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BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSE OF)
ACE HVAC, LLC) **STIPULATION AND ORDER**
TO OPERATE AS A)
CONTRACTOR) **CASE NO. DOPL 2011- 156**
IN THE STATE OF UTAH)

ACE HVAC, LLC (“Respondent”) and the Construction Services Commission
 (“Commission”) of the Department of Commerce of the State of Utah stipulate and agree as
 follows:

1. Respondent admits the jurisdiction of the Commission and the Division of
 Occupational and Professional Licensing (“Division”) over Respondent and over the subject
 matter of this action. Ronald E. Powell and Teresa L. Powell are the owners of Respondent
 company, and Jeremy J. Powell is the qualifier of Respondent company. Ronald E. Powell,
 Teresa L. Powell, and Jeremy J. Powell are authorized to act as agents for and to enter into
 binding agreements on behalf of Respondent company. In this Stipulation and Order, the term

“Respondent” shall mean Ace HVAC, LLC, Ronald E. Powell, Teresa L. Powell, and Jeremy J. Powell, collectively and individually.

2. Respondent acknowledges that Respondent enters into this Stipulation knowingly and voluntarily.

3. Respondent understands that Respondent has the right to be represented by counsel in this matter and Respondent’s signature below signifies that Respondent has either consulted with an attorney or Respondent waives Respondent’s right to counsel in this matter.

4. Respondent understands that Respondent is entitled to a hearing before the Commission, or other Presiding Officer, at which time Respondent may present evidence on Respondent’s own behalf, call witnesses, and confront adverse witnesses. Respondent acknowledges that by executing this document Respondent hereby waives the right to a hearing and any other rights to which Respondent may be entitled in connection with said hearing. Respondent understands that by signing this document Respondent waives all rights to any administrative and judicial review as set forth in Utah Code Ann. §§ 63G-4-301 through 63G-4-405 and Utah Administrative Code R151-46b-12 through R151-46b-15. Respondent and the Division hereby express their intent that this matter be resolved expeditiously through stipulation as contemplated in Utah Code Ann. § 63G-4-102(4).

5. Respondent waives the right to the issuance of a Petition and a Notice of Agency Action in this matter.

6. Respondent acknowledges that this Stipulation and Order, if adopted by the Commission and Division, will be classified as a public document. The Commission and

Division may release this Stipulation and Order, and will release other information about this disciplinary action against Respondent's license to other persons and entities.

7. Respondent admits the following facts are true:

a. Respondent company was first licensed as a contractor in the State of Utah on or about May 25, 2010.

b. Respondent company submitted an application to add Jeremy J. Powell to be an additional qualifier on the license on or about February 09, 2011.

 c.

~~Jeremy~~
Jeremy J. Powell has the following criminal record:


- i. On or about August 25, 2009, in Salt Lake City Justice Court, Utah, case number 09CR09408, Jeremy J. Powell pleaded guilty to one count of simple assault, a Class B misdemeanor, and one count of retail theft, a Class B misdemeanor.
 - ii. On or about September 8, 2009, in Third District Court, Salt Lake City, Utah, case number 091906692, Jeremy J. Powell pleaded guilty to one count of possession and/or use of a controlled substance, a Class A misdemeanor.
 - iii. On or about September 9, 2009, in Salt Lake County Justice Court, Utah, case number 081600964, Jeremy J. Powell was convicted of one count of retail theft, a Class B misdemeanor.
 - iv. On or about September 21, 2009, in Third District Court, Salt Lake City, Utah, case number 081903845, Jeremy J. Powell was convicted of one count of retail theft, a Class A misdemeanor.
 - v. On or about October 7, 2009, in Salt Lake City Justice Court, Utah, case number 08CR07093, Jeremy J. Powell pleaded guilty to one count of retail theft, a Class B misdemeanor.
 - vi. On or about December 3, 2009, in West Valley City Justice Court, Utah, case number 081706779, Jeremy J. Powell pleaded guilty to one count of theft, a Class B misdemeanor.
- d. Jeremy J. Powell has engaged in the conduct that resulted in a conviction with respect to a crime of moral turpitude and/or a crime that, when considered with the functions and duties of the qualifier for a contractor,

bear a reasonable relationship to Respondent's ability to safely and/or competently practice as a qualifier for a contractor.

e. Jeremy J Powell has a long history of alcohol and substance abuse.

8. Respondent admits that Jeremy J Powell's conduct described above is unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a) and (c); and that said conduct justifies disciplinary action against Respondent pursuant to Utah Code Ann. § 58-1-401(4)(2)(a).

