

### **STIPULATION AND AGREEMENT**

This Stipulation and Agreement is executed this 19<sup>th</sup> day of March, 2004, by and between **Amega Sales, Inc.**, a Missouri corporation ("Amega") and the **Director of the Manufactured Housing and Modular Units Program of the Public Service Commission** (the "Director"). Amega and the Director are referred to herein collectively as the "Parties."

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

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

a. **Agreement:** As used in this Agreement, the term "Agreement" shall mean this agreement and all exhibits, attachments, and amendments hereto.

b. **Amega:** As used in this Agreement, the term "Amega" shall mean Amega Sales, Inc., a Missouri corporation.

c. **Administrative Case:** As used in this Agreement, the term "Administrative Case" shall mean the case initiated by the Director against Amega before in Commission case number MC-2004-0079.

d. **Commission:** As used herein, the term "Commission" shall mean the Missouri Public Service Commission.

e. **Complaint:** As used in this Agreement, the term "Complaint" shall mean the complaint filed by the Director with the Commission in order to initiate and begin the Administrative Case.

f. **Damaged Home:** As used in this Agreement, the term "Damaged Home" shall mean any manufactured home now or hereafter owned by Amega which Amega desires to sell at retail to a consumer for the purpose of human habitation.

g. **DeLine:** As used in this Agreement, the term "DeLine" shall mean Greg DeLine, individually, who has been made a party to this Agreement for certain limited purposes and only for the purposes expressly stated herein.

h. **Director:** As used in this Agreement, the term "Director" shall mean the Director of the Manufactured Housing and Modular Units Program of the Public Service Commission.

i. **Disputed Home:** As used in this Agreement the term "Disputed Home" shall mean the manufactured home described in paragraph 12 of the Complaint.

j. **HUD:** As used in this Agreement the term "HUD" shall mean the U.S. Department of Housing and Urban Development.

k. **Parties:** As used in this Agreement, the term "Parties" shall mean Amega and the Director.

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

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

b. Amega requested that the disputes and claims made in the Administrative Case be submitted to mediation. The Director agreed to mediation. On November 13, 2003, Amega and the Director submitted the Administrative Case to mediation. At said mediation session, the Parties resolved most of the issues involved in the Administrative Case. After the mediation, representatives of the Director and Amega continued to discuss the remaining unresolved issues and, since the date of mediation, Amega and the Director have resolved all other issues not resolved at the mediation.

c. Amega and the Director have entered into this Agreement to set forth their agreements which they have made in order to resolve the Administrative Case.

d. By entering into this Agreement and by undertaking the obligations stated herein, neither Amega, 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. Nothing contained herein will be an admission by any Party or DeLine on any matter either to the other Party or to DeLine, to the Commission or to any other person or entity who is not a party to this Agreement or the Administrative Case.

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

3. **Restrictions on Future Sales:** Amega or any company or entity owned or partially owned by DeLine agrees that it shall not sell or convey any new manufactured homes (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.

4. **Process to "Recertify" Damaged Homes:** Amega shall not sell any Damaged Home to any consumer except in accordance with the provisions of this paragraph of this Agreement. In the event that Amega desires to sell a Damaged Home, Amega shall give written notice thereof to the Director and the remaining provisions of this paragraph 4 shall apply. Either the Director or any entity assigned and approved by the Director (which may include an engineer) conduct a physical inspection or examination of the Damaged Homes in order to determine corrections, modifications or alterations which are needed to bring the Damaged Home into compliance with the HUD Code. Amega shall pay the reasonable costs of all such examinations and inspections within thirty (30) days. Amega shall not sell any Damaged Home at retail to any consumer unless and until Amega has undertaken the corrective actions recommended by the Director with respect to the Damaged 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 Damaged 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 Damaged Home has been brought back into compliance with the HUD Code pursuant to §700.021 RSMo. and other applicable provisions of law, and Amega may then sell the Damaged Home.

5. **Covenants Concerning Disputed Homes:** One of the contentions made by the Director in the Administrative Case is the Disputed Home was sold by Amega in violation of applicable law because it was sold after the Director had instructed Amega not to sell it, all as more particularly described in the Complaint. Within ten (10) days from the date on which both Parties have executed this Agreement, the Director shall send a letter to the purchasers of the Disputed Home 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 purchaser and owner of the Disputed Home to allow the Director and Amega to have access to and to reinspect the Disputed Home in an effort to have it 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 send the Customer Letter and to show Amega proof that the Customer Letter has been sent to the last known address of the purchasers of the Disputed Home. Furthermore:

a. The Customer Letter will inform the recipient thereof that the Disputed Home which was purchased did not comply with applicable federal or state law and will specify the ways' in which it did not comply with applicable federal or state law. The Customer Letter further will state that the recipients thereof have the option to have Amega or a designee of Amega perform repairs to the Disputed Home in order to bring it in to compliance with applicable federal or state standards at no cost to the owner of the Disputed Home.

b. If the party who receives the Customer Letter does not respond to it or elects not to have any further repair work performed on the Disputed Home, then Amega shall have no obligation to perform any further or additional repairs on the Disputed Home. If the recipient of any Customer Letter does not respond to Amega within sixty (60) days after

receipt thereof stating that the customer desires the additional repair work to be done, then Amega shall have no obligation to perform any additional repair work to the Disputed Home. Furthermore, nothing contained in this Agreement shall obligate Amega to make any repairs or improvements to the Disputed Home which are necessary to repair any defect or item which occurred or arose after the Disputed Home was delivered and accepted by the customer or which was caused by the acts, omissions, or failure to maintain of the customer.

c. 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 determine the corrections, modifications, or alterations which are needed to bring the Disputed Home into compliance with the HUD code. Amega shall pay the reasonable costs of all such examinations and inspections within thirty (30) days. Furthermore, Amega agreed to undertake corrective actions which are recommended by the Director or the third-party company retained by the Director as long as such corrective actions are reasonable under the circumstances. Such actions shall be taken within the time period requested by the Director as long as such time period is reasonable under the circumstances. Amega shall have such additional repairs, modifications and corrections performed with reasonable diligence and as soon as reasonably possible not to exceed sixty (60) days, subject to extension as approved by the Director for matters beyond Amega's control. After such corrections or modifications are completed, 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 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.

