

## SETTLEMENT AGREEMENT

**THIS SETTLEMENT AND MUTUAL RELEASE AGREEMENT** is made effective this 15th day of December, 2022 (the "**Settlement Agreement**").

**BETWEEN:**

**TARGET CAPITAL INC.**

and

**[REDACTED]**

and

**PERFORMANCE CBD BRANDS CORP.**

**WHEREAS** [REDACTED] (the "**Defendant**") is an individual ordinarily resident in [REDACTED];

**AND WHEREAS** Performance CBD Brands Corp. ("**Performance**") is an Alberta corporation;

**AND WHEREAS** Target Capital Inc. (the "**Plaintiff**") is a publicly-traded Alberta corporation;

**AND WHEREAS** Baker Law Firm ("**Baker**") is counsel for the Plaintiff;

**AND WHEREAS** Jensen Shawa Solomon Duguid Hawkes LLP ("**JSS**") is counsel for the Defendant;

**AND WHEREAS** Serv-it Bailiff Services Inc. ("**Serv-it**") is the civil enforcement agent acting on behalf of the Plaintiff;

**AND WHEREAS** the Defendant jointly owns a residential property with a municipal address of [REDACTED], with the legal description Plan [REDACTED] (the "**Home**")

**AND WHEREAS** the Defendant directed the Plaintiff to transfer funds to Performance on certain dates as described in the Statement of Claim in the Action (as defined below);

**AND WHEREAS** Performance executed a Convertible Secured Note in favour of Target on June 16, 2021 (the "**CSN**");

**AND WHEREAS** the Defendant entered into a personal guarantee of the CSN on June 16, 2021 (the "**Guarantee**");

**AND WHEREAS** the Defendant entered in a General Security Agreement in favour of Target on June 16, 2021 (the "**GSA**");

**AND WHEREAS** the Defendant represented to the Plaintiff that the Defendant held approximately CDN \$[REDACTED] in certain security accounts before entering into the GSA;

**AND WHEREAS** the Defendant entered in a Real Estate Covenant Agreement on June 16, 2021 (the “**Covenant**”; together with the CSN, Guarantee and GSA, the “**Security Documents**”);

**AND WHEREAS** the Plaintiff demanded payment under the Security Documents on July 18, 2022;

**AND WHEREAS** the Plaintiff initiated distress proceedings against the Defendant under the *Civil Enforcement Act*, the *Personal Property Security Act* and the *Securities Transfer Act*;

**AND WHEREAS** the Plaintiff commenced Court of King’s Bench Action Number [REDACTED] against the Defendant on August 4, 2022 (the “**Action**”);

**AND WHEREAS** the Plaintiff noted the Defendant in default on the expiry of the time for the Defendant to file a defence in the Action.

**AND WHEREAS** The Plaintiff was granted an Order styled as a “Mareva Injunction/Attachment Order” on September 22, 2022 (the “**Initial Order**”);

**AND WHEREAS** the Plaintiff, through its civil enforcement agent, Serv-It seized items from the Defendant on multiple dates and registered the same in the Alberta Personal Property Registry (the “**Seized Assets**”);

**AND WHEREAS** the Seized Assets include shares contained within security accounts, as more particularly described within Schedule A to this Settlement Agreement, which are domiciled in [REDACTED], and the Plaintiff has yet to effect seizure of certain shares which are located in [REDACTED];

**AND WHEREAS** the Defendant applied to set aside or vary the Initial Order on November 10, 2022;

**AND WHEREAS** the Plaintiff has provided the Defendant with an accurate Statement of Account of amounts owing under on the Security Documents as at December 9, 2022;

**AND WHEREAS** the Defendant seeks the return of the Seized Assets and a compromise on the his indebtedness to the Plaintiff under the Security Documents and the Action;

**AND WHEREAS** the Defendant has sought to obtain funds from [REDACTED] to make payment towards the Settlement Amount;

**AND WHEREAS** the Plaintiff is agreeable to providing the Defendant time to repay the indebtedness under the Security Documents and the Action;

**AND WHEREAS** it appears to the Plaintiff and the Defendant that the Seized Assets aside from those listed at Schedule A of this Settlement Agreement do not have individually marketable resale values in excess of CDN\$[REDACTED];

**AND WHEREAS** the Defendant has updated his SEDI filings with respect to [REDACTED];

**AND WHEREAS** the Plaintiff and Defendant (the “**Parties**”) have agreed to settle all disputes between them in relation to the matters set out herein in accordance with the terms of this Settlement Agreement;

**NOW THEREFORE** in consideration of the mutual covenants contained in this Settlement Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Settlement Agreement hereby agree as follows:

