

2520032034904

DEFERRED COMPENSATION

SPECIMEN ERISA MEMORANDUM STATEMENT

DATE: December 16 1991

TO: Office of Pension and Welfare Programs
Labor Management - Services Administration
U.S. Department of Labor
Washington, D.C.
20216

FROM: Farmers Co-op of Hanska
41-0298006
Hanska, MN 56041

This statement is with respect to Non-Qualified Deferred Compensation Plans maintained by Employers under the requirements of 29 CFR Section 2520.104-23(a)

Employer currently maintains one non-qualified deferred compensation plan for Executives who are members of a "select group of management" or who are "highly compensated".

The number of participants are:

Plan 1: ONE

Plan Administrator: Farmers Co-op Of Hanska
Board of Directors

Title: Directors

Employer: Farmers Co-op of Hanska

DEC 18 1991

SALARY REDUCTION DEFERRED COMPENSATION

PREFACE

PLAN PROVISIONS:

A Salary Reduction Deferred Compensation Plan differs from a "Salary Continuation Plan" in that the former is funded through the Executive's irrevocable election to defer a portion of compensation yet to be earned. The result is that the Executive removes such elected deferral sums from his current taxable income and will be taxed only as benefits become due under the Agreement. Benefits are conditional upon future services. However, we have added reference to past services (particularly those under compensated years) to buttress the arguments in favor of "Reasonable Compensation". Andrews Distributing Co. Inc., TC Memo 1972-146. The plan provides supplemental retirement benefits as well as pre-retirement death benefits.

INSURANCE FUNDING:

It is presumed that life insurance will be the primary funding vehicle. For tax reasons discussed in the Appendix, the Executive has no more lien or superior rights to any of the proceeds or benefits of the policy than any other creditor of the Employer-Corporation.

ERISA:

ERISA requirements for Salary Reduction Deferred Compensation Plans are nominal. Such plans, if designed for a "select group of management" or "highly-compensated" Employees, are exempt from most ERISA provisions. Nevertheless, the plan must provide for a Named Fiduciary and Plan Administrator as well as a "Claims Procedure". Finally, a memo-statement to the Labor Department describing the number of plans and the number of covered Employees is required. Suggested language for all of these requirements are offered to this Specimen Agreement and its accompanying memo.

ACCOMPANYING RESOLUTIONS:

To avoid the possible arguments of the Internal Revenue Service that accumulations for insurance purchase are subject to the "unreasonable accumulation of earnings" rules, the "Key Employee Insurance Resolution" offered elsewhere in this program should be adopted. In addition, a specific resolution authorizing the Salary Reduction Deferred Compensation Agreement itself, is provided.

**BENEFICIARY DESIGNATION AND
ASSIGNMENT OF OWNERSHIP**

Policy No. INA 101 1207979

Insured John O. Brekke

Policy Issued By Investors Life Co. of California PO Box 13564 Philadelphia PA 19101-3564

Owner/Assignor Hanska Farmers Coop

1. **Beneficiary Designation.** The undersigned Owner/Assignor hereby designates First Colony Life Insurance Company, Lynchburg, Virginia, as beneficiary of the above policy.
2. **Assignment of Ownership.** Immediately following the above beneficiary designation, the undersigned Owner/Assignor hereby assigns and transfers all right, title and interest in the above policy to First Colony Life Insurance Company, Lynchburg, Virginia. This assignment specifically includes, but not by way of limitation, the right to surrender the policy for its cash value and to receive such cash value.