Respondent understands that the issuance of the Order in this matter is disciplinary action by the Division against Respondent's license pursuant to Utah Administrative Code R156-1-102(6) and Utah Code Ann. § 58-1-401(2). Respondent agrees that an Order shall be entered in this matter as follows:

- (1) Respondent's license shall be subject to a term of probation for a period of three years. The period of probation shall commence on the effective date of this Stipulation and Order, which is the date the Division Director signs the Order. Respondent's license shall be subject to all of the following terms and conditions. If the Commission or Division later deems any of the conditions unnecessary such deletions may be made by an amended order issued unilaterally by the Commission or Division.
 - a. Respondent shall meet with the Commission or a Division representative on a quarterly basis, or at such other greater or lesser frequency as determined by the Commission and Division, for the duration of the Stipulation and Order.
 - b. All reports or documentation required in this Stipulation and Order shall be submitted to the Commission on a quarterly basis, or such other greater or lesser frequency as determined by the Division, for the remainder of probation.
 - c. If Respondent is arrested or charged with a criminal offense by any law enforcement agency, in any jurisdiction, inside or outside the State of Utah, for any reason, or should Respondent be admitted as a patient to any institution in this state or elsewhere for treatment regarding the abuse of or dependence on any chemical substance, or for treatment for any emotional or psychological disorder, Respondent agrees to cause the Division and Commission to be

notified immediately. If Respondent at any time during the period of this agreement is convicted of a criminal offense of any kind, or enters a plea in abeyance to a criminal offense of any kind, including a pending criminal charge, the Division may take appropriate action against Respondent, including imposing appropriate sanctions, after notice and opportunity for hearing. Such sanctions may include revocation or suspension of Respondent's license, or other appropriate sanctions.

- d. Ronald E. Powell and Teresa L. Powell shall, initially within thirty days, and quarterly thereafter, provide the Division with progress reports that summarize Jeremy J. Powell's work attendance, behavior, quality of work product, ability to get along with others, and, if and Jeremy J. Powell leaves the company or is terminated, the reason for his leaving or termination.
- e. Respondent shall maintain a current license at all times during the period of this agreement.
- f. Respondent shall provide the Commission with a plan for Jeremy J. Powell's treatment including the name(s) of the evaluators, prescribing practitioner, and dispensing pharmacy.
- g. Although the use and possession of alcohol is generally legal for persons age 21 and older, Jeremy J Powell agrees to abstain from the personal use or possession of alcohol in any form. Jeremy J Powell agrees to abstain from the personal use or possession of controlled substances and prescription drugs, unless such controlled substance or prescription drug is lawfully prescribed to Jeremy J Powell for a current bona fide illness or condition by a licensed practitioner and taken by Jeremy J Powell in accordance with that practitioner's instructions. Jeremy J Powell shall abstain from the use of any and all other mood altering substances or use of mood altering substances for any other purpose than the purpose for which the substance is intended.
- h. Jeremy J. Powell shall submit to the following course of treatment as part of Jeremy J. Powell's rehabilitation and at Jeremy J. Powell's own expense:
 - i. Jeremy J. Powell shall successfully complete an alcohol/chemical dependency evaluation provided by a Division-approved licensed provider within ninety (90) days of the effective date of this Stipulation and Order. Jeremy J

Powell shall contact the Division-approved Rehabilitation Center for an initial appointment within 10 days of the effective date of this Stipulation and Order. Jeremy J. Powell shall schedule the initial appointment to be held within 45 days of the effective date of this Stipulation and Order. Jeremy J. Powell shall attend all appointments and follow-up appointments in a timely manner. Jeremy J. Powell shall cooperate fully with the evaluator to ensure a fair and complete evaluation. Jeremy J. Powell shall notify the Division immediately after successfully completing the evaluation and inform the Division that Jeremy J. Powell has successfully completed the chemical dependency evaluation. Jeremy J. Powell agrees to cause the evaluation report to be sent to the Division within 90 days of the effective date of this Order. If an adequate evaluation has already been completed as the result of previous court orders, the Division may agree to accept the previous evaluation rather than requiring a new evaluation provided prior evaluation is provided within 45 days of the effective date of this Stipulation and Order.

- ii. If Respondent fails to submit the evaluation(s) to the Division within the time stated above, the Division may take any action necessary pursuant to the Utah Administrative Procedures Act, Utah Code Annotated § 63-46b.
 - iii. Jeremy J. Powell shall successfully complete all treatment programs and treatment recommendations as outlined in the evaluations. Jeremy J. Powell shall sign any releases required to allow Jeremy J. Powell's therapist or counselor to provide the Division with ongoing reports of diagnosis, prognosis, compliance, etc., regarding Jeremy J. Powell's treatment.
 - iv. In the interest of public safety, the Division may impose additional requirements above and beyond those recommended by the evaluator in the chemical dependency evaluation set forth above. Jeremy J. Powell agrees to comply with these additional requirements.
- j. Unless otherwise approved by the Division, Jeremy J. Powell shall, except as provided otherwise herein, receive prescriptions from only one prescribing practitioner, and Jeremy J. Powell shall fill prescriptions at only one pharmacy. Jeremy J. Powell shall not obtain the same or equivalent prescription drug or controlled substance from more than one practitioner. All prescribing practitioners must be informed of any and all of Jeremy J.

