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Deputy Commissioner
2 SEAN ROONEY
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6 Los Angeles, California 90013-2344
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7 Facsimile: (213) 576-7181

8 Attorneys for Complainant

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

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| 12 In the Matter of: |) | OAH CASE NO.: 2017050747 |
| |) | |
| 13 THE COMMISSIONER OF BUSINESS |) | CRD NOs.: 205516 and 848580 |
| 14 OVERSIGHT, |) | |
| |) | SETTLEMENT AGREEMENT |
| 15 Complainant, |) | |
| 16 v. |) | Hearing Date: October 30-November 2, 2017 |
| |) | Hearing Time: 9:00 a.m. |
| |) | Location: 320 West 4th Street, Suite 630 |
| 17 TWO LAKES CAPITAL ADVISORS, LLC; |) | Los Angeles, CA 90013-2344 |
| 18 ROBERT ALLEN BERLACHER, |) | Judge: Matthew Goldsby |
| 19 as an individual, |) | |
| |) | |
| 20 Respondents. |) | |

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22 This Settlement Agreement (Agreement) is entered between the Commissioner of Business
23 Oversight (Commissioner), Two Lakes Capital Advisors, LLC (Two Lakes), and Robert Allen
24 Berlacher (Berlacher) (collectively the Parties) and is made with respect to the following facts:

25 RECITALS

26 A. The Commissioner has jurisdiction over the licensing and regulation of investment
27 advisers and broker-dealers under the Corporate Securities Law of 1968 (CSL) (Corp. Code, § 25000
28 et seq.).

1 B. Two Lakes is a limited liability company organized under the laws of the State of
2 Illinois with its principal place of business located at 100 East Huron Street, Suite 4803, Chicago,
3 Illinois 60611.

4 C. Berlacher is the managing member and owner of Two Lakes, and, as such, is
5 authorized to enter into this Agreement on behalf of Two Lakes.

6 D. On March 21, 2016, Two Lakes filed an application for an investment adviser
7 certificate with the Department of Business Oversight (the Department). The application listed
8 Berlacher as the managing member, control person, and 75 percent or more principal owner of Two
9 Lakes.

10 E. On April 5, 2017, the Commissioner issued a Statement of Issues in Support of
11 Notice of Intention to Issue Orders Denying Application for Investment Adviser Certificate Under
12 Corporations Code section 25232, subdivision (b) and Barring Robert Allen Berlacher from Any
13 Position of Employment, Management, or Control of Any Investment Adviser or Broker-Dealer
14 Under Corporations Code section 25232.1 (the Statement of Issues).

15 F. Two Lakes and Berlacher timely filed a Notice of Defense on May 1, 2017,
16 requesting a hearing and disputing the assertions contained in the Statement of Issues. A four-day
17 hearing on the matter in dispute is scheduled to begin on October 30, 2017 before the Office of
18 Administrative Hearings, Los Angeles.

19 NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set
20 forth herein, the Parties agree as follows:

21
22 TERMS AND CONDITIONS

23
24 1. Purpose. It is the intention and desire of the Parties to resolve this matter without the
25 necessity of a hearing or other litigation for the purpose of judicial economy and expediency and to
26 avoid the expense of a hearing and possible further court proceedings.

27 2. Acknowledgment. Two Lakes and Berlacher acknowledge that the Commissioner
28 issued a Statement of Issues dated April 5, 2017, in which the Commissioner sought to deny Two

1 Lakes' investment adviser application and to bar Berlacher from any position of employment,
2 management, or control of any investment adviser or broker-dealer. The Commissioner
3 acknowledges that Two Lakes and Berlacher filed a Notice of Defense dated April 28, 2017,
4 requesting a hearing and disputing the Commissioner's assertions contained in the Statement of
5 Issues. The Parties acknowledge and agree that the Statement of Issues does not by itself constitute
6 an order issued by or a final action by the Commissioner. The Parties further acknowledge and agree
7 that this Agreement is an agreement between the parties to effect the informal resolution of matters
8 described in the Statement of Issues and shall not be viewed, construed, or otherwise treated as a
9 consent decree or other formal resolution of such matters.

10 3. Waiver of Hearing Rights. Two Lakes and Berlacher agree that this Agreement,
11 predicated additionally on the formal withdrawal of Two Lakes' application for an investment
12 adviser certificate (the Application), shall have the effect of withdrawing their requests for an
13 administrative hearing on the matters set forth herein. Two Lakes and Berlacher acknowledge their
14 right to an administrative hearing under the CSL in connection with the Statement of Issues and, in
15 light of the agreement to formally withdraw the Application and this informal resolution of the
16 matters described by the Statement of Issues by this Agreement, hereby waive such right to a hearing
17 and to any reconsideration, appeal, or other rights which may be afforded them under the CSL, the
18 Administrative Procedure Act (APA) (Gov. Code, § 11370 et seq.), the Code of Civil Procedure
19 (CCP) (Code Civ. Proc., § 1 et seq.), or any provision of law in connection with these matters.

20 4. Withdrawal of Investment Adviser Certificate Application. On or before the date of
21 this Agreement, Two Lakes shall withdraw the Application by filing a withdrawal request in the
22 form of Form ADV-W on the IARD System. In addition, at the Commissioner's request, Two Lakes
23 hereby submits the letter attached as Exhibit A hereto, signed by an authorized representative, stating
24 that it has withdrawn the Application as evidenced by the filing of Form ADV-W. In reliance upon
25 Two Lakes' representation herein and in the letter attached hereto that it has withdrawn the
26 Application, upon execution of this Agreement, the Commissioner shall treat the Application as
27 withdrawn and shall promptly move to dismiss with prejudice the present proceeding before the
28 Department.

