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2010-02-11 09:31

To: Office of Pension and Welfare Benefit Programs
Labor Management-Services Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20216

From: Employer: I. SPIEWAK & SONS, INC.
Employer Identification Number: 22-1297130
Address: 505 8th Avenue, New York, NY 10018

March 13, 1998

This document constitutes the statement required by 29 C.F.R. 2520.104-23(a)(1) to be filed with the Secretary of Labor in respect to the Deferred Compensation Agreement maintained by the above employer.

The employer currently maintains a Deferred Compensation Agreement for a key executive who is a member of a select group of management or who is highly compensated.

The number of participants in each plan is as follows:

Plan 1 1
PLAN 1 1



ROBIN S. LAZAROW, ESQ.
BY POWER OF ATTORNEY

DEFERRED COMPENSATION AGREEMENT

THIS DEFERRED COMPENSATION AGREEMENT made as of the 23rd day of December, 1997, between I. SPIEWAK & SONS, INC. (hereinafter referred to as the "Company") and SOL JACOBS (hereinafter referred to as the "Employee").

W I T N E S S E T H :

WHEREAS, the Employee has rendered valuable services to the Company in the past; and

WHEREAS, it is considered vital to the Company's continued success that it continue to have the services of the Employee until he is retired; and

WHEREAS, it is also considered vital to the Company's future success that the Employee will not compete with it after he is retired;

NOW, THEREFORE, in consideration of these premises and the covenants and agreements herein set forth, the parties hereto covenant and agree as follows:

1. DEFINITIONS

A. "Designated Beneficiary" shall mean the beneficiary designated by the Employee in writing, delivered to the President of the Company. The Employee may change an existing designation of a beneficiary at any time by delivering in writing a change of an existing designation of a beneficiary to the President of the Company. If the Employee fails to exercise his right to designate a beneficiary, or should no named beneficiary survive the Employee, the designated beneficiary shall be the Employee's spouse, if living, and if not, then his then living issue, per stirpes, and if there be none, then his estate.

B. **"Effective Date"** of this Agreement shall mean January 1, 1998.

C. **"Full-Time Employment with the Company"** For purposes of this Agreement, the Employee will be deemed to be in the "Full-Time Employment with the Company" so long as the Employee performs at least forty (40) hours of service per week, or so long as his absence from employment is the result of his being on an approved leave of absence. All years of Full-Time Employment with the Company shall be credited for purposes of this Agreement.

D. **"Retirement Date"** shall mean the later of (a) the Employee's attainment of age fifty-five (55), or (b) his actual date of termination of employment with the Company.

2. **RETIREMENT BENEFIT**

A. If the Employee continues to be in the Full-Time Employment with the Company until his Retirement Date, the Company shall pay to the Employee a certain benefit upon reaching his Retirement Date (the "Retirement Benefit"). If the Employee reaches his Retirement Date on or after his fifty-fifth (55th) birthday but prior to his sixtieth (60th) birthday, his Retirement Benefit shall equal Five Hundred Thousand Dollars (\$500,000). If the Employee reaches his Retirement Date on or after his sixtieth (60th) birthday but prior to his sixty-fifth (65th) birthday, his Retirement Benefit shall equal Seven Hundred Fifty Thousand Dollars (\$750,000). If the Employee reaches his Retirement Date at any time on or after his sixty-fifth (65th) birthday, his Retirement Benefit shall equal One Million Dollars (\$1,000,000).

B. The Retirement Benefit shall be paid to the Employee by the Company in ten (10) equal annual payments without interest as follows: The first payment shall be made on the first day of the calendar month following the Employee's termination of employment (the "anniversary date") and each succeeding annual payment shall be made on each anniversary date thereafter for a total of ten (10) equal annual payments.

C. If the Employee dies after his Retirement Benefit payments have begun but before the said ten (10) annual payments have been completed, then the Company shall pay the balance of the

payments in one lump sum payment to the Designated Beneficiary. Said payment shall be made no later than ninety (90) days following the Employee's death.

D. The Employee shall not receive payment of his Retirement Benefit except upon termination of employment.

3. **DEATH BENEFIT**

A. If the Employee dies of natural causes within the first two years of this Agreement or without regard to the cause of his death after the first two years of this Agreement and, prior to his death, was in the Full-Time Employment with the Company from the date this Agreement is made until death occurs (but before the Employee's attainment of his Retirement Date), then the Company shall pay a certain benefit to the Employee's Designated Beneficiary (the "Death Benefit"). If the Employee's death occurs prior to his sixtieth (60th) birthday, the Death Benefit shall equal Five Hundred Thousand Dollars (\$500,000). If the Employee's death occurs on or after his sixtieth (60th) birthday but before reaching his sixty-fifth (65th) birthday, the Death Benefit shall equal Seven Hundred Fifty Thousand Dollars (\$750,000). If the Employee's death occurs on or after his sixty-fifth (65th) birthday, the Death Benefit shall equal One Million Dollars (\$1,000,000).

B. The Death Benefit shall be paid to the Designated Beneficiary in one lump sum payment within ninety (90) days of the Employee's death.

