

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

**Director of the Manufactured Housing
and Modular Units Program of the
Public Service Commission,**

Complainant,

v.

A & G Commercial Trucking, Inc.,

Respondent.

Case No. MC-2004-0078

NOTICE OF FILING
STIPULATION AND AGREEMENT

COMES NOW the Complainant, Director of the Manufactured Housing and Modular Units Program of the Public Service Commission ("Director") and, for his Notice of Filing Stipulation and Agreement, states to the Missouri Public Service Commission as follows:

The Director filed a Complaint against Respondent A & G Commercial Trucking, Inc. on August 5, 2003, alleging that: the Director had placed restrictive sale notices ("red tags") on four manufactured homes owned by Respondent A & G; that all four red tags were removed; that A & G offered the said homes for sale at retail; that A & G was not registered with the Public Service Commission as a manufactured home dealer; and that two of the said homes were sold, did not comply with the code, and did not bear the proper seal. The Director requested that the Commission authorize the Director to seek civil penalties from A & G in circuit court.

Respondent A & G obtained a writ of prohibition, to prohibit the Commission from conducting further proceedings in the case. The writ of prohibition was appealed to the Court of Appeals and then to the Missouri Supreme Court, and ultimately the circuit court vacated the

writ of prohibition, and the case has now been returned to the jurisdiction of the Commission for further proceedings.

After lengthy negotiations, the Director and A & G have now executed a Stipulation and Agreement, a true copy of which is attached hereto as Exhibit A. By this Stipulation and Agreement, the parties intend to resolve all issues in this case, and the parties request that the Commission approve the Stipulation and Agreement.

WHEREFORE, Complainant requests that the Commission approve the Stipulation and Agreement and order the parties to comply with the terms thereof.

Respectfully submitted,

/s/ Keith R. Krueger

Keith R. Krueger
Deputy General Counsel
Missouri Bar No. 23857

Attorney for the Director of the
Manufactured Housing and Modular Units
Program of the Public Service Commission
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or e-mailed to all counsel of record this 29th day of September, 2006.

/s/ Keith R. Krueger

STIPULATION AND AGREEMENT

This Stipulation and Agreement ("Agreement") is executed this 29 day of September, 2006, by and between **A&G Commercial Trucking, Inc.**, a Missouri corporation ("A & G"), **Greg DeLine** ("DeLine"), and the **Director of the Manufactured Housing and Modular Units Program of the Public Service Commission** (the "Director"). A & G, DeLine and the Director are referred to herein collectively as the "Parties."

1. **Definitions:** As used in this Agreement, the following terms shall have the following meanings:

a. **Agreement:** This agreement and all exhibits, attachments, and amendments hereto.

b. **Administrative Case:** The case initiated by the Director against A & G in Commission Case No. MC-2004-0078.

c. **Commission:** The Missouri Public Service Commission.

d. **Complaint:** The complaint filed by the Director with the Commission in Case No. MC-2004-0078.

e. **A&G-Owned Home:** Any manufactured home, whether new or used, and whether damaged or not, that is now or hereafter owned by A & G and that A & G desires to sell at retail to a consumer for the purpose of human habitation.

f. **Disputed Homes:** A total of seven manufactured homes, including the four homes that are described in Paragraph 10 of the Complaint and the following three additional homes: a 2003 model Waverlee home, bearing serial number 17L08034XU, which Service Pro sold to Frank Raddatz, 19812 Pike 250, Bowling Green, MO 63334; a 2003 model Clayton home, bearing serial number CLR02018TTNAB, which Service Pro sold to Barbara Honeycutt, 6629 Timberland, Cedar Hill, MO 63016; and a 2003 Southern home, bearing serial number DSLAL43515AB, which Service Pro sold to James and Nikki Large, 12251 Saverton Road, Saverton, MO 63467.

g. **HUD:** The U.S. Department of Housing and Urban Development.

h. **Service Pro:** Service Pro, Inc., a Missouri corporation owned and controlled by DeLine.

