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10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:) CFL License No.: 603F654
13 THE COMMISSIONER OF BUSINESS)
14 OVERSIGHT,) CONSENT ORDER
15 Complainant,)
16 v.)
17 DIAMOND CREEK CAPITAL, LLC,)
18 Respondent.)
19 _____)

20
21 The Commissioner of Business Oversight (Commissioner) and Diamond Creek Capital, LLC
22 (DCC), (collectively, Parties), enter into this Consent Order with respect to the following facts:

23 RECITALS

- 24 A. The Commissioner has jurisdiction over the licensing and regulation of persons and entities
25 engaged in the business of making consumer and commercial loans pursuant to the California
26 Financing Law (CFL) (Fin. Code, § 22000 et seq.).
27 B. DCC is a finance lender that was licensed by the Commissioner from October 22, 2007 to
28 December 29, 2019 (CFL License No. 603F654). DCC has its principal office located at 11378 Villa

1 Bellagio Drive, Las Vegas, Nevada 89141.

2 C. DCC has no branch locations in California.

3 D. Thomas P. Harrison is the managing partner and a control person of DCC and, as such, is
4 authorized to enter into this Consent Order on DCC's behalf.

5 E. In accordance with Financial Code section 22107, each finance lender, broker, or program
6 administrator licensee shall pay to the Commissioner its pro rata share of all costs and expenses,
7 including the costs and expenses associated with the licensing of mortgage loan originators it
8 employs, reasonably incurred in the administration of this division, as estimated by the
9 Commissioner, for the ensuing year and any deficit actually incurred or anticipated in the
10 administration of the program in the year in which the assessment is made. CFL licensees must pay
11 the annual assessment on or before the 31st day of October each year.

12 F. Pursuant to Financial Code section 22153, a licensee is required to submit a change of address
13 form 10 days prior to an address change.

14 G. On September 30, 2019, the Commissioner sent DCC the Assessment Notice per invoice
15 number CF1044. The notice was mailed to the address DCC registered with the Department
16 (Registered Address): 31482 Carril De Maderas, San Juan Capistrano, California 92675. The notice
17 stated that the annual assessment would become delinquent if not paid by October 31, 2019.

18 H. As of October 31, 2019, DCC had not paid its annual assessment. The failure to pay the annual
19 assessment on or before October 31, 2019 represents a violation of Financial Code section 22107.

20 I. As of November 6, 2019, DCC had not paid its annual assessment. As a result, the
21 Commissioner sent to DCC's Registered Address a Notice of Unpaid Assessment on November 6,
22 2019. The notice warned that failure to pay the assessment would result in summary revocation of
23 DCC's license. DCC did not respond to the Commissioner's notice.

24 J. As of December 6, 2019, DCC had not paid its annual assessment. As a result, on December
25 6, 2019, the Commissioner issued an Order Summarily Revoking California Financing Law License
26 Pursuant to Financial Code Section 22107 for CFL License Number 603F654 (Revocation Order).
27 The Department mailed the Revocation Order to DCC's Registered Address along with notice that it
28 would become effective December 30, 2019 unless payment of the annual assessment was received

1 by close of business on December 27, 2019.

2 K. As of December 27, 2019, the assessment remained unpaid. As such, the Revocation Order
3 became effective December 30, 2019.

4 L. DCC stated that it did not receive the notices or the Revocation Order because it failed to
5 properly notify the Commissioner that it had changed its place of business to a street address other than
6 that designated on its license, as required by Financial Code section 22153.

7 M. DCC admits to the jurisdiction of the Commissioner and it is the intention of the parties to
8 resolve this matter without the necessity of a hearing and/or other litigation.

9 N. The Commissioner finds that entering into this Consent Order is in the public interest and
10 consistent with the purposes fairly intended by the CFL.

11 NOW, THEREFORE, for good and valuable consideration, and the terms and conditions set
12 forth herein, the Parties agree as follows:

13 TERMS

14 1. Purpose. This Consent Order resolves the issues before the Commissioner described
15 above in a manner that avoids the expense of a hearing and other possible court proceedings,
16 protects consumers, is in the public interest, and is consistent with the purposes, policies, and
17 provisions of the CFL.

