SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND HOLLYWOOD BLONDE, INC. AND DIANNE HOFMEISTER, OWNER

Come now Hollywood Blonde, Dianne Hofmeister, Owner (collectively, "Licensee") and the Missouri Board of Cosmetology and Barber Examiners ("Board") enter into this settlement agreement for the purpose of resolving the question of whether Licensee's cosmetology establishment and operator licenses will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,[1] the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's licenses, and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo.

Licensee acknowledges that Licensee understands the various rights and privileges afforded Licensee by law, including the right to a hearing of the charges against Licensee; the right to appear and be represented by legal counsel; the right to have all charges against Licensee proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Licensee; the right to present evidence on Licensee's own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against Licensee and, subsequently, the right to a disciplinary hearing before the Board at which time Licensee may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against Licensee's licenses. Being aware of these rights provided Licensee by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this settlement agreement and agrees to abide by the terms of this document, as they pertain to Licensee.

Licensee acknowledges that Licensee has received a copy of the inspection reports and other documents relied upon by the Board in determining there was cause to discipline Licensee's licenses, along with citations to law and/or regulations the Board believes was violated.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Board that Licensee's cosmetology establishment license,

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[1] All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

number 2012004859, and cosmetologist/manicuring operator license, number 050756 are subject to disciplinary action by the Board in accordance with the provisions of Chapters 621 and 329, RSMo.

Joint Stipulation of Fact and Conclusions of Law

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

2. Licensee holds a cosmetology establishment license, license number 2012004859, for Hollywood Blonde, Inc., located at 140 N. Kingshighway, Saint Charles, Missouri 63301. Licensee also holds a cosmetology/manicuring operator license, license number 050756. Both of Licensee's aforementioned licenses were at all times relevant herein, and are now, current and active.

3. On or about August 26, 2015, the Board conducted a routine inspection at Hollywood Blonde, Inc. Owner Dianne Hofmeister was present during the inspection and Hollywood Blonde, Inc., was open for business. The inspection revealed unlicensed activity was being allowed in that Jessica Nyhuis needed to reinstate her rental space establishment license. Unlicensed activity is a violation of 20 CSR 2085-10.060. On or about September 8, 2015, the Board sent Licensee a violation notice following the August 26, 2015 inspection.

4. On or about October 16, 2015, the Board conducted a follow-up inspection at Hollywood Blonde, Inc. Owner Dianne Hofmeister was present during the inspection and Hollywood Blonde, Inc., was open for business. The inspection revealed unlicensed activity was being allowed in that Jessica Nyhuis and Rene Dollard needed rental space establishment licenses. Unlicensed activity is a violation of 20 CSR 2085-10.060. Kathy Brown's operator license was found to not be current due to non-renewal, in violation of 20 CSR 2085-7.050. Finally, the establishment was licensed for eight operators and nine licenses were posted at the time of inspection. The submission of one additional operator cost is required pursuant to 20 CSR 2085-10.050. On or about October 26, 2015, the Board sent Licensee a violation notice following the October 16, 2015 inspection.

5. On or about December 2, 2015, the Board conducted a follow-up inspection at Hollywood Blonde, Inc. Owner Dianne Hofmeister was present during the inspection and Hollywood Blonde, Inc., was open for business. The inspection revealed unlicensed activity was being allowed in that Jessica Nyhuis and

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Rene Dollard needed to obtain their rental space establishment licenses. Unlicensed activity is a violation of 20 CSR 2085-10.060. On or about December 17, 2015, the Board sent Licensee a violation notice following the December 2, 2015 inspection.

6. Regulation 20 CSR 2085-7.050 states, in relevant part:

...

(2) Examination Required.

(A) Any person who has allowed his/her license to practice any of the classified occupations of cosmetology to expire for a period of more than two (2) years may submit an application to the board to reinstate that license by examination. The examination shall consist of the practical portion of the licensure examination. The application shall be properly completed on a form supplied by the board and shall include or be accompanied by the individual's license number, the license renewal fee and the late fee, two (2) United States passport photographs measuring approximately two inches by two inches (2" × 2") which have been taken within the last five (5) years and other information as the board may require.

7. Regulation 20 CSR 2085-10.050, states:

(1) The minimum biennial fee for a cosmetology establishment shall license the establishment for up to three (3) operators, including apprentices, students with temporary permits, or both. An additional fee is required for each additional operator working in the establishment. If at any time during the license period the number of operators working in the establishment exceeds the number of operators for which the establishment is licensed, it is the responsibility of the holder(s) of the establishment license to submit written notification to the board along with the fee for each additional operator.

