

1 State of Arkansas *As Engrossed: S3/27/13 S3/28/13 S4/2/13*

2 89th General Assembly

A Bill

3 Regular Session, 2013

SENATE BILL 820

4

5 By: Senator Burnett

6 *By: Representative Hodges*

7

8

For An Act To Be Entitled

9 AN ACT CONCERNING AMENDMENT 82 TO THE ARKANSAS
10 CONSTITUTION AS IT RELATES TO A STEEL MILL PROJECT;
11 TO DECLARE A LARGE ECONOMIC DEVELOPMENT PROJECT TO BE
12 A QUALIFIED AMENDMENT 82 PROJECT; TO AUTHORIZE THE
13 ISSUANCE OF GENERAL OBLIGATION BONDS UNDER AMENDMENT
14 82 TO THE ARKANSAS CONSTITUTION TO ASSIST IN THE
15 DEVELOPMENT OF A STEEL MILL PROJECT; TO APPROVE AND
16 AUTHORIZE THE EXECUTION OF AN AMENDMENT 82 AGREEMENT;
17 TO PROVIDE ECONOMIC DEVELOPMENT INCENTIVES TO
18 QUALIFIED MANUFACTURERS OF STEEL UNDER AMENDMENT 82
19 TO THE ARKANSAS CONSTITUTION; TO ADDRESS CONDITIONAL
20 GRANT REPAYMENT REQUIREMENTS; TO DECLARE AN
21 EMERGENCY; AND FOR OTHER PURPOSES.

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Subtitle

25 TO AUTHORIZE ECONOMIC DEVELOPMENT
26 INCENTIVES AND THE ISSUANCE OF GENERAL
27 OBLIGATION BONDS IN CONNECTION WITH A
28 STEEL MILL PROJECT UNDER AMENDMENT 82 TO
29 THE ARKANSAS CONSTITUTION; AND TO DECLARE
30 AN EMERGENCY.

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33 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

34

35 *SECTION 1. DO NOT CODIFY. The Arkansas Code Revision Commission shall*
36 *direct the publisher of the Arkansas Code to print the following in the*



1 *Appendix to Arkansas Code Title 19:*

2 *Legislative findings and intent.*

3 *(a) The General Assembly finds that the:*

4 *(1) Creation of jobs and economic growth are critical to*
5 *improving the lives of the citizens of the State of Arkansas; and*

6 *(2) Arkansas Economic Development Commission has submitted for*
7 *approval of the General Assembly a proposal to issue general obligation bonds*
8 *of the state to provide financing for a large economic development project.*

9 *(b) The General Assembly further finds that:*

10 *(1) The proposed project between the State of Arkansas and Big*
11 *River Steel, LLC is a qualified project under Arkansas Constitution,*
12 *Amendment 82, and the Arkansas Amendment 82 Implementation Act, § 15-4-3201*
13 *et seq., and Big River Steel, LLC qualifies as an eligible business under the*
14 *Arkansas Amendment 82 Implementation Act, § 15-4-3201 et seq.;*

15 *(2) The proposed uses of the bond proceeds described in the*
16 *Amendment 82 Agreement qualify as financing for infrastructure or other needs*
17 *within the meaning of Arkansas Constitution, Amendment 82, and the Arkansas*
18 *Amendment 82 Implementation Act, § 15-4-3201 et seq.; and*

19 *(3) Arkansas Constitution, Amendment 82, authorizes the General*
20 *Assembly to issue bonds bearing the full faith and credit of the State of*
21 *Arkansas if the prospective employer planning an economic development project*
22 *is eligible under the criteria established by law.*

23 *(c) This act is intended to authorize:*

24 *(1) The issuance of bonds under the authority granted to the*
25 *General Assembly under Arkansas Constitution, Amendment 82; and*

26 *(2) Under Arkansas Constitution, Amendment 82, and the Arkansas*
27 *Amendment 82 Implementation Act, § 15-4-3201 et seq., the execution and*
28 *implementation of the Amendment 82 Agreement and other provisions necessary*
29 *to carry out the Amendment 82 Agreement.*

30 *(d) As provided under the Arkansas Amendment 82 Implementation Act, §*
31 *15-4-3201 et seq., this act includes the:*

32 *(1) Authorization for the issuance of bonds bearing the full*
33 *faith and credit of the State of Arkansas as authorized under Arkansas*
34 *Constitution, Amendment 82;*

35 *(2) Authorization of the agreement between the State of Arkansas*
36 *and the Big River Steel, LLC;*

1 (3) Creation of a sales tax exemption for natural gas and
2 electricity for Big River Steel, LLC; and

3 (4) Extension of the waste reduction, reuse, or recycling
4 equipment tax credit.

5
6 SECTION 2. DO NOT CODIFY. The Arkansas Code Revision Commission shall
7 direct the publisher of the Arkansas Code to print the following in the
8 Appendix to Arkansas Code Title 19:

9 Big River Steel Project bonds issued under Arkansas Constitution,
10 Amendment 82.

11 (a) As used in this section:

12 (1) "Amendment 82 Agreement" means the unexecuted document
13 titled "Amendment 82 Agreement between the State of Arkansas and Big River
14 Steel, LLC" submitted to the General Assembly and as found in Section 8 of
15 this act; and

16 (2) "Project" means the acquisition, development, construction,
17 and operation of a mini-mill steel manufacturing facility by Big River Steel,
18 LLC, on a site in Mississippi County, Arkansas, that is identified more
19 specifically in the Amendment 82 Agreement.

20 (b)(1) The General Assembly finds that the project qualifies as a
21 large economic development project for which the issuance of general
22 obligation bonds is authorized under Arkansas Constitution, Amendment 82, and
23 the Arkansas Amendment 82 Implementation Act, § 15-4-3201 et seq., and is of
24 the nature intended by the electors of the state to be financed with bonds
25 under Arkansas Constitution, Amendment 82.

26 (2) The General Assembly approves the terms of the Amendment 82
27 Agreement between the State of Arkansas and Big River Steel, LLC, and
28 authorizes the execution of the Amendment 82 Agreement in substantially the
29 same form as presented to the General Assembly but with such changes as shall
30 be approved by the officers executing the Amendment 82 Agreement on behalf of
31 the state.

32 (c)(1) The General Assembly authorizes the Arkansas Development
33 Finance Authority to issue general obligation bonds of the State of Arkansas
34 in an amount not to exceed one hundred twenty-five million dollars
35 (\$125,000,000) in the aggregate.

36 (2) The bonds authorized under subdivision (c)(1) of this

1 section:

2 (A) Are direct general obligations of the State of
3 Arkansas;

4 (B) Bear the full faith and credit of the State of
5 Arkansas; and

6 (C) Are payable from gross general revenues or special
7 revenues appropriated by the General Assembly.

8 (d) The authority shall issue the bonds in accordance with the
9 Arkansas Amendment 82 Implementation Act, § 15-4-3201 et seq.

10 (e)(1) The Arkansas Economic Development Commission and the authority
11 may implement the Amendment 82 Agreement consistent with this act, Arkansas
12 Constitution, Amendment 82, and the Arkansas Amendment 82 Implementation Act,
13 § 15-4-3201 et seq.

14 (2) If a provision of this act or of the Amendment 82 Agreement
15 conflicts with any provision of the Arkansas Amendment 82 Implementation Act,
16 § 15-4-3201 et seq., the provisions of this act and the provisions of the
17 Amendment 82 Agreement control.

18
19 SECTION 3. DO NOT CODIFY. The Arkansas Code Revision Commission shall
20 direct the publisher of the Arkansas Code to print the following in the
21 Appendix to Arkansas Code Title 19:

22 Sections 4 through 7 of this act shall be known and may be cited as the
23 "Amendment 82 Big River Steel Project Tax Provisions".

24
25 SECTION 4. DO NOT CODIFY. The Arkansas Code Revision Commission shall
26 direct the publisher of the Arkansas Code to print the following in the
27 Appendix to Arkansas Code Title 19:

28 Definitions.

29 As used in sections 4 through 7 of this act:

30 (1) "Invested" includes, but is not limited to, expenditures
31 made from the proceeds of bonds, including interim notes or other evidence of
32 indebtedness, issued by a municipality, county, or an agency or
33 instrumentality of a municipality, county, or the State of Arkansas, if the
34 obligation to repay the bonds, including interest thereon, is a legally
35 binding obligation, directly or indirectly, of the taxpayer;

36 (2) "Production, processing, and testing equipment" includes

1 machinery and equipment essential for the receiving, storing, processing, and
2 testing of raw materials and the production, storage, testing, and shipping
3 of finished products, and facilities for the production of steam,
4 electricity, chemicals, and other materials that are essential to the
5 manufacturing process but which are consumed in the manufacturing process and
6 do not become essential components of the finished product; and

7 (3) "Qualified manufacturer of steel" means any natural person,
8 company, or corporation, and any holding company of any of the foregoing,
9 engaged in the manufacture, refinement, or processing of steel whenever more
10 than fifty percent (50%) of the electricity or more than fifty percent (50%)
11 of the natural gas consumed in the manufacture, refinement, or processing of
12 steel is used to power an electric arc furnace or furnaces or continuous
13 casting equipment in connection with the melting, continuous casting, or
14 rolling of steel or in the preheating of steel for processing through a
15 rolling mill or rolling mills, or both.

