SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF COSMETOLOGY AND BARBER EXAMINERS AND THE HOOD BARBERSHOP, RODNEY PORTER, OWNER

Come now The Hood Barbershop, Rodney Porter, 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 barber establishment and barber 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 2000.

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Licensee acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges 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 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 him and, subsequently, the right to a disciplinary hearing before the Board at which time he may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against his licenses. Being aware of these rights provided him 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 him.

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

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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 barber establishment license,

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

numbered 2009006583 and barber operator license, numbered 2005035355 are subject to disciplinary action by the Board in accordance with the provisions of Chapters 621, 328 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 barber establishment license issued by the Board, license No. 2009006583 for The Hood Barbershop. The Hood Barbershop is located at 5900 Vivion Road, Kansas City, Missouri. Licensee's barber establishment license was at all times relevant herein, and is now, current and active.

3. Licensee holds a barber operator license issued by the Board, license number 2005035355. Licensee's barber operator license was at all times relevant herein, and is now, current and active.

4. On or about September 29, 2011, the Board's inspector conducted an inspection of The Hood Barbershop. The shop was open and offering services and Licensee was present at the time of the inspection. The Board's inspection revealed the following violations: the electric clippers and guards had hair on them and were not cleaned and disinfected after each use, the barber chairs had tears in the vinyl and needed repairing, the floor going into the restroom was falling in and needed repairing; the workstation and floor had hair on and around it which needed to be cleaned up, all in violation of 20 CSR 2085-11.010; and Licensee's operator license was not posted in public view in violation of 20 CSR 2085-10.010.

5. On or about December 14, 2011, the Board sent Licensee a violation notice following the September 29, 2011 inspection. The inspection notice identified the violations from the September 29, 2011 inspection report and instructed Licensee to correct all violations immediately.

6. On or about January 13, 2012, the Board's inspector conducted an inspection of The Hood Barbershop. The shop was open and offering services and Licensee was present at the time of the inspection. The Board's inspection revealed the following violation: the floor near the restroom was damaged and in need of repair in violation of 20 CSR 2085-11.010.

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7. On or about February 7, 2012, the Board sent Licensee a violation notice following the January 13, 2012 inspection. The inspection notice identified the violation from the January 13, 2012 inspection report and instructed Licensee to correct all violations immediately.

8. On or about February 29, 2012, the Board's inspector conducted an inspection of The Hood Barbershop. The shop was open and offering services and Licensee was present at the time of the inspection. The Board's inspection revealed the following violation: the floor near the restroom was damaged and in need of repair in violation of 20 CSR 2085-11.010. The inspection report also stated that the floor was in the process of repair. The report also stated that the barber chairs still needed to be repaired or replaced because the leather was torn, revealing the foam padding.

9. On or about March 28, 2012, the Board sent Licensee a violation notice following the January 13, 2012 inspection. The inspection notice identified the violation from the February 29, 2012 inspection report and instructed Licensee to correct all violations immediately.

10. On or about April 24, 2012, the Board's inspector conducted an inspection of The Hood Barbershop. The shop was open and offering services and Licensee was present at the time of the inspection. The Board's inspection revealed the following violations: no EPA registered disinfectant was available in the establishment, the disinfectant jar was empty and therefore not deep enough to immerse the implements, and the barber chair was torn and in need of repair in violation of 20 CSR 2085-11.010.

11. On or about June 7, 2012, as a result of the inspections described in paragraphs 4, 6, 8 and 10 above, the Board invited Licensee to its sanitation workshop on June 25, 2012. Licensee did not attend the sanitation workshop.

12. On or about July 11, 2012, the Board inspector conducted an inspection of The Hood Barbershop. The shop was open and offering services and Licensee was present at the time of the inspection. The Board's inspection revealed the following violations: the barber chair was torn and in need of repair, the shampoo bowl was broken and the drain pipe was not connected in violation of 20 CSR 2085-11.010.

13. Regulation 20 CSR 2085-10.010 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.

14. Regulation 20 CSR 2085-11.010 states, in relevant part:

(1) Physical facilities of barber establishments and schools shall consist of the following:

(A) Floors, Walls, Ceilings, Windows, Equipment and Contents. All floors, walls, ceilings, windows, equipment and contents shall be kept clean and in good repair. Use of cloth or plush-covered barber chairs is strictly prohibited;

...

(D) Water Supply and Waste Disposal. Hot (not to exceed one hundred twenty degrees (120°) Fahrenheit) and cold water must be available to all lavatories and shampoo bowls at all times. Lavatories and shampoo bowls shall be provided with soap (liquid or powder) and paper towels;

(2) All barber establishments and schools shall comply with:

(C) Disinfecting and Storing Implements: All implements used in barbering shall be disinfected before use on each patron 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. Every barber establishment or school shall have a sufficient supply of disinfectant and disinfectant that shall immediately be replaced if it becomes contaminated. All supplies that cannot be disinfected shall be disposed of in a covered waste receptacle immediately after use. Implements not in use shall be stored in a disinfectant solution or in a clean, dust-tight cabinet or drawer. The following disinfectant procedures shall be followed:

1. For non-electrical:

A. Wash in soapy water;
B. Rinse in clean water;
C. Totally immerse in an EPA-registered disinfectant used according to manufacturer's instructions;
D. Dry with clean cloth or air dry; and
E. Store in clean, dust-tight cabinet or drawer; and

2. For electrical:

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A. Remove all foreign matter;
B. Disinfect with EPA-registered disinfectant according to manufacturer's instructions; and
C. Store in clean, dust-tight cabinet or drawer[.]

15. As a result of the violations, as described above in paragraphs 4 through 12, The Hood Barbershop violated chapter 328, RSMo, and lawful regulations adopted pursuant to chapter 328, RSMo, as described above in paragraphs 13 and 14 for which the Board has cause to take disciplinary action against Licensee's establishment and operator licenses.

16. Cause exists for the Board to take disciplinary action against Licensee's establishment license under § 328.150.2(6) and (15), and 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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> ...
>
> (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 2000:

17. The terms of discipline shall include that the barber establishment license, license number 2009006583 and the barber operator license, license number 2005035355, 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 barbering under Chapter 328, RSMo, provided he adheres to all of the terms of his Settlement Agreement.

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I. SPECIFIC REQUIREMENTS

A. Licensee shall correct all sanitation violations within 30 days of the date of execution 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 he 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, 2013.

C. Licensee shall keep the Board apprised of his 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 Chapters 328 and 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 his license(s) 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 Chapters 328 and 329, or fails to advise the Board of his current place of business and residence, the time of his 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 his 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 Chapters 328 and 329, RSMo, by Licensee not specifically mentioned in this document.

18. 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 328, 329, 610, and 324, RSMo.

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19. 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.

20. Licensee, together with his heirs and assigns, and his 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.

21. 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.**

22. 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

The Hood Barbershop
Rodney Porter, Owner

Date 1-3-13

BOARD

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

Date 1/8/2013

Missouri Board of Cosmetology Examiners