Powell's addiction/abuse problems. Jeremy J. Powell shall not undertake, under any circumstance, to obtain prescription drugs in quantities or types that are not legitimately required. Jeremy J. Powell shall submit the names of the prescribing practitioner and pharmacy to the Division and Commission for approval. Jeremy J. Powell shall provide the Division with a copy of all Jeremy J. Powell prescriptions for prescription drugs, controlled substances, or any other mood altering substance, within forty-eight (48) hours after the prescription has been written.

- k. Prescriptions from an emergency practitioner or referral practitioner must be submitted to the Division within forty-eight (48) hours of being issued. Jeremy J. Powell shall report to the Division within forty-eight (48) hours any and all medications and controlled substances administered or dispensed to Jeremy J. Powell by any other individual.
- l. Jeremy J. Powell shall report to the Division within forty-eight (48) hours any and all medications or controlled substances ingested by Jeremy J. Powell from any source.
- m. Jeremy J. Powell shall provide to the primary prescribing practitioner a copy of this Stipulation and Order.
- n. Jeremy J. Powell shall provide samples (urine, blood, saliva, hair, or any other type of sample requested) for drug analysis upon the request of the Division, to be conducted by any company with which the Division has contracted to conduct drug testing. The designated company may also request such samples and Jeremy J. Powell shall comply with such requests. The Division shall determine when and where Jeremy J. Powell is to submit for testing. Jeremy J. Powell shall call in to a designated phone number every day to determine if Jeremy J. Powell is required to provide a sample for drug analysis. Jeremy J. Powell shall pay for the cost of drug testing and shall accurately complete and sign any and all release forms requested by the Division or the drug testing company with respect to drug testing, including but not limited to, forms authorizing the company to send the drug test results to the Division. Any report from a drug testing company that indicates that Jeremy J. Powell failed to provide a sample for drug analysis as directed will be considered a positive drug test result for Jeremy J. Powell and will subject Respondent to additional sanctions. Any drug test result or pattern of results that indicates that the sample provided by Jeremy J. Powell for drug analysis is diluted to an extent that it cannot be analyzed, will be considered a positive drug test result for Jeremy J. Powell and will subject Respondent to additional sanctions.

- o. Failure of Respondent to pay the costs associated with this Stipulation and Order constitutes a violation of the Stipulation and Order.
- p. Jeremy J. Powell shall participate in any therapy and/or aftercare that the Division and the Commission may require after completion of Jeremy J. Powell's treatment program. Any treatment program or therapist from whom Jeremy J Powell has or will receive treatment must be approved by the Division and Commission, and Jeremy J Powell shall direct and authorize Jeremy J Powell's therapist to discuss Jeremy J Powell's diagnosis, treatment, and prognosis with the Division and the Commission. Jeremy J Powell shall direct Jeremy J Powell's therapist or aftercare provider to submit quarterly evaluations to the Commission that address Jeremy J Powell's progress in treatment and Jeremy J Powell's prognosis. Jeremy J Powell may be subject to reevaluation upon notice and opportunity to be heard.
- q. Jeremy J Powell shall participate in any therapy, counseling or aftercare that the Division or Commission may require, even if no therapy, counseling or aftercare was recommended by an evaluator.
- r. Jeremy J Powell shall attend a 12-step program, obtain a 12-step program sponsor, comply with the requirements of the the12-step program, and submit quarterly reports to the Division documenting Jeremy J Powell's participation. The frequency of Jeremy J Powell's participation in the 12-step program shall be monitored and approved by the Commission. Unless otherwise directed, Jeremy J Powell shall attend at least two times per month.
- s. The Division may take appropriate action to impose sanctions if:
 - i. Jeremy J Powell tests positive for alcohol, a prescription drug, a controlled substance, or any mood altering substance which cannot be accounted for by an administration or prescription by a lawful practitioner for a current medical condition; or
 - ii. Jeremy J Powell violates any federal, state or local law relating to Jeremy J Powell's area of licensed practice, the Controlled Substance Act; or a term or condition of this Stipulation and Order. Sanctions may include revocation or suspension of Respondent's license, or other appropriate sanction, in the manner provided by law.

