

2520032900473

**BEECHER, RATHERT, FIELD, FISTER, WALKER & MORRIS**  
**LAWYERS**

W. L. BEECHER (1891-1976)  
W. LOUIS BEECHER  
JOHN W. RATHERT  
HUGH M. FIELD  
JON FISTER  
JOHN R. WALKER, JR.  
RICHARD R. MORRIS  
CARTER J. STEVENS

COURT SQUARE BUILDING - SUITE 300  
620 LA FAYETTE STREET  
P. O. BOX 178  
**WATERLOO, IOWA 50704**

TELEPHONE (319) 234-1766  
TELECOPIER (319) 234-1225

May 1, 1991

Secretary of Labor  
U.S. Department of Labor  
Pension and Welfare Benefits Administration  
Washington, D.C. 20210

Gentlemen:

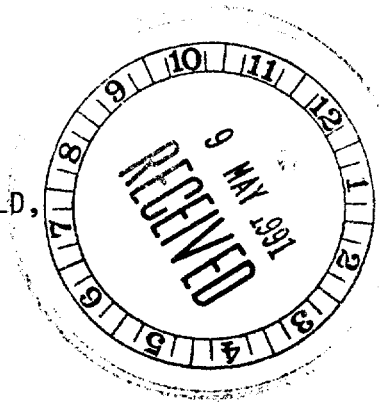
In order to comply with the requirements of the alternative reporting and disclosure method under ERISA, Title I, Part 1, as provided for an unfunded or insured pension plan for a select group of management or highly compensated employees in D.O.L. Reg. §2520.104-23, the following information is provided by the undersigned Plan Administrator:

1. The name of the Employer is: Kirk Gross Company.
2. The mailing address of the Employer is: 4015 Alexandra Drive, P. O. Box 2097, Waterloo, Iowa, 50704.
3. The Employer's federal identification number (EIN) is: 42-1295738.
4. The number of plans and the number of participants in each plan is: 1 plan covering 1 employee.

The above-named Employer maintains this plan primarily for the purpose of providing deferred compensation in the form of salary continuation benefits to a select group of management or highly compensated employees. The Employer will provide a copy of the Agreement to the Secretary of Labor upon request.

Very truly yours,

  
for  
BEECHER, RATHERT, ROBERTS, FIELD,  
FISTER, WALKER & MORRIS



RRM/gh

Enc.

SALARY CONTINUATION AGREEMENT

THIS AGREEMENT is entered into this 10<sup>th</sup> day of January, 1991, by and between KIRK GROSS COMPANY, an Iowa Corporation, having its principal place of business in Waterloo, Iowa, (hereinafter called the "Corporation"), and CAROL A. SMITH, a resident of Waterloo, Black Hawk County, Iowa, (hereinafter called the "Employee").

WITNESS:

WHEREAS, the Employee has been employed by the Corporation for twenty-six (26) years, and is currently employed by the Corporation in the capacity of Secretary-Treasurer; and

WHEREAS, the Corporation is motivated to retain the valuable services and business counsel of the Employee and to induce the Employee to remain in her executive capacity with the Corporation; and

WHEREAS, the Corporation wishes to retain the Employee in order to prevent the substantial financial loss which the Corporation would incur if the Employee were to leave and were to enter the employment of a competitor; and

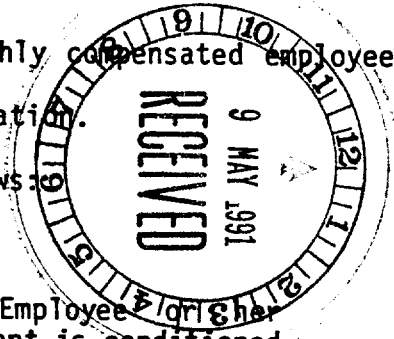
WHEREAS, the Employee is willing to continue in the employment of the Corporation, provided the Corporation will agree to provide an additional fringe benefit in the form of certain payments in the event of the Employee's retirement, disability, or death; and

WHEREAS, the Employee is considered a highly compensated employee or member of a select management group of the Corporation.

NOW, THEREFORE, the parties agree as follows:

1. CONDITIONS.

- A. The payment of benefits to the Employee designated recipient under this Agreement is conditioned upon the continuous employment of the Employee with the



Corporation (including periods of disability and authorized leaves of absence as described in this Agreement) until the 13th day of February, 2009, or her death, whichever is the sooner, and upon the Employee's compliance with the terms of this Agreement.

