SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND KC NAIL SUPPLY, NGOC NGUYEN, OWNER

Come now KC Nail Supply, Ngoc Nguyen, 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 license and class CA – hairdressing and manicuring 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 2000.

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 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 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 establishment license, number

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

2012040620 and "Class CA – hairdressing and manicuring" operator license, number 102685 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 issued by the Board on or about December 3, 2012, License No. 2012040620 for KC Nail Supply, located at 3820 Independence Avenue, Kansas City, MO. Licensee also holds a "Class CA – hairdressing and manicuring" license, License No. 102685. Licensee's Missouri establishment license and "Class CA – hairdressing and manicuring" license were at all times relevant herein, and is now, current and active.

3. On or about September 18, 2015, the Board conducted an inspection of KC Nail Supply. Owner Ngoc Nguyen was present during the inspection and KC Nail Supply was open for business. The inspection revealed the following violations: six pedicure thrones had tears or missing covering on chains, one had a broken tub and all needed to be cleaned properly in that the tubs and jets were dirty; the manicure tables needed to be cleaned inside the drawers and cabinets; there were dirty buffers in the nails stations; there was no prohibited practice flyer posted; the drawers needed cleaning at workstations; and there were illegal grater style foot files in the pedicure carts, all in violation of 20 CSR 2085-11.020. On or about October 6, 2015, the Board sent Licensee a violation notice following the September 18, 2015 inspection.

4. On or about November 13, 2015, the Board conducted an inspection of KC Nail Supply. Owner Ngoc Nguyen was present during the inspection and KC Nail Supply was open for business. The inspection revealed the following violations: six pedicure thrones had tears or missing covering on chains, one had a broken tub and all needed to be repaired or replaced and there were no individual towels in the restroom, all in violation of 20 CSR 2085-11.020. On or about November 24, 2015, the Board sent Licensee a violation notice following the November 13, 2015 inspection.

5. On or about December 24, 2015, the Board conducted an inspection of KC Nail Supply. Owner Ngoc Nguyen was present during the inspection and KC Nail Supply was open for business. The inspection revealed the following violations: the door on the second nail station needed to be repaired in violation of 20

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CSR 2085-11.020 and licensee Huy D. Nguyen needed a photo attached to the operator license in violation of 20 CSR 2085-10.010. On or about January 5, 2016, the Board sent Licensee a violation notice following the December 24, 2015 inspection.

6. On or about February 10, 2016, the Board conducted an inspection of KC Nail Supply. Owner Ngoc Nguyen was present during the inspection and KC Nail Supply was open for business. The inspection revealed the following violations: the entire shop needed to be cleaned and de-cluttered; there were used files in the manicure work stations; the floors needed cleaning throughout the salon; the manicure work stations needed to be cleaned inside and out; the third nail station needed to be repaired and the seat back on the second pedicure chair needed to be repaired or replaced; the nail clippings under the manicure tables needed to be swept up; Licensee needed a fill size license posted and not a wallet size; the drawers in the manicure stations needed to be cleaned and used files thrown away; a license posted in the salon was for someone no longer working there; and the front display clipboard needed to be cleaned, all in violation of 20 CSR 2085-11.020 and 20 CSR 2085-10.010. On or about February 26, 2016, the Board sent Licensee a violation notice following the February 10, 2016 inspection.

7. On or about February 11, 2016, the Board received a consumer complaint regarding KC Nail Supply. The complainant alleged that on September 17, 2015, she went to KC Nail Supply for a pedicure. She stated that the water in the pedicure tub was "too cold" and the "salts did not dissolve." She stated she slipped and fell and her left foot went into the water jet and "ripped my little toe nail completely backwards." She stated the operator "super glue[d] the nail back down and proceeded to work on [her] foot." She stated she went to the doctor on September 18, 2015 and had been seeing a "foot doctor ever since." She stated she had been to the emergency room twice and was going to have to have surgery because she has "tins in both feet and in my left foot the pin is turned sideways/angle which made [her] toe lay over the other toe." Based on the complaint, the Board conducted an investigation including re-inspecting the location and requesting a response from the Licensee.

8. On or about March 11, 2016, the Board conducted an inspection of KC Nail Supply. Owner Ngoc Nguyen was present during the inspection and KC Nail Supply was open for business. The inspection revealed no violations,

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and Barber Examiners

9. On or about March 30, 2016, the Board attempted to conduct an inspection of KC Nail Supply at 9:45 a.m. The Board's inspector waited ten minutes but the door was locked, there was no answer and there were no hours posted.

