

1 PRESTON DuFAUCHARD
California Corporations Commissioner
2 ALAN S. WEINGER
Acting Deputy Commissioner
3 JUDY L. HARTLEY (CA BAR NO. 110628)
Senior Corporations Counsel
4 Department of Corporations
320 West 4th Street, Ste. 750
5 Los Angeles, California 90013-2344
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6 Attorneys for Complainant
7

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

11 In the Matter of THE CALIFORNIA) OAH No.: 1-2008070284
12 CORPORATIONS COMMISSIONER,)
) File No.: 963-2347
13 Complainant,)
) SETTLEMENT AGREEMENT
14 vs.)
) TRIAL DATE: October 9, 2008
15 HIGGINS AND ARTHUR ESCROW)
16 COMPANY,) ASSIGNED TO:
)
17 Respondent.)
)

18
19 This Settlement Agreement is entered into between Higgins and Arthur Escrow Company
20 now known as Escrow Avenue, Inc. (“Higgins”) and the California Corporations Commissioner
21 (“Commissioner”), and is made with respect to the following facts:

22 **RECITALS**

- 23 A. Higgins is a corporation in good standing, duly formed and existing pursuant to the
24 laws of the State of California, and authorized to conduct business in the State of California.
- 25 B. Higgins currently holds escrow agent’s license number 963-2347 with its principal
26 place of business located at 280 Highway 173, P.O. Box 3133, Lake Arrowhead, California 92352.
27 Higgins has been licensed by the Commissioner pursuant to the California Escrow Law since May
28 16, 2006.

1 C. Subsequent to the issuance of the administrative actions described in paragraph E
2 below, Higgins changed its name with the California Secretary of State to Escrow Avenue, Inc.
3 However, the subject escrow agent’s license remains under the name Higgins as of the date of
4 Settlement Agreement.

5 D. Paul M. Pound is the president and owner of Higgins and is authorized to enter into
6 this Settlement Agreement on behalf of Higgins.

7 E. On June 6, 2008, Higgins was personally served with a Notice of Intention to Issue
8 Order Suspending Escrow Agent’s License; Accusation and accompanying documents issued by the
9 Commissioner on May 16, 2008 (“Suspension Action”). Higgins was also personally served on June
10 6, 2008 with an Order Imposing Penalties Pursuant to California Financial Code Section 17408
11 issued by the Commissioner on May 19, 2008 (“Penalty Order”). Higgins has filed Notices of
12 Defense with the Commissioner. The matters are set for hearing on October 9, 2008.

13 F. It is the intention and desire of the parties to resolve these matters without the
14 necessity of a hearing and/or other litigation.

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

17 **TERMS AND CONDITIONS**

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

20 2. Higgins hereby admits the allegations contained in the Penalty Order. Higgins’
21 admissions herein are solely for the limited purposes of this proceeding and any future proceeding
22 that may be initiated by or brought before the Commissioner against Higgins. It is the intent and
23 understanding between the parties that this Settlement Agreement, and particularly Higgins’
24 admissions herein, shall not be binding or admissible against Higgins in any action(s) brought
25 against Higgins by third parties.

26 3. Higgins agrees that the Penalty Order is hereby deemed a final order. Higgins
27 acknowledges that the penalties accruing pursuant to the Penalty Order for the untimely filing of its
28 2007 Audit Report totaled \$5,300.00 as of May 9, 2008; the date when the 2007 audit report was

1 filed. Higgins agrees to pay to the Commissioner the full sum of the penalties, which shall be paid
2 in two equal installments of \$2,650.00. The first installment is due within seven (7) days of the date
3 of the execution of this Settlement Agreement and the second installment is due thirty (30) days
4 thereafter.

5 4. Higgins acknowledges its right to an administrative hearing under California
6 Financial Code section 17408 in connection with the Penalty Order, and hereby waives its right to a
7 hearing, and to any reconsideration, appeal, or other rights which may be afforded pursuant to the
8 Escrow Law, the California Administrative Procedure Act, the California Code of Civil Procedure,
9 or any other provision of law in connection with the Penalty Order.

10 5. Higgins further agrees that its failure to timely remit any payment required under
11 paragraph 3 above shall cause the entire unpaid amount to become due and payable in full, and if
12 payment of the entire unpaid balance is not thereafter tendered to the Commissioner within five (5)
13 days after written notice of demand, the Commissioner may summarily suspend Higgins' escrow
14 agent's license until such time as the unpaid balance of the penalties are paid in full. Higgins hereby
15 waives any notice and/or hearing rights to contest such summary suspension, which may be afforded
16 under the Escrow Law, the California Administrative Procedure Act, the California Code of Civil
17 Procedure, or any other provision of law in connection therewith.

18 6. Higgins acknowledges and agrees that the summary suspension provided for above in
19 paragraph 5 shall not be the exclusive remedy available to the Commissioner in pursuing any failure
20 to penalties, but may be sought and employed in addition to any other remedy available pursuant to
21 the Escrow Law.

22 7. The Commissioner hereby agrees to dismiss the Suspension Action upon execution of
23 this Settlement Agreement.

24 8. The parties hereby acknowledge and agree that this Settlement Agreement is intended
25 to constitute a full, final and complete resolution of the Suspension Action and Penalty Order. The
26 parties further acknowledge and agree that nothing contained in this Settlement Agreement shall
27 operate to limit the Commissioner's ability to assist any other agency, (county, state or federal) with
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1 any prosecution, administrative, civil or criminal, brought by any such agency against Higgins based
2 upon any of the activities alleged in these matters or otherwise.

3 9. The Commissioner shall cause this Settlement Agreement to be filed with the Office
4 of 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
19 exclusive statement of all the agreements, conditions, promises, representations, and covenants
20 between the Parties with respect to the subject matter hereof, and supercedes all prior or
21 contemporaneous agreements, negotiations, representations, understandings, and discussions
22 between and among the Parties, their respective representatives, and any other person or entity, with
23 respect to the subject matter covered hereby.

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

1 language of a contract should be interpreted most strongly against the party who caused the
2 uncertainty to exist.

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

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

8 Dated: August 28, 2008 PRESTON DuFAUCHARD
9 California Corporations Commissioner

10 By _____
11 ALAN S. WEINGER
12 Lead Corporations Counsel

13 Dated: _____ HIGGINS AND ARTHUR ESCROW COMPANY
14 now known as ESCROW AVENUE, INC.

15 By _____
16 PAUL M. POUND, President

17 APPROVED AS TO FORM:
18 MORTON ALAN HAAS & CO.

19
20 By _____
21 MICHAEL C. HAAS, C.P.A., Representatives for
22 HIGGINS AND ARTHUR ESCROW COMPANY
now known as ESCROW AVENUE, INC.

23 PRESTON DuFAUCHARD
24 California Corporations Commissioner

25
26 By _____
27 JUDY L. HARTLEY
Senior Corporations Counsel

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