

2017 APR -7 AM 10: 59

SAMPLE TOP HAT NOTICE

March 27, 2017

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

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

2520171110022

FROM: Employer: Kansas Food Bank Warehouse
E.I.N.: 48-0959213
Address: 1919 East Douglas
Wichita, Kansas 67211

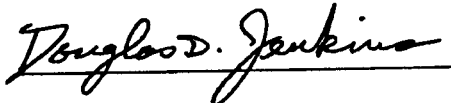
DATE: March 27, 2017

This document constitutes the statement required 29 C.F.R. Section 2520.104-23 to be filed with the Secretary of Labor.

The employer currently maintains one (1) plan primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees. The number of employees participating in the deferred compensation plan is one (1).

If you have any questions, please do not hesitate to contact the undersigned.

Kansas Food Bank
Board Chairman



Douglas D. Jenkins

**KANAS FOOD BANK
WAREHOUSE**

**DEFERRED COMPENSATION
AGREEMENT**

BRIAN WALKER

**KANSAS FOOD BANK WAREHOUSE
DEFERRED COMPENSATION AGREEMENT**

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**KANSAS FOOD BANK WAREHOUSE
DEFERRED COMPENSATION AGREEMENT**

THIS AGREEMENT, made and entered into this 27th day of March, 2017, by and between Kansas Food Bank Warehouse (hereinafter referred to as the "Company") and Brian Walker (hereinafter referred to as "Participant").

WITNESSETH: That:

WHEREAS, Company desires to provide specified unfunded deferred compensation benefits to Participant, and

WHEREAS, the Board of Directors and Participant have reviewed the terms and provisions hereof and found them satisfactory.

NOW, THEREFORE, in consideration of the foregoing premises and mutual covenants of the parties herein contained, it is mutually agreed by and between the parties as follows:

ARTICLE I – DEFINITIONS

Where the following words and phrases appear in this Agreement, they will have the respective meaning as set forth in this Article unless the context clearly indicates to the contrary:

Section 1.01. Beneficiary or Beneficiaries means the person, persons, entity or entities entitled to receive any benefits under this Plan pursuant to the designation of the Participant (or in default of such designation) as provided in Section 3.02 hereof.

Section 1.02. Board of Directors or Board means the Board of Directors of Company.

Section 1.03. Code means the Internal Revenue Code of 1986, as amended.

Section 1.04. Committee means the Board of Directors or a committee appointed by, and serving at the pleasure of, the Board of Directors for purposes of administering the Agreement, which committee will operate under rules and procedures established by the Board of Directors from time to time for such purpose.

Section 1.05. Company means Kansas Food Bank Warehouse and any successor thereto.

Section 1.06. Deferred Compensation Account means the ledger entry established for the Participant under this Agreement, which entry represents the Company's unsecured and unfunded promise to pay the amount of the benefits set forth by such entry in accordance with the terms and provisions of this Agreement.

Section 1.07. Disabled or Disability means the inability to continue in the performance of the usual or substantially similar duties of Participant's employment by reason of a medically determinable physical or mental impairment that is expected to be of a potentially permanent nature. In all cases the Committee will have the right, in its Sole Discretion, to have qualified medical personnel selected by the Committee examine Participant and render an opinion as to Disability. The Committee retains the right to make the final determination, in its Sole Discretion, whether Participant is Disabled. For purposes of this Agreement, the Committee's determination that Participant is or is not Disabled will be binding and conclusive on all parties.

Section 1.08. Sole Discretion means the right and power to decide a matter, which may be exercised arbitrarily.

ARTICLE II – DEFERRED COMPENSATION ACCOUNT

Section 2.01. Deferred Compensation Account. Upon execution of the Agreement, the Participant's Deferred Compensation Account will be credited with \$20,000. Beginning with the 2017 Plan Year and ending with the 2025 Plan Year, if Participant is actively employed on December 28 of the relevant year, the Participant's Deferred Compensation Account will be credited with \$20,000. The Board of Directors, in its Sole Discretion, will have the right, from time to time, to credit Participant's Deferred Compensation Account with such additional amounts as it deems proper.

