



2010 DEC 29 PM 3:43

December 23, 2010

Top Hat Plan Exemption  
Pension and Welfare Benefits Administration  
Room N-5644  
U.S. Department of Labor  
200 Constitution Ave., NW  
Washington, DC 20210

Re: Hoffman York, Inc., Non-Qualified Deferred Compensation Plan

Dear Sir/Madam:

This is to advise you of the establishment of a Non-Qualified Deferred Compensation Plan on behalf of our client, Hoffman York, Inc.

The Plan information is as follows:

Employer: Hoffman York  
Address: 1000 N Water Street # 1600  
Milwaukee, WI 53202

FEIN#: 39-1496568

Number of Plans: 1

Number of Participants in the Plan: 3

The Plan was has an effective date of November 1, 2010.

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Please contact the undersigned if you have any questions.

Very truly yours,

Davis & Kuelthau, s.c.

A handwritten signature in black ink, appearing to read "B. B. Deadman". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Bruce B. Deadman

BBD:kjh

Enclosures

cc: Vivian Moller, Hoffman York (via email, no enc.)  
William Wong, Baker Tilly (via email, no enc.)

**HOFFMAN YORK**  
**NON-QUALIFIED DEFERRED COMPENSATION AGREEMENT**  
**EFFECTIVE NOVEMBER 1, 2010**

**I. Introduction and Purpose**

Hoffman York ("the Company") is a growing, dynamic, changing organization which intends to recognize and reward those executives who continue to make its success possible. To that end, the Company has established a Non-Qualified Deferred Compensation Agreement for the purposes of:

- Rewarding Participant for contributing to the Company's success;
- Encouraging Participant to continue to devote his best efforts to the Company's success;
- Encouraging Participant to remain in the Company's employ for the duration of his/her working career;
- Providing flexibility to Participant to determine when he/she wishes to conclude his/her career with the Company;
- Protecting the Company's investment in Participant.
- Encouraging Participant to become a Shareholder in the Company and providing a means to assist Participant in financing the acquisition of Company stock.

**II. Corporate Approval**

The Company's Board has approved this Agreement.

**III. Definitions**

"Administrator" means any individual or entity designated by the Board to administer this Agreement.

"Beneficiary" means the person or persons designated as primary and contingent beneficiaries from time to time in writing by Participant on a Beneficiary Designation Form approved by the Board and filed with the Administrator to receive any benefits upon the death of Participant. If no designation is made, or if the designated beneficiaries are not living upon the death of Participant, the Beneficiary shall be Participant's spouse, if living, otherwise the children of Participant by right of representation, but if none, then the personal representative, executor, or administrator of Participant's estate.

"Board" means the Board of Directors of the Company.

"the Company" means Hoffman York.

"Change in Control" means:

1. The sale of more than 50% of the operational assets of the Company in any single transaction or series of related transactions effected within any 12-month period; or the outside acquisition of more than 50% of the Company's stock.
2. A transfer of ownership of the Company to family members of the current owners, or to a trust exclusively for the benefit of a current owner and/or family member shall not be considered a Change in Control. "Family" shall be as defined in sec. 267(c)(4) of the Internal Revenue Code to include brothers and sisters (whether by the whole or the half blood), spouse, ancestors, and lineal descendants. However, a transfer to a spouse by virtue of a divorce, legal separation, or the provisions of a Qualified Domestic Relations Order (QDRO) or similar order shall be considered a Change in Control.

In the event of a conflict between this definition and Code Section 409(A) or the regulations and guidance promulgated thereunder, the language of Code Section 409 (A) and the regulations and guidance promulgated thereunder shall control.

"Deferred Compensation Account" means the individual account maintained by the Company under the terms of Section IV of this Agreement for Participant.

"Disabled" means that Participant:

1. Is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to last for a continuous period of not less than twelve (12) months; or
2. Is, by reason of any medically determinable physical or mental impairment which can be expected to last for a continuous period of not less than twelve (12) months, receiving income replacement benefits for a period of not less than three (3) months under an accident and health plan covering Participant.
3. It may be presumed that Participant is disabled for purposes of this Agreement if he/she is receiving Social Security disability benefits.

"Offer Letter" means the letter from the Company to Participant dated September 28, 2010.

"Serious Misconduct" means:

1. Participant's fraud, misappropriation or misrepresentation with respect to the business of the Company or intentional damage to the property or business of the Company or any substantial asset;
2. Willful failure by Participant to perform his duties and responsibilities and to carry out his authority;

3. Willful malfeasance or misfeasance or breach of fiduciary duty or misrepresentation to the Company or its stockholders by Participant;
4. Participant's conviction of a felony.
5. Violation of the Agreement for Restrictive Covenants dated \_\_\_\_\_.

