



employees for purposes of section 162(m) will be granted awards under both the Annual Plan and the Long-Term Plan. Both Plans were approved by shareholders on Date 1.

The Annual Plan provides cash awards if certain performance targets established by the Compensation Committee are satisfied. Generally, an Annual Plan participant who is terminated, demoted, transferred or otherwise ceases to be an executive officer at any time prior to the date the award is paid for a performance period forfeits any right to the award payment.

However, in the event of an Annual Plan participant's death during a performance period, or prior to the date the award is paid for a performance period, the Annual Plan participant will receive the award payable for the performance period during which the Annual Plan participant dies.

In the event of an Annual Plan participant's termination by reason of disability, termination by Company without cause, or termination by the participant with good reason during the performance period or prior to the date the award is paid for a performance period, the Annual Plan participant will receive a partial award, prorated based on the portion of the performance period that elapsed prior to such termination of employment. The terms "cause" and "good reason" are defined in the executive's employment agreement.

The Long-Term Plan provides cash awards if certain performance targets established by the Compensation Committee are satisfied. Performance units are granted at the beginning of the performance period. Each performance unit is subject to a vesting schedule. Each performance unit entitles the Long-Term Plan participant to receive a cash payment. The value of the performance unit is generally determined by the performance level achieved on the last day of the performance period and ranges from \$A to \$B.

Generally, upon termination of a Long-Term Plan participant's employment for any reason, all unvested performance units are forfeited. However, in the event of a participant's termination of employment due to death, disability, or retirement after performance of at least X months of service in the performance period, all of the Long-Term Plan participant's performance units immediately vest.

If a Long-Term Plan participant terminates employment prior to the end of a performance period due to death, disability, termination by Company without cause or termination by the Long-Term Plan participant with good reason, the participant will be paid a "target" level performance award with respect to the vested performance units. The term "cause" is defined in the Long-Term Plan. The term "good reason" is defined in the executive's employment agreement.

If a Long-Term Plan participant terminates employment prior to the end of a performance period due to retirement (as defined in the Long-Term Plan) after the performance of X months of service in the performance period, the participant will be paid a “target” level performance award with respect to the vested performance units.

Section 162(a)(1) 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) 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) 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) 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 the shareholders and approved by a majority of the vote in a separate shareholder vote before the 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 any other material terms were in fact certified.

Section 1.162-27(e)(2)(i) of the Income Tax 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)(iii) provides that the terms of an objective formula or standard must preclude discretion to increase the amount of compensation payable that would otherwise be due upon attainment of the goal.

Section 1.162-27(e)(2)(v) provides that 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. However, 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 requirements.

Based on the facts submitted, we rule as follows:

(1) Compensation paid under the Annual Plan upon the attainment of performance goals, will be considered performance-based under section 162(m)(4)(C), provided it meets all the requirements of that section and of the applicable regulations, even though the compensation could be paid upon the executive's termination by death, disability, by Company without cause, or by the executive for good reason.

(2) Compensation paid under the Long-Term Plan upon attainment of performance goals will be considered performance-based under section 162(m)(4)(C), provided it meets all the requirements of that section and of the applicable regulations, even though the compensation could be paid upon the executive's termination by death, disability, by Company without cause, by the executive for good reason or upon the executive's retirement, as defined in the Long-Term Plan.

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. This ruling is directed only to the taxpayer(s) 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 representative.

Sincerely yours,

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ROBERT B. MISNER  
Senior Technician Reviewer  
Executive Compensation Branch  
Office of the Division Counsel/Associate Chief  
Counsel (Tax Exempt and Government  
Entities)

Enclosure:

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