8. Regulation 20 CSR 2085-10.060, states:

(1) Pursuant to Chapters 328 and 329, RSMo, no barber or cosmetology establishment owner, manager, or proprietor shall permit any person who does not hold a current Missouri barber or cosmetology license to practice as a barber or cosmetologist in the establishment. No license or permit issued by the board shall be posted in a licensed establishment unless the license or permit is current and active, and the licensee or permit holder is an employee of the establishment or holds a current and active renter establishment license issued by the board.

9. As a result of the violations, as described above in paragraphs 3 through 5, in violation of the statutes and regulations contained in paragraphs 6 through 8, Licensee violated lawful regulations adopted pursuant to chapter 329, RSMo.

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10. Cause exists for the Board to take disciplinary action against Licensee's cosmetology establishment license and cosmetology operator license under § 329.140.2(6) and (12), RSMo, which state in pertinent part:

> The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:
>
> ...
>
> (6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;
>
> ...
>
> (12) Failure to display a valid license if so required by this chapter or any rule promulgated hereunder[.]

Joint Agreed Disciplinary Order

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of § 621.045, RSMo:

11. The terms of discipline shall include that the cosmetology establishment and operator licenses be placed on **PROBATION** for a period of one (1) year. During Licensee's probation, Licensee shall be entitled to offer and engage in the practice of cosmetology under Chapter 329, RSMo, provided Licensee adheres to all of the terms of this Settlement Agreement.

I. GENERAL REQUIREMENTS

A. Licensee shall correct all violations and meet with the Board or its representatives at such times and places as required by the Board after notification of a required meeting.

B. Licensee shall submit reports to the Missouri Board of Cosmetology and Barber Examiners, Post Office Box 1062, Jefferson City, Missouri 65102, stating truthfully whether Licensee has complied with all the terms and conditions of this Settlement Agreement by no later than January 1 and July 1 during each year of the disciplinary period. The first report shall be due January 1, 2017.

C. Licensee shall keep the Board apprised of Licensee's current home and work addresses and telephone numbers. Licensee shall inform the Board within ten days of any change of home or work address and home or work telephone number.

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D. Licensee shall comply with all provisions of Chapter 329, RSMo; all applicable federal and state drug laws, rules, and regulations; and all federal and state criminal laws. "State" here includes the state of Missouri and all other states and territories of the United States.

E. During the disciplinary period, Licensee shall timely renew Licensee's licenses and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain Licensee's licenses in a current and active state.

F. If at any time during the disciplinary period, Licensee removes Licensee from the state of Missouri, ceases to be currently licensed under provisions of Chapter 329, RSMo, or fails to advise the Board of Licensee's current place of business and residence, the time of Licensee's absence, unlicensed status, or unknown whereabouts shall not be deemed or taken as any part of the time of discipline so imposed in accordance with § 329.140, RSMo.

G. During the disciplinary period, Licensee shall accept and comply with unannounced visits from the Board's representatives to monitor Licensee's compliance with the terms and conditions of this Settlement Agreement.

H. If Licensee fails to comply with the terms of this Settlement Agreement, in any respect, the Board may impose such additional or other discipline that it deems appropriate, (including imposition of the revocation).

I. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning any other violation of Chapter 329, RSMo, by Licensee not specifically mentioned in this document.

12. The parties to this Agreement understand that the Missouri Board of Cosmetology and Barber and Examiners will maintain this Agreement as an open record of the Board as provided in Chapters 329, 610 and 324, RSMo.

13. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this settlement 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.

14. Licensee, together with Licensee's heirs and assigns, and Licensee's attorneys, do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it

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survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

15. If no contested case has been filed against Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement agreement constitute grounds for denying or disciplining the licenses of the licensee. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit this request to: **Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.**

16. If Licensee has requested review, Licensee and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensee's licenses and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's licenses. Effective the date the Administrative Hearing Commission determines that the agreement sets forth cause for disciplining Licensee's licenses, the agreed upon discipline set forth herein shall go into effect.

LICENSEE

Dianne Hofmeister
Hollywood Blonde, Inc.
Dianne Hofmeister, Owner

Dianne Hofmeister
Dianne Hofmeister

Date 8/25/2016

BOARD

Emily R. Carroll
Emily R. Carroll,
Executive Director
Missouri Board of Cosmetology and Barber Examiners

Date 8/30/2016

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