Section 2.02. Increases and Decreases in Account. In the Committee's Sole Discretion, the Participant's Deferred Compensation Account may be increased or decreased (as appropriate) by an earnings factor. The earnings factor will equal an amount that the Committee determines proper for Participant in its Sole Discretion.

Section 2.03. Statement of Account. The Committee will provide to Participant, at least annually, a statement setting forth the balance of the Participant's Deferred Compensation Account.

ARTICLE III – BENEFITS

Section 3.01. Payment. In the event Participant is actively employed by the Company on December 28, 2025, Participant will be entitled to receive one lump sum cash payment of the amount credited to the Participant's Deferred Compensation Account. Payment will be made to the Participant within ten (10) business days following the date set forth above.

In the event Participant ceases to perform services for the Company due to Disability, Participant will be entitled to receive one lump sum cash payment of the amount credited to the Participant's Deferred Compensation Account within ten (10) business days following the date the Participant is determined to be Disabled.

In the event Participant ceases to perform services for the Company by reason of death, payment of the amount credited to the Participant's Deferred Compensation Account will be payable to the Participant's Beneficiary within ten (10) business days following Participant's death.

Section 3.02. Beneficiary Designations. The Beneficiary of the Participant will be the person, persons, entity, or entities designated by the Participant on a beneficiary designation form provided by the Committee. The Participant will have the right to change his Beneficiary designation at any time; provided, however, that no change of a Beneficiary will be effective until received and accepted by the Committee. All Beneficiary designations, and any amendments and revocations thereto, will be made upon such form or forms and in such manner as the Committee may from time to time direct. In the event Participant dies without having a Beneficiary designation in force, or in the event no named Beneficiary is alive or is in being at that time, all payments due hereunder will be paid to the Participant's surviving spouse, if the Participant leaves a surviving spouse, or to the Participant's estate, if the Participant leaves no surviving spouse.

ARTICLE IV- SOURCE OF BENEFITS

Section 4.01. General. Amounts payable hereunder will be paid exclusively from the general assets of the Company. The Company's obligation under this Agreement will constitute a mere promise to pay benefits in the future, and no person entitled to payment hereunder will have any claim, right, security interest, or other interest in any fund, trust, account, insurance contract, or other asset of the Company. The Company is not obligated to invest in any specific assets or fund, but it may invest in any asset or assets it deems advisable in order to provide a means for the payment of any liabilities under this Agreement. The Participant will be an unsecured general creditor of the Company and will have no interest whatsoever in any such assets or fund. The Company's liability for the payment of benefits hereunder is evidenced only by this Agreement.

ARTICLE V - ADMINISTRATION

Section 5.01. Administration. The administration of this Agreement will be under the supervision of Committee. The Committee will have full power to administer this Agreement in all of its details. For this purpose, the Committee's powers include, but are not limited to, the authority, in addition to all other powers provided by this Agreement, to:

- A. Make discretionary interpretations regarding the terms of this Agreement and to make any factual findings with respect to any issue arising under this Agreement, with its interpretations to be final and conclusive on all persons claiming benefits under this Agreement;
- B. Compute the amounts payable to the Participant in accordance with the provisions of this Agreement;

- C.. Make and enforce such rules and regulations as it deems necessary or proper for the efficient administration of this Agreement;
- D. Appoint such agents, specialists, legal counsel, accountants, consultants, or other persons as the Company deems advisable to assist it in administering this Agreement; and
- E. Allocate and delegate its responsibilities under this Agreement and designate other persons to carry out any of its responsibilities under this Agreement.

Section 5.02. Reliance. In administering this Agreement, the Company, its Board and the Committee will be entitled to rely conclusively on all opinions and reports which are furnished by agents, specialists, legal counsel, accountants, consultants or other persons with whom they may contract for specific services or advice. Such legal counsel may be counsel for the Company.

