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Deputy Commissioner
2 SEAN M. ROONEY
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3 JUDY L. HARTLEY (State Bar No. 110628)
Senior Counsel
4 Department of Business Oversight
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5 Los Angeles, California 90013-2344
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7 Attorneys for Complainant

8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
9 OF THE STATE OF CALIFORNIA

11 In the Matter of:) OAH NO.: 2018010460
12 THE COMMISSIONER OF BUSINESS) CRMLA LICENSE No.: 413-1010
13 OVERSIGHT,) SETTLEMENT AGREEMENT
14 Complainant,)
15 v.)
16 THE LENDING PARTNERS, LLC doing)
17 business as GREENPATH LENDING, LLC,)
18 Respondent.)
19 _____)

20 This Settlement Agreement (Agreement) is entered into between Respondent The Lending
21 Partners, LLC forced to do business in California as GreenPath Lending, LLC (Lending Partners)
22 and Complainant the Commissioner of Business Oversight (Commissioner), and is made with
23 respect to the following facts:

24 **RECITALS**

25 A. Lending Partners is a limited liability company in good standing, duly formed and
26 existing pursuant to the laws of the State of Texas and is authorized to conduct business in the State
27 of California.
28

1 B. Lending Partners is a residential mortgage lender licensed by the Commissioner
2 pursuant to the California Residential Mortgage Lending Act (CRMLA) (Fin. Code §50000 et seq.).
3 Lending Partners has its principal place of business located at 5560 Tennyson Parkway, Suite 201,
4 Plano, Texas 75024. Lending Partners employs mortgage loan originators in its mortgage business.

5 C. The Department of Business Oversight (Department), through the Commissioner, has
6 jurisdiction over the licensing and regulation of persons and entities engaged in the business of
7 lending and/or servicing pursuant to the CRMLA.

8 D. On October 25, 2017, Lending Partners was personally served by the Commissioner
9 with a Notice of Intention to Issue Orders Suspending Residential Mortgage Lender License and to
10 Levy Penalties, Accusation and accompanying documents dated October 23, 2017 (Accusation).
11 Lending Partners has filed a Notice of Defense with the Commissioner regarding the Accusation.

12 E. On October 25, 2017, Lending Partners was also personally served by the
13 Commissioner with an Order to Discontinue Violations Pursuant to Financial Code Section 50321
14 and Statement of Facts in Support of Order to Discontinue Violations Pursuant to Financial Code
15 Section 50321 and Notice of Intent to Make Order Final dated October 23, 2017 (Order to
16 Discontinue Violations). Lending Partners has filed a request for a hearing with the Commissioner
17 regarding the Order to Discontinue Violations.

18 F. The Accusation and Order are currently scheduled for hearing before the Los Angeles
19 Office of Administrative Hearings for July 5 and 6, 2018.

20 G. The Commissioner acknowledges that Lending Partners has submitted information
21 demonstrating that it has adopted policies and procedures addressing the issues described in the
22 Accusation and Order to Discontinue Violations.

23 H. It is the intention and desire of the parties to resolve this matter without the necessity
24 of a hearing and/or other litigation.

25 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
26 forth herein, the parties agree as follows:
27
28

TERMS AND CONDITIONS

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

4 2. Waiver of Hearing Rights. Lending Partners acknowledges its right to an
5 administrative hearing under the CRMLA in connection with the Accusation and/or Order To
6 Discontinue Violations and hereby waives that right to a hearing, and to any reconsideration, appeal,
7 or other rights which may be afforded pursuant to the CRMLA, the California Administrative
8 Procedure Act, the California Code of Civil Procedure, or any other provision of law in connection
9 with these matters.

10 3. Final Order. Lending Partners agrees that the Order to Discontinue Violations
11 described in Paragraph E above is hereby deemed a final order.

12 4. Administrative Penalty. Lending Partners agrees to pay to the Commissioner the sum
13 of \$30,000.00 in administrative penalties upon execution of this Agreement. The payment shall be
14 made by cashiers' check payable to the Department of Business Oversight and shall be sent to the
15 Department, attention, Accounting-Litigation, 1515 K Street, Suite 200, Sacramento, CA 95814-
16 4052.