16
17 SECTION 5. DO NOT CODIFY. The Arkansas Code Revision Commission shall
18 direct the publisher of the Arkansas Code to print the following in the
19 Appendix to Arkansas Code Title 19:

20 Certification required.

21 (a) To claim the benefits of this act, a taxpayer must obtain a
22 certification prior to March 31, 2016, from the Director of the Arkansas
23 Economic Development Commission certifying to the Revenue Division of the
24 Department of Finance and Administration that the taxpayer:

25 (1) Is a qualified manufacturer of steel;

26 (2) Operates a steel mill in Arkansas which began production
27 after January 1, 2013; and

28 (3) Has invested after January 1, 2013, and prior to December
29 31, 2015, more than five hundred million dollars (\$500,000,000) in the steel
30 mill, and the investment expenditure is for one (1) or more of the following:

31 (A) Property purchased for use in the construction of a
32 building or buildings or any addition or improvement thereon to house the
33 steel mill;

34 (B)(i) Machinery and equipment to be located in or in
35 connection with the steel mill.

36 (ii) Motor vehicles of a type subject to

1 registration shall not be considered as machinery and equipment; and
2 (C) Project planning costs or construction labor costs,
3 including:

4 (i) On-site direct labor and supervision, whether
5 employed by a contractor or the project owner;
6 (ii) Architectural fees or engineering fees, or both;
7 (iii) Right-of-way purchases;
8 (iv) Utility extensions;
9 (v) Site preparation;
10 (vi) Parking lots;
11 (vii) Disposal or containment systems;
12 (viii) Water and sewer treatment systems;
13 (ix) Rail spurs;
14 (x) Streets and roads;
15 (xi) Purchase of mineral rights;
16 (xii) Land;
17 (xiii) Buildings;
18 (xiv) Building renovation;
19 (xv) Production, processing, and testing equipment;
20 (xvi) Drainage systems;
21 (xvii) Water tanks and reservoirs;
22 (xviii) Storage facilities;
23 (xix) Equipment rental;
24 (xx) Contractor's cost-plus fees;
25 (xxi) Builders' risk insurance;
26 (xxii) Original spare parts;
27 (xxiii) Job administrative expenses;
28 (xxiv) Office furnishings and equipment;
29 (xxv) Rolling stock; and
30 (xxvi) Capitalized start-up costs related to the
31 construction as recognized by generally accepted accounting principles.

32 (b) To continue to claim the benefits provided under Section 7 of this
33 act after December 31, 2018, a taxpayer shall:

34 (1) Obtain an annual certification from the Director of the
35 Arkansas Economic Development Commission certifying to the Revenue Division
36 of the Department of Finance and Administration that the taxpayer meets the

1 requirements of subsection (a) of this section; and
2 (2) Employ at least three hundred (300) individuals in the
3 management, operations, and maintenance of the steel mill at an average wage
4 equal to or in excess of seventy thousand dollars (\$70,000) in cash
5 compensation per calendar year.

6
7 SECTION 6. DO NOT CODIFY. The Arkansas Code Revision Commission shall
8 direct the publisher of the Arkansas Code to print the following in the
9 Appendix to Arkansas Code Title 19:

10 Exemption from taxes.

11 Beginning on the date that production, processing, and testing
12 equipment are first in operation, sales of natural gas and electricity to a
13 qualified manufacturer of steel that is certified under Section 5 of this act
14 shall be exempt from the gross receipts tax levied by the Arkansas Gross
15 Receipts Act of 1941, Arkansas Code § 26-52-101, et seq., the Arkansas
16 Compensating Tax Act of 1949, Arkansas Code § 26-53-101 et seq., and any
17 other state or local tax administered under those acts.

18
19 SECTION 7. DO NOT CODIFY. The Arkansas Code Revision Commission shall
20 direct the publisher of the Arkansas Code to print the following in the
21 Appendix to Arkansas Code Title 19:

22 Recycling tax credits.

23 (a)(1)(A) A qualified manufacturer of steel that has been certified
24 under Section 5 of this act after January 1, 2013, and prior to December 31,
25 2020, and that has qualified for the income tax credit for the purchase of
26 waste reduction, reuse, or recycling equipment provided by Arkansas Code §
27 26-51-506, may carry forward any unused income tax credit earned under § 26-
28 51-506 for a period of fourteen (14) consecutive years following the taxable
29 year in which the credit originated.

30 (B) However, if a qualified manufacturer of steel is not
31 certified under Section 5(b) of this act, the carry-forward period allowed
32 under subdivision (a)(1)(A) of this section shall be reduced by one (1) year
33 for each year that the qualified manufacturer of steel does not obtain
34 certification under Section 5(b) of this act.

35 (2) Income tax credits that would otherwise expire during that
36 period shall be claimed first.

1 (b)(1) As used in subdivision (a)(1) of this section, the term “waste
2 reduction, reuse, or recycling equipment” as defined in § 26-51-506 shall
3 include production, processing, and testing equipment used to manufacture
4 products containing recovered materials.

5 (2) The provisions of § 26-51-506(d)(4) shall not apply.

6 (3) However, the qualified manufacturer of steel shall make a
7 good faith effort to use recovered materials containing Arkansas post-
8 consumer waste as a part of the materials used.

9 (c)(1) Except as provided in subdivision (c)(2) of this section, the
10 refund provisions of Arkansas Code § 26-51-506(f) shall not apply to a
11 qualified manufacturer of steel that has been certified under Section 5 of
12 this act.

13 (2) The qualified manufacturer of steel shall refund the amount
14 required under subdivision (c)(3) of this section if within three (3) years
15 of the taxable year in which the credit originated:

16 (A)(i) The waste reduction, reuse, or recycling equipment
17 is removed from Arkansas, disposed of, or transferred to another person, or
18 the qualified manufacturer of steel otherwise ceases to use the required
19 materials or operate in accordance with § 26-51-506 or this section.

20 (ii) Reorganization transactions, changes of
21 ownership and control, and sales and transfers of waste reduction, reuse, or
22 recycling equipment among affiliates which do not constitute sales or
23 transfers to a third-party purchaser shall not be considered disposals,
24 transfers, or cessations of use for purposes of § 26-51-506 or this section;
25 or

26 (B) The Director of the Arkansas Department of
27 Environmental Quality finds that the qualified manufacturer of steel has
28 operated the waste reduction, reuse, or recycling equipment in a manner which
29 demonstrates a pattern of intentional failure to comply with final
30 administrative or judicial orders which clearly indicates a disregard for
31 environmental regulation.

32 (3) If the provisions of subdivision (c)(2) of this section
33 apply, the qualified manufacturer of steel shall refund the amount of the
34 allowed tax credit claimed by the qualified manufacturer of steel which
35 exceeds the following amounts:

36 (A) Within the first taxable year, zero dollars (\$0.00);

1 (B) Within the second taxable year, an amount equal to
2 thirty-three percent (33%) of the amount of credit allowed; and

3 (C) Within the third taxable year, an amount equal to
4 sixty-seven percent (67%) of the credit allowed.

5 (4) Any refund required by subdivision (c)(2)(A) of this section
6 shall apply only to the credit given for the particular waste reduction,
7 reuse, or recycling equipment to which that subdivision applies.

8 (5) A qualified manufacturer of steel that is required to refund
9 part of a credit pursuant to this section shall no longer be eligible to
10 carry forward any amount of that credit which had not been used as of the
11 date the refund is required.

12 (6) A qualified manufacturer of steel aggrieved by a decision of
13 the Director of the Arkansas Department of Environmental Quality under this
14 section may appeal to the Arkansas Pollution Control and Ecology Commission
15 through administrative procedures adopted by the commission and to the courts
16 in the manner provided in Arkansas Code §§ 8-4-222 – 8-4-229.

17 (d) In the case of a qualified manufacturer of steel that is:

18 (1) A proprietorship, partnership, limited liability company, or
19 other business organization treated as a proprietorship or partnership for
20 tax purposes, the amount of the credit determined under this section for any
21 taxable year shall be apportioned to each proprietor, partner, member, or
22 other owner in proportion to the amount of income from the entity which the
23 proprietor, partner, member, or other owner is required to include in gross
24 income or as otherwise provided for in the applicable ownership or operating
25 agreements if at least one of the proprietor, partner, member or other owner
26 of the organization is a public retirement system of the State of Arkansas;

27 (2) A Subchapter S corporation, the amount of credit determined
28 shall be apportioned to each Subchapter S corporation shareholder in
29 proportion to the amount of income from the entity which the Subchapter S
30 corporation shareholder is required to include as gross income or as
31 otherwise provided for in the applicable articles of incorporation or bylaws
32 if at least one of the shareholders is a public retirement system of the
33 State of Arkansas; or

34 (3) An estate or trust:

35 (A) The amount of the credit determined for any taxable
36 year shall be apportioned between the estate or trust and the beneficiaries

1 on the basis of the income of the estate or trust allocable to each; and
2 (B) Any beneficiary to whom any amount has been
3 apportioned under this section shall be allowed, subject to the limitations
4 contained in this section, a credit under this section for that amount.