ARTICLE VI – RESTRICTION ON ALIENATION

Section 6.01. General. Until the actual receipt of any benefit under this Agreement by Participant or a Beneficiary, no right or benefit under the Agreement shall be subject in any manner to anticipation, alienation, sale, assignment, transfer, pledge, encumbrance, garnishment, execution, levy, or charge of any kind, whether voluntary or involuntary, including assignment or transfer to satisfy any liability for alimony or other payments for property settlement or support of a spouse or former spouse or other relative of Participant or a Beneficiary, whether upon divorce, legal separation, or otherwise. Any attempt to anticipate, alienate, sell, assign, transfer, pledge, encumber, garnish, execute upon, levy upon, or charge any right or benefit under the Agreement shall be void. No right or benefit hereunder shall in any manner be liable for or subject to the debts, contracts, liabilities, engagements, or torts of the person entitled to such benefit, and no right or benefit hereunder shall be considered an asset of such person in the event of his or her divorce, insolvency, or bankruptcy. To the extent permitted by law, the rights of Participant or a Beneficiary hereunder shall not be subject in any manner to attachment or other legal process for the debts of Participant or such Beneficiary.

ARTICLE VII – CLAIMS PROCEDURES

Section 7.01. Participant Claim. All claims for or relating to benefits whether made by a Participant or other person must be in writing addressed and delivered to the Committee, at the Committee's main office, and such claim must contain the claimant's name, mailing address, and telephone number, if any, and shall identify the claim in a manner reasonably calculated to make the claim understandable to the Committee.

Section 7.02. Claims Review. If a claim is wholly or partially denied, the Committee shall within a reasonable period of time, not to exceed 90 days (45 days in the case of a claim

involving disability benefits), notify the claimant in writing of any adverse benefit determination, unless the Committee determines that special circumstances require an extension of time for processing the claim. If the Committee determines that an extension of time for processing the claim is necessary, written notice of the same will be provided to the claimant prior to the expiration of the 90-day period (45-day period in the case of a claim involving disability benefits), and will indicate the special circumstances which require the extension of time and the date by which the Committee expects to render the determination. The extension of time shall not exceed a 90-day period of time (30-day period in the case of a claim involving disability benefits), beginning at the end of the initial 90-day period (45-day period in the case of a claim involving disability benefits). In case of a disability claim, the Committee may determine that due to matters beyond the control of the Company that a second 30-day extension is necessary. In such case, the Committee will notify the claimant before the expiration of the first 30-day extension period of the circumstances requiring the extension and the date by which a decision is expected to be rendered. In the case of a disability notice of extension, the notice must explain the standards on which entitlement to a benefit is based, the unresolved issues that prevent a decision, the additional information needed to resolve the issue, and that the claimant has at least 45 days to provide the specified information. The Committee's notice will be written in a manner calculated to be understood by the claimant and will set forth:

- A. The specific reason or reasons for the denial;
- B. Specific reference to pertinent Agreement provisions on which the denial is based;
- C. A description of any additional material or information necessary for the claimant to perfect the claim, together with an explanation of why such material or information is necessary; and
- D. An explanation of the claim review procedure set forth in Sections 7.03 and 7.04 below (including a statement of the claimant's right to bring a civil action under ERISA Section 502(a) following an adverse benefit determination).

Section 7.03. Appeal of Claim Denial. A claimant or the claimant's duly authorized representative will have 60 days within which to appeal an adverse benefit determination to the Committee. During the pendency of the review, the following provisions will apply:

- A. The claimant will have the opportunity to submit written comments, documents, records and other information relating to the claim to the Committee; and
- B. The claimant will be provided, upon request and free of charge, reasonable access to and copies of, all documents, records and other relevant information relating to the claim for benefits.

Section 7.04. Review on Appeal. A decision on review will be rendered within a reasonable period of time, not to exceed 60 days after the claimant's request for review, unless the Committee determines that special circumstances require an extension of time for processing

the appeal. If the Committee determines that an extension of time for processing the appeal is necessary, written notice of the extension will be furnished to the claimant prior to the expiration of the 60-day period, and will indicate the special circumstances requiring the extension and the date by which the Committee expects to render the determination. The extension of time will not exceed a 60-day period of time beginning at the end of the initial 60-day period. For purposes of this Section 7.04, in the case of a claim involving disability benefits, 45 days will apply instead of 60 days. The Committee's decision on review will be communicated in writing to the claimant and, if adverse, will take into account all comments, documents, records and other information submitted by the claimant (without regard to whether such information was submitted or considered in the initial benefit determination). The decision on review will be in a written manner calculated to be understood by the claimant and will set forth the following:

- A. The specific reason or reasons for the adverse determination;
- B. Specific reference to pertinent plan provisions on which the benefit determination is based;
- C. A statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits; and
- D. A statement of the claimant's right to bring an action under ERISA Section 502(a).

