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TEXAS BAR ONLY

COUNSEL  
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May 31, 2006

Top Hat Plan Exemption  
Pension and Welfare Benefits Administration  
Room N-5644  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

Re: Graul's Market, Inc.

Dear Sir or Madam:

Enclosed please find an Employment and Deferred Compensation Agreement and an Alternative Method of Compliance with ERISA Reporting and Disclosure Requirements.

Very truly yours,

THOMAS & LIBOWITZ, P.A.



Sasha B. Oshrine

SBO/sac  
Enclosures

cc: Mr. Dennis Graul  
Ms. Kate Poffenberger

## EMPLOYMENT AND DEFERRED COMPENSATION AGREEMENT

THIS EMPLOYMENT AND DEFERRED COMPENSATION AGREEMENT (this "Agreement") is entered into this 27<sup>th</sup> day of May, 2006 (the "Effective Date"), by and between GRAUL'S MARKET, INC., a Maryland corporation (hereinafter referred to as "Corporation") and HAROLD F. GRAUL, JR. (hereinafter referred to as "Employee").

### **RECITALS**

Corporation has agreed to provide employment and deferred compensation benefits to Employee and this Agreement is executed pursuant to such arrangement.

In consideration of the mutual covenants and promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. General. As of the Effective Date, the Corporation will compensate Employee for his services in the form of both current and deferred compensation. The amount of current and deferred compensation shall be controlled by the terms of this Agreement.

2. Employment and Current Compensation. The Corporation agrees to employ the Employee as Chairman of the Board of Directors with such duties and emphasis as the officers and directors of the Corporation shall from time to time direct. The term of this Agreement shall commence on the Effective Date and shall continue for one (1) year. Unless either party gives to the other written notice of non-renewal at least thirty (30) days prior to May 26, 2007, then the Employee's employment shall be automatically renewed for one (1) year and shall continue to be automatically renewed for one (1) year periods thereafter, subject to the terms of this Agreement (individually a "Renewal Period" and collectively, the "Renewals"). The entire period of the Employee's employment shall be called the "Term." Subsequent Renewals may be terminated by either party by written notice to the other party not less than thirty (30) days prior to the expiration of such Renewal Period. During the Term, the Corporation shall pay to the Employee compensation at the rate of Two Hundred Thousand Dollars and No Cents (\$200,000.00) per year, less applicable withholding, payable in accordance with the Corporation's customary practices, but in no event less frequently than monthly.

3. Deferred Compensation. The Corporation shall pay to the Employee deferred compensation at the rate of Seventeen Thousand Nine Hundred Seventy-One Dollars and Twenty-Five Cents (\$17,971.25) per month for thirty-one (31) months beginning on the first (1<sup>st</sup>) day of the first (1<sup>st</sup>) month after the date of termination of Employee's employment with the Corporation (the "Deferred Compensation Term", and together with the Term, the "Entire Term").

4. Benefits

4.1 Benefit Packages. During the Entire Term, the Employee shall be eligible to receive from the Corporation certain benefits (the "Benefits") in accordance with the terms and conditions specifically set forth in each of such Benefit plan (individually, a "Benefit Package" and collectively, the "Benefit Packages") as may be from time to time available to other similarly situated employees of the Corporation. The Employee hereby recognizes and acknowledges that the Corporation has made (and makes) no affirmative representation to the Employee as to the existence or future availability of any Benefit Packages. As such, the Employee acknowledges that he has accepted employment with no promise or representation that he will be eligible for or participate in any Benefit Package. Further, the Employee acknowledges that the Corporation may not offer any Benefit Packages and may arbitrarily modify or cancel any Benefits Packages from time to time offered.

4.2 Current Benefits. In addition to the Benefits outlined in the immediately preceding paragraph, the following specific benefit shall be provided to Employee as of the Effective Date

and shall continue for the Entire Term: the Corporation shall pay directly or reimburse the Employee for all expenses incurred by the Employee relating to the Employee's use of the Employee's automobile. Such expenses shall include, without limitation, repairs and gasoline expenses.

5. Withholding. Any amounts payable under this Agreement shall be subject to such deductions or withholdings as may be required by law. The deferred compensation shall not be deemed to be salary or other compensation for the purpose of computing benefits to which Employee may be entitled under any retirement plan or other arrangement of Corporation for the benefit of its employees generally.