17 5. Quarterly Independent Auditor Reports. For a period of one year commencing on the
18 first day of the first month after the effective date of this Agreement as defined in Paragraph 24
19 herein, Lending Partners agrees to conduct quarterly audits, by and through an independent auditing
20 firm (Independent Auditor) that is reasonably acceptable to the Commissioner, on the effectiveness
21 of the revised policies and procedures newly adopted by Lending Partners on or about July 14, 2017
22 and described in the CA Escrow Account Reconciliation Process dated May 25, 2018 with respect to
23 the daily, weekly and monthly duties and responsibilities contained therein to ensure proper
24 reconciliation and prevent any overages and/or shortages within the trust accounts (and individual
25 loan accounts) used by Lending Partners in the course of its business (quarterly independent auditor
26 report). At a minimum, the quarterly independent auditor reports shall include whether Lending
27 Partner's trust accounts (i) were properly reconciled in accordance with the CRMLA and its
28 regulations; (iii) had any overages or shortages; and/or (iii) had any debit balances in the individual

1 loan accounts; and if so, an explanation as to the cause(s). The quarterly independent auditor
2 reports must also include the documentation reviewed by the Independent Auditor for the quarterly
3 independent audit. Lending Partners, by and through its Independent Auditor, will submit the
4 quarterly independent auditor report to the Department within 45 days of the completion of each
5 quarter.

6 6. Resumption of Originations. Lending Partners agrees to notify the Commissioner in
7 writing within five business days of resuming any loan originations in the State of California.

8 7. Quarterly Per Diem Interest Audits. In the event Lending Partners resumes loan
9 originations in the State of California within two years of the effective date of this Agreement as
10 defined in Paragraph 24 herein, Lending Partners agrees to conduct quarterly audits, by and through
11 an independent certified public accountant, in accordance with procedures agreed upon by the
12 parties, of per diem interest charges for all California loans for a period of one year commencing on
13 the first day of the first month in which it resumed loan originations in California. Each quarterly
14 audit must cover all California loans originated during that quarter. Lending Partners, by and through
15 its independent certified public accountant, will submit to the Department the results of each
16 quarterly audit (quarterly per diem audit report) within 45 days of the completion of each quarter.
17 The quarterly per diem audit report shall include at a minimum, the total number of loans made
18 during the period, the number of loans with per diem interest overcharges, and for each loan, the
19 report shall list the borrower loan number, name, address, loan amount, loan date, interest rate,
20 disbursement date, date per diem interest commenced, per diem interest charged, daily per diem
21 interest amount, number of days per diem interest charged, number of days per diem interest
22 overcharged (if applicable), overcharge amount (if applicable), date of refund (if applicable), and
23 proof of refund (if applicable). Lending Partners further agrees that it shall pay an administrative
24 penalty to the Commissioner, upon submission of the quarterly per diem audit report, equal to
25 \$200.00 for each per diem interest overcharge discovered during the quarterly audit that was not
26 refunded to the borrower within 30 days of loan funding.

27 8. Payment of Refunds: Any borrower refunds made pursuant to Paragraph 7 shall
28 include interest at the rate of 10 percent per annum from the date of overcharge and shall be mailed

1 to the last known address of each borrower prior to submission of the applicable report to the
2 Commissioner. Any borrower refunds made pursuant to this Agreement shall be accompanied by a
3 cover letter that states: “As a result of an examination by the Department of Business Oversight, a
4 refund or adjustment in the amount of \$XXXX is being made for your benefit. If you have any
5 questions concerning this refund, please contact (lender) at (800) XXX-XXXX.” The Department
6 acknowledges Lending Partners has refunded the overcharges plus interest to borrowers identified in
7 the self-audit and will require the above language for any additional refunds moving forward.”

8 9. Outstanding Refunds. Lending Partners shall be responsible for ensuring that any
9 outstanding refund payment owed to any borrower identified in the quarterly audit reports described
10 in Paragraph 6 above shall be escheated to the State of California pursuant to the provisions of the
11 California Unclaimed Property Law (Code Civ. Proc., § 1500 et seq.).

12 10. Effect of Agreement on Licenses. In consideration of the information provided to the
13 Commissioner by Lending Partners as described in Paragraph G above and the agreement of
14 Lending Partners to the entry of the finality of the Order to Discontinue Violations and payment of
15 penalties as provided for in Paragraphs 3 and 4 above, the Commissioner hereby agrees that, except
16 as otherwise set forth in this Agreement, she shall not suspend and/or revoke the residential
17 mortgage lender license of Lending Partners. Accordingly, this Agreement does not affect the
18 licensing status of Lending Partners.

19 11. Servicing Authority. The Commissioner acknowledges that the mortgage loan
20 servicer application filed by Lending Partners on or about January 17, 2017 is ready to be approved,
21 and the Commissioner hereby agrees to approve Lending Partners’s residential mortgage loan
22 servicer application upon execution of this Agreement.

23 12. Information Willfully Withheld. This Agreement may be revoked and the
24 Commissioner may pursue any and all remedies available under law against Lending Partners, if the
25 Commissioner later finds out that Lending Partners knowingly or willfully withheld information
26 used and relied upon in this Agreement.

27 13. Failure to Comply with Agreement. Lending Partners agrees that if it fails to comply
28 with the terms of this Agreement within five business days after written notice of demand, the

1 Commissioner may, in addition to all other available remedies under the CRMLA, summarily
2 suspend the CRMLA license of Lending Partners until Lending Partners is in compliance. Lending
3 Partners waives any notice and hearing rights to contest such summary suspensions which may be
4 afforded under the CRMLA, the California Administrative Procedure Act, the California Code of
5 Civil Procedure, or any other provision of law in connection therewith.

