

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into on the date last signed below (the “Effective Date”) between **Travel 100 Group, Inc.**, (“Plaintiff”), and **Shelborne Associates**, a Florida general partnership (“Defendant”), and the Insurer: Praetorian Insurance Company f/k/a Insurance Corporation of Hannover (“ICH”) (Plaintiff and Defendant and Insurers may hereinafter be collectively referenced as the “Parties”).

WHEREAS, on July 29, 2003, the Plaintiff filed with the Circuit Court of Cook County, Illinois, its Proposed Class Action Complaint (and as amended) against Defendant in the civil case of *Travel 100 Group, Inc. v. Shelborne Associates* (Case No. 03 CH 12537) (the “Litigation”);

WHEREAS, without admitting any wrongdoing or liability the Parties to this Agreement desire to settle all claims, demands, and liabilities between the Plaintiff and Defendant, including all claims that have been asserted or could have been asserted in the Litigation;

WHEREAS, Plaintiff alleged in the Litigation that Defendant violated state law and the Telephone Consumer Protection Act, 47 U.S.C. §227(b)(1)(C) (“TCPA”), by sending out an unsolicited advertisement to certain telephone facsimile machines, including Plaintiff’s telephone facsimile machine;

WHEREAS, Plaintiff’s counsel represents having conducted a full investigation into the facts and law relating to the Litigation and the Proposed Class;

WHEREAS, the Parties agreed on a compromise and settlement which is in the best interests of all Parties, including the Proposed Class and all of its members;

WHEREAS, the Class proposed by Plaintiff is comprised of persons who were sent and received facsimiles advertising Defendant’s goods or services, and from whom Defendant did not seek and obtain prior express permission or invitation for the sending of such faxes, which were sent from July 23, 1999 through July 23, 2003 (the “Proposed Class”).

WHEREAS, in addition to opposing class certification, Defendant, and ICH took the position that any class should exclude persons with whom Defendant had a business relationship prior to sending them an advertising facsimile.

WHEREAS, Defendant filed a motion for summary judgment in the Litigation which was denied on October 21, 2009, based, in part, on the Court’s findings that there were significant disputed questions of material fact;

WHEREAS, Plaintiff filed a motion to certify the Proposed Class which has not been ruled on in the Litigation;

WHEREAS, if Plaintiff were to prevail at trial on behalf of the Proposed Class it would result in liability in excess of \$1 million, and if Defendant were to prevail at trial it would result in liability of \$0;

WHEREAS, the Parties participated in pre-trial settlement conference in furtherance of their efforts to resolve this dispute at which time they agreed to the principal terms of this Settlement Agreement;

WHEREAS, after considering the benefits that the Proposed Class will receive under the settlement which is the subject of this Agreement (the "Settlement"), along with Defendant's representation to vigorously oppose all claims asserted in the Litigation, including class certification, and the attendant risks, uncertainties and delays of litigation, Plaintiff and Proposed Lead Class Counsel, Robert J. Stein III and Anthony S. DiVincenzo ("Proposed Class Counsel") concluded that it is fair, equitable and in the best interests of Plaintiff and the Proposed Class to resolve the Litigation upon the terms and conditions provided for in this Agreement;

WHEREAS, Defendant and the Insurers similarly desire settlement according the terms and conditions of this Agreement;

WHEREAS, on August 26, 2003, Defendant's insurance carrier filed a declaratory action captioned *Insurance Corporation of Hannover v. Shelborne Associates and Travel 100 Group, Inc.*, 2003-CH-14159 ("The Coverage Action") in which ICH sought a declaration that it owed no duty to defend or indemnify Defendant Shelborne Associates, for any claims arising from Travel 100 Group's complaint filed in this case;

WHEREAS, the Coverage Action has been vigorously litigated by the Parties before the Circuit Court and Appellate Court holding that ICH, at a minimum, has a duty to defend Shelborne Associates;

WHEREAS, the Insurers participated in the previously referred to settlement conference, and acknowledged and approved the terms of this Agreement which shall dispose of all pending and remaining issues in the Coverage action, as well;

