SETTLEMENT AGREEMENT BETWEEN THE STATE BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND JOHN DINH

John Dinh ("Dinh"), and the State Board of Cosmetology and Barber Examiners ("Board) enter into this Settlement Agreement ("Agreement") for the purpose of resolving the question of whether Dinh's Class MO Manicuring license no. 2006026968 and the Cosmetology establishment license for Fashion Nails, located at 100 Outlet Drive #9, Sikeston, Missouri 63801, license number 2006034204 ("Licenses"), will be subject to discipline. Pursuant to § 536.060, RSMo, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri, and additionally, the parties hereto waive the right to a disciplinary hearing before the Board under § 621.110, RSMo. Dinh and the Board jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo.

Dinh acknowledges that he understands the various rights and privileges afforded by law, including the right to a hearing of the claims against him; the right to appear and be represented by legal counsel; the right to have all claims against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to present evidence on his behalf at the hearing; the right to ruling on questions of law by the Administrative Hearing Commission; the right to a decision based upon the record of the hearing by a fair and impartial Administrative Hearing Commission concerning the claims pending against him; the right to a disciplinary hearing before the Board at which time Dinh may present evidence in mitigation of discipline; the right to a claim for attorney's fees and expenses; and the right to obtain judicial review of the decision of the Administrative Hearing Commission and the Board. Being aware of these rights provided to him by law, Dinh

knowingly and voluntarily waives each and every one of these rights and freely enters into this Agreement and agrees to abide by the terms of the this document as those terms pertain to him.

Dinh acknowledges that the Board and its attorney followed the procedure enumerated in § 621.045, RSMo, including, but not limited to providing Dinh with a written description of the specific conduct for which discipline is sought and citations to the law and rules violated, together with copies of any documents which form the basis thereof.

For the purpose of settling this dispute, Dinh stipulates his manicuring license and cosmetology establishment license are subject to disciplinary action by the Board in accordance with the provisions of Chapters 621 and 329, RSMo.

The parties stipulate and agree that the disciplinary order agreed to by the Board and Dinh in Part II herein is based only on the agreed upon stipulation of facts and conclusions of law set out in Part I herein. Dinh understands that the Board may take further disciplinary action against Dinh's manicuring license based on facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered.

Based upon the foregoing, the Board and Dinh stipulate to the following:

I.

JOINT STIPULATION OF FACTS & CONCLUSIONS OF LAW

1. The Missouri Board of Cosmetology and Barber Examines ("Board") is an agency of the State of Missouri, created and existing pursuant to § 329.015, RSMo., for the purpose of executing and enforcing the provision for Chapters 328 and 329, RSMo.

2. Dinh is a licensed cosmetologist holding a Class MO Manicuring, license number 2006026968. Dinh's Class MO Manicuring license is and was at all relevant times current and active.

3. Dinh provides cosmetology services at Fashion Nails, located at 100 Outlet Drive #9, Sikeston, Missouri 63801, which is operated as a cosmetology establishment for the purpose of rendering manicure and pedicure services.

4. Dinh's cosmetology license was at all relevant times current and active.

5. Dinh practiced and performed cosmetology services on patrons for compensation at all relevant times herein.

6. Dinh's Class MO Manicuring, license number 2006026968 is culpable for the conduct and violations as described in this Joint Stipulation below.

7. From August 31, 2006 to present, Respondent, John Thai Dinh, practiced and performed cosmetology services on patrons; and, as such, Respondent, John Thai Dinh's cosmetology license no. 2006026968 is culpable for the conduct and violations as described in the Board's Complaint and revealed by the Board's inspectors.

8. From October 31, 2006 to present, Respondent, John Thai Dinh, owned and operated Fashion Nails; and, as such, Respondent, John Thai Dinh, bears responsibility for his individual Class MO license no. 2006026968 as well as the establishment license for Fashion Nails, license no. 2006034204 pursuant to Board Rule 20 CSR 2085-10.020(1).