2. **Recital of Facts:** The Parties stipulate to the following facts:

a. The Director initiated the Administrative Case by filing the Complaint against A & G. A & G has denied liability and has denied any violations of any applicable law in connection with the Administrative Case.

b. On November 13, 2003, A & G and the Director submitted the Administrative Case to mediation. As a result of the mediation and subsequent discussions, A & G and the Director made an agreement to resolve all issues then pending in the Administrative Case. On March 19, 2004, A & G and the Director executed a Stipulation and Agreement, which they filed in the Administrative Case on the same date. The Commission held an on-the-record proceeding regarding the Stipulation and Agreement on April 13, 2004. On May 25, 2004, the Commission issued its Order Rejecting Stipulation and Agreement, stating "it would not be appropriate for the Commission to approve a settlement, which encourages A&G to function as a dealer of manufactured homes." At a subsequent prehearing conference on November 16, 2005, the regulatory law judge encouraged the Director and A & G to renew their efforts to negotiate an agreement to resolve the issues in this case on terms that are similar to the terms of the rejected Stipulation and Agreement, but without requiring A & G to register with the Commission as a dealer of manufactured homes.

c. The parties have entered into this Agreement to set forth their agreements to resolve the Administrative Case.

d. By entering into this Agreement and by undertaking the obligations stated herein, neither A & G, nor DeLine, nor the Director admit any liability to each other or to any other party. Rather, this Agreement has been entered into in view of the uncertainty of litigating the Administrative Case. Except as specified in Paragraph 9, below, nothing contained herein will be an admission by any Party on any matter, either to the other Parties, to the Commission, or to any other person or entity who is not a party to this Agreement.

e. The recitals of fact contained in this paragraph 2 are substantive provisions of this Agreement and not mere recitals.

3. **Agreement Not to Apply for Registration as a Manufactured Housing Dealer.** A & G agrees that, so long as DeLine owns A & G or a partial interest therein, it will not do any act that would cause it to meet the definition of a "dealer" under § 700.010, RSMo, and that it will not apply to the Commission for registration as a dealer of manufactured housing pursuant to the requirements of § 700.090, RSMo.

4. **Restriction of Future Sales:** A & G, acting on its own behalf, and DeLine, acting on his own behalf and on behalf of any other company or entity that he owns or partially owns, agree that they will not sell or convey any new manufactured home (as said terms are defined in applicable HUD regulations now existing or hereafter

amended) unless all applicable required HUD labels and certificates are properly affixed and attached to said manufactured home.

5. **Process to "Recertify" A&G-Owned Homes:** A & G shall not sell any A&G-Owned Home to any consumer except in accordance with the provisions of this paragraph of this Agreement. In the event that A & G desires to sell an A&G-Owned Home, A & G shall give written notice thereof to the Director and the remaining provisions of this Paragraph 5 shall apply. Either the Director or any entity assigned and approved by the Director (which may include an engineer) shall conduct a physical inspection or examination of the A&G-Owned Home in order to identify the corrections, modifications or alterations that are needed to bring the A&G-Owned Home into compliance with the HUD Code. A & G shall pay the reasonable costs of all such examinations and inspections within thirty (30) days. A & G shall not sell any A&G-Owned Home at retail to any consumer unless and until A & G has undertaken the corrective actions recommended by the Director with respect to the A&G-Owned Home in question. Such actions shall be taken within the time period requested by the Director, as long as such time period is reasonable under the circumstances. After such corrections or modifications are completed, the Director shall be given the opportunity to reinspect the A&G-Owned Home in question and shall, if such corrections and modifications have been made, approve them promptly. Once all such corrections and modifications are made, the Director shall issue a seal, label or other necessary or appropriate insignia reflecting that the particular A&G-Owned Home has been brought back into compliance with the HUD Code pursuant to § 700.021 RSMo and other applicable provisions of law, and A & G may then sell the A&G-Owned Home.

6. **Covenants Concerning Disputed Homes:** One of the contentions made by the Director in the Administrative Case is that four of the Disputed Homes were sold by A & G in violation of applicable law, because they were sold after the Director had instructed A & G not to sell them and/or because they were sold without the required HUD data plate or label attached thereto, all as more particularly described in the Complaint. Within ten (10) days from the date on which all Parties have executed this Agreement, the Director shall send a letter to the purchasers of all seven Disputed Homes in the form of the letter attached hereto as Exhibit A and incorporated herein by reference (the "Customer Letter"). The purpose of the Customer Letter is to request permission from the ultimate purchasers and owners of the Disputed Homes to allow the Director and A & G to have access to and to reinspect the Disputed Homes in an effort to have them recertified and to affix and to attach thereto any and all required data plates and labels. Director's sole obligation with respect to the Customer Letter shall be to mail the Customer Letter and to show A & G proof that the Customer Letter has been sent to the last known address of each of the purchasers of the Disputed Homes. Furthermore:

a. If a particular customer or party who receives a Customer Letter does not respond to it within sixty (60) days after receipt thereof, or elects not to have any further repair work performed on the Disputed Home in question, or cannot be contacted by the Director, then A & G shall have no obligation to perform any further or additional repairs on said Disputed Home. Nothing

contained in this Agreement shall obligate A & G to make any repairs or improvements to any Disputed Home that are necessary to repair any defect or item that occurred or arose after the Disputed Home was delivered to, and accepted by, the customer, or that was caused by the acts or omissions of the customer, or that resulted from the customer's failure to maintain the home.

b. If the owner of the Disputed Home does make a timely election to have additional repair work done on the Disputed Home, either the Director or any entity assigned and approved by the Director (which may include an engineer) may conduct a physical inspection or examination of the Disputed Home in order to identify the corrections, modifications, or alterations that are needed to bring the Disputed Home into compliance with the HUD code. A & G shall pay the reasonable costs of all such examinations and inspections within thirty (30) days. Furthermore, A & G agrees to undertake the corrective actions that are recommended by the Director or the third-party company retained by the Director, so long as such corrective actions are reasonable under the circumstances. A & G shall take such actions within the time period requested by the Director, so long as such time period is reasonable under the circumstances. A & G shall have such additional repairs, modifications and corrections performed with reasonable diligence and as soon as reasonably possible, but not later than sixty (60) days after receipt of the recommendation, subject to extension as approved by the Director for matters beyond A & G's control. After such corrections or modifications are completed, and approved by the Director within the Director's reasonable discretion, the Director shall be given the opportunity to reinspect the Disputed Home in question and shall, if such corrections and modifications have been made, approve them promptly and shall issue a seal, label or other necessary or appropriate insignia reflecting that the particular Disputed Home has been brought back into compliance with the HUD code pursuant to §700.021 RSMo and other applicable provisions of law.

7. **Payment by A & G:** Upon the final execution of this Agreement and the approval thereof by the Commission, A & G shall pay to the Director a penalty in the amount of Fourteen Thousand Dollars (\$14,000.00), for deposit to the school fund pursuant to the provisions of § 166.011, RSMo.

8. **Storage and Display of Manufactured Homes:** The Director maintains that it is within his powers to restrict the sale or transfer of manufactured homes by dealers thereof for matters such as failure of any manufactured home to meet applicable minimum state or federal building standards or codes. When the Director restricts the retail sale of any manufactured home, such practice is generally referred to in the manufactured home industry as "red tagging" a manufactured home. Any manufactured homes that A & G owns on or after the effective date of this Agreement and intends to resell or offer for sale, but which have been "red tagged" by the Director or which do not have affixed to them the proper or necessary HUD labels or data plates, shall be stored and maintained by A & G in a location that is distinctly separate and apart from other manufactured homes owned by A & G that are capable of being sold. Furthermore, A &

G shall conspicuously and clearly mark and label as "not for sale" any manufactured home that has been "red tagged" by the Director or that does not have affixed to it the necessary HUD label or data plate.

9. **Acknowledgment of Violation of Manufactured Housing Standards.** By execution hereof, A & G acknowledges that: it possessed and sold manufactured homes without registering as a dealer, as required by § 700.015, RSMo; it violated § 700.090, RSMo by failing to register as a dealer, and; it violated § 700.045 by removing the Red Tags from four manufactured homes in violation of the Federal Manufactured Home Construction and Safety Standards.