WHEREAS, the Insurers agreed to dismiss the Coverage Action as part of this Settlement;

WHEREAS, the Parties have continued to engage in settlement negotiations after the settlement conference and have resolved their remaining disputes;

WHEREAS, this Agreement was negotiated among the Parties hereto in good faith and at arm's length, and the Parties hereto stipulate and agree that the claims of the named Plaintiff and the Proposed Class, against Defendant should be and are hereby compromised and settled, subject to the approval of the court in the Litigation, upon the following terms and conditions:

1. **No Admission of Liability.** The execution of this Settlement Agreement by any party shall not constitute or be construed as an admission by such party as to the correctness of any position asserted by any other party in the Litigation, or an admission of any liability or wrongdoing.

2. **No Admission of Coverage.** It is the understanding of the Parties hereto, that the terms of this Agreement and this Agreement itself, should not be construed as an admission of any liability or wrongdoing by ICH or the admission of liability coverage under policy No.: H470010209 for the claims complained of in the Litigation, but are made for the sole purpose of settling disputes and claims among the parties and to avoid the costs, distractions, expenses and delay of any further proceedings in the Litigation and the Coverage Action. The Parties further recognize that this Agreement is a compromise and settlement of disputed claims, is the product of arms-length negotiations, is not intended to and shall not be construed as an insurance policy interpretation and shall not be used in any court, dispute resolution proceedings or otherwise to create, or interpret any obligations under the ICH policy.

3. **Effective Date.** Except as to Section 9(c) (which becomes effective upon preliminary approval by the Court), this Settlement Agreement shall become effective (hereinafter the “Effective Date”) upon (1) the Court’s entry in the Litigation of a final order approving this Agreement as fair, reasonable and adequate to the Proposed Class; finding that this Agreement is fair and made in good faith, and dismissing the claims of Plaintiff and the Proposed Class members against Defendant (with prejudice and without costs, except as otherwise agreed to herein and approved by the Court) unless and until such order should be vacated or otherwise overturned on appeal. However, unless and until the Court denies approval of this Settlement, the Parties shall each remain obligated to perform under this Agreement, subject to Court approval, regardless of changes in facts or law which may be decided after the date the parties agreed to the terms of this Settlement.

4. **Certification of Settlement Class.** The parties stipulate to certification of settlement class consisting of all persons who were sent facsimiles of material advertising the commercial availability of any property, goods or services by or on behalf of Defendant and from whom Defendant did seek or obtain prior express permission or invitations for the sending of such faxes, which were sent during the “Class Period” which shall be from July 23, 1999 through July 23, 2003.

5. **Plaintiff and the Settlement Class.** Defendant agrees to pay to Plaintiff and the Settlement Class members those sums determined by the Court in the Litigation, which under no circumstances whatsoever shall exceed a maximum of \$200,000.00 to (i) settle the claims of the members of Plaintiff and the Settlement Class; (ii) provide for Class settlement notice and administration.

Compensation to each member of the Proposed Class who does not exclude himself or herself and who timely submits a claim shall be determined based on the proof of claim, which shall be divided into two groups.

Group A shall consist of all Proposed Class members who submit a claim form with a copy of the facsimile allegedly sent on behalf of Shelborne Associates attached to the claim form. Group A claimants shall receive **\$150 per fax** received, up to a maximum amount of \$300.

Group B shall consist of all Proposed Class members who submit a claim form with a copy of their phone bill, or other documentation establishing that during the Class Period they owned or leased the facsimile telephone number identified in their claim form. Group B claimants shall receive **\$75 each**, regardless of the number of advertising faxes he or she received.

In the event the aggregate amount of the claims exceeds \$200,000, claimants shall receive a *pro-rata* share of the funds available to pay the claims. In this event, the *pro-rata* distribution shall still be in the same proportions *vis-a-vis* Group A. Group B (e.g., a Group B claimant would receive 50% of the amount paid to a Group A Claimant who received the fax.

