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January 18, 2024

Via Certified Mail - Return Receipt Requested

U.S. Department of Labor
Employee Benefits Security Administration
Top Hat Plan Exemption
200 Constitution Avenue, N.W. - N-1513
Washington, D.C. 20210

2520240610005

Re: Keplinger Freeman Landscape Architects, PLLC
EIN ~~60-002107~~
60-0002107

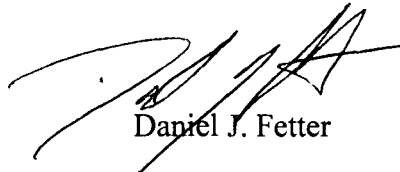
Dear Sir/Madam:

Enclosed please find the executed Top Hat Plan Exemption Letter for the Deferred Compensation Agreement with Vincent Ryan for the above-referenced entity. Please file the enclosed Letter, and return a time-stamped copy of each to me in the enclosed self-addressed, postage paid envelope.

If you have any questions, please do not hesitate to contact me

Very truly yours,

SCOLARO FETTER GRIZANTI & McGOUGH, P.C.



Daniel J. Fetter

DJF/MCD:866093.1
Enclosures

KEPLINGER FREEMAN LANDSCAPE ARCHITECTS, PLLC

December 31, 2023

CERTIFIED MAIL -RETURN RECEIPT REQUESTED

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

Gentlemen:

To comply with the alternative reporting and disclosure method provided under Labor Regulations §2520.104-23, this is to inform you of the adoption of certain plans maintained primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees.

The name and address of the Employer maintaining the plan(s) is:

KEPLINGER FREEMAN LANDSCAPE ARCHITECTS, PLLC
6320 Fly Road, Suite 109
East Syracuse, New York 13057

The Employer's EIN is: 60-0002107

The number of employees participating in the plan is: 1

<u>Plan Name</u>	<u>Number of Participants</u>
Deferred Compensation Agreement for Vincent Ryan	1

Very truly yours,

KEPLINGER FREEMAN LANDSCAPE ARCHITECTS, PLLC

By: Scott Freeman
Scott Freeman (Jan 4, 2024 16:15 EST)
Scott Freeman, Member

be rendered as soon as possible, but not later than one hundred twenty (120) days after receipt of the request of review. If such an extension of time for review is required, written notice of the extension shall be furnished to Employee prior to the commencement of the extension. The decision on review shall be in writing, shall be written in a manner calculated to be understood by Employee, and shall include specific reasons for the decision and specific references to the pertinent provisions of this Agreement upon which the decision is based.

12. Amendment; Termination.

(a) **Amendment.** This Agreement may be modified or amended only in writing by mutual agreement of the parties hereto.

(b) **Termination by Mutual Agreement.** This Agreement may be terminated by mutual agreement of the parties hereto.

(c) **Termination by Company.** This Agreement may be terminated in the discretion of the Company upon any of the following events:

(i) the dissolution of the Company with approval of a bankruptcy court pursuant to the provisions of 11 U.S.C. 503(b)(1)(A);

(ii) the concurrent termination of all arrangements with Employee and all other employees of the Company that are similar to the arrangement under this Agreement in accordance with the conditions set out in Treasury Regulations promulgated under Code Section 409A that permit acceleration of payment of benefits upon termination of deferred compensation arrangements; and/or

(iii) such other events, and subject to such conditions, as prescribed by Treasury Regulations promulgated under Code Section 409A.

(d) **Automatic Termination.** This Agreement shall automatically terminate upon the Employee's forfeiture of the Benefit pursuant to the terms of Paragraph 2(c) above.

13. Severability. In the event this Agreement is determined by the Internal Revenue Service to be ineffective with regard to the deferral set forth herein, and such determination is administratively finalized, those amounts which would be treated as taxable income at the time of such final determination shall be paid to Employee or his designated beneficiary or estate.

14. **Withholding.** The Company shall be entitled to reduce any payment to be made pursuant to this Agreement by an amount which the Company deems necessary to comply with any federal or state withholding requirements.

