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**LEGEND:**

Company = \* \* \*

Plan = \* \* \*

Executive = \* \* \*

Dear \* \* \*:

This responds to a letter dated March 12, 2007, submitted by your authorized representative, requesting a ruling under section 162(m) of the Internal Revenue Code (Code). Specifically, you requested a ruling that compensation paid under the Plan (defined below) upon attainment of a performance goal will be considered performance-based compensation under section 162(m)(4)(C), provided it meets all of the requirements of that section, even though the compensation could have been paid upon Executive's termination without "cause" or for "good reason," without attaining the performance goal.

Company, a publicly-held corporation under section 162(m)(2) of the Code, has adopted an incentive plan (Plan) that provides a variety of incentive awards, including performance share and performance unit awards. These incentive awards are intended to be qualified performance-based compensation under section 162(m)(4)(C).

Company has entered into an Employment Agreement (Agreement) with Executive. The Agreement provides that if Executive's employment is terminated by Company other than for "cause" or by Executive for "good reason," any performance goal under any outstanding performance share or performance unit awards shall be deemed to be achieved at target and the awards shall vest at termination to the extent such awards would have become vested in accordance with the regular vesting schedule had Executive's employment continued for a period of two years following Executive's termination date. The terms "cause" and "good reason" are defined in the Agreement.

Section 162(a)(1) of the Code allows as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business,

including a reasonable allowance for salaries or other compensation for personal services actually rendered.

Section 162(m)(1) of the Code provides that in the case of any publicly held corporation, no deduction is allowed for applicable employee remuneration with respect to any covered employee to the extent that the amount of the remuneration for the taxable year exceeds \$1,000,000.

Section 162(m)(4)(A) of the Code defines "applicable employee remuneration," with respect to any covered employee for any taxable year, generally as the aggregate amount allowable as a deduction for the taxable year (determined without regard to section 162(m)) for remuneration for services performed by the employee (whether or not during the taxable year).

Section 162(m)(4)(C) of the Code provides that applicable employee remuneration does not include any remuneration payable solely on account of the attainment of one or more performance goals, but only if (i) the performance goals are determined by a compensation committee of the board of directors of the taxpayer which is comprised solely of 2 or more outside directors, (ii) the material terms under which the remuneration is to be paid, including the performance goals, are disclosed to shareholders and approved by a majority of the vote in a separate shareholder vote before payment of such remuneration, and (iii) before any payment of such remuneration, the compensation committee referred to in clause (i) certifies that the performance goals and other material terms were in fact satisfied.

Section 1.162-27(e)(2)(i) of the Income Tax Regulations (regulations) provides, in part, that qualified performance-based compensation must be paid solely on account of the attainment of one or more preestablished, objective performance goals.

Section 1.162-27(e)(2)(v) of the regulations provides that the compensation does not satisfy the performance goal requirement if the facts and circumstances indicate that the employee would receive all or part of the compensation regardless of whether the performance goal is attained. Thus, if the payment of compensation under a grant or award is only nominally or partially contingent on attaining a performance goal, none of the compensation payable under the grant or award will be considered performance-based. This section also provides that compensation does not fail to be qualified performance-based compensation merely because the plan allows the compensation to be payable upon death, disability, or change of ownership or control, although compensation actually paid on account of those events prior to the attainment of the performance goal would not satisfy the performance goal requirement.

The provision in the Agreement allowing for payment of performance share or performance unit awards under the Plan upon Executive's termination by Company without cause or by Executive with good reason does not meet the exception in section 1.162-27(e)(2)(v) of the regulations that allows compensation to be payable upon death, disability or change of ownership or control. Thus, compensation paid to Executive with

respect to performance share or performance unit awards is not payable solely upon attainment of a performance goal, for purposes of section 162(m)(4)(C) of the Code. Accordingly, we rule as follows:

Compensation paid to Executive upon attainment of a performance goal under any performance share or performance unit awards will not be considered performance-based compensation under section 162(m)(4)(C) of the Code.

Except as specifically ruled above, no opinion is expressed as to the federal tax consequences of the transaction described above under any other provision of the Code. No opinion was requested and none is expressed regarding any aspect of awards granted or compensation paid under the Plan other than as described above. The ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely yours,

Kenneth M. Griffin  
Senior Technician Reviewer  
Executive Compensation  
Branch Office of Division  
Counsel/Associate Chief Counsel  
(Tax Exempt and Government Entities)