10. **No Admission of Liability; Construction of Agreement:** No Party by entering into this Agreement admits any liability on any point or matter whatsoever to any other Party, to the Commission, or to any third party that is not a party to this Agreement. The Parties have settled the disputes between them as described in the Complaint as a result of the uncertainty of proceeding with litigation of the Complaint. This Stipulation and Agreement has resulted from extensive negotiations between the signatories and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation and Agreement in total, then this Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof. The stipulations herein are specific to the resolution of this proceeding and are made without prejudice to the rights of the signatories to take other positions in other proceedings. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the parties waive, with respect to the issues resolved herein, their respective rights pursuant to § 536.080.1, RSMo, to present testimony, to cross-examine witnesses, and to present oral argument or written briefs; their respective rights to the reading of the transcript by the Commission pursuant to § 536.080.2, RSMo; and their respective rights to seek rehearing pursuant to § 386.500, RSMo; and to seek judicial review pursuant to § 386.510, RSMo. The parties agree to cooperate with each other in presenting this Stipulation and Agreement for approval to the Commission and shall take no action, direct or indirect, in opposition to the request for approval of the Stipulation and Agreement.

11. **Dismissal of Complaint:** Upon the final execution of this Agreement and after all covenants and conditions stated herein are performed and satisfied by both Parties, the Director shall dismiss the Complaint with prejudice such that the Complaint cannot be refiled at any time by the Director.

12. **Binding Effect; Construction:** This Agreement shall be binding upon the Parties hereto and their respective heirs, executors, successors, personal representatives, administrators, and assigns. It shall be interpreted in accordance with the laws of the state of Missouri.

13. **No Adverse Inference:** All Parties had equal input with respect to the language chosen in this Agreement and accordingly, no rule of law or construction shall

be employed in construing this Agreement which requires the construction hereof more favorably or strongly in favor of or against any party to this Agreement.

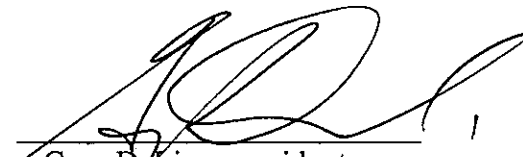
14. **Entire Agreement:** This Agreement expresses the entire agreement of the Parties, and supersedes or replaces any and all prior discussions between the Parties or their respective attorneys.


15. **Amendment:** This Agreement shall not be amended except by a written document that is executed by all of the Parties.

16. **Full and Complete Understanding of Settlement:** The Parties, by executing this Agreement, represent and warrant to each other that they fully and completely comprehend and understand each of the provisions of this Agreement, the legal effect thereof, and the consequences of entering into same.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

A & G Commercial Trucking, Inc.,
A Missouri corporation ("A & G")

By: 
Greg DeLine, president


Greg DeLine, individually

**Director of the Manufactured Housing
and Modular units Program of the Public
Service Commission**

By: 
Ron Pleus

**(Important Information regarding your Manufactured Home)
PLEASE READ**

Dear Consumer:

This letter is sent pursuant to a Stipulation and Agreement, dated September ___, 2006, which has been filed in Missouri Public Service Commission Case No. MC-2004-0078, in which the Staff of the Commission filed a complaint against A & G Commercial Trucking, Inc., which is owned and operated by Gregory DeLine.

As part of the said Stipulation and Agreement, certain homeowners who purchased a manufactured home from either A & G Commercial Trucking, Inc. or Service Pro, Inc. are being notified by the Commission that the homes that are part of the settlement agreement were sold to consumers without the applicable HUD Labels. The HUD Labels are required on all manufactured homes and signify that the home was built to the applicable building codes and safety standards.

The Staff of the Commission has determined that the home that is listed below did not comply with applicable federal or state law in the following respects: _____

Ensuring that your home is brought back into compliance with the HUD Code is critical, so that your home will be safe and insurable in the future, and so that you will be able to refinance or sell your home at some time in the future.

If you currently own the home as identified below, the Commission is requesting that you respond to this letter within 20 days. If you do not own the home identified below, please contact the Commission as soon as possible at 1-800-819-3180. After the Commission receives your response, a representative of the Commission will contact you to set up a date to complete an inspection of your home for any possible building or safety standard violations. The Commission will conduct this inspection at no cost to you. The Commission will share information from the inspection with you, the homeowner, and the company that sold you the home will correct any identified problems or defects at no cost to you. After any identified problems or defects are corrected, the home will be re-certified by the Commission, and the applicable labels will be attached thereto.

Manufacturer Name	Serial No.	Year	Location
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If you have questions, please call Ron Pleus of the Missouri Public Service Commission at 573-751-7119.

Sincerely,
Ron Pleus
Manager
Manufactured Housing & Modular Units Program