

**SETTLEMENT AND RELEASE AGREEMENT BY AND BETWEEN
MELANIE E. DAMIAN, AS RECEIVER OF TODAY'S GROWTH
CONSULTANT, INC., AND HEARTLAND BANK AND TRUST COMPANY**

THIS SETTLEMENT AND RELEASE AGREEMENT (the “**Agreement**”) is made and entered into by and between **Melanie E. Damian**, as Receiver (the “**Receiver**”) of Today's Growth Consultant Inc., and **Heartland Bank and Trust Company** (the “**Bank**”) (each a “**Party**” and collectively the “**Parties**”):

I. RECITALS

A. WHEREAS, on December 30, 2019, the United States Securities and Exchange Commission filed an action against Today's Growth Consultant Inc. (“**TGC**”) and its principal Kenneth D. Courtright, III (“**Courtright**”) (collectively, the “**Defendants**”) in the United States District Court for the Northern District of Illinois (the “**Court**”) styled *Securities and Exchange Commission v. Today's Growth Consultant Inc., et al.*, Case No. 1:19-cv-08454 (the “**SEC Enforcement Action**”).

B. WHEREAS, On December 30, 2019, the Court in the SEC Enforcement Action entered an Order Appointing Receiver (the “**Appointment Order**”) and a Temporary Restraining Order Freezing Assets and Imposing Other Emergency Relief (the “**TRO**”). Under the TRO, among other things, the Court made preliminary findings that the Defendants had violated various sections of the Securities Exchange Act and Rules promulgated thereunder. Under the Appointment Order, the Receiver was “authorized, empowered and directed to investigate, prosecute, defend, intervene in or otherwise participate in, compromise, and/or adjust actions in any state, federal or foreign court or proceeding of any kind” that, in her discretion may be advisable or proper to recover and/or conserve Receivership Property. (Appointment Order ¶ 42). The Appointment Order appointed the Receiver as equity receiver of TGC and directed and authorized her to, among other things, “bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging her duties as Receiver[.]” and to “pursue, resist and defend all suits, actions, claims and demands which may now be pending or which may be brought by or asserted against the Receivership Estates.” (Appointment Order, ¶¶ 8.K., 43). Such actions include, without limitation, actions for violations of the Illinois Fiduciary Obligations Act, aiding and abetting breach of fiduciary duty and fraud, unjust enrichment, and fraudulent transfer to recover transfers that TGC had made to insiders, affiliates and third parties without receiving reasonably equivalent value and, thereby, increasing the value of the Receivership estate for the benefit of the investors who had been defrauded by the Defendants.

C. WHEREAS, on March 2, 2020, the Court entered two separate stipulated preliminary injunction orders titled Order Imposing Preliminary Injunction Freezing Assets and Granting Other Relief (collectively, the “**PI Orders**”) against each of the Defendants, TGC and Courtright, extending the relief granted in the TRO.

D. WHEREAS, pursuant to TRO, the Appointment Order and the PI Orders, the Receiver commenced an action styled *Melanie E. Damian, as Receiver of Today's Growth*

Consultant Inc. (dba The Income Store) v. Heartland Bank and Trust Company, Case No. 1:20-cv-07819, pending in the U.S. District Court for the Northern District of Illinois (the “**Receiver’s Action**”), alleging claims against Heartland for violations of the Illinois Fiduciary Obligations Act, aiding and abetting breach of fiduciary duty, fraudulent transfers, and unjust enrichment in connection with the Receivership Defendants’ scheme.

E. WHEREAS, on February 12, 2020, certain plaintiffs (the “**Class Plaintiffs**”) commenced an action styled *PLB Investments LLC, et al. v. Heartland Bank and Trust Company*, Case No. 1:20-cv-1023, pending in the United States District Court for the Northern District of Illinois (the “**Class Action**”), alleging claims against Heartland for violations of the Illinois Fiduciary Obligations Act, and aiding and abetting breach of fiduciary duty.

