SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND NAILCESSITY, PHUONG KHONANG, OWNER

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Come now Nailcessity, Phuong Khonang, Owner (collectively, "Licensee") and the Missouri Board of Cosmetology and Barber Examiners ("Board") and enter into this settlement agreement for the purpose of resolving the question of whether Licensee's cosmetology establishment and manicurist operator license 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 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 license. Being aware of these rights provided her 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 investigative report and other documents relied upon by the Board in determining there was cause to discipline Licensee 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, numbered 2005003244, and manicurist operator license, numbered 1999139167 is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621, RSMo, and Chapter 329, RSMo.

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[1] All statutory references are to the revised statues of Missouri, as amended, unless otherwise noted.

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 manicurist operator license issued by the Board, License no. 1999139167. Licensee's operator license was at all times relevant herein, and is now current and active.

3. Licensee is the owner of Nailcessity, license no. 2005003244. Nailcessity is located at 13169 State Line Road, Kansas City, MO 64145. Licensee's establishment license was not current and active at all times relevant herein, but is now, current and active.

4. On or about February 22, 2011, the Board received a complaint that implements were not properly sanitized between each client at Nailcessity.

5. On or about February 25 2011, the Board conducted an inspection of Nailcessity. The inspection identified the following violations: implements not properly disinfected, no closed container for clean implements, clean towels not stored in closed container, soiled towels not in closed leakproof container, drawers need to be clean and floors need to be clean in violation of 20 CSR 2085-11.020.

6. On or about March 23, 2011, the Board conducted an inspection of Nailcessity. The inspection indentified the following violations: soiled towels not in closed leakproof container and work stations need cleaned in violation of 20 CSR 2085-11.020; and credo blades were found in establishment in violation of 20 CSR 2085-11.020.

7. On or about June 1, 2011, the Board conducted an inspection of Nailcessity. The inspection indentified the following violations: no closed container for clean implements, implements need cleaned after each use, work stations need cleaned, drawers need to be clean in violation of 20 CSR 2085-11.020; an individual was providing cosmetology services without a license in violation of Section 329.030, RSMo and 20 CSR 2085-10.060(1).

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8. On or about October 28, 2011, the Board conducted an inspection at Nailcessity. The inspection indentified the following violations: soiled towels not in closed leakproof container and no soap

available in the restroom in violation of 20 CSR 2085-11.020; and establishment license not current in violation of 20 CSR 2085-10.010.

9. On or about January 18, 2012, the Board conducted an inspection of Nailcessity. The inspection identified the following violations: work stations need cleaned, floors need cleaned and implements need cleaned after each use in violation of 20 CSR 2085-11.020; and operator license need to be posed in violation of 20 CSR 2085-10.010

10. Section 329.030 states, in relevant part:

> It is unlawful for any person in this state to engage in the occupation of cosmetology or to operate an establishment or school of cosmetology, unless such person has first obtained a license as provided by this chapter.

11. Regulation 20 CRS 2085-10.010 states, in relevant part:

> (3) Display of License.
>
> (A) Operator licenses, apprentice licenses or student temporary permits shall either be posted at each respective assigned work station or all posted together in one (1) conspicuous, readily accessible, central location within the establishment area that will allow easy identification of the persons working in the establishment by clients, board representative or the general public.
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> (B) A two inch square (2" x 2") photograph taken within the last five (5) years shall be attached to operator licenses[.]

12. Regulation 20 CSR 2085-10.060 states, in relevant part:

> (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.

13. Regulation 20 CSR 2085-11.020 states, in relevant part:

> (1) Physical Facilities.
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> ...
>
> (B) Floors, Walls, Ceilings, Equipment and Contents. For areas where all classified occupations of cosmetology are practiced, including retail cosmetic sales counters, all floors, walls, ceilings, equipment and contents shall be constructed of washable materials and must be kept clean and in good repair at all times.
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(2) Sanitation Requirements.

(A) Protection of the Patron.

...

2. Clean towels shall be used for each patron. A closed cabinet or drawer shall be provided for clean towels and linens.

3. Soiled towels shall be placed in a closeable, leakproof container immediately upon completion of use.

...

(D) Disinfecting and Storing Implements. All implements (instruments or tools) used in cosmetology establishments and schools, including scissors, clips, blades, rods, brushes, combs, etc. shall be thoroughly cleansed after each use. All implements which may come in contract directly or indirectly with the skin of the patron shall be disinfected with an Environmental Protection Agency (EPA)- registered disinfectant, which may be a spray solution. The label on the disinfectant shall show that it is EPA-registered with demonstrated bactericidal (disinfectant), virucidal, and fungicidal activity and shall be used according to the manufacturer's instructions. All implements shall be completely immersed in the solution, or, if not capable of immersion, thoroughly dipped in the solution for a period of not less than five (5) minutes. Implements shall either be stored in the solution or removed and stored in a dust-tight cabinet, covered container or drawer at all times when not in use. The dust-tight cabinet, covered container or drawer shall be kept free of other items not capable of being disinfected. Implements shall be permitted to air dry[.]

14. As a result of the sanitation and licensure violations, as described above in paragraphs 4 through 9, in violation of the statutes and regulations contained in paragraphs 10 through 13, Nailcessity violated lawful regulations adopted pursuant to chapter 329, RSMo and failed to properly guard against contagious, infections or communicable diseases or the spread thereof for which the Board has cause to take disciplinary action against Licensee's operator license.

15. Cause exists for the Board to take disciplinary action against Licensee's operator license under § 329.140.2(6) and (15) RSMo, which states 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:

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(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;

...

(15) Failure or refusal to properly guard against contagious, infectious or communicable diseases or the spread thereof.

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 § 621.045.3, RSMo:

16. The terms of discipline shall include that Licensee's establishment license, license number 2005003244, and manicurist operator license, license number 1999139167 be placed on **PROBATION** for a period of three (3) years ("disciplinary period"). During Licensee's probation, Licensee shall be entitled to offer and engage in the practice of cosmetology as licensed under Chapter 329, RSMo, provided Licensee adheres to all of the terms of this Settlement Agreement.

I. SPECIFIC REQUIREMENTS

A. Licensee shall correct all sanitation violations from the above listed inspections within 30 days of the date of execution of this Agreement.

B. Licensee, Phuong Khonang, and all employees of Nailcessity shall attend the next available sanitation workshop offered by the Board. Licensee shall be responsible for contacting the Board to determine the date of the next workshop and ensuring that Licensee and Licensee employees attend the workshop.

II. GENERAL REQUIREMENTS

A. Licensee shall 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 July 1, 2012.

C. Licensee shall keep the Board apprised of Licensee 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.

D. Licensee shall comply with all provisions of the 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.

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E. During the disciplinary period, Licensee shall timely renew Licensee 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 himself from the state of Missouri, ceases to be currently licensed under provisions of Chapter 329, or fails to advise the Board of Licensee current place of business and residence, the time of Licensee 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 § 329.140.3, RSMo.

G. During the disciplinary period, Licensee shall accept and comply with unannounced visits from the Board's representatives to monitor Licensee 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.

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

18. 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.

19. Licensee, together with Licensee heirs and assigns, and Licensee 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 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.

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20. 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 license 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.**

21. 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 license and issue findings of act and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's license. Effective the date the Administrative Hearing Commission determines that the agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect.

LICENSEE

Nailcessity
Phuong Khonang, Owner

Date March 12, 2012

BOARD

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

Date 3/21/2012

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