5.1. If more than 100 claims are submitted by claimants with whom Defendant had a prior business relationship at the time Defendant sent the advertising fax to the claimant, Defendant may, at its discretion, revoke this Settlement Agreement (except for Section 9 (c)) and the parties shall return to the *status quo anti*. Defendant shall notify in writing Proposed Lead Counsel and the Court if it makes such an election. Any such election must be made, and notice given, within 15 calendar days of the deadline for the submission of claims.

Proposed Lead Class Counsel determined that the class settlement is a fair and reasonable and adequate compromise of the Proposed Class' claims.

6. **Attorneys' Fees, Notice Costs and Related Matters.** Proposed Lead Class Counsel will apply for attorneys' fees to be paid by Defendant and the Insurers ("Attorneys Fee"). Proposed Lead Class Counsel may petition for fees under the lodestar multiplier method. Defendant agrees not to oppose request for fees and expenses up to \$200,000 exclusive of the \$10,000 for the cost of notice provided for in section 9 herein. However, it is understood and acknowledged by all Parties that any fee request remains subject to approval by the Court in the Litigation, and must be supported by appropriate documentation by Proposed Lead Class Counsel.

Proposed Lead Class Counsel may also petition for an incentive award to be paid to the named Plaintiff and Proposed Class representative, Travel 100 Group, Inc. the requested incentive award shall not exceed \$1,500, shall be in lieu of Travel 100 Group making a claim under the settlement procedures, and shall be deducted from the \$200,000 maximum allowed for attorneys' fees.

IHC shall be responsible for direct payment of the Attorneys' Fees to Proposed Lead Class Counsel.

7. **Release.** Subject to the provisions of this Agreement, Plaintiff, the Proposed Lead Class, and all Class Members, hereby release Defendant and the ICH, and each of them, and their

officers, directors, members, shareholders, attorneys, representatives, agents, employees, heirs, parents, subsidiaries, licensees, franchisees, successors, assigns, insurers, and reinsurers, including but not limited to any and all claims, liabilities, demands, damages, costs, interest, violations, statutory violations, attorneys' fees, losses, expenses, rights and causes of action of which they have or may have against them arising out of the facts alleged in the Complaint (and as amended) in the Litigation during the Proposed Class periods set forth herein.

8. **Cooperation.** Plaintiff and Defendant and Insurer and their respective attorneys, and agents, agree to cooperate fully with one another and to use their best efforts to effect the consummation of this Settlement Agreement.

9. **Notice.** Subject to the Court's approval in the Litigation, the Parties propose that notice be issued to the Proposed Class as follows:

- (a) Proposed Lead Class Counsel shall cause notice in a form substantially similar to Exhibit 1 to this Settlement Agreement to be published in Travel Weekly. A more comprehensive notice and claim form, substantially similar to Exhibit 2 shall be made available by on the internet, on a website to be created and maintained by the claims administrator. Additionally, Proposed Class members may request that the Claims Administrator provide them a copy of the claim form by U.S. Mail or facsimile.
- (b) For those Proposed Class members who have been identified by the facsimile logs or information produced in discovery in this case, the claims administrator shall send notice by facsimile.
- (c) Within five (5) business day after preliminary approval of this settlement by the Court, Defendant or its insurer shall pay Proposed Lead Class Counsel \$10,000 towards the costs of providing notice in this case. Defendant shall be responsible for this cost even if the proposed Settlement does not receive final approval by the Court. Proposed Class Counsel shall be responsible for all notice costs in excess of \$10,000. Nothing herein shall prohibit Proposed Lead Class Counsel from seeking reimbursement for such costs, pursuant to Section 5 of this Settlement Agreement. However, any such costs remain subject to all of the terms, requirements, and limitations contained in Section 5.

10. **Claims Administration.** Proposed Lead Class Counsel shall be responsible for selecting and employing an unrelated entity to serve as claims administrator for the settlement to: (i) make arrangements for publication of notice in the form and manner designated by the Court; (ii) post the claim form, as approved by the Court, on the internet; issue via U.S. Mail of facsimile the notice and claim form to those Proposed Class members requesting a copy thereof; (iii) process claim forms; and (iv) receive and provide a report identifying all opt-out forms sent by Proposed Class members. All costs of claims administration, except for the \$10,000 set forth in section 9 (c)

are the responsibility of Proposed Lead Class Counsel and are to be paid from the \$200,000 maximum allowed under Section 5, with approval of the Court. Proposed Lead Class Counsel and the Claims Administrator shall take reasonable steps to ensure that fraudulent claims are not allowed and shall ensure that the Claims Administrator forwards all records of claims submitted and any payments made to Proposed Class members to counsel for Defendant.

