

results in the imposition of an excise tax under section 4972 of the Code, such contribution will not be made until the next taxable year of U.S. Steel for which the contribution is deductible under section 404(a)(1) of the Code and does not result in an excise tax under section 4972 of the Code.

- US Steel indemnifies the Plan with respect to all liability for hazardous substances released on the Property prior to the execution and closing of the Timber Rights contribution.

- The Plan retains the right to sell or assign, in whole or in part, any of its Timber Rights interests to any third party purchaser.

Second, following the completion of the Timber Rights contribution, TCG will be authorized to exercise all of the rights and responsibilities otherwise exercisable by the Plan in connection with any subsequent transactional dealings with U.S. Steel, regarding the Timber Rights under the Timber Rights Agreements, or as may be required pursuant to the terms of this exemption. These rights and responsibilities and the transactions to which they pertain include the following:

- Determining that the Plan receives the compensation due to it under the Timber Rights Agreements in the event that either (1) U.S. Steel exercises its right to early termination of an Agreement, which requires a termination payment to the Plan at a premium over the fair market value of the Timber Rights, as determined by a qualified, independent appraiser, which has been selected by the Independent Fiduciary; or (2) U.S. Steel owes compensation to the Plan for mineral activities that interfere with the Plan's use of the land for timber purposes.

- Overseeing and enforcing the requirements of the exemption for a "make-whole" contribution that may be required in the event of a decline in value of the Timber Rights after five years.

- Enforcing U.S. Steel's ongoing obligations to maintain the Property in a fashion that does not unreasonably interfere with the Plan's use thereof.

- Enforcing the Plan's indemnification rights against U.S. Steel for any environmental claims that may arise.

In its Management Agreement with UCF, TCG represents to UCF that (a) it is independent of, and unrelated to, U.S. Steel and its affiliates; (b) to the extent it provides services to U.S. Steel, its affiliates or its retirement plans during the term of its Management Agreement with the Plan, TCG's annual gross revenues for such services will be less than 5% of its total annual gross

revenues; and (c) it has experience with the type of transactions for which it is acting as an Independent Fiduciary, and acknowledges and accepts it is acting as an ERISA fiduciary with an understanding of its duties, liabilities, and responsibilities under that statute.

15. As Independent Fiduciary, TCG duties will encompass, but are not limited to rendering investment management and advisory services, such as buy-hold-sell analysis; coordinating appraisals; providing long-term management planning; determining investment strategies; performing price forecasting; managing regulatory changes and impact on operations; management-level services such as financial accounting, budgeting, reporting, audit supervision, performance measurement, any acquisition and disposition of services; and determining whether it is appropriate to sell or assign, in whole or in part, the Plan's interests in the Timber Rights.

UCF will oversee TCG's Property management. TCG will establish an annual management plan and budget for the Property each year that will be reviewed and approved by UCF. It will include a harvest plan, timber sale plan, capital expenditure plan, silviculture plan (with recommendations regarding such activities as site preparation, planting, fertilization, thinning and application of herbicides, stumpage management), and budget (by calendar year) for the Property. TCG will be able to make expenditures in accordance with the approved annual budget, and within 10% of any budgeted line item, without further approval by UCF, as well as to make extra-budgetary expenditures without prior approval as are required to protect the Property in case of emergencies. TCG will inform UCF promptly of any variance from a budgeted line item, and will (subject to the exception for emergencies) obtain UCF's approval before expending or failing to expend funds at variance with the limits in the management plan. UCF may modify the management plan and annual budget at any time on a prospective basis. TCG also will prepare a strategic plan, setting forth the overall objectives and strategies for the Property, and a five year operating plan to support the strategic plan that contains projections with respect to silviculture and harvesting, which will be updated at least annually. TCG will report all events that, in its judgment, make it impracticable to follow the annual or five-year operating plan and will recommend appropriate modifications. Among its duties as Property manager, TCG will also be

responsible for both the on-site and management level forest operations. Services in this category will include long- and short-term harvesting planning; obtaining all necessary permits and federal, state, and local tax filings; managing log sale contracts and road planning; overseeing subcontractors, including log-harvesting, road construction and maintenance; managing timber inventory and land records; managing risk, such as fire prevention planning; and procuring geographical information systems and mapping.

16. TCG represents that the Property is expected to generate a positive cash flow during the early years of the Timber Rights contribution. The source of this income is from an expected, but small scale timber harvest and from the sale of hunting and recreation leases, which will be managed by TCG. In addition to the timber being in the early stages of growth, TCG believes that the Property will benefit from silviculture programs to improve its long-term value, and thereby enhance the overall economic benefit to the Plan of the timber contribution. TCG will run models on possible expenditures for silvicultural programs that it will then describe in its proposed management plan for the Property, which will be reviewed and approved by UCF before any funds are spent.

17. TCG will receive the following fees<sup>10</sup> from UCF for its services to the Plan:

- *Investment Management and Advisory Service Fees*, which are initially determined as a percentage of the initial asset value (as determined by an independent appraisal) and are thereafter adjusted annually based on the Consumer Price Index for all urban consumers. The value of the basis will be decreased by UCF to reflect land sales (including any acres that U.S. Steel has exercised its right to terminate under either the Timber Agreement or the USS Agreement).

- *Asset Management Service Fees*, which will consist of a flat rate per acre for total acres managed, and a percentage of net stumpage and net log sales provided for in the annual budget that is approved by UCF. Such fees will also include a percentage of ancillary revenue, such as hunting rights income, subject to the approved annual budget.

<sup>10</sup> The Applicant states that the fees will represent reasonable compensation and will be statutorily exempt under section 408(b)(2) of the Act. However, the Department expresses no opinion herein on whether such fees will satisfy the terms and conditions of section 408(b)(2) of the Act.