



**OPHTHALMIC  
CONSULTANTS  
OF BOSTON**

www.eyeboston.com

***Glaucoma, Cataract  
Diseases and Surgery of  
the Anterior Segment***

B. Thomas Hutchinson, M.D.  
A. Robert Bellows, M.D.  
Claudia U. Richter, M.D.  
Bradford J. Shingleton, M.D.  
John V. Thomas, M.D.  
Michael F. Oats, M.D.  
Laura C. Fine, M.D.  
Will J. Price, III, M.D.

***Diseases and Surgery of  
the Retina and Vitreous***

Albert R. Frederick, Jr., M.D.  
Trexler M. Topping, M.D.  
Michael G. Morley, M.D.  
Jeffrey S. Heier, M.D.  
Mark S. Hughes, M.D.  
Delia N. Sang, M.D.  
Jay S. Duker, M.D.

***Cornea, Cataract  
Diseases and Surgery of  
the Anterior Segment***

Ann M. Bajart, M.D.  
Michael B. Raizman, M.D.  
Kenneth C. Chern, M.D.  
Eugenio M. Candal, M.D.  
Nicoletta Fynn-Thompson, M.D.

***Ophthalmic Plastic,  
Lacrimal and Orbital  
Diseases and Surgery***

Mami A. Iwamoto, M.D.

***Refractive Surgery***

Michael B. Raizman, M.D.  
Michael F. Oats, M.D.  
Kenneth C. Chern, M.D.  
Eugenio M. Candal, M.D.  
Nicoletta Fynn-Thompson, M.D.

***Uveitis, Immunology,  
Cornea and External  
Diseases***

Michael B. Raizman, M.D.  
Kenneth C. Chern, M.D.

***Pediatric Ophthalmology***

Mitchell B. Strominger, M.D.

***Neuro-Ophthalmology***

Mitchell B. Strominger, M.D.

***Optometry, Contact Lenses  
and Low Vision Rehabilitation***

Mark W. O'Donoghue, O.D.  
Paul M. Cangiano, O.D.  
Mark D. Kirstein, O.D.  
Leigh C. Kozak, O.D.  
Michael E. Dalton, O.D.  
Claudine Y. Kawabata, O.D.  
Teresa L. Stone, O.D.  
Anne J. Farley, O.D.  
Anmarie J. Russo, O.D.  
Geeta Chowdhary, O.D.

April 26, 2005

**Top Hat Plan Exemption  
Employee Benefits Security Administration  
U.S. Department of Labor  
200 Constitution Avenue, NW, Suite N-1513  
Washington, DC 20210**

2520052092901

Dear Sir or Madam:

Please be advised that: Ophthalmic Consultants of Boston, Inc., 50 Staniford Street, Boston, MA 02114, EIN 04-2500346 maintains the Ophthalmic Consultants of Boston, Inc. Phantom Stock and Profit Distribution Plan (the "Plan").

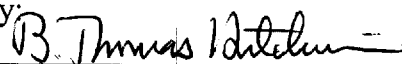
Although the plan sponsor does not believe the Plan is subject to Department of Labor Regulation Section 2520.104-23, this disclosure statement is being filed with your office to satisfy the reporting and disclosure requirements prescribed in Part 1 of Title I of the Employee Retirement Income Security Act of 1974 should such Part be found to apply to the Plan.

The Plan became effective January 1, 2005. As of the date of this letter, only one individual participates in the Plan.

If additional information is needed, please contact the undersigned.