Section 7.05. Litigation of Claim. Prior to initiating legal action concerning a claim in any court, state or federal, against the Company, any trust used in conjunction with this Agreement, the Company, or the Committee, a claimant must first exhaust the administrative remedies provided in this Article VII. Failure to exhaust the administrative remedies provided for in this Article VII shall be a bar to any civil action concerning a claim for benefits under the Agreement.

ARTICLE VIII – AMENDMENT AND TERMINATION

Section 8.01. Right to Amend. This Agreement may be amended at will and at any time and from time to time by the Board of Directors, in its Sole Discretion, provided, that no amendment will reduce the amount that Participant is then entitled to receive without the consent of the Participant (or present interest Beneficiary), provided, further, that the Board of Directors will have the right to amend this Agreement, at will, at any time, in its Sole Discretion without the consent of Participant (or any Beneficiary) to comply with applicable law, which will include, but will not be limited to, the right to retroactively apply any amendments necessary to keep this Plan an unfunded employee benefit plan described in Sections 201(2), 301(a)(3), and 401(a)(1) of ERISA or to comply with Section 409A of the Code or any other applicable provision of the Code or ERISA or any judicial or administrative guidance or other law.

Section 8.02. Termination of Agreement. The Company has established this Agreement with the bona fide intention and expectation that it will be continued indefinitely, but the Company will have no obligation whatsoever to maintain this Agreement for any given length of time and may at will, and at any time, discontinue or terminate this Agreement in whole or in part.

Section 8.03. Termination Procedures. The Board of Directors will have the right to terminate this Agreement at any time in its Sole Discretion. Upon termination of this Agreement, the Company will give notice of the same to Participant (or present interest Beneficiary), the Committee, and any other affected person. Upon termination of this Agreement, the value of the Participant's benefits will be frozen and Participant will be entitled to receive benefits at the time and in the manner determined under Article III.

ARTICLE IX – MISCELLANEOUS

Section 9.01. No Guarantee of Interests. Neither Company, Committee nor the Board of Directors guarantees the payment of any amounts that may be or become due to Participant under this Agreement. The liability to make any payment under this Agreement is limited to the then available assets of Company.

Section 9.02. Company Records. Records of Company as to the Participant's performance of services for the Company and termination of such services will be conclusive on all persons.

Section 9.03. Evidence. Evidence required of anyone under this Agreement may be by certificate, affidavit, document, or other information which the person or entity acting on it considers pertinent and reliable, and signed, made, or presented by the proper party or parties.

Section 9.04. Notice. Any notice which must be or may be given under this Agreement will be deemed given when delivered or when placed in the United States mail, postage prepaid, in an envelope addressed to the last address of the person to whom the notice is being given which was communicated in writing to the person giving such notice.

Section 9.05. Change of Address. Any party may, from time to time, change the address to which notices will be mailed by giving written notice of such new address.

Section 9.06. Effect of Provisions. The provisions of this Agreement will be binding upon Company and its successors and assigns, and upon the Participant, his heirs, executors, trustees, and administrators.

Section 9.07. Erroneous Payments. If any person receives any amount of benefits that the Committee, in its Sole Discretion, later determines that such person was not entitled to receive under the terms of this Agreement, such person will be required to immediately make reimbursement to Company.

Section 9.08. Action by Company. Whenever the Company under the terms of this Agreement is permitted or required to do or perform any act or matter or thing, it will be authorized by the Company's governing board or body or performed by an officer or other delegate thereunto duly authorized by such board or body.

Section 9.09. Headings. The titles and heading of Articles and Sections are included for convenience of reference only and are not to be considered in the construction of the provisions of this Agreement.

Section 9.10. Certain Limitations. In the event Company is subject to legal limitations on the payment of benefits, then benefit payments hereunder will be reduced or eliminated, as the case may be, to comply with such legal limitations.

Section 9.11. Governing Law. All questions arising with respect to this Agreement will be determined by reference to the laws of the State of Kansas to the extent such laws are not preempted by the laws of the United States of America.