F. WHEREAS, the Bank asserted numerous defenses to the Receiver’s Action and the Class Action, including that the Bank did not have knowledge, act in bad faith, or provide substantial assistance with respect to the allegedly fraudulent scheme run by Receivership Defendants, among other defenses.

G. WHEREAS, the Receiver’s Action and the Class Action were consolidated for the purposes of discovery. The Parties, and the Class Plaintiffs and their counsel, engaged in extensive discovery included the exchange of millions of documents and took multiple depositions.

H. WHEREAS, the Parties and Class Plaintiffs engaged in a full day of mediation of the claims in the Receiver’s Action and Class Action with the Honorable United States District Judge Andersen (Ret.). Thereafter, the Receiver, the Class Plaintiffs, and the Bank reached an agreement on the terms of a proposed settlement of the Receiver’s Action and Class Action, as a result of which the Parties and Class Plaintiffs have agreed to amicably resolve any and all disputes between them associated with the Receiver’s claims and the Class Plaintiffs’ claims, subject to the conditions more fully set forth below.

NOW THEREFORE, in consideration of the mutual promises, exchanges, and forbearances set forth below, the sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

II. GENERAL PROVISIONS

A. Approval: The Parties acknowledge and agree that this Agreement is subject to the approval of the Court and, therefore, will not be binding until such approval has been granted (the “**Approval**”), including the approval and issuance of the Bar Order (defined below).

B. Recitals: The Parties acknowledge and agree that the Recitals set forth hereinabove are true, accurate and correct and the same are hereby incorporated into this Agreement.

C. Settlement Amount and Payment: The Bank will pay to the Receivership Estate a total of Nine Million Dollars (USD) (\$9,000,000) (the “**Settlement Amount**”) in one lump sum within two (2) weeks of the full and complete satisfaction of each and all of the Settlement Conditions defined below. The payment of the Settlement Amount to the Receivership Estate shall

be by wire transfer made payable to “Melanie E. Damian, as Receiver for Today's Growth Consultant Inc.”

D. Conditions of Settlement. This Agreement and the obligations of Heartland to pay the Settlement Amount hereunder are expressly conditioned on the satisfaction and completion of each of the following conditions (the “**Settlement Conditions**”):

- i. Bar Order.** An order (the “**Bar Order**”) in the form of the order attached hereto and incorporated herein as **Exhibit 1** shall have been entered by the Court in the SEC Enforcement Action. The Bar Order shall be entered after appropriate notice and an opportunity to object as determined by the Court in the SEC Action shall have been given to all Barred Persons (as defined in the Bar Order). All objections, if any, to such Bar Order shall have been overruled, and no appeal of any orders overruling such objections are timely filed or all such appeal(s) are denied or dismissed.
- ii. Dismissal of Receiver’s Action.** The Receiver’s Action shall be dismissed with prejudice upon such date on which all objections to the Bar Order shall have been overruled, and no appeal of any orders overruling such objections are timely filed or all such appeal(s) are denied or dismissed.
- iii. Dismissal of Class Action.** The Class Action shall have been dismissed prior to the certification of the class without prejudice on or before the date of the entry of the Bar Order, and such dismissal, by its terms, shall become a dismissal with prejudice upon the date on which all objections, if any, to such Bar Order shall have been overruled, and no appeal of any orders overruling such objections are timely filed or all such appeal(s) are denied or dismissed. In the event that such dismissal does not, by its terms, provide that it shall become a dismissal with prejudice upon the occurrence of the above events, then Class Plaintiffs shall immediately dismiss the Class Action with prejudice upon the occurrence of the above events.
- iv. Settlement Agreement and Release by Class Plaintiffs.** The Class Plaintiffs and the Bank shall have entered a settlement agreement (the “**Class Settlement Agreement**”) on such terms as are acceptable to the Bank, which shall contain the requirements for the recognition and entry of the Bar Order described herein, the dismissal of the Class Action on the terms set forth above, and such other terms as are reasonably required by the Class Plaintiffs and the Bank consistent with the terms of this Agreement.