Very truly yours,

**OPHTHALMIC CONSULTANTS  
OF BOSTON, INC.**

By:   
**B. Thomas Hutchinson, M.D.,  
President**

CHI99 4460592-2.057139.0010

**OCB Boston**

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**OCB Beverly**

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**OCB Brookline**

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Fax 617-731-0610

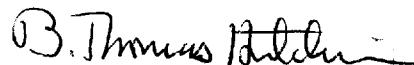
**OCB Stoneham**

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Fax 781-662-5519

**OPHTHALMIC CONSULTANTS OF BOSTON, INC.**  
**PHANTOM STOCK AND PROFIT DISTRIBUTION PLAN**

**Effective as of January 1, 2005**

**The undersigned officer of Ophthalmic Consultants of Boston, Inc. hereby certifies that this is a true and complete copy of the Ophthalmic Consultants of Boston, Inc. Phantom Stock Plan, effective as of January 1, 2005, and as in full force and effect on the date hereof.**

  
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**OPHTHALMIC CONSULTANTS OF BOSTON, INC.  
PHANTOM STOCK AND PROFIT DISTRIBUTION PLAN**

1. **PURPOSE.** The purpose of the Ophthalmic Consultants of Boston, Inc. Phantom Stock Plan (the "Plan") is to provide an equity-based incentive to selected key employees who are responsible for the long-term success of Ophthalmic Consultants of Boston, Inc. (the "Company") and its affiliated surgery centers, real estate companies, and other businesses (together, the "affiliates"). By providing this incentive, the Company intends to align the financial objectives of selected key employees with those of the Company. This purpose will be effectuated by the granting of units of "phantom stock" based upon the ownership interest held by the Company in Cape Cod Eye Surgery and Laser Center, LLC ("CCESLC") and Cape Cod Eye Care Real Estate, LLC ("CCECRE", or together with CCESLC, the "CCE Companies"), each such unit correlating to the percentage interest of the Company's ownership in each of the CCE Companies (hereinafter referred to as "Share Units"). The Plan is a cash-based compensation program. No securities are actually issued; instead, Share Units are created. The value of the Share Units fluctuates based on the combined performance of the CCE Companies and not upon the performance of the Company. The criteria that control Share Unit values fluctuate in a manner similar to the performance criteria that normally impact stock value. The effective date of the Plan is January 1, 2005.

2. **ADMINISTRATION.** The Plan shall be administered by the President of the Company as the "Administrator." The Administrator shall have the power from time to time (i) to construe and interpret the Plan and any Grant Agreements (as described in Paragraph 4 below) and to establish, amend and revoke rules and regulations for the administration of the Plan, including, but not limited to, correcting any defect or supplying any omission, or reconciling any

inconsistency in the Plan or in any Grant Agreement, in the manner and to the extent it shall deem necessary or advisable to make the Plan fully effective, and all decisions and determinations by the Administrator in the exercise of this power shall be final, binding and conclusive upon all parties; (ii) to exercise its discretion with respect to the powers and rights granted to it as set forth in the Plan; and (iii) generally, to exercise such powers and to perform such acts as are deemed necessary or advisable to promote the best interests of the Company with respect to the Plan. The Administrator shall not be personally liable for any action, determination or interpretation made in good faith with respect to the Plan or any agreement thereunder.

3. **ELIGIBILITY.** The President shall have full and final authority to select from time to time those key employees of the Company to whom Share Units shall be granted under the Plan and the number of Share Units to be granted to each such key employee and to prescribe the terms and conditions (which need not be identical) of each grant of Share Units, and to make any amendment or modification to any Grant Agreement consistent with the terms of the Plan. The right of a key employee to participate in this Plan are expressly conditioned upon the key employee making arrangements satisfactory to the Administrator providing for the payment of any employment-related taxes on Plan benefits prior to payment.

4. **SHARE UNITS.** The total number of Share Units reserved under the Plan shall be equivalent to the interest held by the Company in each of the CCE Companies. The value of the Share Units shall be determined under Paragraph 5 below from time to time. Grants of Share Units may be made at the inception of the Plan and at any time thereafter. To receive Share Units, the key employee shall enter into a written agreement with the Company setting forth the

specific terms of the grant of Share Units as determined by the Company, which agreement shall be in substantially the form set forth at Exhibit A attached hereto (the "Grant Agreement").