5
6 SECTION 8. DO NOT CODIFY. The Arkansas Code Revision Commission shall
7 direct the publisher of the Arkansas Code to print the following in the
8 Appendix to Arkansas Code Title 19:

9 Amendment 82 Agreement Between The State Of Arkansas And Big River
10 Steel, LLC.

11
12
13 AMENDMENT 82 AGREEMENT

14
15 Between

16
17 THE STATE OF ARKANSAS

18
19 And

20
21 BIG RIVER STEEL, LLC

22
23 Dated as of
24 MARCH __, 2013

25
26 AMENDMENT 82 AGREEMENT

27
28 THIS AMENDMENT 82 AGREEMENT (“Agreement”) is made and entered into by
29 and between the State of Arkansas (the “State”); and Big River Steel, LLC, a
30 limited liability company organized pursuant to the laws of the State of
31 Delaware (the “Sponsor”).

32
33 W-I-T-N-E-S-S-E-T-H

34
35 For valuable consideration, the receipt and adequacy of which are
36 hereby acknowledged, the Parties, intending to be legally bound, agree as

1 follows:

2 1. Definitions. For purposes of this Agreement, the following terms
3 and variations thereof (including the singular, plural, and possessive and
4 the past, present, and future tense) shall have the following meanings:

5

6 "Act" shall mean and refer to the Arkansas Amendment 82 Implementation
7 Act, A.C.A. § 15-4-3201 et seq., as amended through 2012.

8

9 "Actual Project Capital Expenditures" shall mean and refer to the total
10 of: (a) the Qualifying Site Preparation Costs, including Piling Costs, and
11 the Infrastructure Costs actually invested by, or on behalf of, the Sponsor
12 at the Project Site; and (b) any amounts paid by or received from the City of
13 Osceola, Arkansas or Mississippi County, Arkansas with respect to the
14 acquisition and lease of the Project Site.

15

16 "Advantage Arkansas Agreement" shall mean and refer to a Financial
17 Incentive Agreement with the State for job creation tax credits as required
18 pursuant to A.C.A. § 15-4-2705.

19

20 "Advantage Arkansas Program" shall mean and refer to the job creation
21 tax credit program established by the Consolidated Incentive Act.

22

23 "Agreement" shall mean and refer to this Amendment 82 Agreement.

24

25 "Amendment 82" shall mean and refer to Amendment 82 to the Constitution
26 of the State of Arkansas of 1874.

27

28 "Amendment 82 Financing" shall mean and refer to the funds to be
29 provided by the State to, or for the benefit of, the Sponsor pursuant to the
30 Grants and the Incentive Loan and the funds allocated to the reasonable and
31 necessary closing costs and expenses of the State.

32

33 "Amendment 82 Requirements" shall mean and refer to the provisions of
34 Amendment 82 and the Act, and other requirements imposed by legislation
35 approving this Agreement.

36

1 *“Announced Controlling Party” shall mean and refer to the Person who*
2 *shall be proposed to be the successor to the Sponsor with respect to the*
3 *Project following a Change of Control Event.*

4
5 *“Authority” shall mean and refer to the Arkansas Development Finance*
6 *Authority or any other agency of the State which succeeds by statutory*
7 *enactment to the rights and obligations assigned to the Authority pursuant to*
8 *this Agreement.*

9
10 *“Bonds” shall mean and refer to the general obligation bonds issued by*
11 *the State pursuant to the Amendment 82 Requirements in an amount not*
12 *exceeding One Hundred Twenty-five Million Dollars (\$125,000,000.00) for the*
13 *Amendment 82 Financing.*

14
15 *“Capital Commitments” shall mean and refer to: (a) the written*
16 *commitments obtained by the Sponsor for private equity investments; (b)*
17 *various other forms of capital including term loans and working capital*
18 *financing; (c) written commitments obtained by the Sponsor for*
19 *infrastructure; (c) incentives from the State including the Amendment 82*
20 *Financing and the incentives described in Section 8, but not those incentives*
21 *described in Sections 9 and 10; (d) other incentives including amounts paid*
22 *by or received from the City of Osceola, Arkansas or Mississippi County,*
23 *Arkansas with respect to the acquisition and lease of the Project Site; and*
24 *(e) other forms of financing, exclusive of the Amendment 82 Financing.*

25
26 *“Capital Commitment Documents” shall mean and refer to any documents*
27 *evidencing the Capital Commitments and any such other documents, records, and*
28 *other information as are reasonably necessary to describe the nature, terms*
29 *and conditions, and amount or value of the Capital Commitments.*

30
31 *“Change of Control Event” shall have the meaning set forth in the*
32 *Inter-Creditor Agreement that, when taken as a whole, is no less favorable to*
33 *the State than a definition which includes the following events: (a) the sale*
34 *or disposition of all or substantially all of the assets of the Project to a*
35 *Non-related Entity; and (b) all such other events as may be defined in the*
36 *Inter-Creditor Agreement.*

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“Chief Fiscal Officer” shall have the meaning set forth in the Act.

“Closing Date” shall mean and refer to the date of the issuance of the Bonds.

“Commission” shall mean and refer to the Arkansas Economic Development Commission or any other agency of the State which succeeds by statutory enactment to the rights and obligations assigned to the Commission pursuant to this Agreement.

“Compensation Target” shall mean and refer to an average annual compensation with respect to the Direct Positions and Independent Direct Positions designated by the Sponsor of Seventy-five Thousand Dollars (\$75,000.00) per year, excluding any non-cash benefits.

“Confidential Business Information” shall have the meaning set forth in Section 15.

“Consolidated Incentive Act” shall mean and refer to the Consolidated Incentive Act of 2003, A.C.A. § 15-4-2701 et seq., as amended.

“Department” shall mean and refer to the Arkansas Department of Finance and Administration.

“Development Plan” shall mean and refer to the plans attached to Exhibit 1.

“Direct Positions” shall mean and refer to those employees: (a) who shall be designated by the Sponsor; (b) who shall hold Full Time Positions; and (c) who shall work directly for the Sponsor or a Related Entity at the Facility or on the Project Site.

“Employment Target” shall mean and refer to at least five hundred twenty-five (525) New Full Time Positions through either Direct Positions or Independent Direct Positions at the Facility or on the Project Site.

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“Escrow Account” shall mean and refer to any interest earning escrow account administered by the Escrow Agent pursuant to an Escrow Agreement.

“Escrow Agent” shall mean and refer to any Person appointed by the State as an escrow agent with respect to funds or items to be held or disbursed by the State pursuant to the terms and conditions of this Agreement.

“Escrow Agreement” shall mean and refer to any escrow agreement with any Escrow Agent.

“Exhibit” shall mean and refer to an exhibit specifically referred to in this Agreement that shall be either attached to this Agreement or delivered by a Party in conjunction with the execution and delivery of this Agreement.

“Facility” shall mean and refer to the Mini Mill steel manufacturing facility and all related buildings and infrastructure to be acquired, developed, constructed, and operated at the Project Site as generally described in the Development Plan.

“Financial Incentive Agreement” shall mean and refer to the financial incentive agreements described in the Consolidated Incentive Act.

“Full Time Position” shall mean, when referring to a position or job, a position or job filled for at least nine (9) months during a calendar year with an average of at least thirty (30) hours of work each week.

“General Assembly” shall mean and refer to the Senate and the House of Representatives of the State.

“Governmental Authority” shall mean and refer to any executive, legislative, or judicial branch, or any agency, department, board, commission, council, court, tribunal, official, task force, or other authority exercising governmental powers of the United States of America or

1 *the State.*

2

3 *“Governor” shall mean and refer to the Governor of the State.*

4

5 *“Grants” shall mean and refer collectively to the cash grant for*
6 *Qualifying Site Preparation Costs as described in Section 6.2 and the cash*
7 *grant for Piling Costs as described in Section 6.3.*

8

9 *“Incentive Loan” shall mean and refer to the loan of money as described*
10 *in Section 6.4.*

11

12 *“Incentive Loan Collateral” shall mean and refer to that part of the*
13 *Infrastructure described in Exhibit 2 and all accessions, substitutions, and*
14 *replacements thereto or thereof, whether now owned or hereafter acquired and*
15 *all proceeds thereof whether of the same or different class.*

16

17 *“Incentive Loan Documents” shall mean and refer to the promissory note,*
18 *security agreement, mortgage, financing statement, fixture statement, and*
19 *other documents entered into between the Authority and the Sponsor with*
20 *respect to the Incentive Loan.*

21

22 *“Independent Direct Positions” shall mean and refer to those employees*
23 *and independent contractors of Non-related Entities who shall be designated*
24 *by the Sponsor and who hold Full Time Positions at the Facility or on the*
25 *Project Site with the primary objective of providing any of the following*
26 *products and services necessary to the operation, maintenance, or repair of*
27 *any part of the Project: (1) slag handling operations; (2) oxygen and*
28 *hydrogen production operations; (3) roll shop operations; (4) maintenance*
29 *shop operations; (5) scrap handling and processing operations; (6) material*
30 *management operations; (7) logistic operations; (8) site maintenance; or (9)*
31 *any other support services at the Facility or on the Project Site as approved*
32 *by the Commission.*

33

34 *“Infrastructure” shall mean and refer to the buildings, fixtures,*
35 *machinery, and equipment acquired, developed, constructed, and operated at*
36 *the Project Site and includes the Facility.*

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“Infrastructure Costs” shall mean and refer to the costs and expenses paid or incurred by, on behalf of, the Sponsor with respect to the acquisition, development, construction of the Infrastructure at the Project Site, but shall not include any amounts paid by or received from the City of Osceola, Arkansas or Mississippi County, Arkansas.

