BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

Director of the Manufactured Housing and Modular Units Program of the Public Service Commission,	)	
Complainant,	)	
v.	)	**Case No. MC-2004-0078**
A & G Commercial Trucking, Inc.,	)	
Respondent.	)	**Jury Trial Demanded**

ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT

COMES NOW Respondent, by and through its undersigned attorneys, and for its Answer and Affirmative Defenses to the Complaint filed in this cause states the following:

1. Respondent denies the allegations of paragraph 1 of the Complaint.

2. With respect to the allegations of paragraphs 4, 5, 6, 7, and 9, Respondent admits that the statutes and regulations quoted therein are accurate quotations. Respondent denies all other allegations of said paragraphs. Respondent specifically denies that any violation of any of said statutes, rules or regulations occurred in connection with this case. Respondent affirmatively states that the Missouri Public Service Commission (the "Commission") has no authority or jurisdiction over this cause, to revoke Respondent's dealer registration as requested by Complainant, or to sanction Respondent in any way.

3. In answer to paragraph 2, Respondent states that the Commission generally has jurisdiction over issues dealing with manufactured homes pursuant to Chapter 700 of the Revised Statutes of Missouri. However, Respondent denies that the Commission has jurisdiction over the matters described in the

Complaint filed in this cause and specifically denies that the Commission has jurisdiction over Respondent or to consider the matters and issues or to grant the relief requested by the Complainant in the Complaint.

4. Respondent is without knowledge to admit or deny the allegations of paragraph 3 of the Complaint and therefore denies the same. By way of further answer and affirmative defense, Respondent affirmatively states that any delegation described in paragraph 3 of the Complaint constitutes an illegal and unconstitutional delegation of powers.

5. Respondent lacks knowledge to admit or deny the allegations of paragraph 8 of the Complaint and therefore denies the same. By way of further answer and affirmative defense, Respondent affirmatively states that the allegations of paragraph 8 of the Complaint and are irrelevant and immaterial to this cause.

6. Respondent denies the allegations of paragraph 10 of the Complaint.

7. Respondent denies the allegations of paragraph 11 of the Complaint. By way of further answer and affirmative defense, Respondent states that the allegations contained in paragraph 11 are irrelevant and immaterial to this cause.

8. Respondent denies the allegations of paragraphs 12, 13, 14, 15, 16 and 17 of the Complaint.

9. Any allegation contained in the Complaint not expressly admitted above is hereby denied by Respondent.

10. Given that Chapter 700 of the Missouri Revised Statutes fails to set forth any procedure for a proceeding of this nature (if any proceeding exists), Respondent demands trial by jury of all issues in this cause.

11. By way of further answer, Respondent states the following affirmative defenses:

a. Respondent incorporates by reference the Motion to Dismiss or Alternative Motion to Strike filed by Respondent herewith, and each and every ground stated in said Motion to Dismiss or Alternative Motion to Strike is incorporated herein by reference as affirmative defenses.

b. The Commission has no jurisdiction to consider this cause or to grant the relief sought by Complainant in this cause, and the Commission's consideration of this cause is beyond the scope of its powers because the Missouri General Assembly has not authorized the Commission to impose the penalties sought by Complainant in this cause.

c. Any civil penalty, criminal penalty or suspension imposed by the Commission in this cause would constitute a taking of property without just compensation in violation of the Missouri Constitution and the Fifth Amendment and Fourteenth Amendment of the United States Constitution.

d. This proceeding violates the Fourth Amendment, Fifth Amendment, and Sixth Amendment to the United States Constitution, and the due process clauses contained in the Fifth and Fourteenth Amendments to the United States Constitution and in Article I, Section 10 of the Constitution of the State of Missouri.

e. The Commission has no jurisdiction or legal authority to consider this cause as any purported delegation to the Commission of the power, right, or authority to consider or preside over this cause constitutes an illegal and unconstitutional delegation of powers to the Commission.

f. The civil penalties sought by Complainant in this cause are actually penal in nature and therefore constitute criminal penalties, which the Commission is not authorized to impose. Accordingly, the Commission has no jurisdiction to consider this cause, and this cause violates the Fourth Amendment, Fifth Amendment, and Sixth Amendment to the United States Constitution as well as Article I, Section 10 of the Constitution of the State of Missouri.

g. Article I, Section 31 of the Constitution of the State of Missouri states that an administrative agency may not establish a rule which fixes a fine for violation of that rule. Complainant is an administrative agency which according to the Complainant's Complaint created the administrative rule on which Complainant is relying, and Complainant is now purporting to sit in the position of both prosecutor and finder of fact, which procedure violates Article I, Section 31 of the Constitution of the State of Missouri.

h. Chapter 700 of the Missouri Revised Statutes does not empower the Commission to hold the proceedings sought to be had herein which are hence beyond the scope of those powers delegated to the Commission by the Missouri General Assembly.

i. Both the authority of the Missouri General Assembly to establish and the authority of the Complainant or the Commission to enforce Section 700.010 RSMo., and Section 700.045 RSMo., and to proceed in this case generally are preempted by 42 USC Section 5403(d). Section 5403 of Title 42 of the United States Code establishes that any and all federal statutes and regulations concerning mobile home safety and construction are supreme and supersede any state or local law which is not identical to the federal standards. The "seal" requirement of Section 700.010 RSMo., Section 700.045 RSMo., Section 700.100 RSMo. and other portions of

Chapter 700 RSMo. (which allegedly authorizes Complainant to suspend Respondent's dealer registration) all are beyond the scope of and are not identical to the provisions contained in 42 USC Section 5401 et. seq., and therefore are preempted by such federal statute.

j. Complainant alleges that Respondent sold the subject mobile homes without a required HUD label; as such, Complainant is alleging violation by Respondent of federal statutes and regulations concerning mobile home construction and safety, which violation Respondent specifically denies. Complainant has no jurisdiction or authority to enforce such federal statutes or regulations, and the Commission has no jurisdiction to consider any complaint which alleges violation of such federal statutes or regulations.

k. Respondent is not a "dealer" within the meaning of Section 700.010 RSMo. Therefore, the Commission has no jurisdiction in this case.

l. The statute at issue in this cause (i.e., Chapter 700) as applied in these circumstances is unconstitutionally overbroad. The purpose sought to be achieved by the applicable federal regulations and Chapter 700, to the extent, if any, that Chapter 700 is not preempted by federal law, is to insure compliance with applicable codes for the construction of manufactured homes and hence to promote safety. Given that there is no requirement of a showing of noncompliance with those codes the statute creates a crime without a victim.

m. The prosecution of this matter is both selective and vindictive and therefore the pleadings of the Director of the Division of Manufactured Homes should be struck.

n. Complainant and Respondent have settled completely and fully all claims and controversies in this case pursuant to a written settlement stipulation. Respondent, therefore, pleads the affirmative defenses of settlement, release, waiver, and accord and satisfaction.

WHEREFORE, Respondent prays that the Complaint in this cause be dismissed, or in the alternative that Commission find all issues in favor of Respondent and that any taxable costs be taxed to the Complainant and that Respondent be awarded its attorney's fees in this cause.

/s/ Thomas M. Harrison

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The undersigned certifies that a complete and conformed copy of the foregoing document was mailed to each attorney who represents any party to the foregoing action, by U.S. Mail, postage prepaid in the proper amount, at said attorney's business address.

/s/ Thomas M. Harrison
Dated: March 25, 2004