

## SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is made and entered into by and between the State of Maine (the "State"); Zealandia Holding Company, Inc. ("ZHC"), a Nevada corporation; Festiva Development Group, Inc. ("FDG"), a Nevada corporation; Resort Travel & Xchange, Inc. ("RTX"), a Nevada Corporation; Festiva Real Estate Holdings, LLC ("FREH"); a Nevada limited liability company; Zealandia Capital, Inc. ("ZCap"), a Nevada corporation; Patton Hospitality Management, Inc. ("PHM"), a Nevada corporation; Festiva Resorts Adventure Club Members' Association, Inc. (the "Association"), a South Carolina corporation; Herbert H. Patrick, Jr., an individual residing in Asheville, North Carolina; and Donald K. Clayton, an individual residing in Asheville, North Carolina. Hereinafter ZHC, FDG, RTX, FREH, ZCap, PHM, the Association, Mr. Patrick, and Mr. Clayton will be collectively referred to as the "Defendants." Hereinafter, the State and the Defendants will be collectively referred to as the "Parties"; and the State and each of the Defendants will be referred to as "Party," as the case may be.

WHEREAS, in 2011, the State of Maine began an investigation of the sales and marketing practices for Festiva Adventure Club ("FAC") memberships and in connection therewith sent a survey (the "Survey") to certain FAC members (the "Survey Recipients"), a small number of whom responded to the Survey by stating that they were satisfied with "Festiva" (the "Satisfied Recipients"). Hereinafter, that body of other Survey Recipients shall be referred to as the "Consumers," and a list of the Consumers is attached hereto as Exhibit A;

WHEREAS, on or about November 25, 2013, the State filed a complaint against Defendants, in the Kennebec County Superior Court captioned as *State of Maine v. Zealandia Holding Company, et al.*, currently pending on the Business and Consumer Docket in the Maine Superior Court, Docket No. BCD-CV-14-11 (the "Action"), alleging violations of § 207 of the Maine Unfair Trade Practices Act (5 M.R.S.A. §§ 205-A – 214) in connection with the sale and marketing of FAC memberships and seeking a variety of declaratory and injunctive relief, as well as civil penalties and the costs of the State's investigation;

WHEREAS, the State alleges that Defendants' sales agents induced consumers to purchase such memberships and/or points by using high pressure sales tactics and by making misrepresentations relating to, *e.g.*, the savings that consumers would realize, the ease and simplicity of booking a vacation, the availability of vacations at peak times and locations, and Defendants' responsiveness to consumer service issues; and that Defendants' sales agents and sales materials omitted information that was material to a consumer's decision to purchase including, *e.g.*, the true cost of a FAC membership over the 40-year contract term, that maintenance fees would increase, and that consumers have a ten (10) day right to cancel;

WHEREAS, the State alleges that ZHC, FDG, RTX, FREH, ZCap, PHM, and the Association have operated as a common enterprise while engaging in unfair and deceptive trade practices through an interrelated network of companies;

WHEREAS, the State has alleged that Mr. Patrick and Mr. Clayton have formulated, directed, controlled, had the authority to control, participated in and had knowledge of the acts and practices which the State alleges constitutes the common enterprise;

WHEREAS, FDG contends it is in the business of developing and acquiring timeshare resorts, and is in the business of marketing and selling vacation club memberships in the FAC;

WHEREAS, in connection with selling FAC memberships, FDG contends that it enters into contracts with purchasers in which purchasers agree to purchase FAC memberships together with annual or biennial points (the "FAC Contract") and FDG may extend loans to purchasers of FAC memberships and/or FAC points to allow them to finance a portion of the purchase price for the FAC membership and/or points;

WHEREAS, all FAC members are members of the Association;

WHEREAS, RTX contends it is in the business of providing, among other things, reservation and exchange services to the vacation industry by contract;

WHEREAS, FREH contends it is in the business of owning real estate and leasing real estate to its tenants;

WHEREAS, ZCap contends it is in the business of providing, among other things, collection, billing and account maintenance services to the vacation industry by contract;

WHEREAS, PHM contends it is in the business of providing, among other things, resort management services to component resorts of the FAC;

WHEREAS, the Association was formed in 2006 as a South Carolina non-profit corporation to serve as the association for all members of the FAC;

WHEREAS, ZHC wholly owns FDG, RTX, FREH, ZCap, and PHM as subsidiaries;