“Inter-Creditor Agreement” shall mean and refer to the inter-creditor agreement among the Authority and all Senior Term Lenders to the Project and all other Persons who may claim any interest in the Incentive Loan Collateral and certain other Persons.

“Investment Requirement” shall mean and refer to the obligation of the Sponsor, as described in this Agreement, to make a minimum capital investment of One Billion Twenty-three Million Five Hundred Ninety Thousand Dollars (\$1,023,590,000.00) in Actual Project Capital Expenditures.

“Investment Threshold” shall mean and refer to the investment by the Sponsor of a minimum of Two Hundred Fifty Million Dollars (\$250,000,000.00) in Actual Project Capital Expenditures for the use and benefit of the Project at the Project Site.

“Joint Marketing Agreement” shall mean and refer to the joint marketing agreement to be entered into between the Commission and the Sponsor prior to the Closing Date.

“Letter of Commitment” shall mean and refer to the letter of commitment entered into pursuant to the Amendment 82 Requirements between the Commission and the Sponsor as of January 28, 2013.

“Mini Mill” shall mean and refer to the steel manufacturing facility to be acquired, developed, constructed, and operated at the Project Site as generally described in the Development Plan.

“New Full Time Position” shall mean and refer to a permanent Full Time Position at the Facility or the Project Site that was created after the date

1 *of this Agreement.*

2
3 *“Non-related Entity” shall mean and refer to any Person that shall not*
4 *meet the definition of a Related Entity.*

5
6 *“Office of Economic and Tax Policy” shall mean and refer to the Office*
7 *of Economic and Tax Policy of the Arkansas Bureau of Legislative Research.*

8
9 *“Party” shall mean and refer to either or both of the State and the*
10 *Sponsor.*

11
12 *“Person” shall mean and refer to any Party, individual, entity,*
13 *corporation, company, association, limited liability company, joint venture,*
14 *general partnership, limited partnership, organization, Governmental*
15 *Authority, revocable trust, irrevocable trust, estate, personal*
16 *representative, executor, trustee, receiver, liquidator, or other person.*

17
18 *“Piling Costs” shall mean and refer to those Qualifying Site*
19 *Preparation Costs directly related to that part of the Facility on which the*
20 *Mini Mill shall be situated and that shall be necessary for subsurface*
21 *stabilization of the Mini Mill. “Piling Costs” include costs and expenses*
22 *related to piling, subsurface stabilization, engineering, grading, footers,*
23 *dewatering, excavation and foundation preparation, all installation, material*
24 *and labor costs and expenses directly related to the foregoing, and all other*
25 *necessary subsurface stabilization costs and expenses incidental to the*
26 *Piling Costs.*

27
28 *“Position Creation Requirement” shall mean and refer to the obligation*
29 *of the Sponsor, as described in this Agreement, to achieve and maintain the*
30 *Employment Target and the Compensation Target.*

31
32 *“Preliminary Period” shall mean and refer to a term of thirty-six (36)*
33 *months commencing on the Closing Date and continuing until the third*
34 *anniversary thereof.*

35
36 *“Project” shall mean and refer to the acquisition, development,*

1 *construction, and operation of the Facility at the Project Site in a manner*
2 *that shall satisfy the Investment Requirement and that shall achieve and*
3 *maintain the Position Creation Requirement.*

4
5 *“Project Site” shall mean and refer to the location of the Project in*
6 *Mississippi County, Arkansas as described in Exhibit 3.*

7
8 *“Qualified Amendment 82 Project” shall have the meaning set forth in*
9 *the Act.*

10
11 *“Qualifying Site Preparation Costs” shall mean and refer to the*
12 *following costs and expenses of the Project at the Project Site: removal of*
13 *trees, removal of structures, site clearing activities, grubbing, grading,*
14 *environmental remediation costs, excavation and other earthwork, fill dirt,*
15 *compaction, erosion control, installation of drainage and storm water*
16 *detention, fencing, installation of temporary and permanent internal roads,*
17 *footers and building foundations, on-site rail installation, on-site public*
18 *infrastructure improvements or construction, engineering costs, and any other*
19 *costs and expenses incidental to the Project that shall be eligible for*
20 *Amendment 82 Financing and that shall be approved by the State.*

21
22 *“Recycling Credit Legislation” shall mean and refer to an act to extend*
23 *the carry-forward of the income tax credit pursuant to the Recycling*
24 *Equipment Tax Credit Program from three (3) years to fourteen (14) years for*
25 *steel mills that newly invest at least Five Hundred Million Dollars*
26 *(\$500,000,000.00) in connection with a facility located in the State of*
27 *Arkansas and that create at least three hundred (300) New Full Time Positions*
28 *paying an annual average wage of at least Seventy Thousand Dollars*
29 *(\$70,000.00).*

30
31 *“Recycling Equipment Tax Credit Program” shall mean and refer to the*
32 *program with such name established under A.C.A. § 26-51-506.*

33
34 *“Related Entity” shall have the meaning set forth in A.C.A. § 15-4-3202*
35 *(24) (2011 Revision).*

36

1 *“Repayment Calculations” shall mean and refer to the formulae set forth*
2 *in Section 11 and Section 14 to be used if the Sponsor shall fail to satisfy*
3 *the Investment Requirement and to achieve and maintain the Position Creation*
4 *Requirement as set forth in this Agreement.*

5
6 *“Repayment Penalties” shall mean and refer to the penalties payable by*
7 *the Sponsor as determined by the Repayment Calculations.*

8
9 *“Request for Disbursement” shall mean and refer to a request by the*
10 *Sponsor with respect to a disbursement of the Grants or the Incentive Loan in*
11 *the form to be reasonably approved by the State and the Sponsor.*

12
13 *“Senior Term Lenders” shall mean and refer to those senior secured term*
14 *lenders to the Project who shall be required to join as a party to the Inter-*
15 *Creditor Agreement, as reasonably determined by the Authority and the*
16 *Sponsor.*

17
18 *“Sponsor” shall mean and refer to Big River Steel, LLC, a limited*
19 *liability company organized pursuant to the laws of the State of Delaware.*

20
21 *“State” shall mean and refer to the State of Arkansas.*

22
23 *“Tax Back Program” shall mean and refer to the investment tax*
24 *incentives program established by the Consolidated Incentive Act at A.C.A. §*
25 *15-4-2706.*

26
27 *“Termination Date” shall mean and refer to June 30, 2014.*

28
29 *“Test Date” shall mean and refer to the date on which the Preliminary*
30 *Period shall expire and the anniversary of such date during each year of the*
31 *Testing Period.*

32
33 *“Testing Period” shall mean and refer to a term of fifteen (15) years*
34 *commencing upon the expiration of the Preliminary Period and continuing until*
35 *the eighteenth (18th) anniversary of the Closing Date.*

36

1 *“Training Agreement” shall mean and refer to the training agreement to*
2 *be entered into between the Commission and the Sponsor with respect to the*
3 *assistance to be provided by the Commission to the Sponsor in the recruitment*
4 *and training of employees and independent contractors.*

5
6 *“Utility Tax Legislation” shall mean and refer to an act to provide a*
7 *full exemption of state sales taxes associated with the sale of natural gas*
8 *and electricity for use directly in the manufacturing process of steel mills*
9 *that newly invest at least Five Hundred Million Dollars (\$500,000,000.00) and*
10 *create at least three hundred (300) New Full Time Positions paying an annual*
11 *average wage of at least Seventy Thousand Dollars (\$70,000.00).*

12
13 2. *Project.* *Subject to the terms and conditions of this Agreement,*
14 *the Sponsor shall: (a) acquire, develop, construct, and operate the Facility*
15 *at the Project Site; (b) satisfy the Investment Requirement prior to the*
16 *expiration of the Preliminary Period; (c) achieve the Position Creation*
17 *Requirement prior to the expiration of the Preliminary Period; and (d)*
18 *maintain the Position Creation Requirement during the Test Period. The*
19 *Facility shall be acquired, developed, and constructed as generally described*
20 *in the Development Plan.*

21
22 3. *Investment Requirement.*

23
24 3.1. *Capital Commitments.* *The Project shall require a minimum capital*
25 *investment at the Project Site in Actual Project Capital Expenditures of at*
26 *least the Investment Requirement. The Sponsor shall satisfy the Investment*
27 *Requirement by no later than the expiration of the Preliminary Period. Prior*
28 *to the Termination Date, the Sponsor shall raise Capital Commitments in the*
29 *form of private equity investments of a minimum of Three Hundred Million*
30 *Dollars (\$300,000,000.00), and the Sponsor shall obtain other Capital*
31 *Commitments.*