Signed this 9th day of December, 19 91

Elinor B. Barshatz
Witness

Hanska Farmers Coop
Perry Thompson **President**
Owner/Assignor

Richard Wellmann
Irrevocable Beneficiary Secretary
(if applicable)

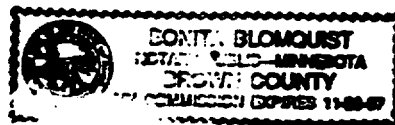
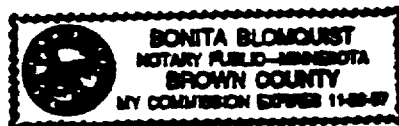
State of Minnesota, Brown County ss:

On this 9th day of December, 1991, before me appeared Perry Thompson and Richard Wellmann, to me personally known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

My Commission expires: 11/26/97

Bonita Blomquist
Bonita Blomquist, Notary Public

Form No. 1035B



This is a samplly document only. Its legal and tax consequences must be reviewed and approved by a client's own legal and tax counsel. This document has been furnished courtesy of Kathryn R. Jordahl.

SALARY REDUCTION DEFERRED COMPENSATION

AGREEMENT

This Agreement, made and entered into this 25th day of July, 1991, by and between Hanska Farmers Coop, a Corporation organized and existing under the laws of the State of Minnesota, hereinafter referred to as "Corporation", and John O. Brekke, a Key Employee and Executive of the Corporation, hereinafter referred to as "Executive".

The Executive has been in the employ of the Corporation for 23 years, and has now and for years past faithfully served the Corporation. It is the consensus of the Board of Directors that Executive's services have been of exceptional merit, in excess of the compensation paid and an invaluable contribution to the profits and position of the Corporation in its field of activity.

It is the mutual desire of the Corporation and the Executive that Executive remain in the employ of the Corporation and, to assist Executive in establishing a program to provide supplemental retirement benefits and pre-retirement death benefits, they mutually-establish a Salary Reduction Deferred Compensation Plan. Accordingly, it is the desire of the Corporation and the Executive to enter into this Agreement under which the Corporation will agree to make certain payments to Executive upon his retirement and, alternatively, to his beneficiaries in the event of his premature death while employed by Corporation.

Therefore, in consideration of Executive's services performed in the past and those to be performed in the future and based upon the mutual promises and covenants herein contained, the Corporation and the Executive agree as follows:

I. ARTICLE ONE - DEFINITIONS

A. Effective Date

The effective date of this Agreement shall be July 12, 1991.

B. Normal Retirement Date:

The Normal Retirement Date shall mean retirement from service with the Corporation which becomes effective on the first day of the calendar month in which the Executive reaches his 60th birthday.

II. ARTICLE TWO - EMPLOYMENT

A. Employment:

Corporation agrees to employ Executive in such capacity as the Corporation may from time to time determine with such duties, responsibilities and compensation as determined by the Board of Directors.

Executive agrees to remain in the Corporation's employment, to devote his full time and attention exclusively to the business of the Corporation and to use his best efforts to provide faithful and satisfactory service to Corporation.

B. No Employment Agreement Created:

No provision of this Agreement shall be deemed to restrict or limit any existing employment Agreement by and between the Corporation and the Executive nor shall any conditions herein create specific employment rights to the Executive nor limit the right of the Employer to discharge the Executive with or without cause. In a similar fashion, no provision shall limit the Executive's rights to voluntarily sever his employment at any time.

III. ARTICLE THREE - SALARY REDUCTION

The Executive and the Corporation agree that Executive's compensation, which would otherwise be receivable subsequent to the effective date of a Joinder Agreement, may be irrevocably reduced and that portion deferred as provided in this Agreement.

- A. Executive shall have the privilege, exercisable within 30 days prior to a new calendar year, to reduce irrevocably his compensation not yet earned for the following calendar year by executing a Joinder Agreement.
- B. Executive's failure to amend his original compensation reduction, in writing, within 30 days of the next ensuing calendar year (and those that follow) shall constitute a waiver of Executive to elect a different compensation reduction sum and a reaffirmation and ratification to continue the compensation reduction levels as chosen in the last period.
- C. Executive may, nevertheless, provide written notice to the Corporation within 30 days prior to any calendar year to increase, decrease or discontinue compensation reduction for any ensuing calendar year.