- t. Jeremy J Powell shall provide to the Division a current criminal history report obtained from the State of Utah, Department Public Safety, or any other state requested by the Division on an annual basis or whenever directed by the Division.
- u. Respondent shall immediately notify the Division in writing of any change in Respondent's residential or business address.
- v. Respondent shall notify the Division within 10 days after the qualifier of record fails to fulfill the duties of a qualifier as required in Utah Code Ann. § 58-55-304(6).
- w. Respondent shall immediately notify the Division in writing of any change in Respondent's business address.
- x. Respondent shall be responsible for payment of all costs associated with this Stipulation and Order. Failure of Respondent to pay the costs associated with this Stipulation and Order constitutes a violation of this Stipulation and Order.

9. This Stipulation and Order, upon approval by the Commission and Division Director, shall be the final compromise and settlement of this non-criminal administrative matter. Respondent acknowledges that the Commission and Director are not required to accept the terms of this Stipulation and Order and that if the Commission does not do so, this Stipulation and the representations contained therein shall be null and void, except that the Commission, Director, and the Respondent waive any claim of bias or prejudgment Respondent might have with regard to the Commission and Director by virtue of his having reviewed this Stipulation, and this waiver shall survive such nullification.

10. Respondent agrees to abide by and comply with all applicable federal and state laws, regulations, rules and orders related to the Respondent's licensed practice. If the Division files a Petition alleging that Respondent has engaged in new misconduct or files an Order to Show Cause Petition alleging that Respondent has violated any of the terms and conditions contained in this Stipulation and Order, the period of Respondent's probation shall be tolled

during the period that the Petition or Order to Show Cause Petition has been filed and is unresolved.

11. This document constitutes the entire agreement between the parties and supersedes and cancels any and all prior negotiations, representations, understandings or agreements between the parties regarding the subject of this Stipulation and Order. There are no verbal agreements that modify, interpret, construe or affect this Stipulation. Respondent agrees not to take any action or make any public statement, that creates, or tends to create, the impression that any of the matters set forth in this Stipulation and Order are without factual basis. A public statement includes statements to one or more Commission or Board members during a meeting of the Commission or Board. Any such action or statement shall be considered a violation of this Stipulation and Order.

12. The terms and conditions of this Stipulation and Order become effective immediately upon the approval of this Stipulation and signing of the Order by the Commission and Division Director. Respondent must comply with all the terms and conditions of this Stipulation immediately following the Commission and Division Director's signing of the Order page of this Stipulation and Order. Respondent shall complete all the terms and conditions contained in the Stipulation and Order in a timely manner. If a time period for completion of a term or condition is not specifically set forth in the Stipulation and Order, Respondent agrees that the time period for completion of that term or condition shall be set by the Commission. Failure to complete a term or condition in a timely manner shall constitute a violation of the Stipulation and Order and may subject Respondent to revocation or other sanctions.

13. If Respondent violates any term or condition of this Stipulation and Order, the

Commission may take action against Respondent, including imposing appropriate sanction, in the manner provided by law. Such sanction may include revocation or suspension of Respondent's license, or other appropriate sanction.

14. Respondent understands that the disciplinary action taken by the Division in this Stipulation and Order may adversely affect any license that Respondent may possess in another state or any application for licensure Respondent may submit in another state.

15. Respondent has read each and every paragraph contained in this Stipulation and Order. Respondent understands each and every paragraph contained in this Stipulation and Order. Respondent has no questions about any paragraph or provision contained in this Stipulation and Order.

DIVISION OF OCCUPATIONAL &
PROFESSIONAL LICENSING

RESPONDENT

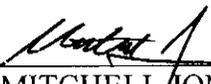
BY: 
DAN S. JONES
Bureau Manager

BY: 
RONALD E. POWELL
Owner
Ace HVAC LLC

DATE: 4-28-11

DATE: 4/28/2011

MARK L. SHURTLEFF
ATTORNEY GENERAL

BY: 
L. MITCHELL JONES
Counsel for the Division

BY: 
JEREMY J POWELL
Qualifier
Ace HVAC LLC

DATE: 28 Apr 11

DATE: 4/28/2011

BY: 
TERESA L POWELL
Owner
Ace HVAC LLC

DATE: 4-28-11

ORDER

THE ABOVE STIPULATION, in the matter of **ACE HVAC, LLC**, is hereby approved by the Construction Services Commission, and constitutes its Findings of Fact and Conclusions of Law in this matter. The issuance of this Order is disciplinary action pursuant to Utah Administrative Code R156-1-102(6) and Utah Code Ann. § 58-1-401(2). The terms and conditions of the Stipulation are incorporated herein and constitute the Commission's final Order in this case.

DATED this 28 day of April, 2011.


CONSTRUCTION SERVICES COMMISSION
Representative

I concur with the above Stipulation and Order, which the Construction Services Commission has approved.

DATED this 28 day of April, 2011.

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING


MARK B. STEINAGEL
Director