32
33 3.2. *Escrow of Capital Commitments.* *When the Sponsor shall have*
34 *raised such minimum of Capital Commitments in the form of private equity*
35 *investments and shall have obtained such other Capital Commitments to satisfy*
36 *the Investment Requirement as described in Section 3.1, the Sponsor shall:*

1 (a) deposit into escrow with the Escrow Agent cash or irrevocable letters of
2 credit with a total value of at least Three Hundred Million Dollars
3 (\$300,000,000.00); (b) provide a written summary to the Commission and the
4 Authority of the other Capital Commitments as shall be necessary to satisfy
5 the Investment Requirement; and (c) provide a copy of all of the Capital
6 Commitment Documents to the Commission and the Authority. The Sponsor shall
7 reasonably cooperate with the Commission and the Authority with respect to
8 any review of the Capital Commitment Documents. If the Commission and the
9 Authority shall reasonably determine that the Capital Commitments and the
10 proceeds of the Bonds shall not provide the Sponsor with sufficient financial
11 capability to satisfy the Investment Requirement by the expiration of the
12 Preliminary Period, the Commission and the Authority shall provide written
13 notice thereof to the Sponsor within five (5) business days from the receipt
14 of the Capital Commitment Documents, and the Sponsor shall have until the
15 Termination Date to raise Capital Commitments in the form of private equity
16 investments and to obtain other Capital Commitments to satisfy the Investment
17 Requirement. If the Commission and the Authority shall reasonably determine
18 that the Capital Commitments and the proceeds of the Bonds shall provide the
19 Sponsor with the sufficient financial capability to satisfy the Investment
20 Requirement by the expiration of the Preliminary Period, the Commission and
21 the Authority shall send written notice thereof to the Sponsor and the
22 Closing Date and the issuance of the Bonds shall be scheduled for a date
23 within fifteen (15) calendar days after receipt of all the Capital Commitment
24 Documents by the Commission and the Authority.

25
26 3.3. Local Investment. Prior to the expiration of the Preliminary
27 Period, the Sponsor shall use its reasonable efforts to spend Two Hundred
28 Fifty Million Dollars (\$250,000,000.00) for products and services from
29 vendors and suppliers based in the State.

30
31 4. Position Creation Requirement. Prior to the expiration of the
32 Preliminary Period, the Sponsor shall achieve the Employment Target and the
33 Compensation Target through either Direct Positions or Independent Direct
34 Positions. During the Testing Period, the Sponsor shall maintain the
35 Employment Target and the Compensation Target through either Direct Positions
36 or Independent Direct Positions. The New Full Time Positions required by the

1 *Position Creation Requirement shall include those Direct Positions and*
2 *Independent Direct Positions designated by the Sponsor. The Employment*
3 *Target and the Compensation Target may be satisfied through a combination of*
4 *Direct Positions and Independent Direct Positions which constitute Full Time*
5 *Positions during the calendar year in question.*

6
7 5. *Time Periods.*

8
9 5.1. *Closing Date.* *The Parties anticipate that the Closing Date shall*
10 *occur prior to December 31, 2013, but the Closing Date may occur on any date*
11 *prior to the Termination Date.*

12
13 5.2. *Project Schedule.* *The acquisition, development, and construction*
14 *of the Project by the Sponsor is currently scheduled to commence promptly*
15 *following the Closing Date, and is currently scheduled to be substantially*
16 *completed within twenty-four (24) months after the Closing Date. The Sponsor*
17 *currently anticipates that commercial production by the Facility shall*
18 *commence approximately twenty-four (24) months after the Closing Date.*

19
20 5.3. *Termination.* *In the event the conditions to Closing set forth in*
21 *Sections 12 and 13 of this Agreement shall have not been satisfied or waived*
22 *on or before the Termination Date, either the State or the Sponsor may send*
23 *written notice of termination to the other Party and thereafter the Parties*
24 *shall have no further obligations pursuant to this Agreement and the Sponsor*
25 *shall no longer be required to satisfy the Investment Requirement and to*
26 *achieve and maintain the Position Creation Requirement.*

27
28 5.4. *Preliminary Period.* *The Preliminary Period is intended to be the*
29 *period during which the acquisition, development, and construction of the*
30 *Project shall be completed. The Sponsor shall satisfy the Investment*
31 *Requirement and shall achieve the Position Creation Requirement not later*
32 *than the expiration of the Preliminary Period.*

33
34 5.5. *Testing Period.* *The Testing Period is intended to be the period*
35 *during which the compliance with the Position Creation Requirement may be*
36 *evaluated and during which the Repayment Penalties may be imposed. The*

1 *Sponsor shall maintain the Position Creation Requirement during the Testing*
2 *Period.*

3
4 *5.6. Other Periods. Except as provided in this Agreement with respect*
5 *to the Investment Requirement and the Position Creation Requirement, the*
6 *Sponsor shall comply with the terms and conditions of this Agreement*
7 *commencing as of the date of this Agreement and continuing until the*
8 *expiration of the Testing Period. The Sponsor hereby waives any right to*
9 *extend any time period specified in this Agreement as set forth in A.C.A. §*
10 *15-4-3206.*

11
12 *6. Amendment 82 Financing.*

13
14 *6.1. Bonds. Subject to the terms and conditions of this Agreement and*
15 *the Amendment 82 Requirements, the State shall provide funding from the*
16 *Amendment 82 Financing to, or for the benefit of, the Sponsor in an aggregate*
17 *amount up to One Hundred Twenty Million Dollars (\$120,000,000.00). The*
18 *Amendment 82 Financing shall be funded through issuance of the Bonds in an*
19 *amount not exceeding One Hundred Twenty-five Million Dollars*
20 *(\$125,000,000.00) in the aggregate. The Bonds shall be in such denominations*
21 *and series and upon such terms and conditions as determined by the Authority,*
22 *in its sole and absolute discretion. The Bonds shall be direct general*
23 *obligations of the State for the payment of debt service on which the full*
24 *faith and credit of the State shall be pledged. The Bonds shall be payable*
25 *from gross general revenues or special revenues appropriated by the General*
26 *Assembly.*

27
28 *6.2. Grant for Qualifying Site Preparation Costs. From the proceeds*
29 *of the Bonds, the State shall fund to, or for the benefit of, the Sponsor a*
30 *cash grant in the amount of Fifty Million Dollars (\$50,000,000.00) for*
31 *payment or reimbursement of Qualifying Site Preparation Costs.*

32
33 *6.3. Grant for Piling Costs. From the proceeds of the Bonds, the*
34 *State shall fund to, or for the benefit of, the Sponsor an additional cash*
35 *grant in an amount up to Twenty Million Dollars (\$20,000,000.00) for*
36 *reimbursement of Piling Costs. Reimbursement by the State for Piling Costs*

1 shall be: (a) on a matching basis in which the State shall reimburse the
2 Sponsor one-half (1/2) of eligible Piling Costs paid by the Sponsor; and (b)
3 the maximum amount of Piling Costs to be reimbursed by the State shall be
4 limited to not more than Twenty Million Dollars (\$20,000,000.00) out of a
5 total of Forty Million Dollars (\$40,000,000.00) or more of Piling Costs.

6
7 6.4. Incentive Loan. Subject to the terms and conditions of this
8 Agreement and the Incentive Loan Documents, the Authority shall make the
9 Incentive Loan to the Sponsor as follows:

10
11 (a) Amount Funded; Principal Amount. In order to fund the
12 Incentive Loan and in consideration of the Sponsor's promissory note
13 evidencing the Incentive Loan, the Authority will make available from the
14 Bond proceeds the sum of Fifty Million Dollars (\$50,000,000.00) for
15 disbursement to the Sponsor under Section 7 hereof. The promissory note
16 evidencing the Incentive Loan shall be in a principal amount equal to Fifty
17 Million Dollars (\$50,000,000.00).

18
19 (b) Incentive Loan Collateral. The proceeds of the Incentive
20 Loan shall be used solely for the engineering, design, procurement,
21 installation, fabrication, and erection of the Incentive Loan Collateral and
22 related purposes. The Incentive Loan shall be secured by a first priority,
23 perfected, purchase-money lien and security interest in the Incentive Loan
24 Collateral subject to the terms and conditions of the Inter-Creditor
25 Agreement.

