**[YOUR ENTITY NAME]**

**Phantom Stock Agreement**

This Phantom Stock Agreement (this “***Agreement***”) is made this [**DAY]**th of [**MONTH]** 201[**YEAR]** (the “***Award Date***”) by and between **[YOUR ENTITY NAME]**, a **[YOUR ENTITY STATE FORMATION] [corporation/LLC]** with a mailing address of **[YOUR ENTITY FULL ADDRESS]**, and **[SELLER ENTITY NAME]**, an **[individual/company]** with a mailing address of **[SELLER ENTITY ADDRESS]** (“***Recipient***”).

WHEREAS Recipient is an independent contractor providing services for the Corporation; and

WHEREAS, in order to reward Recipient for his contribution to the Corporation’s financial success and to incentivize Recipient to continue to provide services for the Corporation, the Corporation wishes to grant to Recipient, and Recipient wishes to accept from the Corporation, the Phantom Stock (as defined below), all on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual agreements and covenants hereinafter set forth, the Corporation and Recipient hereby agree as follows:

# Grant of Award.

## Effective as of the Award Date, the Corporation awards to Recipient [**WRITTEN COUNT]** ([**SHARE COUNT**]) shares of phantom stock(the “***Phantom Stock***”). As of the Award Date the Phantom Stock represents [**DATE]** percent (**[EQUITY %]** %) of the outstanding common stock of the Corporation, and each share of Phantom Stock is intended to be the equivalent of one share of the Corporation’s common stock. Phantom Shares shall be subject to dilution or other adjustment on the same terms and to the same extent as are shares of the Corporation’s common stock.

## The Phantom Stock represents the right to receive, subject to Section 2, a compensatory payment in cash equal to the value of an equivalent number of shares of the common stock of the Corporation as provided in this Agreement. The Phantom Stock will not be credited with, nor be entitled to any dividends, to the extent dividends are declared or paid, on the common stock of the Corporation.

## Upon termination of Recipient’s engagement to provide services to the Corporation (a) by reason of his termination of such engagement for any reason, or (b) by the Corporation for “Cause” (as defined below), Recipient shall immediately forfeit all of the Phantom Stock without payment.

## “***Change of Control***” shall mean consummation of (a) a transaction or series of related transactions in which a person, or a group of related persons, acquires from stockholders of the Corporation shares representing more than fifty percent (50%) of the outstanding voting power of the Corporation, or (b) the sale of all or substantially all of the assets of the Corporation.

## “***Cause***” shall mean “Recipient’s breach of the provisions of Exhibit B (“Covenant”).

# Payment on Phantom Stock.

## Upon a Change in Control all Phantom Stock and all rights with respect thereto, shall expire, and Recipient shall be entitled to a compensatory payment with respect to the vested Phantom Stock to be paid by the Corporation within 14 days after the Change of Control, in accordance with the following:

### Subject to Section 2.1.2, the compensatory payment shall be paid in cash and shall be equal to the number of shares of vested Phantom Stock multiplied by the “Change of Control Value.” The “***Change of Control Value***” shall be equal to whichever of the following is applicable to the Change of Control:

##### the per share price of common stock of the Corporation received by the common stockholders of the Corporation in any sale, merger, consolidation or other reorganization,

##### the price per share of common stock of the Corporation received by the common stockholders of the Corporation in any tender offer or exchange offer whereby a Change of Control takes place, or

##### the price per share of common stock of the Corporation to be received by the common stockholders of the Corporation upon the liquidation of the Corporation following a sale of all or substantially all of the assets of the Corporation.