15. **Nature of the Benefit.** It is the specific intent of the parties to this Agreement that the Benefit provided under this Agreement is pursuant to a plan which is unfunded and is maintained by the Company primarily for the purpose of providing a deferred compensation benefit for a key executive of the Company within the meaning of various sections of the Employee Retirement Income Security Act of 1974, which exempts from Title I thereof unfunded plans maintained by employers primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees.

16. **Headings.** The section and clause headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

17. **Terms.** Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular, and plural, as the identity of the Person may in the context require.

18. **Legal Counsel.** *The law firm of Scolaro Fetter Grizanti & McGough, P.C. has drafted this Agreement on behalf of Company. Employee hereby expressly acknowledges that he has been advised that he has not been represented by Scolaro Fetter Grizanti & McGough, P.C. in this matter and has been advised and urged to seek separate legal counsel for advice in this matter.*

19. **Entire Agreement.** This Agreement represents the entire agreement between the parties with respect to the subject matter set forth herein and this Agreement specifically supersedes any prior agreement or understanding between the parties which may have been adopted and in force prior to the date hereof.

20. **Counterparts.** For convenience of the parties, this Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year first written above.

COMPANY:

**KEPLINGER FREEMAN LANDSCAPE ARCHITECTS,
PLLC**

By: Scott Freeman
Scott Freeman (Jan 4, 2024 16:15 EST)
Name: Scott Freeman
Title: Partner

EMPLOYEE:

Vincent E. Ryan
Vincent E. Ryan (Jan 12, 2024 13:35 EST)
NAME: **Vincent Ryan**

DEFERRED COMPENSATION AGREEMENT
(with Vincent Ryan)

THIS DEFERRED COMPENSATION AGREEMENT ("Agreement") is made effective as of the 31st day of December, 2023, by and among **KEPLINGER FREEMAN LANDSCAPE ARCHITECTS, PLLC**, a New York professional limited liability company ("**Company**") and **VINCENT RYAN**, an individual residing at 119 Hampton Rd., Syracuse, New York 13203 ("**Employee**").

RECITALS

WHEREAS, Employee has been employed by the Company for a number of years and during such period has performed expeditiously and efficiently substantial services on behalf of the Company; and

WHEREAS, the Company is desirous of retaining the continued services of Employee, and Employee is willing to continue in such employ, provided the Company provides adequate compensation and reasonable benefits during the continued term of his employment and such other benefits as are hereinafter described.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the sum of One Dollar (\$1.00) each to the other in hand paid, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

TERMS

1. **Employment.** As an employee of the Company, Employee shall serve the Company in such capacities and exercise the duties, discharge the responsibilities and obligations and perform such services as the Company shall, from time to time, determine. During the time Employee is employed, Employee shall devote sufficient time and attention to such duties and responsibilities of employment and such employment shall be exclusively for the benefit of the Company. The services contemplated herein to be performed by Employee shall be performed faithfully, diligently and to the best of Employee's ability.

2. **Deferred Compensation Benefit.**

(a) **Amount of Deferred Compensation Benefit.** The amount of the deferred compensation benefit(s) shall be the amount(s) determined in accordance **Exhibit A**

attached hereto and made a part hereof (such deferred compensation benefits may be hereinafter referred to collectively as the "**Benefit**").

(b) **Payment of the Benefit.** Subject to the terms set forth in **Exhibit A**, the Benefit shall be paid to Employee in accordance with the terms set forth on **Exhibit A** attached hereto and made a part hereof. For purposes of this Agreement, the "**Triggering Event**" shall be defined as the closing of the transactions contemplated in those certain Membership Unit Purchase Agreements by and between Employee, Company and certain other individuals, dated of even date herewith ("**Purchase Agreements**"), at which time payments will be made as provided in **Exhibit A**.

(c) **Forfeiture of Benefit.** Notwithstanding anything to the contrary set forth herein, upon Employee's separation from the Company for any reason prior to the Triggering Event or in the event the transactions contemplated in the Purchase Agreements fail to close for any reason, this Agreement shall terminate and all of Employee's rights to the Benefit payable hereunder shall immediately terminate and shall never become due or payable.

3. **Acceleration Prohibited.** Except as expressly provided under this Agreement and under Treasury Regulations promulgated under Code Section 409A, the acceleration of the time or schedule of any payment due under this Agreement is prohibited.