4. **FORFEITABILITY**

A. The provisions of Paragraphs 2 and 3 are conditioned upon the Employee's Full-Time Employment with the Company until the earlier of his Retirement Date or death. In the event the Employee has not been in the Full-Time Employment with the Company through his Retirement Date, or on his date of death, whichever occurs first, the Company shall be under no obligation to the Employee or his Designated Beneficiary regarding the benefits provided by Paragraphs 2 and 3 hereof.

B. The Employee agrees that as a condition to his receipt of benefits under Paragraph 2 or 3 hereof, he will not at any time

during the term of his employment and for a period of three (3) years thereafter, without the written consent of the Company, compete with the business of the Company. A breach of this commitment by the Employee shall give the Company the right to the return of all benefits paid hereunder as liquidated damages (it being agreed that the Company's loss in such case is substantial but not susceptible of precise valuation) and shall terminate all future obligations of the Company hereunder, unless the Company determines otherwise. The Employee expressly agrees that in order to receive payments under this Agreement: (i) he will not engage in nor carry on, directly or indirectly, with or without compensation, any business which is the same as or similar to the business being conducted by the Company, either for himself or as a member of a partnership, limited partnership or joint venture, or as a stockholder, investor, member, officer or director of a corporation or limited liability company or as an employee, agent, associate or consultant of any person, partnership, limited liability company or corporation; and (ii) he will not solicit or accept as a customer, on behalf of himself or any other person, any firm, corporation, partnership, limited partnership or any other entity which is a customer of the Company at the time of his termination or at any time during the three (3) years subsequent to such termination. Customer as used herein shall be liberally construed and shall include any principal officer, any director or principal shareholder or any corporate customer and the principal partners or any partner, customer or sole proprietor of any unincorporated customer and such term shall further include any corporation, partnership, sole proprietorship or other business entity (whether in existence or not at the time of termination of Employee) which is controlled by or under common control of any customer of the Company. If, in any legal proceedings, a court shall refuse to enforce the covenants included in this paragraph, then such unenforceable covenants shall be amended by such court to relate to such lesser period or geographical area as shall be enforceable.

5. **UNFUNDED AGREEMENT**

Benefits to be provided under this Agreement are unfunded obligations of the Company. Nothing contained in this Agreement shall require the Company to segregate any monies from its general funds, to create any trust, to make any special deposits, or to purchase any policies of insurance with respect to such obligations. If the Company elects to purchase individual policies of insurance on the Employee to help finance its obligations under this Agreement, such individual policies and the proceeds therefrom shall, at all times, remain the sole property of the Company, and neither the Employee nor his beneficiaries shall have any ownership rights in such policies of insurance.

Such insurance policies shall be subject to the claims of the Company's general creditors. Any reference in this Agreement to amounts payable with references to said policies, which are to be purchased solely for the purpose of aiding the Company in meeting its obligation under this Agreement and assisting the Company in determining the amount of payments the Company is required to make to the Employee, shall not be deemed to constitute an assignment, conveyance or other transfer of any interest in said policies to the Employee.

6. **AMENDMENT OR TERMINATION OF AGREEMENT**

The Company may amend or terminate the Agreement at any time; however, no such amendment or termination shall reduce or impair the benefits payable to the Employee or his Designated Beneficiary which accrued prior to the effective date of such amendment or termination.

7. **BINDING EFFECT**

This Agreement shall inure to the benefit of and shall be binding upon and enforceable against the beneficiaries, heirs, executors, administrators and legal representatives of the Employee, and the successors and assigns of the Company.

8. **ASSIGNABILITY**

The Employee shall not have any power or right to transfer, assign, hypothecate, mortgage or otherwise encumber, or advance any benefits payable hereunder, nor shall the benefits payable

hereunder be subject to seizure or payment of any debt or judgment or be transferable under operation of law in the event of bankruptcy, insolvency or otherwise. In the event that the Employee or Designated Beneficiary hereunder attempts to assign such right, the Company, at its own discretion, may suspend, reduce or terminate any or all rights created by this Agreement as to the Employee or to the person attempting such assignment.

9. MISCELLANEOUS


A. The Company shall withhold from benefits paid under this Agreement any taxes or other amounts required to be withheld by law.

B. Nothing contained in this Agreement shall be construed as a contract of employment between the Employee and the Company or to suggest or create a right in the Employee to be continued as an employee of the Company.

C. The Company, in its sole discretion, may accelerate the payment of the Employee's Retirement Benefit pursuant to Paragraph 2 of the Agreement.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date and year first above written.

ATTEST:



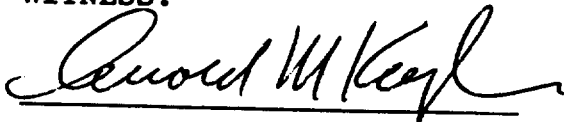
ROY SPIEWAK, President and
Secretary


I. SPIEWAK & SONS, INC.

BY: 

MICHAEL SPIEWAK, CEO

WITNESS:



BY: 

SOL JACOBS, Employee

WITMAN, STADTMAUER & MICHAELS, P.A.
COUNSELLORS AT LAW
26 COLUMBIA TURNPIKE
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