9. From October 31, 2006 to present, Fashion Nails has operated as a cosmetology establishment providing cosmetology (manicure and pedicure) services to patrons; and, as such, Fashion Nails' cosmetology establishment license number 2006034204 is culpable for the conduct and violations as described in the Board's Complaint and revealed by the Board's inspectors pursuant to § 1.020(11), RSMo.

10. Respondent allowed unlicensed operators to offer and engage in the performance of cosmetology on patrons for compensation; and, as such, Respondent, John Thai Dinh's,

individual Class MO license no. 2006026968 as well as the establishment license for Fashion Nails, license no. 2006034204 are subject to discipline.

11. By failing to only allow licensed operators to perform cosmetology services on patrons, Respondent committed misconduct and breached and violated a professional trust and confidence owed the Board, patrons, and the public in violation of § 329.140.2 (4); (5); (6); (10); and (13), RSMo.

12. By failing to keep the work stations drawers clean and not comingle unsanitized and sanitized implements, Respondent, John Thai Dinh individually, and through Fashion Nails violated Board Rules 20 CSR 2085-11.020 (1)(B) and 20 CSR 2085-11.020 (2)(D), in violation of §§ 329.140.2(6), RSMo, 329.140.2(13), RSMo, and 329.140.2(15), RSMo.

13. By failing to sanitize implements and instruments after each use, Respondent, John Thai Dinh individually, and through Fashion Nails violated Board Rules 20 CSR 2085-11.020(2)(A)(5), 20 CSR 2085-11.020 (1)(B), and 20 CSR 2085-11.020(2)(D), in violation of §§ 329.140.2(6), RSMo, 329.140.2(13), RSMo, and 329.140.2(15), RSMo.

14. By allowing operators to violate the sanitation requirements of the Board, Respondent, John Thai Dinh individually, and through Fashion Nails violated § 329.140.2(6), RSMo., and § 329.140.2(10), RSMo., for assisting and/or enabling individuals to violate Board Rules 20 CSR 2085-11.020 (1)(B) and 20 CSR 2085-11.020 (2)(D).

15. Respondent by permitting unlicensed individuals to offer cosmetology services and practice the occupation of cosmetology for compensation at Fashion Nails without holding a valid Missouri cosmetology license, made a substantial misrepresentation to the public in violation of §§ 329.140.2(4), RSMo, 329.140.2(5), RSMo, 329.140.2(6), RSMo, 329.140.2(10), RSMo., and 329.140.2(13), RSMo.

16. Accordingly, cause exists to discipline Respondent, John Dinh's, Class MO Manicuring license number 2000157447 pursuant to §§ 329.140.2 (4);(5);(6); (10) ;(13) and (15), RSMo.

II.

JOINTLY AGREED UPON DISCIPLINARY ORDER

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered into by the Board in this matter under the authority of § 329.140, 536.060, 621.045.3, and 621.110, RSMo.

1. John Dinh shall close his shop for ten (10) days beginning from June 14 – June 23. Furthermore, Dinh's Class MO Manicuring, license number 2006026968 and cosmetology establishment license 2006034204, shall be placed on probation for a period of five (5) years. Dinh shall be otherwise entitled to offer and perform manicuring services provided Dinh adheres to all the terms stated herein.

2. Terms and conditions of the disciplinary period are as follows:

A. Dinh shall keep the Board apprised at all times in writing of his current residential and business addresses and telephone numbers. Dinh shall notify the Board in writing within ten days of any changes in this information. Dinh is responsible for ensuring that such notification is received by the Board within the time specified.

B. Dinh shall timely renew his manicuring license when required and shall maintain such licenses in an active and valid state throughout the disciplinary period, including but not limited to, timely paying all fees required for license renewal.

C. If at any time during the disciplinary period, Dinh changes residence from the state of Missouri, ceases to be currently licensed under the provisions of Chapter 329, RSMo, fails to timely pay all fees required for license renewal, or fails to keep the Board advised of all current places of residence and business, then the time of absence, unlicensed status, delinquency in paying fees for license renewal, or unknown whereabouts shall not be included in the disciplinary period.