1. **Settlement**

In full and final satisfaction of all claims currently existing as between the Plaintiff and Defendant as described in the Action, as relating to the Initial Order and any steps taken pursuant thereto by any of the Plaintiff and Defendant, any matters otherwise as referenced in this Settlement Agreement (including the recitals), and any matters related to the foregoing (the “**Claims**”), the Parties agree that:

- (a) The Defendant agrees to pay the Plaintiff CDN\$1,850,000 inclusive of all costs in the Action (regardless of to whom those costs were owed) and, subject to the terms of this Settlement Agreement, inclusive of any interest (the “**Settlement Amount**”);
- (b) The Defendant shall enter into a promissory note in respect of CDN\$400,000 of the Settlement Amount, in substantially the form attached hereto as Appendix A (the “**Promissory Note**”), which shall be secured over the Home in the form of a collateral mortgage, which shall be executed and entered into by both the joint owners of the home, in substantially the form attached hereto as Appendix B (the “**Mortgage**”);
- (c) The Defendant and the Plaintiff shall enter into an agreement amending the Guarantee to be limited to the amount of CDN\$1,850,000, and making such other amendments as are required to give full effect to this Settlement Agreement, in substantially the form attached hereto as Appendix C (the “**Amending Agreement**”; together with the Promissory Note and Mortgage the “**Settlement Documents**”);
- (d) For greater clarity, and notwithstanding anything else in this Settlement Agreement, with the exception of interest as provided for in this Settlement Agreement, the Plaintiff’s recovery of the Settlement Amount through the Guarantee, as amended, the Promissory Note, and the Mortgage collectively shall not exceed CDN\$1,850,000;

- (e) The Plaintiff, through Serv-It or another civil enforcement agency as needed, shall be entitled to take or retain possession of the following assets and shall proceed to sell the same in accordance and compliance with the *Civil Enforcement Act* and any other applicable legislation, the proceeds of which shall be applied toward the Settlement Amount:
- (i) The Defendant's [REDACTED] as more particularly described in Schedule A to this Settlement Agreement;
  - (ii) The Defendant's [REDACTED] as more particularly described in Schedule A to this Settlement Agreement;
  - (iii) The Defendant's [REDACTED] as more particularly described in Schedule A to this Settlement Agreement;
  - (iv) The securities contained in the security accounts noted in this Action as more particularly described in Schedule A to this Settlement Agreement;
  - (v) [REDACTED] shares registered in the name of the Defendant;
  - (vi) [REDACTED] shares and options in the name of Defendant, or beneficially owned by the Defendant; and
  - (vii) [REDACTED] that was seized from the Defendant. (collectively, the **"Retained Assets"**).
- (f) With the exception of the Retained Assets, the Plaintiff shall direct Serv-It to release the Seized Assets from seizure, and shall cause the Seized Assets to be delivered to the Defendant's home and placed within the Home, forthwith and at the Plaintiffs own cost;
- (g) The Defendant accepts the return of the Seized Assets, as is, accepts that some of the Seized Assets may have been lost or damaged, and agrees that he is estopped from making any claim for loss or damage regarding the Seized Assets against the Plaintiff or any of its agents, including Serv-It and Baker;
- (h) The Plaintiff shall market and sell the Retained Assets, and the net proceeds from the sales shall be applied towards the Settlement Amount;
- (i) The Defendant shall provide the Plaintiff with the sum of CDN\$300,000 in cash (the **"Settlement Funds"**) in addition to the funds referenced in subparagraph (a)(vii), to be applied toward the Settlement Amount;
- (j) Performance shall use its best efforts to market its all of its assets and enter into a finalized a sale of the same by June 30, 2023 (the **"Asset Sale"**) and the proceeds

of the Asset Sale shall be paid to the Plaintiff or credited to the Defendant as set forth in this Settlement Agreement;