The Claims Administrator shall provide a claims report to counsel for both Plaintiff, Defendant and ICH within ten (10) days after the deadline for filing claims or opt-out requests, and said claims report shall include the number and identity of the claimants in each Group and the number and identity of all Proposed Class members filing opt-out requests.

ICH shall be responsible for direct payment of the claims to the claimants.

11. **Claim Form.** The Parties agree that members of the Proposed Class shall be required to submit any claim by using the claim form which is part of Exhibit 2 to this Settlement Agreement (the "Claim Form"). The Claim Form shall require all claimants to provide either information regarding their current name, address, telephone number, as well as the facsimile number that they owned or leased during the Class Period. Each Claim Form must be completed in one of the two following manners, which will, in turn, determine the claimant's eligibility for compensation as specified in Section 4:

Group A — The Claim Form must be accompanied by an original or copy of the facsimile promoting Shelborne Associates' goods or services including showing the date the facsimile was transmitted to the proposed group A member and an IRS W-9 Form (to be provided by the Claims Administrator), which must be completed and executed by the claimant and returned to the Claims Administrator;

Group B — The Claim Form must be accompanied by proof, in the form of a phone bill or other documentation provided by the phone line carrier, establishing that during the Class Period the claimant owned, leased, or otherwise paid for and had the use of the telephone number identified as the facsimile number in the claim form, and an IRS W-9 Form to be provided by the Claims Administrator, which must be completed and executed by the claimant and returned to the Claims Administrator.

Any Claim Form which is not submitted by the claim deadline date to be set by the Court and which is not completed and signed by claimant and with a completed and executed IRS W-9 form in accordance with the instructions in the notice or Claim Form, is to be rejected. Each member of the Proposed Class may submit only one Claim Form regardless of the number of facsimiles that he, she or it received from or on behalf of Defendant during the Proposed Class period.

If Defendant disputes the validity of any claims, or the Claims Administrator rejects any claims, in full or in part, any such dispute or rejection will be ruled upon by the Court, which shall constitute the final and binding resolution of any such dispute.

12. **Preliminary approval.** As soon as practicable after execution of this Settlement Agreement, the Parties shall make application to the Court for an order which:

- (a) Preliminarily approves this Settlement Agreement.
- (b) Schedules a hearing for final approval of this Settlement Agreement by the Court.
- (c) Approves the form of notice to the Proposed Class.
- (d) Finds that publication of the Proposed Class notice and the other measures specified in Section 8 of this Settlement Agreement is the only notice required and that such notice satisfies the requirements of due process under the constitutions of the State of Illinois and the United States of America and the requirements of 735 ILCS 5/2-806.

The Parties agree to request the form of notice attached hereto as Exhibits 1 and 2. The fact that the Court may require non-substantive changes in the notice or order does not invalidate this Settlement Agreement.

13. **Final approval.**

- (a) At the conclusion of, or as soon as practicable after, the close of the hearing on the fairness, reasonableness and adequacy of this Settlement Agreement, counsel for the Proposed Class and Defendant shall request that the court enter a Final Order approving the terms of this Settlement Agreement as fair, reasonable and adequate, providing for the implementation of those terms and provisions, finding that the notice given to the Proposed Class satisfies 735 ILCS 5/2-806, satisfies the requirements of due process in Illinois, that the claims of Plaintiff and the Proposed Class members against Defendant are barred, and that this Court shall retain jurisdiction for the sole purpose of enforcing the provisions of this Settlement Agreement.
- (b) The Parties agree to request the form of Final Order to be filed with the Court prior to the final fairness hearing. The fact that the Court may require non-substantive changes in the Final Order does not invalidate this Settlement Agreement.