6. Death of Employee. In the event Employee dies during the Entire Term, the Corporation's obligation to pay the amounts specified in Sections 2 and 3 and provide the Benefits described in Section 4, shall immediately cease and the Corporation shall have no further obligations to the Employee or Employee's estate or beneficiaries to make any further payments described in Sections 2 or 3 or to provide the Benefits described in Section 4.

7. Non-Alienation Provision. Neither Employee, his designated beneficiary or beneficiaries, his estate, nor any other person or persons claiming any benefits through or under him by virtue of this Agreement, shall have any right to anticipate, commute, pledge, encumber, alienate, sell, transfer, assign or otherwise dispose of the right to receive payments hereunder, all of which payments and the rights thereto are expressly hereby declared to be nonassignable and not subject to the debts, contracts, liabilities, engagements or torts of Employee or such persons. Any attempted transaction contrary to the foregoing shall be null and void.

8. Section 409A Compliance. This Agreement may not be amended in any way that results in a violation of Section 409A of the Internal Revenue Code or any regulatory or other guidance issued by the Internal Revenue Service thereunder. In particular, except to the extent permitted by regulatory or other guidance issued by the Internal Revenue Service under Section 409A(a)(3) of the Internal Revenue Code, no amendment of this Agreement shall in any way (including a change in form of distribution) result in acceleration of the timing or amount of any payment (or any portion thereof) due under this Agreement. An amendment that permits acceleration for any one or more of the reasons that constitute exceptions to the prohibition on acceleration of payments, pursuant to Prop. Treas. Regs. § 1.409A-3(k)(2) (as presently written or as hereafter amended, finalized, replaced or supplemented), shall not be deemed to be in violation of this Section.

9. Amendment. This Agreement may be amended only by a writing executed by both the Corporation and the Employee.

10. Financial Statements. During the Entire Term, the Employee shall have access to the financial statements (audited and unaudited), of the Corporation prepared in accordance with generally accepted accounting principles, including without limitation, balance sheets, statements of income, statements of shareholder equity and statements of changes in financial position.

11. Miscellaneous. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, legatees, beneficiaries, personal representatives and other legal representatives, successors and assigns. Nothing herein contained shall be construed as conferring upon Employee any right to continue in the employ of Corporation. The enumeration and headings contained in this Agreement are for convenience of reference only and are not intended to affect the meaning of any provision. The laws of the State of Maryland shall apply and bind the parties in any and all questions arising hereunder. This Agreement may be executed in multiple counterparts or in duplicate, and when so executed by the Corporation and the Employee shall constitute one agreement.

[Remainder of page intentionally left blank,  
signatures begin on following page]

IN WITNESS WHEREOF, the parties have executed this Agreement under seal this 27<sup>th</sup> day of May, 2006.

WITNESS:

Kate Poffenbeger

GRAUL'S MARKET, INC.

By: [Signature] (SEAL)

Name: Dennis G. Graul

Title: President

EMPLOYEE:

Kate Poffenbeger

[Signature] (SEAL)

Harold F. Graul, Jr.

Harold F. Graul Jr.  
(Print full name)

**ALTERNATIVE METHOD OF COMPLIANCE WITH ERISA  
REPORTING AND DISCLOSURE REQUIREMENTS**

**TO:** Top Hat Plan Exemption  
Pension and Welfare Benefits Administration  
Room N-5644  
U.S. Department of Labor  
200 Constitution Avenue, NW.  
Washington, D.C. 20210

**FROM:** Graul's Market, Inc.  
12218 Tullamore Road  
Timonium, MD 21093  
EIN: 52-0981560

**DATE:** May 21<sup>st</sup>, 2006

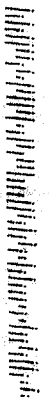
**NAME OF PLAN:** Graul's Market, Inc. / Harold F. Graul, Jr. Agreement

**DATE PLAN ADOPTED:** May 21<sup>st</sup>, 2006

**NUMBER OF EMPLOYEES IN PLAN:** 1

The above-named employer maintains a plan primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees.

This is a protective filing only. The employer does not believe that the arrangement constitutes a deferred compensation plan (or any plan at all within the meaning of ERISA).



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