E. Entry of Bar Order: For the avoidance of doubt, the entry of a final, non-appealable Bar Order is an essential condition to this Agreement, and the effectiveness of this Agreement and the obligation of the Bank to pay the Settlement Amount are expressly conditioned upon the entry of the Bar Order by the Court in the SEC Enforcement Action that fully and finally bars and enjoins any persons or entities from asserting any claims against the Bank involving

TGC's Consulting Performance Agreements or that in any way relate to, are based upon, arise from, or are connected to the acts, practices, or course of conduct alleged in the SEC Enforcement Action, the Receiver's Action, or the Class Action, and that includes the following language:

BAR ORDER AND INJUNCTION: THE BARRED PERSONS ARE PERMANENTLY BARRED, ENJOINED, AND RESTRAINED FROM ENGAGING IN THE BARRED CONDUCT AGAINST THE HEARTLAND RELEASED PARTIES WITH RESPECT TO THE BARRED CLAIMS, as those terms are herein defined.

- a. **The "Barred Persons":** Any non-governmental person or entity, including, without limitation, (i) all Claimants, as defined herein; (ii) any current or former owners, officers and directors, limited and general partners, investors, and creditors of TGC; (iii) any persons or entities against whom the Receiver has asserted or may hereafter assert any claims, demands, or lawsuits involving TGC's Consulting Performance Agreements or that in any way relate to, are based upon, arise from, or are connected to the acts, practices, or course of conduct alleged in the SEC Enforcement Action, the Receiver's Action, or the Class Action; or (iv) any person, entity, or affiliate claiming by or through the persons or entities identified in (i), (ii), or (iii);
- b. **The "Barred Conduct":** Instituting, reinstating, intervening in, initiating, commencing, maintaining, continuing, filing, encouraging, soliciting, supporting, participating in, collaborating in, otherwise prosecuting, or otherwise pursuing or litigating in any case or manner, whether pre-judgment or post-judgment, or enforcing, levying, employing legal process, attaching, garnishing, sequestering, bringing proceedings supplementary to execution, collecting or otherwise recovering, by any means or in any manner, based upon any liability or responsibility, or asserted or potential liability or responsibility, directly or indirectly, relating in any way to the Barred Claims;
- c. **The "Barred Claims":** Any and all direct, indirect, and/or derivative claims, actions, lawsuits, causes of action, complaints, cross-claims, counterclaims, or third-party claims or proceedings of any nature, whether known or unknown against the Heartland Released Parties, including, but not limited to, litigation, arbitration, or other proceeding, in any federal or state court, or in any other court, arbitration forum, administrative agency, or other forum in the United States, Canada or elsewhere, whether arising under local, state, federal or foreign law, that in any way relate to, are based upon, arise from, or are connected to the acts, practices, or course of conduct alleged in the SEC Enforcement Action, the Receiver's Action, or the Class Action;
- d. **The "Heartland Released Parties":** Heartland, its parent,

affiliates, and subsidiary companies, all current, former and future employees, agents, attorneys, officers and directors, and consultants, and each of its shareholders, managers, principals, associates, representatives, attorneys, and each of their respective administrators, heirs, beneficiaries, assigns, predecessors, predecessors in interest, successors, and successors in interest;

e. **“Claimants”**: Any and all investors, site partners, and customers of TGC, all persons and entities that entered into any contracts with TGC, and all persons and entities to whom the Receiver sent any notices concerning any right to file claims in the SEC Enforcement Action, whether or not such Claimants filed a claim in the SEC Enforcement Action or elected to receive a distribution of one or more websites in the claims process in the SEC Enforcement Action, and whether or not any such claim was allowed or disallowed.