- B. Payment of benefits is further conditioned upon the Employee rendering such reasonable business consulting and advisory services as the Corporation's Board of Directors may call upon her to provide and as her health may permit for a period from her retirement to her death, or until prior disability.

- (1) It is understood that such services shall not require the Employee to be active in the Corporation's day-to-day activities, and that the Employee shall perform such services as an independent contractor. These services shall not exceed fifteen (15) hours in any calendar month.

- (2) It is further understood that the Employee shall be compensated for such services in an amount to be then agreed upon, and shall be reimbursed for all expenses incurred in performing such services.

- C. Payment of benefits is further conditioned upon the Employee not acting in any similar employment capacity for any business enterprise which competes to a substantial degree with the Corporation, nor engaging in any activity involving substantial competition with the Corporation, during her employment with the Corporation, after her retirement from the Corporation or after her prior disability while she is receiving benefits, without the prior written consent of the Corporation.

## 2. PRERETIREMENT DEATH BENEFIT.

- A. If the Employee dies during the period of her active employment and prior to her attaining the age of 60, or during a disability as defined under Paragraph 3 of this Agreement, the benefits hereunder shall be paid to the Corporation.
- B. If the Employee dies during the period of her active employment and she is age 60 or older, or during a disability as defined under Paragraph 3 of this Agreement, payment shall be made in the amount of \$15,000.00 per year for fifteen (15) years, payable in monthly installments convenient to the Employee's beneficiary as provided in Paragraph 4. Employer shall have the option to pay off this obligation in a lump sum discounted at an annual rate of eight percent (8%) to the Employee's beneficiary as provided in Paragraph 4.

- C. Payment under subparagraph B above shall be made by the Corporation to such person(s) as the Employee shall designate in writing prior to her death. The Employee shall have the right to change the designated recipient(s) of these payments by presenting a written amendment to the Corporation prior to her death in the form as provided in Schedule A, attached hereto and made a part hereof.
- D. If the Employee's spouse is designated beneficiary of these payments, and the spouse shall begin receiving payment but dies prior to receiving all the payments, the balance of the payments shall be paid to the spouse's estate. In the event the Employee shall fail to designate a recipient prior to her death, the payments shall be made to the Employee's surviving spouse as provided above, if alive; otherwise to the Personal Representative of the Employee's estate.
- E. However, this benefit shall not be payable if the Employee's death results from suicide, whether sane or insane, within two (2) years after the execution of this Agreement.

3. DISABILITY BENEFITS. If prior to retirement of the Employee, such Employee becomes totally and permanently disabled as the result of an injury or an illness, and such total disability prevents the Employee from performing all of the substantial and material duties of her regular occupation, the Corporation agrees to pay the Employee payments in the amount provided under the group insurance policy providing such coverage at the time of the disability under the terms and conditions provided for in that policy.

4. SALARY CONTINUATION AND POSTRETIREMENT DEATH BENEFIT. The Salary Continuation Agreement shall commence:

- A. At the death of the participant when she is age 60 or older, the Company shall pay \$15,000.00 per year salary continuation for the remaining years under the agreement, or postretirement death benefit in the amount of total remaining unpaid balance discounted at an annual rate of eight percent (8%).
- B. Upon the retirement or disability of the Employee at age 65 or older, Kirk Gross Company shall pay the Employee \$1,250.00 per month for a period of fifteen (15) years, reduced by any other benefits paid by Kirk Gross Company on behalf of the Employee but excluding social security benefits.

- C. The Corporation shall withhold federal and state income taxes from these payments to the extent required by the law in effect at the time these payments are made. In the event the Employee should die after these payments have begun, but before the end of all of the monthly payments, the unpaid balance of the payments due shall be continued to be paid by the Corporation to the recipient as designated in Paragraph 2 herein.
5. NAMED FIDUCIARY AND CLAIMS PROCEDURE.
- A. The Named Fiduciary of the plan for purposes of the claims procedure under this Agreement is Robert T. Buckley, President of Kirk Gross Company.
- (1) The business address and telephone number of the Named Fiduciary under this Agreement is 4015 Alexandra Drive, P. O. Box 2097, Waterloo, Iowa, 50704, 1-319-234-6641.
- (2) The Corporation shall have the right to change the Named Fiduciary of the plan created under this Agreement. The Corporation shall also have the right to change the address and telephone number of the Named Fiduciary. The Corporation shall give the Employee written notice of any change of the Named Fiduciary, or any change in the address and telephone number of the Named Fiduciary.
- B. Benefits shall be paid in accordance with the provisions of this Agreement. The Employee, or a designated recipient, or any other person claiming through the Employee (hereinafter collectively referred to as the "Claimant") shall make a written request for the benefits provided under this Agreement. This written claim shall be mailed or delivered to the Named Fiduciary.
- C. If the claim is denied, either wholly or partially, notice of the decision shall be mailed to the Claimant within a reasonable time period. This time period shall not exceed more than ninety (90) days after the receipt of the claim by the Named Fiduciary.
- D. The Named Fiduciary shall provide a written notice to every Claimant who is denied a claim for benefits under this Agreement. The notice shall set forth the following information:
- (1) the specific reasons for the denial;
- (2) the specific reference to pertinent plan provisions on which the denial is based;