WHEREAS, in August 2006, FDG and the Association entered into the Festiva Resorts Adventure Club Trust Agreement and the Declaration for Festiva Resorts Adventure Club, which Defendants contend had the effect of establishing the FAC and creating a trust into which FDG transferred deeded timeshare weeks (the "Trust") to be held by the trustee of the Trust for the benefit of and use by FAC members;

WHEREAS, the Association contends that it is assessed maintenance fees in connection with the deeded timeshare weeks which are held by the Trust and passes such maintenance fees on to and collects them from FAC members;

WHEREAS, in 2008, FDG acquired the unsold deeded timeshare weeks located at the Rangeley Lake Resort ("RLR"), in Rangeley, Maine, and conveyed such inventory to the trustee of the Trust;

WHEREAS, in connection with FDG's acquisition of the unsold deeded timeshare weeks located at the RLR, FDG contends that it also acquired RLR's sales centers located at Riverside Drive in Portland, Maine (the "Portland Sales Location") and at RLR;

WHEREAS, FDG contends that it engaged in marketing and sales of FAC memberships at the Portland Sales Location and at RLR;

WHEREAS, as part of its sale of FAC memberships at the Portland Sales Location and at RLR, FDG contends that it accepted deeded timeshare weeks at RLR and other timeshare resorts owned by purchasers in partial payment for FAC memberships (the "Conversion Transactions");

WHEREAS, after the State initiated the Action, on or about October 17, 2014, the State filed its Third Amended Complaint (the "Third Amended Complaint"), which is the operative complaint in the Action;

WHEREAS, on October 12, 2015, the Parties mediated the Action before Hon. Paul T. Pierson (ret.), and signed a Term Sheet of Settlement, dated October 12, 2015;

WHEREAS, the Parties wish to enter into this Agreement to settle, release and discharge certain claims among them, including those relating to the sale or marketing of any vacation product or services, including but not limited to the marketing or sale of FAC memberships or FAC points, any Conversion Transactions, or the financing of the purchase of FAC memberships or FAC points; any representations or omissions made by Defendants; the collection of amounts owed to Defendants by anyone in connection with the marketing or sale of FAC memberships or FAC points; the establishment of the FAC or Trust; the assessment and collection of maintenance fees or special assessments relating to the FAC; any exchange or reservation services provided to FAC members; any notices sent to persons relating to the FAC; any meetings held with persons relating to the FAC; the FAC; and including any claims which were asserted or which arise out of the facts alleged in the Third Amended Complaint against Defendants in the Action (the "Released Claims");

WHEREAS, this Agreement and the releases contained herein, are the products of mutual negotiation and effects the settlement of the Action;

NOW, THEREFORE, in consideration of the Parties' agreements herein, the receipt and sufficiency of which consideration is hereby acknowledged, the Parties agree as follows:

1. **The State's Release of the Defendants.** In consideration of the undertakings, transactions, and consideration recited in this Agreement, the State hereby unconditionally and irrevocably remises, releases and forever discharges each of the Defendants, and each of their respective past, present and future representatives, administrators, successors, predecessors, assigns, parent companies, members, sister companies, affiliates, subsidiaries, divisions, officers, directors, partners, employees, agents, attorneys, insurers, heirs, assigns and personal representatives (hereinafter the "Released Parties"), of and from any and all suits, arbitrations, claims, demands, interests, costs (including attorneys' fees and costs actually incurred), expenses, actions and causes of action, rights, liabilities, obligations, promises, contracts,

agreements, controversies, losses, grievances, debts, warranties, covenants, damages, variances, judgments, executions, claims and demands, costs, losses, claims for court costs and attorneys' fees, liabilities and obligations of any kind or nature whatsoever matured or unmatured, liquidated or unliquidated, absolute or contingent, known or unknown, in law, in equity, or otherwise, which the State has, now has, or may have against the Released Parties relating to the Released Claims.