F. **Release; Conditions for Release**: In consideration of the payment of the Settlement Amount required herein, and effective immediately upon the payment of the Settlement Amount by the Bank, the Receiver, individually and in her capacity as Receiver, and on behalf of the Receivership estate, and for her respective agents, representatives, successors and assigns, and all other non-government persons and entities claiming by, through or under any of them, does hereby release, acquit and forever discharge the Heartland Released Parties, whomsoever they may be, each in their respective corporate and individual capacities, from any and all claims, demands, obligations, actions, causes of action, rights, damages, punitive damages, attorneys’ fees, costs, expenses and compensation of any nature, arising from her claims, which the Receiver now has or which may hereafter accrue or otherwise be acquired against the Bank. The foregoing release shall relate to any and all claims and causes of action of any kind or character relating to TGC, the Receiver’s Action, and arising out of or in any way connected with or resulting from the acts, actions, or omissions of any of the Heartland Released Parties, or any agent, servant, employee, attorney, officer or director of any of the Heartland Released Parties, including, without limitation, any loss, costs, or damage arising or incurred in connection with any statutory or common law claims, fraudulent transfers, unjust enrichment, negligence, usurious interest, breach of fiduciary duty, breach of any duty of fair dealing, breach of confidence, undue influence, duress, economic coercion, conflict of interest, negligence, bad faith, malpractice, intentional or negligent infliction of mental distress, tortious interference with contractual relations, tortious interference with corporate governance or prospective business advantage, breach of contract, deceptive trade practices, libel or slander, aiding and abetting any of the foregoing actions, or any other action arising in tort, breach of contract or violation of any statute, regulation or law (without admitting or implying that any such claim or cause of action exists or has any validity).

G. **Non-Disturbance of Mortgages**: The priority of the positions of the Bank’s mortgages (the **“Mortgages”**) with respect to the properties owned by Kenneth and Kerri Courtright, located at 212 Slalom Ct., Minooka, Illinois and 405 N. Wabash, Unit 5109-10, Chicago, Illinois (the **“Properties”**) shall not be disturbed. In addition, the Receiver agrees not to hinder, obstruct, or delay Heartland’s right and ability to foreclose on and enforce the Mortgages with respect to the Properties at any time. The Bank acknowledges that both Properties are subject

to the asset freeze provisions of the PI Order against Courtright, which was served on the Bank. Additionally, the SEC has advised that it has filed certain lis pendens against both Properties, and, if the Bank seeks to foreclose on and enforce the Mortgages, the Bank acknowledges that it must first seek permission from the Court presiding over the SEC Enforcement Action before initiating any foreclosure action. The Parties acknowledge that the Securities and Exchange Commission may seek the Court's appointment of a liquidating agent with respect to the Properties, but in such case the priority of the positions of the Bank's Mortgages shall not be disturbed. The Court's approval of this Agreement shall constitute the approval of the foregoing provisions.

H. Material Breach: The Parties acknowledge and agree that the failure by the Bank to pay the Settlement Amount upon satisfaction of each of the Settlement Conditions as set forth above will constitute a material breach of this Agreement and that should such a material breach occur, the Receiver shall be entitled to the entry of a final judgment against the Bank in the amount of \$9,000,000, less any and all amounts that the Receivership Estate received hereunder. If any Party hereto commences an action, suit or other proceeding concerning the negotiation, interpretation, validity, performance or breach of this Agreement, the prevailing Party shall recover such Party's reasonable attorneys' fees and costs incurred in each such action, suit, or other proceeding.

I. No Admission of Liability: Nothing herein shall be construed as an admission of liability by the Bank. Nothing in this Agreement, and no aspect of the Parties' settlement or negotiations thereof, is or shall be construed to be an admission or concession of any violation of any statute or law, of any fault, liability or wrongdoing, or of any infirmity in the claims or defenses of the Bank with regard to the Receivers' Action, the Class Action, or any proceeding therein, or any other case or proceeding, any such liability being expressly disputed and denied, and shall never be construed as an admission(s) by the Bank.

J. Costs: The Parties shall each bear their own attorneys' fees and costs, including court costs, in connection with this Agreement and the settlement of the Receiver's Action and Class Action. Each Party shall be responsible for the payment of all costs incurred in the taking of any depositions in the Receiver's Action and Class Action, with the Party taking such depositions paying the costs and attendance fees of any court reporters and videographers and the cost of that Party's original or copy of transcripts or video recordings of such depositions, and the Party attending such depositions paying the costs of any transcripts or video recordings of such depositions that have been ordered by such Party.