4. **Administration.**

(a) **Administrator.** The Members of the Company (the "**Members**") may appoint a committee to administer this Agreement, but in the absence of such appointment, the Members shall administer this Agreement. The committee or the Members, whichever the case may be, shall be referred to herein as the "Administrator" and shall be the "administrator" as that term is defined in Section 3 (15) of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"). The Administrator shall be responsible for the general operation and administration of this Agreement and for carrying out the provisions herein. The Administrator may delegate to others certain aspects of the management and operational responsibilities of this Agreement including the employment of advisors and the delegation of ministerial duties to qualified individuals, provided that such delegation is in writing.

(b) **Administrator Powers and Duties.** The Administrator shall have all powers necessary or appropriate to enable it to carry out its administrative duties including, but not limited to, the duty and power to interpret this Agreement and determine all questions that may arise hereunder as to the status and rights of Employee and beneficiaries. All final decisions by the Administrator shall be binding upon and conclusive as to all parties concerned. The Administrator shall have absolute, exclusive, total, and complete discretion in carrying out its

duties, and no decision shall be modified or overturned upon judicial review unless it was arbitrary or capricious. No member of the committee or Members shall be personally liable for any actions taken or not taken by the Administrator unless the member's action involves gross negligence or willful misconduct.

(c) **Costs of Administration.** The costs of administering this Agreement shall be borne by the Company.

(d) **Indemnification.** The Company shall indemnify the agents, officers and employees of the Company, the members of the committee or the Members, as the case may be, against any and all claims, losses, damages and expenses, including attorneys' fees, reasonably incurred by them, and any liability, including any amounts paid in settlement (with the Company's written approval), arising from their action or failure to act in connection with the administration of this Agreement, except when the same is judicially determined to be attributable to their gross negligence or willful misconduct.

5. **Non-Alienation of Benefits.**

(a) **Non-Assignment; Non-Alienation.** Except as provided herein, no right or benefit under this Agreement shall be subject in any manner to alienation by anticipation, sale, transfer, assignment, bankruptcy, pledge, attachment, charge, or encumbrance of any kind, nor in any manner be subject to the debts or liabilities of any person, except to the extent such debt or liability arises by reason of a fraud, embezzlement or other felonious action against or which damages the Company. Any attempt to so alienate or subject any such right or benefit in violation of the foregoing, whether or not such benefit is currently payable, shall be void. If any person shall or attempt to alienate, sell, transfer, assign, pledge, attach, charge or otherwise encumber any amount payable under this Agreement, or any part herein, or if by reason of his bankruptcy or other event happening at any time such amounts would be made subject to his debts or liabilities or would otherwise not be enjoyed by him in violation of the foregoing, then the Company, in its sole discretion, may direct that such amount be withheld and the same or any part thereof be paid or applied to or for the benefit of such person, his spouse, children or other dependents, or any of them in such manner and proportion as the Company may deem proper.

(b) **Payment to Alternate Payee.** Notwithstanding the prohibitions contained in subparagraph (a), all or a portion of the Benefit shall be paid to one or more Alternate Payees (as defined below) in accordance with the terms of a Qualified Domestic Relations Order (defined below).

(i) **Initial Notice.** Within thirty (30) days following receipt of any Domestic Relations Order (defined below), or within such other time period as may be

prescribed by Treasury Regulations, the Administrator shall notify Employee and each Alternate Payee in writing of its receipt and shall set forth the Administrator's procedures as outlined below for determining if such order is qualified under Code Section 414(p)(1)(A).

(ii) **Determination Notice.** Within ninety (90) days following the Administrator's initial notice described in subparagraph (b)(i) above, the Administrator shall notify Employee and each Alternate Payee in writing of its determination whether the proposed order is qualified. If the order is denied qualified status, the Administrator shall list the specific reasons therefor. Whether or not the order is determined to be qualified, the Administrator shall notify Employee and each Alternate Payee of their right to appeal such determination within sixty (60) days after receipt of the determination, and that failure to appeal such determination in writing within the sixty (60)-day period will render such determination final, binding, and conclusive. The Administrator's notice shall identify the name of the Administrator and the address to which appeal is to be forwarded.