18 2. Desist and Refrain Order. Pursuant to Financial Code section 22712, DCC is hereby
19 ordered to desist and refrain from failing to timely pay the annual assessment in violation of
20 Financial Code section 22107.

21 3. Order Rescinding Revocation Order(s). The Commissioner hereby rescinds the
22 Revocation Order, which was issued on December 6, 2019, and became effective on December 30,
23 2019, as of the effective date of revocation.

24 4. Order to Pay Annual Assessment. Pursuant to Financial Code section 22107, the
25 Commissioner hereby orders DCC to pay \$250.00 to the Department of Business Oversight for the
26 2019 – 2020 annual assessment. The annual assessment shall be paid to the Commissioner within 30
27 days of the Effective Date of this Consent Order as defined in paragraph 23. The annual assessment
28 shall be labeled “2019 – 2020 annual assessment” and made payable in the form of a cashier’s check

1 or Automated Clearing House deposit to the “Department of Business Oversight,” and transmitted to
2 the attention of:

3 ATTN: Accounting
4 Department of Business Oversight
5 1515 K Street, Suite 200
6 Sacramento, California 95814

7 Notice of payment shall be made via email to Trevor Carroll, Counsel at Department of
8 Business Oversight, at trevor.carroll@dbo.ca.gov.

9 5. Administrative Penalties and Fines. DCC shall pay administrative fines and penalties in
10 the amount of \$3,000.00 for the violations of the CFL enumerated herein. All fines and penalties
11 shall be labeled “fines and penalties” and made payable in the form of a cashier’s check or
12 Automated Clearing House deposit to the “Department of Business Oversight,” and transmitted to
13 the attention of:

14 ATTN: Accounting – Litigation
15 Department of Business Oversight
16 1515 K Street, Suite 200
17 Sacramento, California 95814

18 Notice of payment shall be made via email to Trevor Carroll, Counsel at Department of
19 Business Oversight, at trevor.carroll@dbo.ca.gov.

20 6. Waiver of Hearing Rights. DCC acknowledges that the Commissioner is ready, willing,
21 and able to proceed with the filing of an administrative enforcement action on the charges contained
22 in this Consent Order. DCC hereby waives the right to any hearings, and to any reconsideration,
23 appeal, or other right to review which may be afforded pursuant to the CFL, the California
24 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law.
25 DCC further expressly waives any requirement for the filing of an Accusation pursuant to
26 Government Code section 11415.60, subdivision (b). By waiving such rights, DCC effectively
27 consents to this Consent Order and Desist and Refrain Order becoming final.

28 7. Failure to Comply with Consent Order. DCC agrees that if it fails to comply with the
29 terms of this Consent Order, the Commissioner may, in addition to all other available remedies it
30 may invoke DCC the CFL, summarily suspend or revoke the CFL license of DCC until DCC is in

1 compliance. DCC waives any notice and hearing rights to contest such summary suspension which
2 may be afforded under the CFL, the California Administrative Procedure Act, the California Code of
3 Civil Procedure, or any other provision of law in connection therewith.

4 8. Information Willfully Withheld or Misrepresented. This Consent Order may be revoked
5 and the Commissioner may pursue any and all remedies available under law against DCC if the
6 Commissioner discovers that DCC knowingly or willfully withheld or misrepresented information
7 used for and relied upon in this Consent Order.

8 9. Future Actions by the Commissioner. If DCC fails to comply with any terms of the
9 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
10 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
11 against DCC, or any of its partners, owners, officers, shareholders, directors, employees or
12 successors for any and all unknown violations of the CFL.

13 10. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner's
14 ability to assist any other government agency (city, county, state, or federal) with any prosecution,
15 administrative, civil or criminal brought by that agency against DCC or any other person based upon
16 any of the activities alleged in this matter or otherwise.