IV. ARTICLE FOUR - BENEFITS

The following benefits provided by the corporation to the Executive shall be available under this Agreement:

A. Retirement Benefits:

If Executive shall remain in the employment of the Corporation until four months prior to the "Normal Retirement Date" defined at Article One, B., then in such event, he shall be entitled to receive monthly from the Corporation the sum of \$1500.00 commencing on the first day of the month following such "Normal Retirement Date" and continuing for a period of 120 months. In the event the Executive should die following "Normal Retirement" but before the expiration of 120 months, the unpaid balance of remainder of such period to the beneficiary selected by Executive in the Beneficiary Designation Form provided by the Corporation. In the absence of or failure of the Executive to designate a beneficiary, the unpaid balance shall be commuted at 7 percent, and paid in a lump sum to the personal representative of Executive's estate.

B. Termination of Service or Voluntary Resignation

Should Executive terminate services before four months prior to his "Normal Retirement Date", except by death, he shall receive from the Corporation the amount credited to his account in a lump sum.

C. Death Benefit Prior to Retirement

Should the Executive die prior to the Normal Retirement Date, the Corporation agrees to pay to the Executive's designated beneficiary on the first day of the month following the Executive's death the sum of \$1500.00 for a continuous period of 120 months. If the designated beneficiary should die prior to the expiration of the 120 months, the remaining unpaid installments shall be commuted at 7 percent and paid in a lump sum to the personal representative of the designated beneficiary.

Executive shall declare his designated beneficiary in writing on a form provided by the Corporation. In the absence of or a failure to designate a beneficiary(s) or in the event the designated beneficiary shall have predeceased the Executive, the unpaid balance shall be commuted at 7 percent and paid in a lump sum to the personal representative of the Executive's estate.

V. ARTICLE FIVE - RESTRICTIONS UPON FUNDING

Corporation shall have no obligation to set aside, earmark or entrust any fund or money with which to pay its obligations under this Agreement. The Executive, his beneficiaries or any successor in interest to him shall be and remain simply a general creditor of the Corporation in the same manner as any other creditor having a general claim for matured and unpaid compensation.

The Corporation reserves the absolute right at its sole discretion to either fund the obligations undertaken by this Agreement or to refrain from funding the same and to determine the extent, nature and method of such funding.

Should Corporation elect to fund this Agreement, in whole or in part, through the purchase of life insurance, mutual funds, or annuities, the Corporation reserves the absolute right, in its sole discretion, to terminate such funding at any time, in whole or in part. At no time shall Executive be deemed to have any lien nor right, title or interest in or to any specific funding investment or to any assets of the Corporation.

If Corporation elects to invest in a life insurance or annuity policy upon the life of Executive, then Executive shall assist the Corporation by freely submitting to a physical exam and supplying such additional information necessary to obtain such insurance or annuities.

VI. ARTICLE SIX - MISCELLANEOUS

A. Alienability And Assignment Prohibition:

Neither Executive, his widow nor any other beneficiary under this Agreement shall have any power or right to transfer, assign, anticipate, hypothecate, mortgage, commute, modify or otherwise encumber, in advance, any of the benefits payable hereunder nor shall any of said benefits be subject to seizure for the payment of any debts, judgments, alimony or separate maintenance owed by the Executive or his beneficiary nor be transferable by operation of law in the event of bankruptcy, insolvency or otherwise. In the event Executive or any beneficiary attempts assignment, commutation, hypothecation, transfer or disposal of the benefits hereunder, the Corporation's liabilities shall forthwith cease and terminate.

B. Binding Obligation Of Corporation And Any Successor In Interest

Corporation expressly agrees that it shall not merge or consolidate into or with another Corporation or sell substantially all of its assets to another

Corporation, firm or person until such Corporation, firm or person expressly agrees, in writing, to assume and discharge the duties and obligations of the Corporation under this Agreement. This Agreement shall be binding upon the parties hereto, their successors, beneficiaries, heirs and personal representatives.