(iii) **Appeal.** If Employee or Alternate Payee should appeal the Administrator's decision, he or his duly authorized representative may submit in writing all pertinent issues and comments and may review pertinent documents. The Administrator shall re-examine all facts related to the appeal and make a final determination as to whether the initial determination is justified under the circumstances. The Administrator shall notify the appellant of the Administrator's decision within such time period as provided in rules adopted by the Administrator.

(iv) **Authorized Representative.** An Alternate Payee may designate an authorized representative to receive copies of all notices with respect to the payment of benefits or claim for such payment under a Domestic Relations Order. The Alternate Payee shall notify the Administrator of such designation in writing, which shall be effective upon its receipt by the Administrator.

(v) **Separate Accounting.** Upon receipt of a Domestic Relations Order, the Administrator shall separately account for any amount payable to the Alternate Payee(s) named in such Domestic Relations Order for a period of eighteen (18) months or upon a determination during such period of the order's qualified status. If during such eighteen (18) month period the order is determined to be qualified, the Administrator shall pay the separately accounted for amount to the persons entitled to receive it.

(vi) **Definitions.**

(A) "**Qualified Domestic Relations Order**" shall mean a domestic relations order that meets the requirements of Code Section 414(p).

(B) "**Domestic Relations Order**" shall mean any judgment, decree or order, including approval of a property settlement agreement, which relates to the provision of child support, alimony payments, or marital property rights of a spouse, former spouse, child or other dependent of Employee, and which is made pursuant to a state domestic relations law (including community property law).

(C) "**Alternate Payee**" shall mean a spouse, former spouse, child or other dependent of Employee who is recognized by a Domestic Relations Order as entitled to receive all or a portion of the benefits payable with respect to Employee.

(vii) **Payment.** Payment to an Alternate Payee under a Qualified Domestic Relations Order shall be limited to concurrent payment with any portion of the Benefit payable to Employee, and if there remains no benefit payable to Employee hereunder after considering the terms of the Qualified Domestic Relations Order, payment shall only be made at such times as Employee would have been entitled to payment hereunder had there been no Qualified Domestic Relations Order.

6. **Unsecured Creditor.** Nothing contained in this Agreement and no action taken pursuant to the provisions of this Agreement shall create or be construed to create a trust of any kind, or a fiduciary relationship between the Company and Employee, or estate or any other person, nor shall Employee or estate have any preferred claim on, any title to, or any beneficial interest in, the assets of the Company or the payments deferred hereunder prior to the time the Benefit is actually paid pursuant to the terms hereof. Employee shall have no interest in any fund or in any specific assets of the Company by reason of this Agreement. To the extent that any person acquires a right to the Benefit under this Agreement, such right shall be no greater than the right of any unsecured general creditor of the Company.

7. **Subordination.** Employee covenants and agrees, for himself, his successors and assigns, that the payment of the Benefit is expressly subordinate and junior in right of payment to the prior payment in full, whether at maturity, of: (a) all obligations of the Company for the payment of money borrowed from any bank, insurance company (as the Company's primary lender) or other institutional lender in the ordinary course of business, which contains a specific provision that such indebtedness is senior and which lender has provided prior written notification that such indebtedness is senior ("**Senior Obligations**"); (b) all amendments, modifications, renewals, extensions, replacements and refundings of any Senior Obligation(s);

and, (c) that payment of the Benefit may be delayed, or frozen in the event payment is being made, so long as Senior Obligations exist (in which event all payments that have been delayed or frozen shall be made in the first calendar year in which the Company reasonably determines that the payments will not cause a default under the Senior Obligations).

8. **No Employment Contract.** This Agreement shall not be deemed to constitute a contract of employment between the parties hereto, nor shall any provision herein restrict the right of the Company to terminate the services of Employee.

9. **Construction; Governing Law.**

(a) **Construction.** The provisions of this Agreement shall be construed after taking into account the intentions of the parties as follows:

(i) that this Agreement is an unfunded arrangement maintained by the Company primarily for the purpose of providing deferred compensation for a key executive within the Company's management group and is, therefore, exempt from most of the parts of Title I of ERISA; and

(ii) that this Agreement satisfies the requirements set out in Code Section 409A and Treasury Regulations promulgated thereunder for the effective deferral of compensation for income tax purposes.