1 5. Application for Investment Adviser Certificate. Berlacher agrees that he, or any entity
2 owned or controlled by him, will not reapply for an investment adviser or broker-dealer certificate
3 before the Commissioner. Berlacher agrees that he will not accept a position of employment or
4 management with a broker-dealer or investment adviser that would cause such firm to apply for a
5 broker-dealer agent certificate or an investment adviser representative certificate (or registration), as
6 applicable, in respect of Berlacher before the Commissioner. In the event Berlacher, or any entity
7 owned or controlled by him, applies for an investment adviser or broker-dealer certificate, or any
8 broker-dealer or investment adviser applies for a broker-dealer agent certificate or an investment
9 adviser representative certificate (or registration), as applicable, in respect of Berlacher before the
10 Commissioner, such application shall be deemed automatically denied by the Commissioner.
11 Berlacher hereby waives any hearing rights and to any reconsideration, appeal, or other rights which
12 may be afforded him under the CSL, the Administrative Procedure Act (APA) (Gov. Code, § 11370
13 et seq.), the Code of Civil Procedure (CCP) (Code Civ. Proc., § 1 et seq.), or any provision of law in
14 connection with these matters.

15 6. Remedy for Breach. Two Lakes and Berlacher acknowledge that failure to comply
16 with the terms of this Agreement shall be deemed a breach and cause for the Commissioner to
17 immediately suspend any licenses issued by the Commissioner or deny any application(s) of Two
18 Lakes and Berlacher, or any other entity in which Berlacher holds a position of employment,
19 management, ownership, or control, by whatever names they might be known, pending with the
20 Commissioner. Two Lakes and Berlacher hereby waive any notice and hearing rights to contest
21 such suspension(s) or denial(s) which may be afforded under the CSL, APA, CCP, or any other
22 provision of law inconnection with these matters.

23 7. Full and Final Settlement. The Parties hereby acknowledge and agree that this
24 Agreement is intended to constitute a full, final, and complete resolution of the matters described in
25 the Statement of Issues. No further proceedings or actions will be brought by the Commissioner in
26 connection with these matters under the CSL or any other provision of law, excepting any
27 proceeding to enforce compliance with the terms of this Agreement or action if such proceeding is
28 based upon discovery of violations of the CSL which do not form the basis for this Agreement or

1 which Two Lakes and Berlacher knowingly concealed from the Commissioner.

2 8. Commissioner's Duties. The Parties further acknowledge and agree that nothing in
3 this Agreement shall limit the Commissioner's ability to assist any other agency (city, county, state,
4 or federal) with any prosecution, administrative, civil, or criminal, brought by any such agency
5 against Two Lakes or Berlacher or any other person based upon any of the activities alleged in this
6 matter or otherwise.

7 9. Binding. This Agreement is binding on the Department and all of its heirs, assigns,
8 and successors in interest. This Agreement is binding on Two Lakes, Berlacher, and any entity
9 owned or controlled by Berlacher.

10 10. Third Party Actions. It is the intent and understanding between the Parties that this
11 Agreement does not create any private rights or remedies against Two Lakes or Berlacher, create any
12 liability for Two Lakes or Berlacher, or limit defenses of Two Lakes or Berlacher for any claim or
13 action brought by any person or entity not a party to this Agreement.

14 11. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that
15 they have received independent advice from their attorney(s) or representative(s) with respect to the
16 advisability of executing this Agreement.

17 12. Counterparts. The Parties agree that this Agreement may be executed in one or more
18 separate counterparts, each of which shall be deemed an original when so executed. Such
19 counterparts shall together constitute and be one and the same instrument.

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

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

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

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

17 17. Voluntary Agreement. Two Lakes and Berlacher enter into this Agreement
18 voluntarily and without coercion and acknowledge that no promises, threats, or assurances have been
19 made by the Commissioner, or any officer or agent thereof, about this Agreement.

20 18. Effective Date. This Agreement shall become final and effective when signed by all
21 Parties and delivered by the Commissioner's agent via e-mail to Two Lakes' and Berlacher's
22 counsel at perrie.weiner@dlapiper.com.

23 19. Notice. Any notices required under this Agreement shall be provided to each party at
24 the following addresses:

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26 If to Two Lakes and Berlacher: Robert Allen Berlacher
27 Two Lakes Capital Advisors, LLC
28 100 East Huron Street, Suite 4803
 Chicago, Illinois 60611

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With a copy to: Perrie M. Weiner, Esq.
DLA Piper LLP (US)
2000 Avenue of the Stars
Suite 400 North Tower
Los Angeles, California 90067-4704

If to the Commissioner: Vanessa Lu, Counsel
Department of Business Oversight
320 West 4th Street, Suite 750
Los Angeles, California 90013-2344

20. Authority to Execute. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Agreement.

IN WITNESS WHEREOF, the Parties hereto have approved and executed this Agreement on the dates set forth opposite their respective signatures.

Dated: 9/22/17 JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

TWO LAKES CAPITAL ADVISORS, LLC

Dated: 9/21/17 By _____
ROBERT ALLEN BERLACHER, Managing Member,
On behalf of Two Lakes Capital Advisors, LLC

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ROBERT ALLEN BERLACHER

Dated: 9/21/17

By _____
ROBERT ALLEN BERLACHER, as an individual