SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND LT NAILS, TIEN DUNG AND LIHN NGUYEN, OWNERS

Come now Tien Dung and Lihn Nguyen, Owners of LT Nails (collectively, "Licensees") 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 the Licensees' cosmetology establishment 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 Licensees' establishment license, and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo.

Licensees acknowledge that Licensees understand the various rights and privileges afforded Licensees by law, including the right to a hearing of the charges against Licensees; the right to appear and be represented by legal counsel; the right to have all charges against Licensees proven upon the record by a preponderance of the evidence; the right to cross-examine any witnesses appearing at the hearing against Licensees; the right to present evidence on Licensees' 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 Licensees and, subsequently, the right to a disciplinary hearing before the Board at which time Licensees may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against Licensees' licenses. Being aware of these rights provided them by operation of law, Licensees knowingly and voluntarily waive each and every one of these rights and freely enter into this settlement agreement and agree to abide by the terms of this document, as they pertain to Licensees.

Licensees acknowledge that Licensees have received a copy of the inspection reports and other documents relied upon by the Board in determining there was cause to discipline Licensees' license, along with citations to laws and/or regulations the Board believes were violated.

For the purpose of settling this dispute, Licensees stipulate that the factual allegations contained in this settlement agreement are true and stipulate with the Board that Licensees' establishment license, numbered

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

2010009107 is 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. Licensees hold a cosmetology establishment license issued by the Board on or about March 19, 2010, numbered 2010009107 for LT Nails, located at 615 S. Bishop Avenue, Ste. C, Rolla, MO. Licensees' Missouri establishment license was at all times relevant herein, and is now, current and active.

3. On or about May 2, 2014, the Board conducted an inspection of LT Nails. An Owner was present during the inspection and LT Nails was open for business. The inspection revealed the following violations: pedicure spa was dirty and needed to be cleaned in violation of 20 CSR 2085-11.020. On or about May 16, 2014, the Board sent Licensee a violation notice following the May 2, 2014 inspection.

4. On or about May 20, 2014, the Board conducted an inspection of LT Nails. An Owner was not present during the inspection. LT Nails was open for business. The inspection revealed the following violations: pedicure spa was dirty and needed to be cleaned in violation of 20 CSR 2085-11.020. On or about June 17, 2014, the Board sent Licensee a violation notice following the May 20, 2014 inspection.

5. On or about June 25, 2014, the Board conducted an inspection of LT Nails. An Owner was not present during the inspection. LT Nails was open for business. The inspection revealed the following violations: pedicure spa was dirty and needed to be cleaned in violation of 20 CSR 2085-11.020 and there was a non-licensed operator providing services at the time of the inspection in violation of § 329.030, RSMo, 20 CSR 2085-10.010 and 20 CSR 2085-10.060. On or about July 18, 2014, the Board sent Licensee a violation notice following the June 25, 2014 inspection.

6. On or about July 25, 2014, the Board conducted an inspection of LT Nails. LT Nails was open for business. The inspection revealed the following violations: there was a credo blade on the premises in violation of 20 CSR 2085-11.020. On or about July 31, 2014, the Board sent Licensee a violation notice following the July 25, 2014 inspection.

7. On or About August 6, 2014, the Board conducted an inspection of LT Nails. LT Nails was open for business. The inspection revealed no violations and no Violation Notice was issued.

8. Section 329.030, RSMo, states:

> 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.

9. Regulation 20 CSR 2085-10.010 states, in relevant part:

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> (3) Display of license. Establishment licenses shall be posted within the establishment in plain view at all times so that it may be easily seen by the public. Establishment licenses issued to a station or booth rental establishment shall be posted in plain view at the respective work station.
>
> > (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 representatives, or the general public.
> >
> > (B) A two inch square (2" × 2") photograph taken within the last five (5) years shall be attached to operator licenses. A two inch square (2" × 2") photograph taken within the last five (5) years shall be attached to apprentice licenses and student temporary permits.

10. Regulation 20 CSR 2085-10.060, in relevant part 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.
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> ...
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> (3)Prohibited Practices Within An Establishment. In a licensed establishment, only persons properly licensed by the board shall be allowed to perform barbering, hairdressing, manicuring, or esthetician services on any person within the establishment. The provisions of this section shall apply even if services are being provided for no compensation.

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

(1) Physical Facilities.

...

(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.

...

(D) Restrooms. All cosmetology establishments shall provide adequate and conveniently located restrooms, for use by patrons and operators. All schools shall provide two (2) or more restrooms to separately accommodate male and female students. All restrooms shall be provided with, at least, an operating toilet, a functional sink with hot and cold running water, soap (liquid or powder), and individual towels[.]

(2) Sanitation Requirements.

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(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 contact 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.

...

(L) Prohibited Practices. To prevent the risk of injury or infection—

1. A licensee shall not use or offer to use in the performance of cosmetology services, or possess on the premises of a licensed cosmetology establishment, any razor-type callus shaver designed or intended to cut growths of skin on hands or feet such as corns and

> calluses including, but not limited to, a credo blade or similar type instrument. Any licensee using a razor-type callus shaver prohibited by this rule at a licensed cosmetology establishment or in the performance of any cosmetology, manicuring, or esthetician services shall be deemed to be rendering services in an unsafe and unsanitary manner. Cosmetology establishment licensees shall ensure that razortype callus shavers are not located or used on the premises of the cosmetology establishment;
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> 2. The board shall provide a flyer prohibiting the use of these razor-type callus shavers. Every cosmetology establishment and cosmetology school shall post such flyer in plain view of the public in each of their establishment(s) and school(s); and
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> 3. Violation of this rule shall constitute grounds for discipline under section 329.140.2(15), RSMo.

12. As a result of the violations, as described above in paragraphs 3 through 6, in violation of the statutes and regulations contained in paragraphs 8 through 11, Licensee 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 Licensees' establishment license.

13. Cause exists for the Board to take disciplinary action against Licensees' establishment 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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> ...
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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;
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> ...
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> (15) Failure or refusal to properly guard against contagious, infectious or communicable diseases or the spread thereof.

<u>Joint Agreed Disciplinary Order</u>

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:

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

I. SPECIFIC REQUIREMENTS

A. Licensees shall correct all sanitation violations from the May 2, May 20, June 25 and July 25 inspections within 30 days of the date of execution of this Agreement.

B. Licensees shall correct all licensing violations from the June 25, 2014 inspection within 30 days of the date of execution of this Agreement.

II. GENERAL REQUIREMENTS

A. Licensees 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. Licensees shall submit reports to the Missouri Board of Cosmetology and Barber Examiners, Post Office Box 1062, Jefferson City, Missouri 65102, stating truthfully whether Licensees have 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, 2015.

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

D. Licensees 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.

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

F. If at any time during the disciplinary period, Licensees remove Licensees from the state of Missouri, ceases to be currently licensed under provisions of Chapter 329, or fails to advise the Board of Licensees' current place of business and residence, the time of Licensees' 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, Licensees shall accept and comply with unannounced visits from the Board's representatives to monitor Licensees' 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).

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

14. 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.

15. 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.

16. Licensees, together with Licensees' heirs and assigns, and Licensees' 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.

17. If no contested case has been filed against Licensees, Licensees have 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 licensees. If Licensees desire the Administrative Hearing Commission to review this Agreement, Licensees 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.**

18. If Licensees have requested review, Licensees and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensees' license

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

LICENSEES

LT Nails
Linh Nguyen, Owner

Date 11/2/2014

LT Nails
Tien Dung, Owner

Date 11-2-2014

BOARD

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

Date 11/7/2014

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& Barber Examiners