D. Dinh shall comply with all provisions of Chapter 329, RSMo, all rules and regulations of the Board, and all local, state, and federal laws. "State" as used herein refers to the state of Missouri and all other states and territories of the United States.

E. Dinh shall accept and comply with reasonable unannounced visits from the Board's duly authorized agents to monitor compliance with the terms and conditions stated herein.

F. Dinh shall submit written reports to the Board on or before January 1 and July 1 during each year of the disciplinary period truthfully stating whether there has been compliance with all terms and conditions of this Agreement. The first such report shall be received by the Board on or before July 1, 2010. Dinh is responsible for ensuring that the Board receives each report by the date due.

3. Upon the expiration of the probationary period, Dinh's Class MO Manicuring, license number 2006026968 shall be fully restored if all requirements of law and the terms and conditions of this Agreement have been satisfied.

4. If any alleged violation of this Agreement occurs during the disciplinary period, the parties agree that the Board may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a

violation occurred. Dinh agrees and stipulates that the Board has continuing jurisdiction to hold a hearing to determine if a violation of this Agreement has occurred.

5. No additional discipline shall be entered by the Board pursuant to the preceding paragraph of this Agreement without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 329, RSMo.

6. If the Board determines that Dinh has violated a term or condition of this Agreement, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the Circuit Court, the Board may, in its direction, vacate and set aside the discipline imposed herein and impose such further discipline as the Board deems appropriate and may elect to pursue any lawful remedies or procedures afforded it, and the Board is not bound by this Agreement in its determination of appropriate legal actions concerning such violation.

7. This Agreement does not bind the Board or restrict the remedies available to it concerning facts or conduct and its resulting violations by Dinh of Chapter 329, RSMo, or the regulations promulgated there under not specifically mentioned in this Agreement that are either now known by the Board or may be discovered.

8. The parties to this Agreement agree to pay all their own fees and expenses incurred as a result of this case, its investigations, its settlement, and/or litigation.

9. Dinh, together with his shareholders, partners, heirs, assigns, agents, employees, representatives, and attorneys, does hereby waive, release, acquit and forever discharge the Board, its representative members, employees, agents, and attorneys, including former members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs, expenses, and compensation, including, but not limited to, any claim for attorney's fees

and expenses, whether or not now know or contemplated. This includes, but is not limited to, any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case, its investigation, its litigation, its settlement, or from the negotiation or execution of this Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this Agreement or any portion thereof void or unenforceable.

10. The terms of this Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Agreement nor any of its provisions may be changed, waived, discharged, or terminated except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

11. The parties to this Agreement understand that the Board will maintain this Agreement as an open and public record of the Board as required by Chapters 329, 610, 620, and 621, RSMo.

12. Dinh understands that he may, either at the time the Agreement is signed by all parties, or within fifteen (15) days thereafter, submit the Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining his Class MO Manicuring, license no. 2006026968 and his cosmetology establishment license no. 2006034204 for Fashion Nails. If Dinh desires the Administrative Hearing Commission to review this Agreement, Dinh may submit his request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P. O. Box 1557, Jefferson City, Missouri 65101.

13. If Dinh has requested review, this Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Agreement sets forth cause for disciplining his Class MO Manicuring, license no. 2006026968 and his cosmetology establishment license no. 2006034204 for Fashion Nails. If Dinh has not requested review, this Agreement becomes effective fifteen (15) days after the document is signed by the Executive Director of the Board.

LICENSEE

John Dinh Date
Licensee

STATE BOARD OF COSMETOLOGY
AND BARBER EXAMINERS

Darla Fox 6/7/2010
Darla Fox Date
Acting Executive Director

Respectfully submitted,
TINA M. CROW HALCOMB, L.L.C.

Tina M. Crow Halcomb #47120
Elm Court Plaza
1739 Elm Court, Suite 207
Jefferson City, MO 65101
(573) 636-7017 FAX (573) 636-7012
Attorney for Missouri State Board of
Cosmetology and Barber Examiners