5. **VALUATION OF SHARE UNITS.** The value of Share Units under the Plan shall be determined in accordance with the Operating Agreements of the CCE Companies in effect from time to time. The Administrator reserves the right to adjust the amount payable on redeeming Share Units in connection with a change in capitalization or any other special or extraordinary circumstances. Any good faith determination by the Administrator of the amount to be paid to a key employee by the Company on redemption of Share Units shall be final and binding.

6. **VESTING.** Each Share Unit granted hereunder shall be vested in accordance with a vesting schedule set forth in each Grant Agreement.

7. **PAYMENTS.**

A. Annually, the Company shall pay to each key employee with a Grant Agreement a portion of the K-1 value of each of the CCE Companies that is equal to the total K-1 value of such CCE Company held by the Company times the percentage interest in such CCE Company that is granted to the key employee in his/her Grant Agreement, but only to the extent that amount is received by the Company from the CCE Companies; provided that for purposes of receiving payments under this Paragraph 7A, the employee shall be deemed fully vested in the Share Units granted to him/her; and provided further that the first annual distribution made to each key employee may be reduced to account for the "investment value" to be paid by such key employee for the Share Units, all in accordance with such key employee's Grant Agreement.

B. Upon a Transfer Event as defined in Paragraph 8, the Company shall pay a key employee with a Grant Agreement a redemption payment determined in accordance with Paragraph 8.

C. The Company shall withhold from any amounts payable under this Plan all federal, state, city and local taxes as shall be legally required.

8. **TRANSFER EVENTS.**

A. The Share Units held by a key employee with a Grant Agreement shall be redeemed upon the occurrence of certain transfer events described below (“Transfer Events”).

B. In the event of the death or disability of the key employee, the Share Units granted to the key employee shall be deemed fully vested, and the key employee shall be entitled to a cash payment equal to the fair market value of the Share Units, as determined in accordance with the CCE Companies’ Operating Agreements and shall be payable to the key employee in accordance with the Bylaws of the Company; provided that notwithstanding such disability, the key employee is engaged by a competing (as determined by the Company’s Board of Directors) ophthalmic medical practice or ophthalmic specialty hospital within the Commonwealth of Massachusetts, then the key employee shall only be entitled to a cash payment equal to the book value of the Share Units, as determined in accordance with the Bylaws of the Company.

C. In the event of the retirement or resignation of the key employee, the key employee shall be entitled to a cash payment equal to the fair market value of the Share Units then vested in accordance with the terms of the applicable Grant Agreement, as such fair market value is determined in accordance with the CCE Companies’ Operating Agreements and shall be payable to the key employee in accordance with the Bylaws of the Company; provided that notwithstanding such disability, the key employee is engaged by a competing (as determined by the Company’s Board of Directors) ophthalmic medical practice or ophthalmic specialty hospital within the Commonwealth of Massachusetts, then the key employee shall only be entitled to a

cash payment equal to the book value of the Share Units, as determined in accordance with the Bylaws of the Company.

D. In the event the key employee's employment with the Company is terminated for cause, the key employee shall be entitled to a cash payment equal to the book value of the Share Units then vested in accordance with the terms of the applicable Grant Agreement, as such book value is determined in accordance with the CCE Companies' Operating Agreements.

9. **NON-ASSIGNABILITY.** No Share Units shall be assignable or transferable by a key employee.

10. **TERMINATION AND AMENDMENT OF THE PLAN.** The Board may terminate this Plan at any time; provided that termination of the Plan will not affect any rights and obligations previously granted to key employees and then in effect. The Board may at any time, without limitation, and from time to time modify or amend this Plan or the terms of Share Units hereunder in any respect whatsoever; provided, however, that no termination, modifications or amendment to the Plan or any Grant Agreement shall, without the consent of the key employee to whom any grant shall theretofore have been made, alter or impair the rights of such key employee, unless such termination, modifications or amendment to the Plan are made in compliance with any law or regulation applicable to the Plan, or are required to avoid any penalties or excise taxes relating to such laws or regulations.