### In the event that the consideration to be paid to common stockholders of the Corporation in any transaction described in Section 2.1.1 is not solely cash, and/or is deferred or contingent and/or unable to be determined at the time of the Change of Control (“***Non-Cash Consideration***”), the Board of Directors of the Corporation in its discretion (i) may cause payment of the Non-Cash Consideration to be made to Recipient in a currently taxable promissory note of the Corporation (or of the acquirer of the Corporation’s common stock if the Corporation ceases to exist following the Change of Control), in an amount which, in the reasonable judgment of the Board of Directors of the Corporation, represents the likely cash value of the Non-Cash Consideration, (ii) may cause a cash payment of the Non-Cash Consideration to be made to Recipient in an amount, in the reasonable judgment of the Board of Directors of the Corporation, which represents the likely cash value of the Non-Cash Consideration, or (iii) to the extent such Non-Cash Consideration is deferred or contingent, may cause payment to Recipient to be deferred to a date or dates coterminous with the receipt by the Corporation or the common stockholders of the Corporation, as applicable, of such deferred or contingent Non-Cash Consideration (to the extent permitted under Treasury Regulation Section 1.409A-3(i)(5)(iv)).

## In the event of the termination of Recipient’s engagement with the Corporation without Cause and not in connection with a Change of Control, the Corporation, at its election in its sole discretion, may buy-out and redeem Recipient’s Phantom Stock (to the extent such Phantom Stock has not been forfeited by reason of such termination) at a per share price equal to the then Fair Market Value of a share of the Corporation’s common stock. “***Fair Market Value***” shall mean the then fair market value as determined by the Corporation’s Board of Directors after consultation with the Corporation’s accountant calculated in a manner consistent with the Corporation’s historical practice.

# Phantom Stock Award Adjustments; Dilution. In the event of any change in the outstanding shares of common stock of the Corporation by reason of any stock dividend or split, recapitalization, merger, consolidation, combination or exchange of shares, or other similar corporate change, adjustments will automatically be made to the amount of Recipient’s Phantom Stock as necessary under this Agreement in order to fairly give effect to such change and to the purpose and intent of this Agreement, provided however Recipient hereby understands and acknowledges that the percentage of outstanding securities of the Corporation to which the Phantom Stock is equivalent under this Agreement is subject to dilution in the event of future equity issuances and other events, and may increase or decrease in the future. The percentages set forth in this Agreement are based upon the Corporation’s capitalization as of the Award Date and are illustrative only.

# No Segregation of Assets. The Corporation shall not segregate any assets in connection with Phantom Stock. The rights of Recipient to benefits under this Agreement shall be solely those of a general, unsecured creditor of the Corporation.

# Withholding of Taxes. The amounts payable to Recipient under this Agreement shall be reduced by any amount that the Corporation is required to withhold with respect to such payments under the then applicable provisions of the Internal Revenue Code, and state or local income tax laws.

# No Rights as a Stockholder. Recipient shall have no dividend, voting, or any other rights as a stockholder with respect to any common stock of the Corporation as a result of the award of the Phantom Stock.

# Assignment. No right or interest to or in the Phantom Stock or this Agreement shall be assignable by Recipient except by will or the laws of descent and distribution. No right, benefit or interest of Recipient hereunder shall be subject to anticipation, alienation, sale, assignment, encumbrance, charge, pledge, hypothecation or set off in respect of any claim, debt or obligation, or to execution, attachment, levy or similar process, or assignment by operation of law. Any attempt, voluntarily or involuntarily, to effect any action specified in the immediately preceding sentences shall, to the full extent permitted by law, be null, void and of no effect; provided, however, that this provision shall not preclude Recipient from designating one or more beneficiaries to receive any amount that may be payable to Recipient under this Agreement after Recipient’s death and shall not preclude the legal representatives of Recipient’s estate from assigning any right hereunder to the person or persons entitled thereto under Recipient’s will, or, in the case of intestacy, to the person or persons entitled thereto under the laws of intestacy applicable to Recipient’s estate.

# Entire Agreement. This Agreement constitutes the entire agreement between the Corporation and Recipient concerning the subject matter hereof, and supersedes all other agreements, whether written or oral, with respect to such subject matter; provided, however, nothing contained herein shall, or shall be deemed to be, a waiver, modification or amendment of any agreement between Recipient and the Corporation or any term or condition contained therein.