“Termination of Employment” means:

Participant’s cessation of services to the Company. Participant will not be considered to provide services to the Company under this Agreement if his pay for a calendar year is less than twenty (20) per cent of his average pay over the last three (3) years of employment; or if Participant provides services to the Company other than as an employee, if Participant’s annual pay is less than fifty (50) per cent of his average pay over the last three (3) years of employment. However, the preceding sentence shall not apply to decreases in pay due to statutory leave such as FMLA or USERRA, other approved leaves less than six (6) months’ duration, or disability leave of less than twenty nine (29) months where there is a reasonable expectation that Participant will return to The Company’s employ.

“Year” means the calendar year.

#### **IV. Crediting, Growth, and Management of Deferred Compensation Account**

The Participant’s Deferred Compensation Account will be credited as set forth in the Offer Letter.

Participant’s Deferred Compensation Account shall be segregated from other accounts on the books and records of the Company as a contingent liability of the Company to the Participant.

Plan Participants shall be advised of the balances in their accounts on not less than an annual basis. Account balances shall not earn interest.

For Participant’s Deferred Compensation Account to be credited in a year, Participant must be employed in a full-time capacity for the entire year and be on the payroll the last day of the year; provided, however, that if Participant terminates the employment of the Company prior to the year end due to death, disability, retirement, or the Company’s Change in Control, Participant’s Deferred Compensation Account shall be credited on a pro rata basis determined by the number of days in the year prior to Participant’s termination date.

## **V. Vesting Schedule**

Subject to Section VII below, amounts credited to Participant's Deferred Compensation Account shall become vested as of the Stock Purchase Date(s) set forth below, subject to the provisions for acceleration of vesting set forth below.

## **VI. General Creditor Status**

1. Participant shall be regarded as a general unsecured creditor of the Company with respect to any rights derived by Participant from the existence of this Agreement or the existence or amount of Participant's Deferred Compensation Account.
2. Title to and beneficial ownership of any assets, whether cash, investment, life insurance policies, or other assets which the Company may earmark or set aside to pay contingent deferred compensation under this agreement shall at all times remain with the Company. Participant and/or Participant's Beneficiary shall not have any property interest whatsoever in any specific assets of the Company.
3. Notwithstanding the foregoing to the contrary, the Deferred Compensation Account shall be subject to the claims of general creditors of the Company under federal and state laws and shall be subject to cessation of payment of Participant's benefits in the event the company is insolvent.

## **VII. Payment of Deferred Compensation**

The accumulated balance in Participant's Deferred Compensation Account shall be paid as follows:

1. Upon termination of employment, the Company shall make payment of any vested, but not yet distributed, Deferred Compensation Account balance to Participant in accordance with the distribution rules set forth in Paragraph (4) of this section; provided, however, that Participant shall forfeit all benefits, and shall be entitled to no rights or benefits hereunder in the event of Serious Misconduct. Under current law, distributions may not be rolled over into IRAs or similar vehicles. In all cases, Participant's Deferred Compensation Account shall be valued as of 60 days prior to Participant's termination of employment. Payments shall begin to be made to Participant on or as soon as practicable, and shall be determined based on this valuation.
2. In the event that Participant's employment shall be terminated by reason of Change in Control, death or disability, or in the event Participant's Deferred Compensation Account is used to purchase stock in the Company in accordance with paragraph (5) below, all amounts in Participant's Deferred Compensation Account shall become fully vested. The Company shall make payment of the vested amounts to Participant or Participant's beneficiary, as the case may be, in accordance with the distribution rules set forth in Paragraph (4) of this section.

3. If the Board concludes in its sole discretion that events such as changes in the federal tax laws or applicable accounting principles or practices, have rendered continued deferral of the balance in the Deferred Compensation Account undesirable either for the Company or Participant, the Board may, by resolution, specifically referring to this Agreement, provide for (a) the payment of the Deferred Compensation Account hereunder in the form of a single, lump-sum payment, or in any other schedule of installment payments, so long as the term of such payments shall not exceed five (5) years or (b) the lump sum payment of the balance in the Deferred Compensation Account prior to the separation of service of Participant. The Board shall consult with its legal and tax advisors to ensure compliance with all applicable laws and regulations before taking any action under this paragraph.
4. Payment of the Deferred Compensation Account balance will be a lump sum in all cases.
5. As a controlling exception to this section, it is the intent of the Company and the Participant that the primary purpose of this Plan is to provide Participant with funds which will be used to purchase stock in the Company. Participant will be afforded that opportunity to purchase stock on November 1, 2013 (the "Stock Purchase Date(s)"). If, on the Stock Purchase Date(s), Participant purchases stock in the Company, the entire vested balance of Participant's Deferred Compensation Account will, as of such date, be used to assist in the funding of said purchase, and will be paid to Participant in a lump sum, which will then be paid to the Company in exchange for shares of Company Stock per the terms of the Offer Letter. Participant will be responsible for any tax consequences in association therewith.