2. **Other Consideration.** Among the consideration granted to the State and to the Defendants are the following:

a. **Opportunities for Consumers to Obtain Releases.**

- 1) **Group 1 Consumers.** To each Consumer who indicated dissatisfaction with "sales tactics" on the Survey and who never took a vacation in connection with his or her FAC membership through the use of points and who did not participate in a Conversion Transaction, FDG shall provide the Consumer an opportunity to seek a release from his or her FAC Contract. A list of such Consumers is attached hereto as Exhibit B. For each Consumer who elects to exercise the foregoing opportunity, FDG shall cancel any outstanding loan balances as of the date this Agreement is executed and the Association shall cancel any outstanding maintenance fee amounts owed by the Consumer as of the date this Agreement is executed. FDG shall communicate the foregoing opportunity to each Consumer listed on Exhibit B through a letter accompanied with a release agreement to be executed by the Consumer. The letter and release agreement shall be mutually agreed to between the State and FDG.
- 2) **Group 2 Consumers.** To each Consumer who indicated dissatisfaction with "sales tactics" on the Survey and who never took a vacation in connection with his or her FAC membership through the use of points and who participated in a Conversion Transaction, FDG shall provide the Consumer with an opportunity to elect either (a) an opportunity to seek a release from his or her FAC Contract or (b) an opportunity to seek a release from his or her FAC Contract, the return of his or her original deeded week, and reversion to the Consumer's prior status as a deeded week owner. A list of such Consumers is attached hereto as Exhibit C. For each Consumer who elects to exercise either of the foregoing opportunities, FDG shall cancel any outstanding loan balances as of the date this Agreement is executed and the Association shall cancel any outstanding maintenance fee amounts owed by the Consumer as of the date this Agreement is executed. FDG shall communicate the foregoing opportunity to each Consumer listed on Exhibit C through a letter accompanied with a release

agreement to be executed by the Consumer. The letter and release agreement shall be mutually agreed to between the State and FDG.

- 3) **Group 3 Consumers.** To each Consumer who participated in a Conversion Transaction and who is not described in Sub-Paragraph 2(a)(2) above, FDG shall provide an opportunity to seek a release from his or her FAC Contract, the return of his or her original deeded week, and reversion to the Consumer's prior status as a deeded week owner. A list of such Consumers is attached hereto as Exhibit D. For each Consumer who elects to exercise the foregoing opportunity, FDG shall cancel any outstanding loan balances as of the date this Agreement is executed and the Association shall cancel any outstanding maintenance fee amounts owed by the Consumer as of the date this Agreement is executed. FDG shall communicate the foregoing opportunity to each Consumer listed on Exhibit D through a letter accompanied with a release agreement to be executed by the Consumer. The letter and release agreement shall be mutually agreed to between the State and FDG.
- 4) **Group 4 Consumers.** For each Consumer who owns less than 3200 biennial points in the FAC and who did not participate in a Conversion Transaction, FDG shall provide the rights and opportunities described in Sub-Paragraph 2(a)(1). A list of such Consumers is attached hereto as Exhibit E. FDG shall communicate the foregoing opportunity to each Consumer listed on Exhibit E through a letter accompanied with a release agreement to be executed by the Consumer. The letter and release agreement shall be mutually agreed to between the State and FDG.
- 5) **Group 5 Consumers.** For each Consumer who owns less than 3200 biennial points in the FAC and who participated in a Conversion Transaction, FDG shall provide the rights and opportunities described in Sub-Paragraph 2(a)(2). A list of such Consumers is attached hereto as Exhibit F. FDG shall communicate the foregoing opportunity to each Consumer listed on Exhibit F through a letter accompanied with a release agreement to be executed by the Consumer. The letter and release agreement shall be mutually agreed to between the State and FDG.
- 6) **Group 6 Consumers.** For each Consumer not described in Sub-Paragraphs 2(a)(1) through 2(a)(3), above, FDG shall provide an opportunity for him or her to be released from his or her FAC contract before the end of the 40-year term so long as any loan balances in connection with the purchase and/or upgrade of the Consumer's FAC membership is paid in full and the Consumer is

at all times current on maintenance fees owed to the Association. A list of such Consumers is attached hereto as Exhibit G. Each release granted by FDG in accordance with this Sub-Paragraph shall be effective ten (10) years from the date the Consumer signed his or her FAC contract, but each Consumer who elects such a release shall continue to be bound by his or her FAC contract, including the obligation to pay all required maintenance fees, until the ten (10) year period expires. FDG shall communicate the foregoing opportunity to each Consumer through a letter accompanied with a release agreement to be executed by each Consumer receiving this opportunity. The letter and release agreement shall be mutually agreed to between the State and FDG.

7) **Procedures Relating to Exhibits A through G.** FDG has supplied the information set forth on Exhibits A through G. The State shall inform FDG in writing about any error or omission the State contends appears on Exhibits A through G on or before October 30, 2015. Thereafter, the Parties shall work cooperatively in good faith to resolve any contention made by the State within ten (10) days of the State's notice under this Sub-Paragraph. In the event that the Parties are unable to resolve any contention by the State, the Parties shall rely on the dispute resolution mechanisms set forth in Paragraph 11.