- (k) The Defendant shall cause Performance, and Performance agrees, to forward the proceeds of the Asset Sale to the Plaintiff to repay the CSN up to a maximum of CDN\$1,000,000, with all amounts so forwarded reducing the amount owed by Performance under the CSN accordingly;
- (l) The balance of the Settlement Amount remaining shall be paid by June 30, 2023 (the “**Outside Date**”);
- (m) The Action is hereby stayed by mutual consent, and the Plaintiff and Defendant agree that during such stay no steps will be taken by either the Plaintiff or Defendant within or in furtherance of that Action except as expressly contemplated in this Settlement Agreement (the “**Stay**”);
- (n) During the Stay, the Initial Order shall remain in effect, as amended, however it may be modified to give effect to the terms of this Settlement Agreement, or as agreed between the Parties in accordance with paragraph 8 of the Initial Order;
- (o) The Parties agree that the Defendant shall have access to the following bank accounts and that the Parties will execute whatever documentation necessary, without delay, to permit the Defendant to have access to these accounts:
  - (i) [REDACTED]
  - (ii) [REDACTED]
  - (iii) [REDACTED]
  - (iv) [REDACTED];
- (p) The term of the Mortgage shall be extended to December 31, 2023 at the option of the Defendant, with such option becoming effective upon written request accompanied by payment of CDN\$10,000 to the Plaintiff, with such amount not to be a credit toward the Settlement Amount;
- (q) Subject to subparagraph (p), in the event that a minimum payment of CDN\$1,450,000 towards Settlement Amount is not paid by the Outside Date, the Stay shall be lifted and the Plaintiff shall be at liberty to take steps within and pursuant to the Action, including proceedings in furtherance of recovering any unpaid portion of the Settlement Amount by any legal means at the Plaintiff’s disposal;
- (r) All payments received by Target pursuant to this Settlement Agreement, including payments toward the Settlement Amount, the proceeds of the Asset Sale, and the

proceeds of all items seized, shall reduce the amount owing from Performance to Target under the CSN by that same amount;

- (s) Upon payment of CDN\$1,450,000 towards the Settlement Amount, and provided all other terms of this Settlement Agreement have been met, and the Defendant and Performance are not in default of this Settlement Agreement, the GSA and related *Personal Property Act* registrations shall be discharged; and
- (t) The Parties shall take all reasonable steps to finalize and execute the Settlement Documents forthwith upon the execution of this Settlement Agreement. Following execution of all of the Settlement Documents, the Parties shall compile a fully-executed version of this Settlement Agreement and appendices.

## 2. **The Asset Sale**

The Asset Sale is to be governed by the following terms:

- (a) In the event the proceeds from the Asset Sale are an amount exceeding CDN\$1,000,000, the Mortgage shall be removed and fully discharged, and the Promissory Note shall be extinguished;
- (b) In the event the proceeds from the Asset Sale are less than CDN\$1,000,000, the amounts owing under the Settlement Amount, Promissory, and Mortgage shall be reduced by eighty cents (\$0.80) for each dollar (\$1.00) recovered by the Plaintiff from the Asset Sale in excess of CDN\$500,000;<sup>1</sup>
- (c) Any amounts paid to the Plaintiff in accordance with subparagraph (b) above shall not be recoverable against the Mortgage, and for greater clarity, Target has no right recover any amount exceeding a total of CDN\$1,850,000, whether under the Security Documents or otherwise, as against the Defendant, subject to the terms of this Settlement Agreement;
- (d) Under no circumstances will the Settlement Amount be reduced in excess of CDN\$400,000 through the mechanism described in paragraph 3(b); and
- (e) Performance shall be entitled to retain any proceeds of the Asset Sale in excess of CDN\$1,000,000.

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<sup>1</sup> For illustration purposes only: if the amount recovered in the Asset Sale is CDN\$750,000, the CSN shall be reduced by CDN\$750,000 and the Settlement Amount shall be reduced by CDN\$200,000; If the amount recovered in the Asset Sale is CDN\$1,000,000, the CSN shall be reduced by CDN\$1,000,000, the Settlement Amount shall be reduced by \$400,000 and the Mortgage shall be discharged; if the amount recovered by the Asset Sale is CDN\$300,000, the CSN shall be reduced by CDN\$300,000 and the Settlement Amount shall remain unchanged (i.e., CDN\$400,000).

3. **Interest and Costs**

- (a) If, after the Outside Date, the Settlement Amount has not been paid in full, interest shall begin to accrue at 16% on any unpaid portion of the Settlement Amount less any amounts outstanding under the Promissory Note and secured by the Mortgage. For clarity, the 16% interest rate shall apply only to a maximum of \$1,450,000 less any amounts paid by the Defendant toward that amount, and only after the Outside Date.
- (b) As of the execution date of this Settlement Agreement, interest shall accrue at 5% on any unpaid portion of the Promissory Note and Mortgage.
- (c) In the event of a conflict or disagreement about which interest provisions apply to any amounts owed by the Defendant to the Plaintiff, the terms contained herein shall supersede any other agreement and shall be given effect.

