

1 PRESTON DuFAUCHARD
California Corporations Commissioner
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7 Attorneys for Complainant

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

11
12 In the Matter of the Accusation of THE) OAH case No. L-2008040537
CALIFORNIA CORPORATIONS)
13 COMMISSIONER,) File No.: 963-2346
14)
Complainant,) SETTLEMENT AGREEMENT
15)
16 v.)
17 RESORTS WEST ESCROW, INC.,)
18 Respondent.)

19
20 This Settlement Agreement (“Settlement Agreement”) is entered into between Resorts West
21 Escrow, Inc. (“Resorts West”) and the California Corporations Commissioner (“Commissioner”) as
22 of November 12, 2008, and is made with respect to the following facts:

23 **RECITALS**

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

26 B. Resorts West is an escrow agent licensed by the Commissioner pursuant to the Escrow
27 Law of the State of California (California Financial Code § 17000 *et seq.*). Resorts West has its
28 principal place of business located at 40588 Village Drive, P.O. Box 1949, Big Bear Lake,
California 92315.

1 C. Timothy J. Brigham is the president and owner of Resorts West and is authorized to enter
2 into this Settlement Agreement on behalf of Resorts West.

3 D. On March 4, 2008, the Commissioner issued an Accusation (“Accusation”) against
4 Resorts West for its failure to file its annual audit report containing audited financial statements
5 (“Audit Report”) in accordance with Financial Code section 17406.

6 E. On March 10, 2008, Resorts West was personally served with a Notice of Intention to
7 Issue Order to Suspending Escrow Agent’s License, Accusation and accompanying documents
8 issued by the Commissioner on March 4, 2008. Resorts West filed a Notice of Defense with the
9 Commissioner on the above-referenced matter, and the matter was set for hearing on November 10,
10 2008.

11 F. On November 10, 2008, Resorts West filed its Audit Report.

12 G. It is the intention and desire of the parties to resolve this matter without the necessity of a
13 hearing and/or other litigation.

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

16 **TERMS AND CONDITIONS**

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

19 2. Resorts West hereby admits the allegations contained in the Accusation. The admissions
20 of Resorts West are solely for the limited purposes of these proceedings and any future
21 proceeding(s) that may be initiated by or brought before the Commissioner against Resorts West. It
22 is the intent and understanding of the parties that this Agreement, and particularly the admissions of
23 Resorts West contained herein, shall not be binding or admissible against Resorts West in any
24 action(s) brought against Resorts West by third parties.

25 3. Resorts West hereby agrees to the immediate issuance by the Commissioner of an order
26 suspending its escrow agent’s license for a period of two weeks to be served as follows: November
27 17, 2008 through November 21, 2008, and December 8, 2008 through December 12, 2008. In
28 connection with the suspension, Resorts West shall file with the Commissioner at close of business

1 the business day immediately preceding the date on which the suspensions are to commence a list of
2 all open escrows with escrow numbers and escrow party names along with a copy of the signed
3 escrow instructions and signed deposit receipt(s), if applicable, for the last opened escrow. For
4 purposes of this Settlement Agreement, open escrow shall mean an escrow wherein the parties to
5 such escrow have already entered into a binding agreement and monies and/or escrow instructions
6 have been submitted to Resorts West regarding the transaction. A copy of the suspension order is
7 attached and incorporated as Exhibit A.

8 4. Resorts West acknowledges its right to an administrative hearing under Financial Code
9 sections 17608 in connection with the Accusation, and hereby waives that right to a hearing, and to
10 any reconsideration, appeal, or other right which may be afforded pursuant to the Escrow Law, the
11 California Administrative Procedure Act, the California Code of Civil Procedure or any other
12 provision of law in connection with this matter.

13 5. Resorts West further agrees to an automatic revocation of its escrow agent’s license, if it
14 is found, after a hearing to be held before an Administrative Law Judge in accordance with the
15 Administrative Procedure Act, California Government Code Sections 11500 et seq., that Resorts
16 West violated this Settlement Agreement and/or the suspension order in any manner.

17 6. Resorts West hereby waives its right to any reconsideration, appeal or other right to
18 review of any finding by the Commissioner pursuant to paragraph 5 above which may be afforded
19 pursuant to the Escrow Law, the California Administrative Procedure Act, the California Code of
20 Civil Procedure, or any other provision of law in connection therewith.

21 7. Resorts West acknowledges and agrees that the revocation provided for above in
22 paragraph 6 shall not be the exclusive remedy available to the Commissioner in pursuing violation(s)
23 of this Settlement Agreement and/or the suspension order but may be sought and employed in
24 addition to any other remedy available pursuant to the Escrow Law.

25 8. The parties hereby acknowledge and agree that this Settlement Agreement is intended to
26 constitute a full, final and complete resolution of this matter. The parties further acknowledge and
27 agree that nothing contained in this Settlement Agreement shall operate to limit the Commissioner’s
28 ability to assist any other agency, (county, state or federal) with any prosecution, administrative,

1 civil or criminal, brought by any such agency against Resorts West based upon any of the activities
2 alleged in this matter or otherwise.

3 9. The Commissioner shall cause this Settlement Agreement to be filed with the Office of
4 Administrative Hearings within five days of its execution by all parties hereto.

5 10. Each of the parties represents, warrants, and agrees that it has received independent
6 advice from its attorney(s) and/or representative(s) with respect to the advisability of executing this
7 Settlement Agreement.

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

18 12. This Settlement Agreement is the final written expression and the complete and exclusive
19 statement of all the agreements, conditions, promises, representations, and covenants between the
20 parties with respect to the subject matter hereof, and supercedes all prior or contemporaneous
21 agreements, negotiations, representations, understandings, and discussions between and among the
22 parties, their respective representatives, and any other person or entity, with respect to the subject
23 matter covered hereby.

24 13. In that the parties have had the opportunity to draft, review and edit the language of this
25 Agreement, no presumption for or against any party arising out of drafting all or any part of this
26 Agreement will be applied in any action relating to or arising out of this Agreement. Accordingly,
27 the parties hereby waive the benefit of California Civil Code section 1654 and any successor statute
28 or amended statute, providing that in cases of uncertainty, language of a contract should be

1 interpreted most strongly against the party who caused the uncertainty to exist.

2 14. The waiver of any provision of this Settlement Agreement shall not operate to waive any
3 other provision set forth herein, and any waiver, amendment and/or change to the terms of this
4 Settlement Agreement must be in writing signed by the parties hereto.

5 15. Each signatory hereto represents and warrants that he/she possesses the necessary
6 capacity and authority to execute this Settlement Agreement.

7 16. This Settlement Agreement may be executed in one or more counterparts, each of which
8 shall be an original but all of which, together, shall be deemed to constitute a single document.

9 Dated: 11/20/08 PRESTON DuFAUCHARD
10 California Corporations Commissioner

11 By: _____
12 Alan S. Weinger
13 Lead Corporations Counsel

14 Dated: _____ RESORTS WEST ESCROW, INC.

15
16
17 By: _____
18 Timothy J. Brigham
19 President

20 APPROVED AS TO FORM:

21 MORTON ALAN HAAS & CO.

22 By _____
23 MICHAEL C. HAAS, C.P.A., Representatives for
24 RESORTS WEST ESCROW, INC.

25 PRESTON DuFAUCHARD
26 California Corporations Commissioner

27 By _____
28 JUDY L. HARTLEY
Senior Corporations Counsel