8) **Procedures Relating to Letters and Release Agreements.**

i) Whenever FDG has agreed to communicate to certain Consumers by letter with a release agreement, as described in Sub-Paragraphs 2(a)(1) through 2(a)(6), FDG shall provide such letters and release agreements to the State for its review and approval. FDG shall provide such documents to the State by email and overnight delivery, addressed as follows:

Attn: Linda Conti, AAG  
[Linda.conti@maine.gov](mailto:Linda.conti@maine.gov)  
Assistant Attorney General  
Office of the Attorney General  
6 State House Station  
Augusta, ME 04333-0006

ii) The State shall have ten (10) days from FDG's transmission of the documents to communicate its position as to approval. If the State does not communicate its position as to approval, FDG shall be entitled to send the letter and release agreement to such Consumers, as the case

may be, as if the State had approved the letter and release agreement.

- iii) With respect to its obligations to provide Consumers with a letter and release agreement, pursuant to Sub-Paragraphs 2(a)(1) through 2(a)(6), above, FDG shall send each such letter and release agreement to each Consumer via certified U.S. Mail, return-receipt requested, or through such other method of communication mutually-agreed upon with the State. FDG shall send the letter and release agreement to the last-known address for each respective Consumer.
  - iv) With respect to its obligations to provide Consumers with a letter and release agreement, pursuant to Sub-Paragraphs 2(a)(1) through 2(a)(6), above, FDG shall provide each Consumer 30 days from the date of postmark of such letter and release agreement to execute and return the release agreement.
- b. **Credit Reporting.** FDG shall request credit reporting agencies to delete any trade line(s) relating to amounts owed to FDG for each Consumer. FDG shall provide a certification to the State regarding compliance with this Sub-Paragraph by email to Linda Conti, AAG, at [Linda.Conti@maine.gov](mailto:Linda.Conti@maine.gov).
  - c. **Payment to the State.** FDG shall pay the State the amount of \$150,000 to be distributed by the State to Consumers, in the Attorney General's sole discretion.
  - d. **Three (3) Year Covenant Not to Sell.** FDG covenants not to sell any FAC memberships in Maine for three (3) years from the date this Agreement is executed. ZHC also covenants that neither it nor any of its subsidiaries nor any new entity ZHC causes to be created shall sell FAC memberships in Maine for three (3) years. In the event this Sub-Paragraph is breached, FDG agrees to pay liquidated damages to the State in the amount of \$250,000.

3. **Reporting Requirements.**

- a. FDG shall provide the State with an exemplar of any letter and release agreement that it is required to send to Consumers pursuant to Sub-Paragraph 2(a), together with a list of the recipients of such correspondence, within a reasonable time after FDG directs such correspondence to Consumers.
- b. FDG shall cause H. Catherine Claussen, Esq. to serve as the point of contact in connection with FDG's compliance described in this Paragraph

and shall provide reports to the State relating to the same on a weekly basis until FDG's obligations under Paragraphs 2(a) through 2(c) are completed.

- c. Any reporting required in this Paragraph shall be provided to the State via email to Linda Conti, AAG, at [Linda.Conti@maine.gov](mailto:Linda.Conti@maine.gov).

4. **Dismissal of Action with Prejudice and Without Costs.** Upon performance of the obligations identified in Sub-Paragraphs 2(a) through 2(c), the Parties will file a Stipulation of Dismissal with Prejudice and Without Costs, in the form of Exhibit H hereto.

5. **Acknowledgments and Representations.**

The Parties understand and agree that the acceptance of the consideration referred to in this Agreement herein is in settlement of claims which are disputed and is not to be considered as an admission of fault or liability by any Party, by whom any fault or liability is expressly denied.

The decision by the Parties to enter into this Agreement has not been induced in any way by any other Party or any representative or person acting on behalf of any Party and, further, no Party relies upon any statement or representation made by any other Party or their agent, attorney or any other person representing any other Party in connection herewith.

The Parties each represent that (1) the execution of this Agreement has been duly authorized, and (2) the claims released herein have not been and will not be assigned or otherwise transferred to any person, corporation or other entity.