10. On or about March 31, 2016, the Board conducted an inspection of KC Nail Supply. Owner Ngoc Nguyen was present during the inspection and KC Nail Supply was open for business. The inspection revealed the following violations: workstations needed to be cleaned inside and out and had a lot of powder and residue on the workstations and pedicure carts which also needed to be cleaned; clippings needed to be swept up and the drawers and cabinets in the manicure stations needed to be cleaned, all in violation of 20 CSR 2085-11.020. On or about April 14, 2016, the Board sent Licensee a violation notice following the March 31, 2016 inspection.

11. On or about April 26, 2016, the Board conducted an inspection at KC Nail Supply. Owner Ngoc Nguyen was present during the inspection and KC Nail Supply was open for business. The inspection revealed no violations.

12. On or about April 27, 2016, the Board sent Licensee a letter stating that the Board received a complaint and enclosed a copy of the complaint. The Board also requested a response no later than May 6, 2016.

13. On or about May 16, 2016, the Board received correspondence from Licensee dated May 6, 2016. The letter was in response to the complaint and stated that she "hit the bowl spa [and] her toe nail [was] long [so] it br[oke] halfway." Licensee stated she took the glue gun and put it on the nail break, completed the pedicure including cutting the toes nails because they were "very long" and told her to go to the doctor.

14. On or about May 23, 2016, the Board sent Licensee a letter requesting that Licensee appear before the Board on July 17, 2016 at 10:00 a.m. at the Missouri Division of Professional Registration to discuss the complaint. Licensee did not appear on July 17, 2016.

15. On or about August 30, 2016, the Board conducted an inspection of KC Nail Supply. Owner Ngoc Nguyen was present during the inspection and KC Nail Supply was open for business. The inspection revealed the following violations: the front entry carpet needed to be swept and cleaned; there were dirty nail files in the manicure stations; the floors, walls, wax pot, nail lamp, workstation light and pedicure chairs needed to be cleaned; all workstations needed to be cleaned inside and out; the floor needed to be swept clean of nail

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OCT 7 2016
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clippings; there was no running water in the restroom include hot water in the sink; the restroom needed to be cleaned and walls washed; there were no individual towels in the restroom; and drawers needed to be cleaned and free of un-disinfected implements, including the hair area which needed to be cleaned inside and out, all in violation of 20 CSR 2085-11.020. On or about April 14, 2016, the Board sent Licensee a violation notice following the March 31, 2016 inspection.

16. Regulation 20 CSR 2085-10.010(3) states, in relevant part:

> (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.
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> > (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.

17. 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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> > (C) Water Supply and Waste Disposal. For cosmetology establishments and schools in cities and towns where these facilities are available, water must be obtained from the public water supply system and wastewater must be drained through pipes into the public sewer system. In all towns or communities in which a public water supply or public sewer system is not available, the water must be obtained from an individual supply source approved by the Division of Environmental Quality. Wastewater and sewage must be disposed of into a suitable sewage treatment device constructed and operated in a manner

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OCT 31 2016
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approved by the Missouri Clean Water Commission. Hot and cold water must be available to all lavatories and shampoo bowls. Water from the supply to the hot water faucets must be piped through a continuous water heater capable of providing an ample supply of water not to exceed one hundred twenty degrees Fahrenheit (120°) at all times. All plumbing in establishments and schools shall be installed in accordance with any applicable municipal, city, or government requirements. All lavatories and shampoo bowls shall be provided with soap (liquid or powder) and individual towels.

(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.

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(I) Covered Waste Receptacles. Any cosmetology establishment or school shall be required to have covered waste receptacles for the disposal of hair and nail clippings. Hair and nail clippings shall be swept up and disposed of in a coverage waste receptacle after each patron.

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

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OCT 17 2016
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> 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.

18. As a result of the violations, as described above in paragraphs 3 through 15, in violation of the statutes and regulations contained in paragraphs 16 through 17, 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 Licensee's establishment and "Class CA – hairdressing and manicuring" licenses.

19. Cause exists for the Board to take disciplinary action against Licensee's establishment and operator licenses 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;
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OCT 17 2016
Missouri Board of Cosmetology & Barber Examiners

(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:

20. The terms of discipline shall include that the cosmetology establishment and "Class CA – hairdressing and manicuring" operator licenses 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 under Chapter 329, RSMo, provided Licensee adheres to all of the terms of this Settlement Agreement.

I. SPECIFIC REQUIREMENTS

A. Licensee Nguyen shall correct all licensure and sanitation violations within thirty (30) days of the effective date of this Agreement. Licensee shall provide the Board with written proof of compliance with this requirement within thirty (30) days of the effective date of this Agreement.

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 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.

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.

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, 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 § 329.140.3, RSMo.

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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.

21. 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.

22. 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.

23. 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 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.

24. 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:

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OCT 17 2016
Missouri Board of Barber Cosmetology Examiners

Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.

25. 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

20120406 20
KC Nail Supply
Ngoc Nguyen, Owner

Ngoc Nguyen

Date 10/11/16

BOARD

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

Date 10/18/2016

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