26
27 (c) Debt Service. Interest will accrue on the Incentive Loan
28 at the rate payable on the Bonds issued to fund the Incentive Loan, beginning
29 twenty-four (24) months after the Closing Date. The payment of principal and
30 interest due on the Incentive Loan shall be structured as nearly as possible
31 to correspond with debt service payments due on the Bonds issued to fund the
32 Incentive Loan (excepting interest accruing on such Bonds during the first
33 twenty-four (24) months following their date of issuance, which shall be
34 fully borne by the State). The first payment of debt service on the
35 Incentive Loan is projected at this time to be due from the Sponsor on the
36 first day of the thirtieth (30th) month following the Closing Date. A debt

1 *service schedule detailing the semiannual debt service payments due on the*
2 *Incentive Loan (and the principal and interest components thereof) will be*
3 *attached to the promissory note evidencing the Incentive Loan. In no event*
4 *shall the total debt service payments due on the Incentive Loan or the net*
5 *present value of such payments exceed the total debt service payments, or the*
6 *net present value of such payments, due on the Bonds issued to fund the*
7 *Incentive Loan. For purposes of determining the net present value of such*
8 *total debt service payments, the total debt service payments will be*
9 *discounted at a rate equal to the lesser of the true interest cost on the*
10 *Bonds issued to fund the Incentive Loan or the rate agreed upon by the*
11 *Authority and the Sponsor with respect to the Bonds issued to fund the*
12 *Incentive Loan.*

13
14 (d) Term. *The Incentive Loan shall have a term of twenty (20)*
15 *years commencing on the Closing Date.*

16
17 (e) Prepayment. *The Sponsor may prepay the Incentive Loan in*
18 *whole or in part without penalty at any time beginning twenty-four (24)*
19 *months after the Closing Date. The portion of any repayment in part that is*
20 *attributable to principal shall be applied to satisfy principal component(s)*
21 *of the Bonds issued to fund the Incentive Loan being redeemed in connection*
22 *with the prepayment and the Authority shall promptly thereafter provide a*
23 *revised debt service schedule for approval by the Sponsor and attachment to*
24 *the promissory note. In the event the Sponsor meets the conditions in this*
25 *Section 6.4(e) and the Sponsor elects to prepay the Incentive Loan in full*
26 *prior to the expiration of forty-eight (48) months after the Closing Date,*
27 *the prepayment amount shall be equal to Forty-five Million Dollars*
28 *(\$45,000,000.00) million less any principal amount of the Incentive Loan*
29 *previously paid by the Sponsor plus any accrued interest on the Incentive*
30 *Loan outstanding through the prepayment date. To qualify for the discount of*
31 *the prepayment amount, both of the following conditions must be met: (1)*
32 *within four (4) years after the Closing Date the Sponsor shall have obtained*
33 *Capital Commitments, as audited and verified by the Commission and Authority,*
34 *of at least Five Hundred Million Dollars (\$500,000,000.00) (in addition to*
35 *the Investment Requirement) with respect to an expansion of the steel mill*
36 *operations of the Sponsor at or near the Project Site; and (2) construction*

1 of such expansion shall have commenced prior to the date of the receipt of
2 the prepayment by the State.

3
4 6.5. Other Costs. An amount up to Five Million Dollars
5 (\$5,000,000.00) may be funded through the Bonds for the purpose of paying
6 reasonable and necessary closing costs and expenses of the State, in the sole
7 and absolute discretion of the Authority, including those that relate to the
8 issuance of the Bonds and including costs and expenses due to those trustees,
9 agents, underwriters, attorneys, advisors, and consultants performing
10 services on behalf of the State in connection with the Project. The Sponsor
11 shall not be responsible for any of such costs and expenses.

12
13 6.6. Related Entities. In the event that the Sponsor may elect for
14 any part of the Amendment 82 Financing to be paid to or received by a Related
15 Entity to the Sponsor, the Sponsor shall notify the Commission and the
16 Authority. As a prior condition to the payment or receipt of any part of the
17 Amendment 82 Financing, such Related Entity of the Sponsor shall execute and
18 deliver a joinder to this Agreement in which such Related Entity shall agree
19 to comply with all of the terms and conditions of this Agreement.

20
21 7. Disbursement.

22
23 7.1. Investment Threshold. Prior to any disbursement of funds by the
24 State with respect to the Grants or the Incentive Loan, the Sponsor shall
25 provide written confirmation to the Commission and the Authority that the
26 Sponsor has achieved the Investment Threshold by investment of a minimum of
27 Two Hundred Fifty Million Dollars (\$250,000,000.00) in Qualifying Site
28 Preparation Costs, Piling Costs, and Infrastructure Costs. The Commission
29 and the Authority shall have the right to audit and verify the investment of
30 the Investment Threshold before disbursing funds to, or for the benefit of
31 the Sponsor, with such audit and verification to be conducted in a timely
32 manner. After the Investment Threshold shall have been achieved, the Actual
33 Project Capital Expenditures that comprise the Investment Threshold may be
34 eligible for reimbursement through a disbursement from the Grants or the
35 Incentive Loan, as applicable.

36

1 7.2. Generally. All funds to be disbursed by the State with respect
2 to the Grants and Incentive Loan shall require the prior approval of the
3 Commission and the Authority. All funds to be disbursed by the State with
4 respect to the Grants and the Incentive Loan shall be disbursed to, or for
5 the benefit of, the Sponsor, for payment or reimbursement of qualified
6 project costs and expenses permitted by the Amendment 82 Requirements with
7 such qualified project costs and expenses to include Qualifying Site
8 Preparation Costs, Infrastructure Costs, and any other costs and expenses
9 incidental to the Project that shall be eligible for Amendment 82 Financing
10 and approved as eligible by the State. The disbursement of funds with
11 respect to the Incentive Loan shall also be subject to the terms and
12 conditions of the Incentive Loan Documents.

13
14 7.3. Procedure. Subject to the terms and conditions of this
15 Agreement, the Grants and the Incentive Loan shall be disbursed by the State
16 to, or for the benefit of, the Sponsor in one (1) or more disbursements. The
17 Sponsor may request a disbursement from the Grants or the Incentive Loan by
18 submitting a Request for Disbursement to the Commission and the Authority.
19 The Request for Disbursement shall specify the requested source of funding
20 from either the Grants or the Incentive Loan. A Request for Disbursement
21 shall include an itemization of each cost and expense for which the Sponsor
22 may request payment or reimbursement. In support of a Request for
23 Disbursement, the Sponsor shall provide a copy of all receipts, invoices,
24 bills, statements, checks, payments, orders, correspondence, notices, and
25 other documents sent, received, or exchanged with respect to each cost and
26 expense identified in the Request for Disbursement. The Sponsor shall
27 provide the State with full access to all documents, records, and other
28 information in the possession of or available to the Sponsor that may relate
29 to each cost and expense identified with respect to a Request for
30 Disbursement. The State may audit and verify all such documents, records,
31 and other information and may take all other reasonable actions to verify
32 that each cost and expense identified with respect to a Request for
33 Disbursement shall have been actually paid or incurred by the Sponsor, the
34 reasonableness of the nature and amount of the cost and expense, and whether
35 the cost and expense may be properly characterized as Qualifying Site
36 Preparation Costs, Infrastructure Costs, Piling Costs, or other costs and

1 expenses incidental to the Project that shall be eligible for Amendment 82
2 Financing. Upon completion of the audit and verification by the State of the
3 costs and expenses identified in a Request for Disbursement, the Authority
4 shall send a Notice of Payment to the Sponsor setting forth the amount
5 approved by the Commission and the Authority to be disbursed by the State
6 with respect to the costs and expenses identified in a Request for
7 Disbursement and the source of funding from either the Grants or the
8 Incentive Loan. Within five (5) business days after the date of a Notice of
9 Payment, the State shall cause the amount set forth in the Notice of Payment
10 to be disbursed to, or for the benefit of, the Sponsor by wire transfer to
11 the account of the Sponsor designated in the Request for Disbursement.

12
13 7.4. Eligible Costs and Expenses. A Request for Disbursement may
14 request reimbursement of Qualifying Site Preparation Costs, Infrastructure
15 Costs, Piling Costs, and other costs and expenses incidental to the Project
16 that shall be eligible for Amendment 82 Financing. A Request for
17 Disbursement may include only such costs and expenses that constitute
18 Qualifying Site Preparation Costs, Infrastructure Costs, Piling Costs, and
19 other costs and expenses incidental to the Project that shall be eligible for
20 Amendment 82 Financing. With respect to any cost and expense that shall not
21 constitute Qualifying Site Preparation Costs, Infrastructure Costs, or Piling
22 Costs, the State shall determine whether such other cost and expense shall be
23 incidental to the Project and whether such cost and expense shall be eligible
24 for Amendment 82 Financing. A Request for Disbursement may not include any
25 cost or expense that shall have been included in any prior Request for
26 Disbursement. All Requests for Disbursement must be submitted by the Sponsor
27 to the State no later than twenty-four (24) months after the Closing Date.

28
29 8. Training Benefits. The Commission shall assist the Sponsor in
30 recruiting and training employees and independent contractors who shall work
31 at the Facility or on the Project Site. The Commission and the Sponsor shall
32 enter into the Training Agreement regarding the assistance to be provided to
33 the Sponsor. Subject to the terms and conditions of this Agreement and the
34 Training Agreement, the Commission shall fund up to Ten Million Dollars
35 (\$10,000,000.00) by payment or reimbursement of costs and expenses paid or
36 incurred by the Sponsor for training activities and facilities with respect

1 to the employees and independent contractors who shall work at the Facility
2 or on the Project Site. The funds disbursed to, or for the benefit of, the
3 Sponsor for such training activities and facilities shall be in addition to
4 the Amendment 82 Financing described in this Agreement and shall be spread
5 equally over a period of two (2) years based on a schedule of on-the-job
6 training determined by the Sponsor in consultation with the Commission. The
7 assistance to be provided by the Commission pursuant to the Training
8 Agreement shall include the following support services: (a) recruitment
9 advertising for new employees; (b) securing the use of facilities for
10 accepting applications and interviewing new employees; (c) reproduction of
11 training manuals; (d) reimbursement of compensation to instructors for on-
12 the-job training (up to, but not to exceed actual hourly rate of pay); (e)
13 on-site training facility space; and (f) reimbursement for train-the-trainer
14 expenses, including reasonable expenses of travel. Requests for
15 reimbursement shall provide the Commission, at a minimum, with the
16 information described in paragraphs I(A) and I(B) of the form of Training
17 Agreement.