C. Revocation:

It is agreed by and between the parties hereto that, during the lifetime of the Executive, this Agreement may be amended or revoked at any time or times, in whole or in part, by the mutual written assent of the Executive and the Corporation.

D. Gender:

Whenever in this Agreement words are used in the masculine or neuter gender, they shall be read and construed as in the masculine, feminine or neuter gender whenever they should so apply.

E. Effect On Other Corporation Benefit Plans:

Nothing contained in this Agreement shall affect the right of the Executive to participate in or be covered by any qualified or non-qualified pension, profit-sharing, group, bonus or other supplemental compensation or fringe benefit plan constituting a part of Corporation's existing or future compensation structure.

F. Headlines:

Headings and Subheadings in this Agreement are inserted for reference and convenience only and shall not be deemed a part of this Agreement.

G. Applicable Law

The validity and interpretation of this Agreement shall be governed by the laws of the State of Minnesota.

VII. ARTICLE SEVEN - ERISA PROVISIONS

A. Named Fiduciary And Plan Administrator:

The "Named Fiduciary and Plan Administrator" of this plan shall be Farmers Coop of Hanska Board of Directors. As Named Fiduciary and Administrator, Farmers Coop of Hanska Board of Directors, shall be responsible for the management, control and administration of the Salary Continuation Agreement as

established herein. They may delegate to others certain aspects of the management and operation responsibilities of the plan including the employment of advisors and the delegation of ministerial duties to qualified individuals.

B. Claims Procedure And Arbitration

In the event that benefits under this Plan Agreement are not paid to the Executive (or to his beneficiary in the case of the Executive's death) and such claimants feel they are entitled to receive such benefits, then a written claim must be made to the Named Fiduciary and Administrator named above within sixty (60) days from the date payments are refused. The Plan Fiduciary and Administrator and the Corporation shall review the written claim and, if the claim is denied in whole or in part, they shall provide, in writing and within ninety (90) days of receipt of such claim, their specific reasons for such denial and reference to the provisions of this Agreement upon which the denial is based and any additional material or information necessary to perfect the claim. Such written notice shall further indicate the additional steps to be taken by claimants if a further review of the claim denial is desired. A claim shall be deemed denied if the Plan Fiduciary and Administrator fails to take any action within the aforesaid ninety-day period.

If claimants desire a second review, they shall notify the Plan Fiduciary and Administrator in writing within sixty (60) days of the first claim denial. Claimants may review the Plan Agreement or any documents relating thereto and submit any written issues and comments they may feel appropriate. In its sole discretion, the Plan Fiduciary and Administrator shall then review the second claim and provide a written decision within sixty (60) days of receipt of such claim. This decision shall likewise state the specific reasons for the decision and shall include reference to specific provisions of the Plan Agreement upon which the decision is based.

If claimants continue to dispute the benefit denial based upon completed performance of the Agreement or the meaning and effect of the terms and conditions thereof, then claimants may submit the dispute to a Board of Arbitration for final arbitration. Said Board shall consist of one member selected by the claimant, one member selected by the Corporation and the third member selected by the first two members. The Board shall operate under any generally recognized set of arbitration rules. The parties hereto agree that they and their heirs, personal representatives,

successors and assigns shall be bound by the decision of such Board with respect to any controversy properly submitted to it for determination.

IN WITNESS WHEREOF, the parties hereto acknowledge that each has carefully read this Agreement and executed the original thereof on the 29th day of July, 1991 and that, upon execution, each has received a confirming copy.

Eduard B. Borchardt
(WITNESS)

Laura Meier
(WITNESS)

Hanska Farmers Coop
Perry Thompson President
(EXECUTIVE)

Hanska Farmers Coop
(CORPORATION)

BY: Richard Wellmann Secretar
(TITLE)

State of Minnesota, Brown County, ss:

On this 9th day of December, 1991, before me appeared Perry Thompson and Richard Wellmann, to me personally known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

My Commission expires: 11/26/97

Bonita Blomquist
Bonita Blomquist, Notary Public