14. **Miscellaneous provisions.**

- (a) Within ten (10) days after Final Order approving this Settlement Agreement is entered and becomes non-appealable, ICH and American Guarantee shall dismiss the *Coverage* Action with prejudice and without costs, except as otherwise provided herein and approved by the Court;

- (b) Whether or not this Settlement Agreement and the Settlement contemplated hereunder are consummated, this Settlement Agreement and the proceedings had in connection herewith shall in no *event* be construed as, or be deemed to be, evidence of an admission or concession on the part of Defendant or its insurers of any liability or wrongdoing whatsoever or coverage for the claims being settled.
- (c) Notices of objections to this Settlement Agreement shall be filed with the Court and sent to both Plaintiff's and Defendant's counsel and ICH's counsel at:

Plaintiff's counsel:

Robert J. Stein III
AlvaradoSmith, APC
1 MacArthur Place, Suite 200
Santa Ana, California 92707
714-852-6800
714-852-6899 (fax)

Anthony S. DiVincenzo
DiVincenzo Schoenfield and Swartzman
33 N. LaSalle St., 29th Fl.
Chicago IL 60602
312-334-4800

Defendant's counsel:

Kevin D. Finger
Greenberg Traurig LLP
77 W. Wacker Drive, Suite 2500
Chicago, Illinois 60603
312-456-8400

ICH's counsel:

Richard D. Foody
Stellato & Schwartz, Ltd.
120 N. La Salle St.
34th Floor
Chicago, Illinois 60602
(312) 419 - 1011

The persons and addresses designated in this paragraph may be changed by any signatory hereto by written notice to the other signatories hereto.

- (d) This Settlement Agreement supersedes all prior representations and Agreements, if any, between the parties to this Agreement and their legal counsel. This Settlement Agreement may not be altered, ended or extinguished except by a writing that expressly refers to this Settlement Agreement and is signed subsequent to the execution of this Settlement Agreement by the Parties.

- (e) The Parties agree that any rule of interpretation to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Settlement Agreement; and that in fact, no one party shall be deemed the drafter of this Settlement Agreement.
- (f) This Settlement Agreement shall be deemed subject to the laws of the State of Illinois and shall be interpreted in a manner consistent with those laws.
- (g) This Settlement Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument. Facsimile signatures are acceptable for the execution of this Settlement Agreement.
- (h) The Parties each further represent, warrant, and agree that, in executing this Settlement Agreement, they do so with full knowledge of any and all rights which they may have with respect to the claims released in this Settlement Agreement and that they have received independent legal advice from their attorneys with regard to the facts involved and the controversy herein compromised and with regard to their rights arising out of such facts.
- (i) This Settlement Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and to their respective agents, employees, representatives, trustees, officers, directors, shareholders, divisions, parent corporations, subsidiaries, heirs, assigns, and successors in interest.
- (j) Each of the individuals executing this Agreement warrants that he or she has authority to enter into the Settlement Agreement and legally bind the party for which he or she is signing.

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IN WITNESS WHEREOF, the parties have caused this Settlement Agreement to be executed on the date set forth underneath their respective signatures.

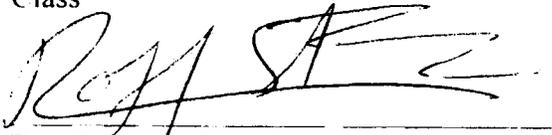
Dated: June 16, 2011

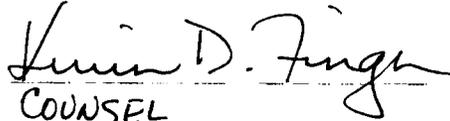
Plaintiff:

Defendant:

TRAVEL 100 GROUP, INC. and the Proposed Class

SHELBORNE ASSOCIATES, a Florida General Partnership



By: 
Its: COUNSEL

By: Robert J. Stein III
Lead Counsel for Plaintiff and the Proposed Class

GREENBERG TRAURIG, LLP
77 W. WACKER DRIVE, STE 3100
CHICAGO, IL 60601

AGREED AND ACKNOWLEDGED:

INSURANCE CORPORATION OF HANNOVER

By: _____

Its: _____