18
19 9. Other Incentive Programs.

20
21 9.1. Advantage Arkansas Program. The Sponsor may be eligible for a
22 job creation income tax credit provided pursuant to the Advantage Arkansas
23 Program. The Advantage Arkansas Program provides an income tax credit
24 against a portion of State income tax liabilities based upon a percentage of
25 the annual payroll paid to the new full time permanent employees hired as a
26 result of an approved project. To receive the income tax credit of the
27 Advantage Arkansas Program, the Sponsor must enter into a Financial Incentive
28 Agreement. The tier of the county in which the approved project is located
29 determines the qualifying payroll threshold, as well as the income tax
30 benefit calculation. Counties are segmented into four (4) tiers based on
31 poverty rate, population growth, per capita income, and unemployment rate.
32 Based on the location of the Project Site, the Sponsor may be entitled to an
33 income tax credit up to four percent (4%) of the total taxable wages paid to
34 new full time permanent employees hired after the date of the Financial
35 Incentive Agreement. The annual payroll thresholds of the new employees must
36 be met within twenty-four (24) months following the date the Financial

1 *Incentive Agreement is signed by the Commission. Employees must be taxpayers*
2 *of the State to qualify for the credit. The income tax credit begins in the*
3 *year in which the new employees are hired and is earned each tax year for a*
4 *period of five (5) years. Any unused credits can be carried forward for nine*
5 *(9) years beyond the year in which they were earned. The Sponsor may apply*
6 *the credit to its State income tax liability, not to exceed fifty percent*
7 *(50%) of the total income tax liability for a reporting period. The income*
8 *tax credit provided by the Advantage Arkansas Program is also conditioned*
9 *upon the satisfaction of the requirements of the Consolidated Incentive Act.*

10
11 *9.2. Tax Back Program. The Sponsor may be eligible for a refund of*
12 *state and local sales and use taxes provided pursuant to the Tax Back*
13 *Program. The Tax Back Program provides for a refund of a portion of state*
14 *and local sales and use taxes paid on certain purchases of material used in*
15 *the construction of a building or buildings and on purchases of taxable*
16 *machinery or equipment to be located in or in connection with such building*
17 *or buildings. To qualify for the refund provided by the Tax Back Program,*
18 *the Sponsor must: (a) invest a minimum of One Hundred Thousand Dollars*
19 *(\$100,000.00); (b) execute the Advantage Arkansas Agreement within the*
20 *appropriate time as required by applicable law; and (c) submit a completed*
21 *application accompanied by a local endorsement resolution from the city,*
22 *county or both where the Project Site is located and which authorizes the*
23 *refund of its local taxes to the Sponsor. The refund shall not include the*
24 *portion of the sales tax dedicated to the Educational Adequacy Fund described*
25 *in A.C.A. § 19-5-1227 and the Conservation Tax Fund as described in A.C.A. §*
26 *19-6-484. These two (2) exceptions reduce the refund by one percent (1%).*
27 *Currently, the State sales tax rate is six percent (6%), and therefore, the*
28 *refund of State taxes shall be based upon five percent (5%) of the eligible*
29 *taxable purchases. The refund of local taxes shall be based on the sales tax*
30 *rate for the city and county where the Project Site is located. The refund*
31 *provided by the Tax Back Program is also conditioned upon the satisfaction of*
32 *the requirements of the Consolidated Incentive Act.*

33
34 *9.3. Recycling Equipment Tax Credit Program. The Sponsor may be*
35 *eligible for an income tax credit provided pursuant to the Recycling*
36 *Equipment Tax Credit Program. The Recycling Equipment Tax Credit Program*

1 provides for an income tax credit for thirty percent (30%) of the cost of
2 eligible equipment and installation costs and expenses. Eligibility for the
3 Recycling Equipment Tax Credit Program is determined by the Arkansas
4 Department of Environmental Quality. If the Sponsor otherwise qualifies for
5 the Recycling Equipment Tax Credit it may also qualify under the Recycling
6 Credit Legislation to extend the carry-forward of the income tax credit
7 pursuant to the Recycling Equipment Tax Credit Program from three (3) years
8 to fourteen (14) years for steel mills that newly invest at least Five
9 Hundred Million Dollars (\$500,000,000.00) and create at least three hundred
10 (300) New Full Time Positions paying an annual average wage of at least
11 Seventy Thousand Dollars (\$70,000.00).

12
13 9.4. Utility Tax. The Sponsor may be eligible for a reduced rate of
14 sales taxes with respect to purchases of electricity and natural gas used
15 directly in the manufacturing process. The Utility Tax Legislation will
16 provide a full exemption of sales taxes associated with the sale of natural
17 gas and electricity for use directly in the manufacturing process of steel
18 mills that newly invest at least Five Hundred Million Dollars
19 (\$500,000,000.00) and create at least three hundred (300) New Full Time
20 Positions paying an annual average wage of at least Seventy Thousand Dollars
21 (\$70,000.00).

22
23 9.5. Machinery & Equipment Tax Exemptions. The Sponsor may be
24 eligible for an exemption from state and local sales and use taxes with
25 respect to purchases of machinery and equipment used directly in
26 manufacturing for a new manufacturing facility or to replace existing
27 machinery and equipment for a manufacturing facility. Machinery and equipment
28 required by the State's laws to be purchased for air or water pollution
29 control shall be also exempt.

30
31 10. Joint Marketing Agreement. The Commission and the Sponsor shall
32 enter into the Joint Marketing Agreement whereby each shall commit to spend
33 up to One Hundred Fifty Thousand Dollars (\$150,000.00) per calendar year for
34 each of three (3) years beginning no later than twelve (12) months after the
35 Closing Date, to market and advertise steel companies based in the State to
36 out-of-state suppliers, vendors, and customers for the purpose of marketing

1 the State as the right place for out-of-state suppliers, vendors, and
2 customers to locate their business or to market or consume the products
3 produced by steel companies based in the State. The expenditures by the
4 Commission with respect to the Joint Marketing Agreement shall be in addition
5 to the Amendment 82 Financing described in this Agreement.

6
7 11. Consequences of Unsatisfied Obligations.

8
9 11.1. Generally. The Sponsor shall pay to the State certain amounts to
10 be determined by the applicable Repayment Calculations set forth in this
11 Section 11 in the event the Sponsor shall fail to: (a) satisfy the Investment
12 Requirement prior to the expiration of the Preliminary Period; (b) achieve
13 the Position Creation Requirement prior to the expiration of the Preliminary
14 Period; and (c) maintain the Position Creation Requirement during the Test
15 Period. The total amount to be paid by the Sponsor pursuant to any or all of
16 the Repayment Calculations shall not exceed the maximum amount of the lesser
17 of: (i) Seventy Million Dollars (\$70,000,000.00) or (ii) the total amount
18 disbursed by the State pursuant to the Grants. Any amounts determined to be
19 due from the Sponsor to the State pursuant to this Section 11 shall be paid
20 by the Sponsor to the State not later than thirty (30) days following the
21 receipt of written notice by the Sponsor from the Commission. In no case
22 shall the Sponsor be entitled to additional funds from the State as a result
23 of the Repayment Calculations.

24
25 11.2. Repayment Calculation - Investment Requirement. If, at the
26 expiration of the Preliminary Period, the Sponsor has made or caused to be
27 made Actual Project Capital Expenditures of less than One Billion Dollars
28 (\$1,000,000,000.00), the Sponsor shall pay to the State an amount equal to
29 one-half of one percent (0.50) of the difference between One Billion Dollars
30 (\$1,000,000,000.00) and the Actual Project Capital Expenditures.

31
32 11.3. Repayment Calculation - Employment Target. If, at the expiration
33 of the Preliminary Period, and continuing through the Test Period, as
34 measured annually on the Test Date, the Sponsor has not achieved and
35 maintained the Employment Target, but employs at least fifty-five (55)
36 individuals in Direct Positions and Independent Direct Positions, the Sponsor

1 shall pay to the State an amount calculated as follows: (i) the total amount
2 disbursed by the State pursuant to the Grants divided by fifteen (15) and
3 further divided by two (2); (ii) minus the ratio of the total qualified
4 Direct Positions and Independent Direct Positions to five hundred twenty-five
5 (525), multiplied by the quotient obtained in (i). With respect to the first
6 calculation pursuant to this Section 11.3 on the first Test Date at the
7 expiration of the Preliminary Period, the Employment Target may be satisfied
8 through a combination of Direct Positions and Independent Direct Positions
9 which are filled on a full-time basis of at least thirty (30) hours per week
10 for a period of four and one-half months ($4\frac{1}{2}$) months during the six (6)
11 months prior to the first calculation pursuant to this Section 11.3.