4. **Trust Conditions**

The Parties agree that the following additional trust conditions apply to this Settlement Agreement:

- (a) The Defendant shall irrevocably instruct JSS to not disburse any portion of the Settlement Funds until (i) this Settlement Agreement has been executed by all of the Parties; and (ii) the Mortgage has been executed and provided to JSS and Baker, as applicable.
- (b) JSS, on behalf of the Defendant, and Baker, on behalf of the Plaintiff, will hold in trust the signature pages of this Settlement Agreement and the Settlement Documents until they have been executed by all Parties.
- (c) Once the aforementioned steps in subsections (a) to (b) have been completed the Defendant shall irrevocably instruct JSS to release the Settlement Funds to Baker.
- (d) Once the signature pages of the Settlement Documents have been executed by all the parties they shall be released to the Parties by JSS and Baker, as applicable.
- (e) In the event that the Mortgage is rejected by the Land Titles Office for any reason, the parties to the Mortgage undertake to correct any defect with the mortgage promptly and ensure it is registered correctly.

5. **Dismissal of the Action**

Provided the Defendant and Performance are not in default under this Settlement Agreement, upon the full payment of the Settlement Amount:

- (a) The Parties shall cause an order to be filed in the Action (the “**Consent Dismissal Order**”) in a form substantially in the form attached hereto as Appendix D after finalizing such the Consent Dismissal Order with the correct Land Titles instrument numbers, as available.; and
- (b) The Parties shall enter a release substantially in the form attached hereto as Appendix E.

6. **Confidentiality**

The Parties agree to maintain as confidential and not to disclose or divulge (whether directly or indirectly) to any person any of the terms of this Settlement Agreement or the underlying settlement, and agree not to make any public statement with respect to this Settlement Agreement. Nothing in this Settlement Agreement is intended to restrict the Parties from disclosure for legal, insurance, tax, audit, or accounting purposes as necessary, nor from disclosure which is required by law, securities and government regulation.

7. **Counterpart Execution**

This Settlement Agreement may be executed in counterpart and by electronic or facsimile signature. All executed and delivered counterparts together shall constitute a fully executed agreement. This Settlement Agreement and any appendices thereto which require affidavit execution may be sworn or affirmed remotely, in keeping with prevailing practice in Alberta following the COVID-19 Pandemic. No Party to this Settlement Agreement shall take the position that a document is not properly executed or does not have full legal effect on account of having been executed, sworn, or affirmed remotely.

8. **Entire Agreement**

The Parties to this agreement acknowledge that this Settlement Agreement, the Settlement Documents, documents appended to this agreement, and any other documents specifically referred to in this Settlement Agreement (including the CSN and Guarantee) are intended to comprise the entire agreement between the Parties and that there are no representations, warranties, or conditions affecting this agreement or the Settlement Documents other than as are expressly contained herein and therein.

9. **Enurement**

This Settlement Agreement enures to the benefit of and is binding upon the Parties and their respective successors and assigns.

10. **Legal Representation**

The Parties acknowledge that they have each been represented by independent legal counsel with respect to the terms of this Settlement Agreement, and that they

understand and agree to the terms hereof. The parties to this Settlement Agreement voluntarily accept the terms of this Settlement Agreement for the purposes of making full and final compromise, adjustment, and settlement of any and all matters referred to in this Settlement Agreement.

11. **No Admission**

The acceptance and execution of this Settlement Agreement shall not be deemed or construed as an admission of liability by anyone. The parties to this Settlement Agreement do not admit any liability, and all such liability is hereby denied.

12. **Neutral Interpretation**

The parties to this Settlement Agreement agree that this Settlement Agreement shall not be construed against the drafter of the Settlement Agreement but shall be construed neutrally in accordance with the plain language of the Settlement Agreement.

13. **Severability**

If any provision of this Settlement Agreement is for any reason found to be unenforceable, in whole or in part, the unenforceability thereof shall not affect the enforceability of any other provision in or part of this Settlement Agreement.

14. **Recitals**

The parties to this Settlement Agreement agree that the recitals to this Settlement Agreement are contractual and incorporated into this Settlement Agreement, and are not mere recitals.

15. **Governing Law and Venue**

The Parties agree that this Settlement Agreement shall be governed by the Laws of the Province of Alberta. The Parties agree that any dispute in regard to or arising out of this Settlement Agreement shall be determined by the Court of King's Bench of Alberta, and the parties to this Settlement Agreement irrevocably attorn to the exclusive jurisdiction of the Court of King's Bench of Alberta.

*[Signature page follows]*

**IN WITNESS WHEREOF** the parties have executed this Settlement and Mutual Release Agreement as of the date first written above.

**[REDACTED]**

**TARGET CAPITAL INC**

\_\_\_\_\_  
[REDACTED]

Per \_\_\_\_\_  
Name: Theo Zunich  
Title

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

**PERFORMANCE CBD BRANDS CORP.**

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title:

Witness: \_\_\_\_\_

Name: \_\_\_\_\_