11. **CONSOLIDATION OR MERGER.** No provision of this Plan shall prevent the consolidation or merger of the Company with or into any corporation, or prevent the sale or transfer by the Company of its property or any part thereof. The successor corporation resulting from any consolidation, merger, sale or transfer shall succeed the Company and become a party hereto, unless the Administrator elects to accelerate payment of the Share Units prior to such

consolidation or merger and the employee's Share Units shall be deemed vested in accordance with the applicable Grant Agreement. 12. **LIMITATIONS ON CONSOLIDATION, MERGER OF PLAN OR TRANSFER OF PLAN.** In the event of this Plan's merger or consolidation with any other plan, each key employee then covered under the Plan (if the Plan then terminates) shall be entitled to receive a benefit immediately after such merger, consolidation or transfer which is equal to or greater than the benefit he or she would have been entitled to receive immediately before the merger, consolidation or transfer (if the Plan had then terminated).

13. **LIABILITY LIMITATION.** Neither the establishment of the Plan nor any modification thereof, nor the creation of any account under the Plan, nor the payment of any benefits, shall be construed as giving to a key employee or other person any legal or equitable right against the Company (or any person connected therewith), except as provided by law or by any Plan provision. Nothing contained in the Plan, and no action taken pursuant to its provisions, shall create or be construed to create a fiduciary relationship between the Company (or any person connected therewith) and any key employee or other person. In no event shall the Company (or any person connected therewith) be liable to any person for the failure of any key employee or other person to be entitled to any particular tax consequences with respect to the Plan or any contribution thereto or distribution therefrom.

14. **EMPLOYMENT RIGHTS.** It is understood that the establishment of this Plan gives no rights whatsoever to a key employee to be retained in the employment or service of the Company, and all key employees shall remain subject to disciplinary action, including but not limited to, discharge to the same extent as if this instrument had never been executed. Nothing contained herein shall be construed as a contract of employment.

15. **CLAIMS PROCEDURE.** In the event that benefits under the Plan are denied, the Administrator shall notify the affected key employee in writing within thirty (30) days of the specific reasons for such denial, making specific reference to the provision of the Plan or such employee's Grant Agreement. If the key employee contests the denial of benefits, the employee will have sixty (60) days from the date of such action to file a written appeal to the Board. The situation will be reviewed and the Board shall render a decision within ninety (90) days. The key employee shall be informed in writing of such decision and its basis with reference to the provisions of the Plan and such key employee's Grant Agreement. If the key employee's Employment Agreement allows for arbitration of disputes, any dispute of the Board's decision may be arbitrated in accordance with the terms of that Agreement.

16. **UNFUNDED, UNSECURED OBLIGATION.** The Plan shall at all times be entirely unfunded and no provisions shall at any time be made with respect to segregating assets of the Company for payment of any benefits hereunder. No key employee or other person shall have any interest in any particular assets of the Company by reason of the right to receive a benefit under the Plan and any key employee or other person shall have only the rights of a general unsecured creditor of the Company with respect to any rights under the Plan.

17. **ERISA.** It is the Company's intent that the Plan, to the extent covered by the Employee Retirement Income and Security Act of 1974, as amended ("ERISA"), constitutes an unfunded deferred compensation plan for a "select group of management and highly compensated employees" within the meaning of U.S. Department of Labor Regulation §2520.104-23, and complies with the applicable requirements of ERISA.

18. **NON-EXCLUSIVE**. Adoption of the Plan shall not be construed as creating any limitations on the power of the Company to adopt such other incentive arrangements as it may deem desirable, either generally or applicable only in specific cases.

19. **GOVERNING LAW**. Except to the extent superseded by federal law, the laws of the Commonwealth of Massachusetts shall apply to this Plan.

UNITED STATES MAIL™



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50 Staniford Street  
Suite 600  
Boston, MA 02114

**TO:**

Top Hat Plan Exemption  
Employee Benefits Security Administration  
U.S. Department of Labor  
200 Constitution Avenue, NW, Suite N-1513  
Washington, DC 20210

