

## **Incentive Compensation Plan (Phantom Stock)**

THIS INCENTIVE COMPENSATION AGREEMENT, is entered into effective as of the \_\_\_ day of \_\_\_\_\_, 200\_ between \_\_\_\_\_, a \_\_\_\_\_ company (the "Company"), and the individual whose signature appears at the end of this Agreement, an employee of the Company (the "Participant").

### **WITNESSETH:**

The purpose of this Incentive Compensation Agreement (the "Agreement") is to provide deferred compensation to the Participant, as a key employee of the Company. Such deferred compensation shall be based upon the award of Performance Units, the value of which is related to the appreciation in the value of the common stock of the Company. This Agreement is also intended to benefit the Company by creating incentives to Participant.

### Section 1. Grant of Performance Units.

Subject to the terms hereof, a total of \_\_\_\_\_ (\_\_\_\_\_) Performance Units are hereby granted to the Participant, which Units shall be credited to a Performance Unit Account (the "Account") established and maintained for such Participant. The Account of the Participant which shall be the record of Performance Units granted to the Participant under this Agreement, is solely for accounting purposes, and shall not require a segregation of any Company assets. Each Performance Unit shall be valued in the manner provided in Section 3.

### Section 2. Maturity of Performance Units.

All Performance Units granted to the Participant shall become fully matured only upon the sale of the Company. The phrase "sale of the Company" as used herein shall mean the occurrence, during the Participant's employment with the Company, of the sale of all or substantially all of the assets or stock of the Company and any merger or consolidation of the Company in which the stockholders of the Company immediately prior to such transaction do not hold shares of voting securities of the surviving corporation sufficient to allow such stockholders to elect a majority of the board of directors of the surviving corporation.

### Section 3. Valuation and Payment for Performance Units.

(a) Upon the maturity of the Performance Units of the Participant under Section 2, the Participant shall be entitled to receive from the Company an amount, with respect to each Performance Unit in the Participant's Account equal to \_\_\_percent (\_\_\_\_%) of the net amount received for the assets or stock of the Company (less applicable federal and state taxes paid by the then owners of the Company), reduced by the value of the assets of the Company as of the date of issuance of this grant. The assets of the Company have been so valued in good faith by the Board of Directors and Participant at \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_).

(b) Payment to the Participant of the amount set forth in paragraph (a) above for Performance Units shall be in a manner consistent with the character of the compensation received by the Company or owners of the stock (i.e. cash, stock, note or other) and timing by which the Company or the then owners receive their respective payment or payments. The owners shall be allowed ample time to determine their tax liabilities as a result of the sale of the assets before payment is due. The Participant will not be entitled to receive any earnings on the value of the Participant's Performance Units with respect to the period between the maturity of the Performance Units and the receipt of payments under this Agreement.

### Section 4. Forfeiture of Performance Units.

Notwithstanding any other provision of this Agreement, all rights to any payments hereunder to the Participant will be immediately discontinued and forfeited, and the Company will have no further obligation hereunder to such Participant, if any of the following circumstances shall occur:

- (i) The Participant's employment with the Company is terminated by the Participant for any reason; or
- (ii) The Participant's employment with the Company is terminated by the Company for Cause, as defined below, at any time.

In any such event, the Participant's rights with respect to Performance Units will terminate and be forfeited and neither the Participant nor the Participant's heirs, personal representatives, successors or assigns shall have any future rights with respect to any such Performance Units.

### Section 5. Termination of Agreement.

The Company may terminate this Agreement at any time and thereafter be relieved of all obligations hereunder by accelerating the maturity of the Performance Units and paying the Participant the amount determined in accordance with Section 3(a). For purposes of determining "the net amount received for the assets or stock of the Company" in this case, said value shall be deemed to be equal to the net book value of the Company on the date this Agreement is terminated.

#### Section 6. Nontransferability.

Performance Units granted under this Agreement, and any rights and privileges pertaining thereto, may not be transferred, assigned, pledged or hypothecated in any manner, by operation of law or otherwise, and shall not be subject to execution, attachment or similar process.

#### Section 7. Withholding.

The Company shall have the right to deduct from all amounts paid pursuant to this Agreement any taxes required by law to be withheld with respect to such awards.

#### Section 8. Voting and Dividend Rights.

The Participant shall not be entitled to any rights of a stockholder of the Company, including, without limitation, any voting rights, or any rights to receive dividends, or to have the Participant's Account credited or increased as a result of any dividends or other distribution with respect to the Common Stock of the Company.

#### Section 9. Life Insurance.

The Participant hereby authorizes the Company, in its discretion and at its expense, to purchase a life insurance policy or policies on the life of the Participant to provide funds for the Company's obligations hereunder. The Participant hereby agrees to cooperate with the Company and to complete and execute such documents and instruments as may be reasonably required in connection therewith.

#### Section 10. Definition of Cause

"Cause" means (a) willful and repeated failure to comply with the lawful directions of the management of the Company, (b) gross negligence or willful misconduct in the performance of Participant's duties to the company, (c) commission of any act of fraud against, or the misappropriation of material property belonging to the Company, (d) conviction of a crime for acts of moral turpitude or that is injurious to the business or reputation of the company, or (e) insubordination or habitual absenteeism, in each case as determined in good faith by the Company's Board of Directors.

#### Section 11. Miscellaneous Provisions.

(a) No employee or other person shall have any claim or right to be granted an award under this Agreement. Neither this Agreement nor any action taken hereunder shall be construed as giving the Participant any right to be retained in the employ of the Company, or to affect the right of the Company to change the Participant's present or future rate of compensation or work assignment or to terminate the employment of Participant with or without cause.

(b) The Account shall at all times be entirely unfunded and no provision shall at any time be required to be made with respect to segregating assets of the Company for payment of any benefits hereunder. Neither the Participant nor other person shall have any

interest in any particular assets of the Company by reason of the right to receive a benefit under this Agreement and any such Participant or other person shall have only the rights of a general unsecured creditor of the Company with respect to any rights under this Agreement. Nothing contained herein and no action pursuant hereto shall create or be construed to create a trust of any kind or fiduciary relationship between the Participant or any other person and the Company or the Board.

(c) This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement may not be amended or modified without the prior written consent of the parties hereto.

(d) All notices or other communications to the Participant hereunder ("Notice") shall be in writing and shall either be delivered personally or given by registered or certified mail, return receipt requested to the Participant at the address of the Participant on the records of the Company or to such other address as to which the Participant or the Participant's personal representative give Notice in accordance with this Section 11(d).

(e) This Agreement shall be governed by and construed and interpreted according to the laws of the State of \_\_\_\_\_ and any action to enforce this Agreement shall be brought in the County of \_\_\_\_\_, State of \_\_\_\_\_.

(f) In case any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby. To the extent that any provision of this Agreement is adjudicated to be invalid or unenforceable because it is deemed to be overbroad, that provision shall not be void but rather shall be limited only to the extent required by applicable law and enforced as so limited.

(g) The headings used herein are for convenience only and shall not affect the construction hereof.

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

\_\_\_\_\_  
Company Name

By: \_\_\_\_\_  
Office of Company

\_\_\_\_\_  
Employee