Section 9.12. Payments Net of Withholding and Other Amounts. All payments under this Agreement will be net of any amount sufficient to satisfy all federal, state, and local withholding tax requirements.

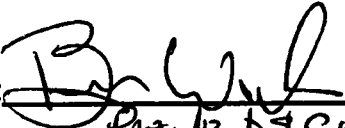
Section 9.13. Severability Clause. If any provision of this Agreement is held to be invalid or unenforceable, this determination will not affect the validity of this Agreement or the other provisions of this Agreement. In such event, this Agreement will be construed as if such provision had not been included therein; provided, that, nothing shall increase the Company's liability for payment of benefits in any amount beyond the amount specified in this Agreement.

Section 9.14. No Contract of Employment. Nothing contained herein will be construed to constitute a contract of employment or services between the Company and the Participant. Further, nothing herein contained will be deemed to give Participant the right to be retained by the Company or to interfere with the right of the Company to discharge or terminate any relationship that the Company may have with the Participant at any time without regard to the effect such discharge might have on the Participant under this Agreement.

Section 9.15. No Acceleration. Except as otherwise permitted by law, no interpretation, modification, alteration, amendment, or complete or partial termination of the Plan or any provision of the Plan will cause or permit acceleration of the time or schedule of any payment under the Plan.

IN WITNESS WHEREOF, this Agreement is executed as of this 27 day of MARCH, 2017.

Kansas Food Bank Warehouse

By: 
Its President & CEO

By: Douglas D. Jenkins
Board Chairman

**KANSAS FOOD BANK WAREHOUSE
DEFERRED COMPENSATION AGREEMENT
BENEFICIARY DESIGNATION**

Pursuant to Section 3.02 of the Kansas Food Bank Warehouse Deferred Compensation Agreement, I hereby designate the following individual(s) or entity(ies) to be my Beneficiary(ies).

PRIMARY BENEFICIARY(IES).

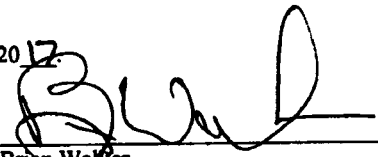
<u>Name and Address</u>	<u>Relationship to Employee</u>	<u>Percentage of Benefits</u>
1. <u>BARBARA WALKER</u> <u>34 REGAL CRESSENT PO216</u> <u>North Newton KS 67117</u>	<u>WIFE</u>	<u>100%</u>
2. _____ _____ _____	_____	_____
3. _____ _____ _____	_____	_____

CONTINGENT BENEFICIARY(IES). If the Primary Beneficiary(ies) dies (or otherwise ceases to exist) before my death, the following shall be my Beneficiary(ies):

<u>Name and Address</u>	<u>Relationship to Employee</u>	<u>Percentage of Benefits</u>
1. <u>ANDREW WALKER</u> <u>34 REGAL CRESSENT PO216</u> <u>North Newton KS 67117</u>	<u>SON</u>	<u>50%</u>
2. <u>GRANT WALKER</u> <u>34 REGAL CRESSENT PO216</u> <u>North Newton KS</u>	<u>SON</u>	<u>50%</u>
3. _____ _____ _____	_____	_____

If more than one primary beneficiary or contingent beneficiary is named, each beneficiary will share equally in the benefits to be paid under the plan, unless I have indicated otherwise by specifying the percentage of plan benefits to be received by each beneficiary. If more than one multiple primary or contingent beneficiary dies (or ceases to exist) prior to my death, the percentage that would have been received by that beneficiary shall be divided among the surviving primary or contingent beneficiary(ies), as the case may be, in proportion to the percentages denominated to each surviving beneficiary unless I elect otherwise. This designation can be revoked at any time prior to my death by submitting to the Committee a change of beneficiary on such forms provided by the Committee.

DATED this 27 day of MARCH, 2017.



Brian Walker

Accepted by the Committee on this 27th day of March, 2017.



On behalf of the Committee

Kansas Food Bank Warehouse (ATTN: Doug Jenkins)
1919 E. Douglas
Wichita, KS 67211

CERTIFIED MAIL



7016 0600 0000 6142 8131

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