17 11. Headings. The headings to the paragraphs of this Consent Order are inserted for
18 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
19 the provisions hereof.

20 12. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
21 interest.

22 13. Reliance. Each of the parties represents, warrants, and agrees that in executing this
23 Agreement it has relied solely on the statements set forth herein and the advice of its own counsel.
24 Each of the parties further represents, warrants, and agrees that in executing this Agreement it has
25 placed no reliance on any statement, representation, or promise of any other party, or any other
26 person or entity not expressly set forth herein, or upon the failure of any party or any other person or
27 entity to make any statement, representation or disclosure of anything whatsoever. The parties have
28 included this clause: (1) to preclude any claim that any party was in any way fraudulently induced to

1 execute this Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret,
2 supplement, or contradict the terms of this Agreement.

3 14. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
4 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.
5 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
6 provision. No waiver by either party of any breach of, or of compliance with, any condition or
7 provision of this Consent Order by the other party will be considered a waiver of any other condition
8 or provision or of the same condition or provision at another time.

9 15. Full Integration. This Consent Order is the final written expression and the complete and
10 exclusive statement of all the agreements, conditions, promises, representations, and covenant
11 between the parties with respect to the subject matter hereof, and supersedes all prior or
12 contemporaneous agreements, negotiations, representations, understandings, and discussions
13 between and among the parties, their respective representatives, and any other person or entity, with
14 respect to the subject matter covered hereby.

15 16. Governing Law. This Consent Order will be governed by and construed in accordance
16 with California law. Each of the parties hereto consents to the jurisdiction of such court, and hereby
17 irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to
18 the maintenance of such action or proceeding in such court.

19 17. Counterparts. This Consent Order may be executed in one or more separate counterparts,
20 each of which when so executed, shall be deemed an original. Such counterparts shall together
21 constitute a single document.

22 18. Effect Upon Future Proceedings. If DCC applies for any license, permit, or qualification
23 under the Commissioner's current or future jurisdiction, or is the subject of any future action by the
24 Commissioner to enforce this Consent Order, then the subject matter hereof shall be admitted for the
25 purpose of such application(s) or enforcement proceedings(s).

26 19. Voluntary Agreement. DCC enters this Consent Order voluntarily and without coercion
27 and acknowledges that no promises, threats or assurances have been made by the Commissioner or
28 any officer, or agent thereof, about this Consent Order. The parties each represent and acknowledge

1 that he, she or it is executing this Consent Order completely voluntarily and without any duress or
2 undue influence of any kind from any source.

3 20. Notice. Any notice required under this Consent Order be provided to each party at the
4 following addresses:

5 To Diamond Creel Capital, LLC.:

6 Thomas P. Harrison, Managing Partner
7 Diamond Creek Capital, LLC
8 11378 Villa Bellagio Drive
9 Las Vegas, Nevada 89141
10 tharrison@diamondcreekcap.com

11 To the Commissioner:

12 Trevor J. Carroll, Counsel
13 Department of Business Oversight
14 Enforcement Division
15 1515 K Street, Suite 200
16 Sacramento, California 95814
17 trevor.carroll@dbo.ca.gov

18 21. Signatures. A fax or electronic mail signature shall be deemed the same as an original
19 signature.

20 22. Public Record. DCC hereby acknowledges that this Consent Order is and will be a
21 matter of public record.

22 23. Effective Date. This Consent Order shall become final and effective when signed by all
23 parties and delivered by the Commissioner's agent via email to DCC's representative, at
24 tharrison@diamondcreekcap.com.

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1 24. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary
2 capacity and authority to sign and enter into this Consent Order and undertake the obligations set
3 forth herein.

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5 Dated: February 28, 2020

MANUEL P. ALVAREZ
Commissioner of Business Oversight

6
7 By _____
8 MARY ANN SMITH
9 Deputy Commissioner
10 Enforcement Division

11 Dated: February 27, 2020

12 By _____
13 DIAMOND CREEK CAPITAL, LLC

14 _____