set forth herein and the advice of its own counsel
22 and/or representative. Each of the parties further represents, warrants, and agrees that in executing
23 this Settlement Agreement it has placed no reliance on any statement, representation, or promise of
24 any other party, or any other person or entity not expressly set forth herein, or upon the failure of any
25 party or any other person or entity to make any statement, representation or disclosure of anything
26 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in
27 any way fraudulently induced to execute this Settlement Agreement; and (2) to preclude the
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1 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this
2 Settlement Agreement.

3 18. This Settlement Agreement is the final written expression and the complete and
4 exclusive statement of all the agreements, conditions, promises, representations, and covenants
5 between the parties with respect to the subject matter hereof, and supercedes all prior or
6 contemporaneous agreements, negotiations, representations, understandings, and discussions
7 between and among the parties, their respective representatives, and any other person or entity, with
8 respect to the subject matter covered hereby.

9 19. In that the parties have had the opportunity to draft, review and edit the language of
10 this Settlement Agreement, no presumption for or against any party arising out of drafting all or any
11 part of this Settlement Agreement will be applied in any action relating to, connected, to, or
12 involving this Settlement Agreement. Accordingly, the parties waive the benefit of California Civil
13 Code section 1654 and any successor or amended statute, providing that in cases of uncertainty,
14 language of a contract should be interpreted most strongly against the party who caused the
15 uncertainty to exist.

16 20. This Settlement Agreement shall not become effective until signed by all parties and
17 delivered by all parties.

18 21. This Settlement Agreement may be executed in one or more counterparts, each of
19 which shall be an original but all of which, together, shall be deemed to constitute a single
20 document. This Settlement Agreement may be executed by facsimile signature, and any such
21 facsimile signature by any party hereto shall be deemed to be an original signature and shall be
22 binding on such party to the same extent as if such facsimile signature were an original signature.

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22. Each signator hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Settlement Agreement.

Dated: 4/24/13 JAN LYNN OWEN
California Corporations Commissioner

By _____
MARY ANN SMITH
Deputy Commissioner

Dated: 4/24/13 CRESTA VERDE ESCROW, INC.

By _____
SHIRLEY LEWIS, President

Dated: 4/24/13 By _____
SHIRLEY LEWIS, an individual

APPROVED AS TO FORM:
LAW OFFICES OF GREG M. MORTENSEN
By _____
GREG M. MORTENSEN, ESQ. Attorney for CRESTA VERDE
ESCROW, INC. and SHIRLEY LEWIS

JAN LYNN OWEN
California Corporations Commissioner
By _____
JUDY L. HARTLEY
Senior Corporations Counsel