- (3) a description of any additional material or information necessary for the Claimant to perfect the claim and an explanation of why such material or information is necessary; and
- (4) appropriate information and explanation of the claims procedure under this Agreement so to permit the Claimant to submit his claim for review.

All of this information shall be set forth in the notice in a manner calculated to be understood by the Claimant.

E. The claims procedure under this Agreement shall allow the Claimant a reasonable opportunity to appeal a denied claim and to get a full and fair review of that decision from the Named Fiduciary.

- (1) The Claimant shall exercise his/her right of appeal by submitting a written request for a review of the denied claim to the Named Fiduciary. This written request for review must be submitted to the Named Fiduciary within one hundred twenty (120) days after receipt by the Claimant of the written notice of denial.
- (2) The Claimant shall have the following rights under this appeal procedure:
  - a. to request a review upon written application to the Named Fiduciary;
  - b. to review pertinent documents with regard to the employee benefit plan created under this Agreement;
  - c. the right to submit issues and comments in writing;
  - d. to request an extension of time to make a written submission of issues and comments; and
  - e. to request that a hearing be held to consider Claimant's appeal.

F. The decision on the review of the denied claim shall promptly be made by the Named Fiduciary:

- (1) within sixty (60) days after the receipt of the request for review if no hearing is held; or

(2) within one hundred twenty (120) days after the receipt of the request for review, if an extension of time is necessary in order to hold a hearing.

a. If an extension of time is necessary in order to hold a hearing, the Named Fiduciary shall give the Claimant written notice of the extension of time and of the hearing. This notice shall be given prior to any extension.

b. The written notice of extension shall indicate that an extension of time will occur in order to hold a hearing on Claimant's appeal. The notice shall also specify the place, date, and time of that hearing and the Claimant's opportunity to participate in the hearing. It may also include any other information the Named Fiduciary believes may be important or useful to the Claimant in connection with the appeal.

G. The decision to hold a hearing to consider the Claimant's appeal of the denied claim shall be within the sole discretion of the Named Fiduciary, whether or not the Claimant requests such a hearing.

H. The Named Fiduciary's decision on review shall be made in writing and provided to the Claimant within the specified time periods in Paragraph F. This written decision on review shall contain the following information:

(1) the decision(s);

(2) the reason for the decision(s); and

(3) specific references to the plan provisions of the Agreement on which the decision(s) is/are based.

All of this information shall be written in a manner calculated to be understood by the Claimant.

6. NATURE OF EMPLOYER'S OBLIGATION. The Corporation's obligation under this Agreement shall be an unfunded and unsecured promise to pay. The Corporation shall not be obligated under any circumstances to fund its financial obligations under this Agreement. Any assets which the Corporation may acquire to help cover its financial liabilities are and remain general assets of the Corporation subject to the claims of its creditors. Neither

the Corporation nor the plan created by this Agreement gives the Employee any beneficial ownership interest in any asset of the Corporation. All rights of ownership in any such assets are and remain in the Corporation.

7. EMPLOYMENT RIGHTS.

- A. This Agreement shall not be deemed to create a contract of employment between the Corporation and the Employee and shall create no right in the Employee to continue in the Corporation's employ for any specific period of time, or to create any other rights in the Employee or obligations on the part of the Corporation, except as are set forth in this Agreement. Nor shall this Agreement restrict the right of the Corporation to terminate the Employee for cause, or restrict the right of the Employee to terminate her employment.
- B. "Cause" as defined in this Agreement shall mean:
- (1) incompetence;
  - (2) insubordination;
  - (3) conviction or a plea of nolo contendere in a felony case;
  - (4) intoxication; and/or
  - (5) drug addiction.