# Tax Treatment. The Corporation is not responsible for, and makes no representation or warranty whatsoever in connection with, the tax treatment hereunder. Recipient acknowledges that he has been advised to consult her own tax advisor regarding the tax implications of the grant of Phantom Stock provided for herein.

# Waivers. No waiver of any term or condition hereof shall be binding unless it is in writing and signed by the Corporation and Recipient. The waiver by any party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party.

# Administration. The Board of Directors of the Corporation may correct any defect or supply any omission or reconcile any inconsistency in, or interpret any provisions of, this Agreement in the manner and to the extent it shall deem expedient to carry this Agreement into effect, and it shall be the sole and final judge of such expediency. The determination of the Board of Directors on the matters referred to in this Agreement shall be final, binding, and conclusive on all interested parties.

# No Guarantee of Engagement. This Agreement does not represent a guarantee of engagement for services by the Corporation of Recipient and does not alter any other terms of compensation, benefits, or other engagement conditions between the Corporation and Recipient. This Agreement applies only to the specific parties listed herein and does not pertain to any other contractors or employees. By signing below, both parties agree to the terms and conditions of this award.

# Governing Law. This Agreement shall be deemed to have been made in the State of Delaware, shall take effect as an instrument under seal within the State of Delaware, and the validity, interpretation and performance of this Agreement shall be governed by, and construed in accordance with, the internal law of the State of Delaware, without giving effect to conflict of law principles. Both parties further acknowledge that the last act necessary to render this Agreement enforceable is its execution by the Company in the State of Delaware, and that the Agreement thereafter shall be maintained in the State of Delaware. Both parties agree that any action, demand, claim, or counterclaim relating to the terms and provisions of this Agreement, or to its breach, shall be commenced in the State of Delaware in a court of competent jurisdiction. Both parties further acknowledge that venue shall exclusively lie in the State of Delaware and that material witnesses and documents would be in the State of Delaware.

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[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Phantom Stock Award Agreement as of the day and year first above written.

CORPORATION:

**[YOUR ENTITY NAME]**

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, **[YOUR TITLE]**

RECIPIENT:

**[SELLER ENTITY NAME]**

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**Exhibit B**

**Covenant Not to Compete; Non-Solicitation; Confidentiality**

1. The Seller and the Owner each covenants and agrees that neither the Seller nor the Owner will: (1) Seller and the major stockholders of the Seller will agree not to engage in any activities competing with the Business within 24 months of the closing of the transaction, nor consult, advise, join or start a new competitive entity in the **[DESCRIPTION OF ADJACENT AND APPLICABLE INDUSTRIES] industries**. (2) or for a period of 2 years following the Effective Date recruit or employ (whether as an employee or independent contractor) any of the Business’s current employees or independent contractors.

2. The Seller and the Owner shall hold the Confidential Information in confidence and shall not use the Confidential Information for any purpose other than in furtherance of the Buyer’s operation of the Business without the Buyer’s express written consent. The Seller and the Owner recognize that Confidential Information involves one of the Buyer’s valuable and unique assets. “**Confidential Information**” means information directly or indirectly involving the Business that is not available or open to the public generally.

3. The Seller and the Owner each has carefully read and considered the provisions of this Exhibit B and, having done so, agrees that the restrictions set forth herein are fair and reasonable given the terms and conditions of this agreement, the nature of the Seller’s and its affiliates’ business, the area in which the Seller and its affiliates market their products and services, and the consideration being provided pursuant to this agreement. In addition, the Seller and the Owner each specifically agrees that the length, scope, and definitions used in the covenant not to compete and other restrictions set forth in this Exhibit B are fair and reasonable.

4. The Seller and the Owner each acknowledges and agrees that its breach of any of the agreements in this Exhibit B would result in irreparable damage and continuing injury to the Buyer. Therefore, in the event of any breach or threatened breach of such agreements, the Seller and the Owner each agrees that the Buyer will be entitled to an injunction from any court of competent jurisdiction enjoining such person or entity from committing any violation or threatened violation of those agreements.