III. WARRANTY OF CAPACITY TO EXECUTE AGREEMENT

The Parties represent and warrant that they have the sole and exclusive right to receive sums specified in this Agreement; that they have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Agreement; and that the persons executing this Agreement on behalf of the Parties have the authority to execute the terms and conditions set forth in this Agreement.

IV. WARRANTY OF SOLVENCY

In order to induce the Receiver to enter into this Agreement, the Bank represents and warrants that it is not presently insolvent, that payment of the Settlement Amount and Class Action settlement amount will not render it insolvent, and it does not intend to file for relief under any section of the United States Bankruptcy Code during the two-year period following the Court's approval of this Agreement. The Receiver reasonably relied upon such representations and warranties of Heartland Bank and Trust Company in entering into this Agreement.

V. ENTIRE AGREEMENT AND SUCCESSORS-IN-INTEREST

The Parties agree that this Agreement contains the entire agreement between the Receiver and the Bank with regard to the matters set forth in it and shall be binding upon and inure to the benefit of their respective successors and assigns. There are no other understandings or agreements, verbal or otherwise, in relation thereto between the Parties, except as herein expressly set forth. There have been no representations not set forth herein that the Parties have relied upon when entering into this Agreement. Should any provision of this Agreement require interpretation or construction, the parties agree that all Parties have participated in the drafting of this document and no presumption regarding construing the document against one Party shall apply. The Bank shall have no duty or liability with respect to the administration of, management of or other performance by the Receiver of her duties relating to the Receivership, including, without limitation, the process to be established by the Receiver for filing, adjudicating and paying claims against the Receivership estate or the allocation, disbursement or other use of the Settlement Amount.

VI. PRESERVATION OF CLAIMS; NO THIRD-PARTY BENEFICIARIES

This Agreement is solely for the benefit of the parties hereto and no persons other than the undersigned shall be entitled to claim or receive any benefit by reason of this Agreement. Nothing in this Agreement, nor the performance of the Parties' obligations thereunder, shall in any way impair, limit, modify or otherwise affect the rights of the Parties against any person or entity (collectively, "Third Parties") that are not Parties to this Agreement. The Parties reserve all rights to assert any such claims against Third Parties as they may determine appropriate.

VII. PARTIES' OPPORTUNITY TO BE REPRESENTED BY COUNSEL

The Parties acknowledge that each has had the opportunity to consult with the attorney of their choice. Furthermore, each Party to this Agreement represents and warrants that they are entering into this Agreement of their own free will, without having been subjected to any form of duress or coercion of any kind.

VIII. EXECUTION

This Agreement may be executed in counterparts, and such execution shall be valid and binding on the Parties.

IX. SEVERABILITY

In the event any provision of this Agreement, other than the Settlement Conditions, is found

to be invalid by any court of law, the remaining provisions of the Agreement shall remain valid and binding on the Parties. For the avoidance of doubt, if any of the Settlement Conditions, including but not limited to the Bar Order, are found to be invalid, this Agreement shall not be binding on the Parties.

X. JURISDICTION AND VENUE FOR LITIGATION OF DISPUTES

In the event of a dispute as to the interpretation, enforcement, application, or violation of this Agreement, the Parties consent, understand, and agreed that the District Court for the Northern District of Illinois, Eastern Division, shall retain exclusive jurisdiction, and be the exclusive venue, in which to resolve such dispute.

XI. CONSTRUCTION BY STATE LAW

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Illinois to the extent state law is applicable, without giving effect to principles of conflicts of law.

AGREED TO BY:

HEARTLAND BANK AND TRUST
COMPANY

MELANIE E. DAMIAN, AS RECEIVER FOR
TODAY’S GROWTH CONSULTANT, INC.

By: _____

By: _____

Melanie E. Damian, Receiver

Its: _____

Date: _____

Date: _____