(b) **Governing Law.** This Agreement shall be governed by the laws of the State of New York except to the extent such laws are superseded by federal law.

10. **Satisfaction of Claim.** Employee agrees that his rights and interests, and rights and interests of any persons taking under or through him, will be completely satisfied upon compliance by the Company with the provisions of this Agreement.

11. **Claims Procedure.**

(a) **Determination Period.** Employee, if seeking payment of any benefit hereunder, must submit a written request to the Company. If a claim for benefits is wholly or partially denied, notice of the denial, prepared in accordance with subparagraph (b) below, shall be furnished to Employee within a reasonable period of time, not to exceed ninety (90) days, after receipt of the request by the Company ("**Determination Period**"), unless special circumstances require an extension of time for processing the request. If such an extension of time is required, written notice of the extension shall be furnished to Employee prior to the termination of the initial Determination Period. In no event shall such extension exceed a period

of ninety (90) days from the end of the initial Determination Period. Each extension notice shall indicate the special circumstances requiring an extension of time and the date on which the Company expects to render a decision.

(b) **Determination Procedure.** The Company shall provide Employee whose request for benefits is denied a written notice setting forth, in a manner calculated to be understood by Employee, the following:

- (i) the specific reason(s) for the denial;
- (ii) specific references to the pertinent provisions of this Agreement upon which the denial is based;
- (iii) a description of any additional material or information necessary for Employee to perfect the request and an explanation of why such material or information is necessary;
- (iv) an explanation of the review procedure as set forth in subparagraphs (c) and (d) below, and a statement of Employee's right to bring a civil action in a court of law after final administrative review; and
- (v) if an internal rule, guideline, protocol or other similar criterion was relied on in making the determination, either (A) a recitation of such rule, guideline, protocol or other similar criterion, or (B) a statement that such criterion was relied upon and that a copy of it will be provided free of charge to Employee upon request.

(c) **Review of Determination.** The purpose of the review procedure set forth in this subparagraph and subparagraph (d) is to provide a procedure by which Employee may have a reasonable opportunity to appeal to the Company a denial of a request for benefits. To accomplish this purpose, Employee (or Employee's duly authorized representative) may (i) review pertinent documents and records; and (ii) submit issues, documents, records and comments in writing. Employee (or Employee's duly authorized representative) may request a review by filing a written request for review with the Company at any time within sixty (60) days after receipt by Employee of written notice of the denial of Employee's request for benefits.

(d) **Members Determination.** A decision on review of a denied request for benefits shall be made by the Members, after taking into account all comments, documents, records and other pertinent information regardless of when submitted. They shall make a decision promptly, but not later than sixty (60) days after receipt of the request for review, unless special circumstances require an extension of time for processing, in which case a decision shall

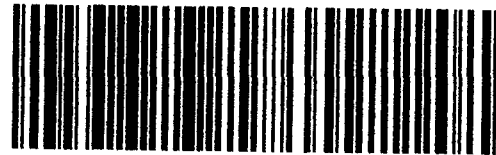
EXHIBIT A

BENEFIT

The amount of the Benefit payable to Employee pursuant to the terms of this Agreement shall be as follows:

During the term of this Agreement, the Company shall contribute Ten Thousand and 00/100 Dollars (\$10,000.00) per year for a period of four (4) years into an investment vehicle offered through Avantax Investment Services. In connection with the closing of the transactions contemplated in the Purchase Agreements, the Company shall pay to Employee a deferred compensation benefit equal to the accumulated value of the investment described herein as of closing date set forth in the Purchase Agreements, which amount shall be paid in accordance with the historical payment of wages for the Employee while employed by the Company.

SCOLARO FETTER GRIZANTI & MCGOUGH
ATTORNEYS AND COUNSELORS AT LAW
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SYRACUSE, NEW YORK 13204



9489 0090 0027 6549 1602 01

Label 880-PB, Oct. 2015
Pitney Bowes

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