8. EMPLOYEE RIGHT TO ASSETS.

- A. The rights of the Employee, any designated recipient of the Employee, or any other person claiming through the Employee under this Agreement, shall be solely those of an unsecured general creditor of the Corporation. The Employee, the designated recipient of the Employee, or any other person claiming through the Employee, shall have the right to receive those payments specified under this Agreement only from the Corporation, and has no right to look to any specific or special property separate from the Corporation to satisfy a claim for benefit payments.
- B. The Employee agrees that she, her designated recipient, or any other person claiming through her shall have no rights or beneficial ownership interest whatsoever in any general asset that the Corporation may acquire or use to help support its financial obligations under this Agreement. Any such general asset used or acquired by the Corporation in connection with the liabilities it has assumed under this Agreement, shall not be deemed to be held under any trust for the benefit of the Employee

or her designated recipients. Nor shall any such general asset be considered security for the performance of the obligations of the Corporation. Any such asset shall remain a general, unpledged, and unrestricted asset of the Corporation.

- C. The Employee also understands and agrees that her participation in the acquisition of any such general asset for the Corporation shall not constitute a representation to the Employee, her designated recipient, or any person claiming through the Employee that any of them has a special or beneficial interest in such general asset.

9. INDEPENDENCE OF BENEFITS. The benefits payable under this Agreement shall be independent of, and in addition to, any other benefits or compensation, whether by salary or bonus or otherwise, payable under any other employment agreements that now exist or may hereafter exist from time to time between the Corporation and the Employee. This agreement between the Corporation and the Employee does not involve a reduction in salary or foregoing of an increase in future salary by the Employee. Nor does the Agreement in any way affect or reduce the existing and future compensation and other benefits of the Employee.

10. ACCELERATION OF PAYMENTS. The Corporation reserves the right to accelerate the payment of any benefits payable under this Agreement without the consent of the Employee, her estate, her designated recipients, or any other person claiming through the Employee.

11. LEAVES OF ABSENCE. The Corporation may, in its sole discretion, permit the Employee to take a leave of absence for a period not to exceed one (1) year. During such leave, the Employee will still be considered to be in the continuous employment of the Corporation for purposes of this Agreement.

12. ASSIGNABILITY. Except insofar as this provision may be contrary to applicable law, no sale, transfer, alienation, assignment, pledge, collateralization, or attachment of any benefits under this Agreement shall be valid or recognized by the Corporation.

13. AMENDMENT. During the lifetime of the Employee, this Agreement may be amended or revoked at any time, in whole or part, by the mutual written agreement of the parties.

14. LAW GOVERNING. This Agreement shall be governed by the laws of the State of Iowa. This Agreement is solely between the Corporation and the Employee. Further, the Employee, her designated recipients or other persons claiming through the Employee shall only have recourse against the Corporation for enforcement of the Agreement. However, it shall be binding upon the designated recipients, beneficiaries, heirs, executors and administrators of the Employee and upon the successors and assigns of the Corporation.

KIRK GROSS COMPANY

EMPLOYEE

By Robert T. Buckley  
Robert T. Buckley, President

Carol A. Smith  
Carol A. Smith

By Carol A. Smith  
Carol A. Smith, Secretary

SCHEDULE A

DESIGNATION OF SALARY CONTINUATION AND DEATH BENEFIT RECIPIENT

I, Carol A. Smith, request that the Corporation mark/change its records to reflect Karen M. Smith as the designated recipient(s) of the Salary Continuation Benefit payment under Paragraph 4, and the Death Benefit payable under Paragraph 2 of a Salary Continuation Agreement dated 1-10-91, 1991, and to make payment of the Salary Continuation Benefit and the Death Benefit to the above-designated recipient(s) as provided under the terms of the Agreement. You are instructed to retain the above designation until such time as you receive a new "Designation of Salary Continuation and Death Benefit Recipient" from me which makes a change.

Dated: 1-10-91

Carol A. Smith  
Carol A. Smith, Employee

To the Secretary of Labor:

In order to comply with the requirements of the alternative reporting and disclosure method under ERISA, Title I, Part 1, as provided for an unfunded or insured pension plan for a select group of management or highly compensated employees in D.O.L. Reg. §2520.104-23, the following information is provided by the undersigned Plan Administrator:

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KIRK GROSS COMPANY

By

  
Plan Administrator

Dated: 1-10-91