In the event that Participant chooses not to purchase stock as set forth above, the entire vested balance of Participant's Deferred Compensation Account, as of the Stock Purchase Date, shall be paid to Participant in a lump sum and included in Participant's income as required by applicable tax laws. At the time of any such lump-sum payment under the terms of this paragraph, the Participant shall forfeit the opportunity to purchase Company Stock in connection with the applicable Stock Purchase Date.

### **VIII. Repayment; Cessation of Payment**

To the extent that Participant has been paid a distribution and subsequently engages in substantial misconduct to the detriment of the Company, or in the event that previous Serious Misconduct is discovered by the Company, Participant or his Beneficiaries shall within (10) days of receipt of written demand by the Company return to the Company all payments made to him

under this Agreement and Participant or his Beneficiaries shall not have the right to any future payments hereunder.

#### **IX. Liability of the Company**

Nothing in this Agreement shall constitute the creation of a trust fiduciary relationship between the Company and Participant or between the Company and the Beneficiary or any other person. The Company shall not be considered a trustee by reason of this Agreement. Nothing in this Agreement shall be construed as a contract of employment between the Company and Participant, or as a right of Participant to be continued in the employment of the Company, or as a limitation on the right of the Company to discharge Participant, with or without cause.

#### **X. Assignment**

The rights of Participant or any other person to the payment of benefits under the Agreement shall not be assigned, transferred, pledged, encumbered, attached or subject to claims of Participant's creditors, except that Participant may designate a Beneficiary(ies) by completing a Beneficiary Designation Form. Beneficiary(ies) may be changed from time to time at the option of Participant.

#### **XI. Binding Agreement**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs, personal representatives, executors, administrators and legatees.

#### **XII. Amendment or Termination**

Subject to the Board's reservation of rights in Section VII.4, this Agreement may be modified, altered, amended or terminated only by prior written approval and consent of the Board and Participant.

#### **XIII. Withholding and Tax Consequences**

The Payor shall withhold the appropriate payroll and income taxes from any distributions made under this Agreement as required by law. While the Agreement is designed to allow the deferral of Participant's income in compliance with all applicable laws, the Company makes no guarantees or representations to Participant regarding the tax consequences to him, his estate or beneficiary as a result of this Agreement.

#### **XIV. Effect upon Other Plans**

Any payments payable under this Agreement shall not be deemed salary or other compensation to Participant for purposes of any qualified retirement plans maintained by the Company, or for purposes of any other fringe benefit obligations of the Company.

**XV. Claims Submission and Review Procedure**

In the event that any claim for benefits, which must initially be submitted in writing to the Company is denied (in whole or in part) hereunder, Participant shall receive from the Company notice in writing, written in a manner calculated to be understood by Participant, setting forth the specific reasons for denial, with specific reference to pertinent provision of this Agreement. The interpretations and construction hereof by the Company shall be binding and conclusive on all persons and for all purposes. Any disagreements about such interpretations and applications shall be submitted to an Arbitrator subject to the rules and procedures established by the American Arbitration Association. The Arbitrator's authority shall be limited to whether the Company acted arbitrarily and capriciously when it interpreted and applied the terms of the Agreement. Any costs associated with arbitration will be shared equally between the Company and Participant. Arbitration decisions will be final and binding.

**XVI. Miscellaneous**

The expenses and costs in connection with the establishment and operation of the Agreement shall be borne by the Company. This Agreement shall be construed in accordance with and governed by the law of the State of Wisconsin, without reference to the principles of conflicts of law, except as such laws may be superseded by any Federal law.

This document contains all the terms of the understanding between the Company and Participant on its subject matter, and there are no other agreements, representations and/or rights or obligations other than those set forth in this document concerning the subject matter contained in it.

**HOFFMAN YORK**

By: \_\_\_\_\_  
President

\_\_\_\_\_  
Anne Martino

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_