6. **Payment by Amega:** Upon the final execution of this Agreement, Amega shall pay to the Director a penalty of the amount of Five Thousand Dollars (\$5,000.00).

7. **Covenants by Amega Concerning Sales of Manufactured Homes in the Future:** Amega or any company or entity owned or partially owned by DeLine further covenants and agrees with and in favor of the Director as follows:

a. In the event that Amega (or any company or entity owned or partially owned by DeLine) in the future receives title to any manufactured home which does not have affixed to it any required data plate or seal in order to allow it to be resold, Amega (or any company or entity owned or partially owned by DeLine) will give notice to the Director of the fact that Amega (or any company or entity owned or partially owned by DeLine) has received such a manufactured home.

b. Amega (or any company or entity owned or partially owned by DeLine) recognizes and understands that from time to time, the Director places "prohibitive sale

notices" on certain manufactured homes (which is generally referred to in the manufactured home industry as "red tagging" a manufactured home). Amega (or any company or entity owned or partially owned by DeLine) covenants and agrees that Amega (or any company or entity owned or partially owned by DeLine) will not sell any manufactured home which is "red tagged" at the time of sale and will not sell any manufactured home which does not contain or have affixed to it a HUD data plate or label. In the event that Amega (or any company or entity owned or partially owned by DeLine) violates any covenant contained in this paragraph 7.b., Amega (or any company or entity owned or partially owned by DeLine) shall pay to the Director, as a penalty, the amount of Ten Thousand Dollars (\$10,000.00) per occurrence. The Commission shall have the power to determine whether any violations of this paragraph 7.b. have occurred, subject to rights of appeal and judicial review as provided for under Missouri law. DeLine has been made a party to this Agreement for the purpose of personally guaranteeing the obligations of Amega (or any company or entity owned or partially owned by DeLine) to pay the liquidated damages described above, and DeLine hereby personally guarantees the payment of any and all liquidated damages which may be payable by Amega (or any company or entity owned or partially owned by DeLine) to the Director pursuant to this paragraph 7.b. However, the personal guarantee and personal liability of DeLine as stated herein shall be limited solely to payment of liquidated damages if the same become payable, and DeLine's personal guarantee does not extend to any other obligation of Amega (or any company or entity owned or partially owned by DeLine) undertaken in this Agreement. Specifically, but not in limitation of the following, DeLine shall have no personal liability obligation to ensure Amega's (or any company or entity owned or partially owned by DeLine) compliance with provisions of paragraph 7.b. of this Agreement.

8. **No Admission of Liability; No Effect of Future Cases:** Neither Party by entering into this Agreement admits any liability on any point or matter whatsoever to the other Party, to the Commission, or to any third party which is not a party to this Agreement or to the Administrative Case. 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 Section 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 Section 536.080.2, RSMo; and their respective rights to seek rehearing pursuant to Section 386.500, RSMo; and to seek judicial review pursuant to Section 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.

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

10. **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.

11. **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.

12. **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. This Agreement embodies and represents the complete Agreement between the Parties, except as set forth in the immediately preceding sentence.

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

14. **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.

**Amega Sales, Inc.**, a Missouri corporation ("Amega")

By: \_\_\_\_\_

Greg DeLine, President

\_\_\_\_\_  
Greg DeLine, Individually (who has executed this Agreement for the limited and express purposes stated herein)

**Director of the Manufactured Housing and  
Modular Units Program of the Public Service  
Commission** (the "Director")

By: 

Bruce H. Bates, MO Bar No. 35442  
Public Service Commission  
Associate General Counsel  
Attorney for the Director of the Manufactured  
Housing and Modular Units Program of the  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102  
(573) 751-7434 (Telephone)  
(573) 751-9285 (Fax)



**Exhibit A**

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

Dear Consumer:

This letter is being sent in response to a recent settlement agreement, No. \_\_\_\_\_ between Amega Sales Inc., A & G Commercial Inc. and Service Pro, companies owned and operated by Gregory DeLine, and the Missouri Public Service Commission (MPSC), dated March \_\_\_\_ 2004.

As part of the above settlement agreement, certain homeowners who purchased a manufactured home from either of the above companies are being notified by the MPSC 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 MPSC is requesting your response to this letter, if you currently own the home as identified below, within 20 days from the date of this letter. If you do not own the home identified below, please contact the MPSC as soon as possible at 1-800-819-3180. After receiving your response, a representative from the MPSC will contact you to set up a date to complete an inspection of your home for any possible building or safety standard violations. This inspection is free. The information from the inspection will be shared with you, the homeowner, and any identified problems or defects will be corrected and paid for by the company that sold you the home. After any identified problems or defects are corrected, the home will re-certified by the MPSC and the applicable labels attached thereto.

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

Sincerely,

Ron Pleus  
Manager  
Manufactured Housing & Modular Unit Program