6. **Entire Agreement.** This Agreement is contractual in nature, and constitutes the entire agreement among the Parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings, both written and oral, including but not limited to the Term Sheet of Settlement, among the Parties with respect to the subject matter hereof. No other promises or agreements shall be binding or shall modify this Agreement unless signed by the Parties hereto.

7. **Amendment.** This Agreement may be amended only in a writing signed by the Parties.

8. **Severability.** If any provision of this Agreement, or the application thereof, becomes or is declared by an arbitrator or court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of this Settlement Agreement will continue in full force and effect. The Parties further agree to replace such void or unenforceable provision of this Settlement Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.



9. **Counterparts.** This Agreement may be executed by facsimile and in counterparts, each of which shall be deemed to be an original and all of which, taken together, shall constitute one agreement binding on the Parties.

10. **Rules of Construction.** The Parties waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

11. **Dispute Resolution.**

- a. The Parties agree that this Agreement, and any disputes arising out of it, shall be governed under the laws of the State of Maine, without regard to any choice of law provisions or conflicts of laws principles.
- b. The Parties also agree that for any dispute arising out of this Agreement, including but not limited to any breach of any term of this Agreement, shall entitle the non-breaching Party, at its option, to pursue any available remedy. Any such attempts to enforce this Agreement or any disputes arising under this Agreement shall be resolved through binding arbitration with Hon. Paul T. Pierson (ret.), serving as the arbitrator or another arbitrator mutually agreed upon by the Parties. By agreeing to this provision, the State does not waive its sovereign immunity.

12. **Voluntary Act.**

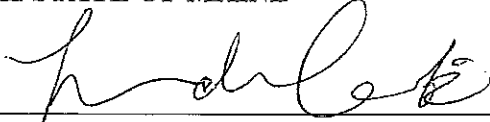
The Parties acknowledge that each of them have carefully read and understand the contents of this Agreement and that each of them signs it as his or its own free act and deed.

IN WITNESS WHEREOF, the Parties have executed this Agreement by affixing their signature below.

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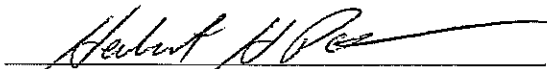
Dated: October 13, 2015

**THE STATE OF MAINE**



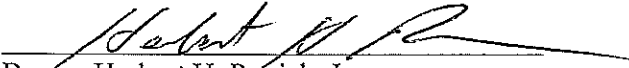
By: Linda Conti, Assistant Attorney General

**FESTIVA DEVELOPMENT GROUP, INC.**



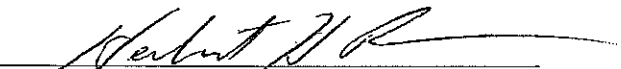
By: Herbert H. Patrick, Jr.  
Its President

**ZEALANDIA HOLDING COMPAY, INC.**



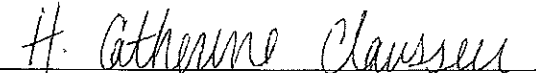
By: Herbert H. Patrick, Jr.  
Its President

**FESTIVA REAL ESTATE HOLDINGS, LLC by Zealandia Holding Company, Inc., its  
sole member**



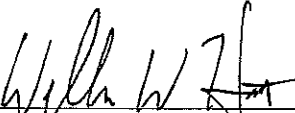
By: Herbert H. Patrick, Jr.  
Its President

**ZEALANDIA CAPITAL, INC.**

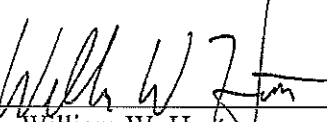


By: H. Catherine Claussen, Esq.,  
Its Secretary and Treasurer

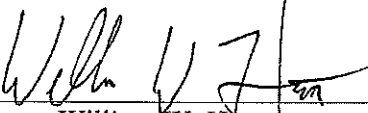
PATTON HOSPITALITY MANAGEMENT, INC.

  
By: William W. Horton  
Its President

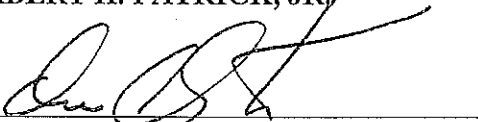
RESORT TRAVEL & XCHANGE, INC.

  
By: William W. Horton  
Its President

FESTIVA RESORTS ADVENTURE CLUB MEMBERS' ASSOCIATION, INC. by Patton Hospitality Management, Inc., its Manager

  
By: William W. Horton  
Its President

  
HERBERT H. PATRICK, JR.

  
DONALD K. CLAYTON