6 14. Binding. This Agreement is binding on all heirs, assigns and/or successors in interest.

7 15. Third Party Actions. This Agreement does not create any private rights or remedies
8 against Lending Partners, create any liability for Lending Partners or limit defenses of Lending
9 Partners for any person or entity not a party to this Agreement.

10 16. Full and Final Settlement. The parties hereby acknowledge and agree that this
11 Agreement is intended to constitute a full, final and complete resolution of the Accusation and Order
12 to Discontinue Violations and that no further proceedings or actions will be brought by the
13 Commissioner in connection with these matters either under the CRMLA, or any other provision of
14 law, excepting therefrom any proceeding or action if such proceeding or action is based upon facts
15 not presently known to the Commissioner and which were actively concealed from the
16 Commissioner by Lending Partners.

17 17. Commissioner's Duties. The parties further acknowledge and agree that nothing
18 contained in this Agreement shall operate to limit the Commissioner's ability to assist any other
19 agency, (city, county, state or federal) with any prosecution, administrative, civil or criminal,
20 brought by any such agency against Lending Partners or any other person based upon any of the
21 activities alleged in these matters or otherwise.

22 18. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
23 has received independent advice from its attorney(s) and/or representatives with respect to the
24 advisability of executing this Agreement.

25 19. Reliance. Each of the parties represents, warrants, and agrees that in executing this
26 Agreement it has relied solely on the statements set forth herein and the advice of its own counsel
27 and/or representative. Each of the parties further represents, warrants, and agrees that in executing
28 this Agreement it has placed no reliance on any statement, representation, or promise of any other

1 party, or any other person or entity not expressly set forth herein, or upon the failure of any party or
2 any other person or entity to make any statement, representation or disclosure of anything
3 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in
4 any way fraudulently induced to execute this Agreement; and (2) to preclude the introduction of
5 parol evidence to vary, interpret, supplement, or contradict the terms of this Agreement.

6 20. Full Integration. This Agreement is the final written expression and the complete and
7 exclusive statement of all the agreements, conditions, promises, representations, and covenants
8 between the parties with respect to the subject matter hereof, and supersedes all prior or
9 contemporaneous agreements, negotiations, representations, understandings, and discussions
10 between and among the parties, their respective representatives, and any other person or entity, with
11 respect to the subject matter covered hereby.

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

19 22. Waiver, Modification, and Qualified Integration. The waiver of any provision of this
20 Agreement shall not operate to waive any other provision set forth herein. No waiver, amendment,
21 or modification of this Agreement shall be valid or binding to any extent unless it is in writing and
22 signed by all of the parties affected by it.

23 23. Headings and Governing Law. The headings to the paragraphs of this Agreement are
24 inserted for convenience only and will not be deemed a part hereof or affect the construction or
25 interpretation of the provisions hereof. This Agreement shall be construed and enforced in
26 accordance with and governed by California law.

27 24. Effective Date. This Agreement shall not become effective until signed by all parties
28 and a fully executed copy is delivered by counsel for the Commissioner via email to counsel for

1 Lending Partners.

2 25. Counterparts. This Agreement may be executed in one or more separate counterparts,
3 each of which when so executed, shall be deemed an original. Such counterparts shall together
4 constitute a single document.

5 26. Notice. Any notice/report required under this Agreement shall be addressed as
6 follows:

7 To: The Lending Partners, LLC: Joshua A. Rosenthal, Esq.
8 Medlin & Hargrave, PC
9 Fountaingrove Executive Center
10 3562 Round Barn Circle, Suite 212
11 Santa Rosa, CA 95403
12 jrosenthal@mhlawcorp.com

13 To: the Commissioner: Judy L. Hartley, Esq.
14 Senior Counsel
15 Department of Business Oversight
16 320 W. 4th Street, Suite 750
17 Los Angeles, California 90013-2344
18 judy.hartley@dbo.ca.gov

19 27. Public Record. Lending Partners acknowledges that this Agreement is a public
20 record.

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

23 Dated: 6/7/18 JAN LYNN OWEN
24 Commissioner of Business Oversight

25 By _____
26 MARY ANN SMITH
27 Deputy Commissioner

28 Dated: 6/1/18 THE LENDING PARTNERS, LLC

By _____
TOM PARKER, Chief Executive Officer

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APPROVED AS TO FORM:

MEDLIN & HARGRAVE

By _____
JOSHUA A. ROSENTHAL, ESQ. attorney for
THE LENDING PARTNERS, LLC

Commissioner of Business Oversight

By _____
JUDY L. HARTLEY, ESQ.
Senior Counsel