12
13 11.4. Repayment Calculation - Compensation Target. If, at the
14 expiration of the Preliminary Period, and continuing through the Test Period,
15 as measured annually on the Test Date, the Sponsor has employed a minimum of
16 fifty-five (55) total full-time Direct Positions and Independent Direct
17 Positions, but has not met the Compensation Target, the Sponsor upon written
18 notice shall pay to the State an amount calculated as follows: (i) the total
19 amount disbursed by the State pursuant to the Grants divided by fifteen (15)
20 and further divided by two (2); (ii) minus the ratio of the average annual
21 compensation of all those Direct Positions and Independent Positions as
22 designated by the Sponsor to Seventy-five Thousand Dollars (\$75,000.00),
23 multiplied by the quotient obtained in (i). With respect to the first
24 calculation pursuant to this Section 11.4 on the first Test Date at the
25 expiration of the Preliminary Period, the average annual compensation shall
26 be calculated by using the amount of compensation paid during months thirty-
27 one (31) through thirty-six (36) after the Closing Date to full-time Direct
28 Positions and Independent Direct Positions designated by the Sponsor and then
29 multiplied by two (2).

30
31 11.5. Repayment Calculation - After Preliminary Period. If, at any
32 time after the expiration of the Preliminary Period, as measured annually on
33 the Test Date, the Sponsor shall not maintain a minimum of fifty-five (55)
34 total full-time Direct Positions and Independent Direct Positions, the
35 Sponsor shall pay to the State an amount calculated as follows: (i) the total
36 amount disbursed by the State pursuant to the Grants; (ii) minus the product

1 of the total amount disbursed by the State pursuant to the Grants divided by
2 fifteen (15) multiplied by the number of years, beginning after the end of
3 the Preliminary Period, the Sponsor has employed at least fifty-five (55)
4 total Direct Positions and Independent Direct Positions; (iii) minus any
5 amounts previously paid by the Sponsor pursuant to the Repayment Calculations
6 set forth in Sections 11.2, 11.3, and 11.4.

7
8 11.6. Tax Incentive Penalties. The repayment obligations described in
9 this Section 11 shall be in addition to any provisions of the State's laws
10 pertaining to repayment, recalculation, or penalties in the event the Sponsor
11 shall receive a benefit or economic incentive, including the Amendment 82
12 Financing described in this Agreement, for which the Sponsor shall later be
13 deemed to have been ineligible.

14
15 11.7. Other. In the event that the Sponsor shall fail to comply with
16 the terms and conditions of this Agreement other than those terms and
17 conditions relating to the Investment Requirement and the Position Creation
18 Requirement, the Sponsor may also be subject to penalties or remedies
19 permitted by applicable law.

20
21 12. Conditions of the State. In addition to all other conditions set
22 forth in this Agreement and the Amendment 82 Requirements, the obligations of
23 the State pursuant to this Agreement shall be subject to the satisfaction of
24 following conditions on or before the Closing Date:

25
26 12.1. Negotiation and execution of all documents pertaining to the
27 issuance of the Bonds on terms and conditions satisfactory to the State.

28
29 12.2. Negotiation and execution of the Incentive Loan Documents on
30 terms and conditions satisfactory to the State.

31
32 12.3. Satisfactory completion of the actions required by the Governor,
33 the General Assembly, the Commission, the Authority, the Department, and all
34 other officials pursuant to the Amendment 82 Requirements.

35
36 12.4. Any special legislation required for any of the economic

1 *incentives described in this Agreement, including the Recycling Tax*
2 *Legislation and Utility Tax Legislation, shall have been approved by the*
3 *General Assembly and the Governor.*

4
5 *12.5. Negotiation and execution of the Inter-Creditor Agreement on*
6 *terms and conditions satisfactory to the State.*

7
8 *12.6. Negotiation and execution of the Escrow Agreement for the Capital*
9 *Commitments on terms and conditions satisfactory to the State.*

10
11 *12.7. The closing of all transactions in connection with the Capital*
12 *Commitments.*

13
14 *12.8. The Bonds shall have been sold and delivered by the Authority on*
15 *terms and conditions satisfactory to the State.*

16
17 *12.9. All of the covenants and obligations that the Sponsor is required*
18 *to perform or to comply with pursuant to this Agreement on or prior to the*
19 *Closing Date shall have been performed and complied with in all material*
20 *respects.*

21
22 *13. Conditions of the Sponsor. In addition to all other conditions*
23 *set forth in this Agreement and the Amendment 82 Requirements, the*
24 *obligations of the Sponsor pursuant to this Agreement shall be subject to the*
25 *satisfaction of following conditions on or before the Closing Date:*

26
27 *13.1. Satisfactory negotiation and execution of all documents*
28 *pertaining to the issuance of the Bonds.*

29
30 *13.2. Negotiation and execution of the Incentive Loan Documents on*
31 *terms and conditions satisfactory to the Sponsor.*

32
33 *13.3. Negotiation and execution of the Advantage Arkansas Agreement,*
34 *the Escrow Agreement with respect to the Capital Commitments, the Financial*
35 *Incentive Agreement, the Joint Marketing Agreement, the Training Agreement,*
36 *and all other contracts specifically identified in this Agreement on terms*

1 *and conditions satisfactory to the Sponsor.*

2
3 *13.4. Satisfactory completion of the actions required by the Governor,*
4 *the General Assembly, the Commission, the Authority, the Department, and all*
5 *other officials pursuant to the Amendment 82 Requirements.*

6
7 *13.5. Any special legislation required for any of the economic*
8 *incentives described in this Agreement, including the Recycling Tax*
9 *Legislation and Utility Tax Legislation, shall have been approved by the*
10 *General Assembly and the Governor.*

11
12 *13.6. Approval by the Sponsor of the Capital Commitments and the*
13 *closing of all transactions in connection with the Capital Commitments.*

14
15 *13.7. Negotiation and execution of an agreement between the Sponsor and*
16 *Mississippi County, the City of Osceola, Arkansas or another local entity for*
17 *the acquisition and lease of the Project Site on terms and conditions*
18 *satisfactory to the Sponsor.*

19
20 *13.8. Issuance of the relevant Governmental Authorities of the State of*
21 *all required environmental, construction, and operating permits prior to the*
22 *Closing Date.*

23
24 *13.9. Negotiation and execution of a satisfactory long-term electrical*
25 *power contract for the Facility on terms and conditions satisfactory to the*
26 *Sponsor.*

27
28 *13.10. All of the covenants and obligations that the State is*
29 *required to perform or to comply with pursuant to this Agreement on or prior*
30 *to the Closing Date shall have been performed and complied with in all*
31 *material respects.*

32
33 *14. Due on Sale.*

34
35 *14.1. No Assumption. If a Change of Control Event is announced by the*
36 *Sponsor and the Announced Controlling Party shall not agree in writing to*

1 *assume all of the rights and obligations of the Sponsor pursuant to this*
2 *Agreement and all related agreements executed in connection with the Project,*
3 *the Sponsor shall, upon written notice by the Commission and the Authority,*
4 *cause the Announced Controlling Party to pay to the State prior to*
5 *consummation of the Change of Control Event an amount calculated as follows:*
6 *(i) the total amount disbursed by the State pursuant to the Grants; (ii)*
7 *minus the product of the total amount disbursed by the State pursuant to the*
8 *Grants divided by fifteen (15) and then multiplied by the number of years*
9 *beginning after the end of the Preliminary Period, the Sponsor has employed*
10 *at least fifty-five (55) total Direct Positions and Independent Direct*
11 *Positions; and (iii) minus any amounts previously paid by the Sponsor*
12 *pursuant to the Repayment Calculations set forth in Section 11 as a result of*
13 *failing to achieve and maintain the Employment Target or the Compensation*
14 *Target.*

15
16 *14.2. Assumption Subsequent to Investment Requirement Being Met. If a*
17 *Change of Control Event is announced by the Sponsor subsequent to the*
18 *Investment Requirement having been satisfied and the Announced Controlling*
19 *Party shall agree in writing to assume all of the rights and obligations of*
20 *the Sponsor pursuant to this Agreement and all related agreements executed in*
21 *connection with the Project, but the Commission and the Authority reasonably*
22 *determine that the Announced Controlling Party is unlikely to achieve and*
23 *maintain the Employment Target or the Compensation Target, the Sponsor shall,*
24 *upon written notice by the Commission and the Authority, cause the Announced*
25 *Controlling Party prior to consummation of the Change of Control Event to*
26 *fund an Escrow Account in an amount calculated as follows: the product of the*
27 *total amount disbursed by the State pursuant to the Grants divided by fifteen*
28 *(15) and then multiplied by the number of years remaining until the*
29 *expiration of the Test Period divided by two (2) with such years remaining*
30 *until the expiration of the Test Period to be no greater than fifteen (15).*
31 *In any year in which the Announced Controlling Party shall fail to achieve*
32 *and maintain the Employment Target or the Compensation Target, the Commission*
33 *and the Authority shall withdraw an amount from such Escrow Account equal to*
34 *the amount determined pursuant to the applicable Repayment Calculations for*
35 *that particular year. If the Announced Controlling Party maintains the*
36 *Employment Target and the Compensation Target for the three (3) consecutive*

1 years following the later of the Change of Control Event and the end of the
2 Preliminary Period, all amounts in the Escrow Account shall be released and
3 returned to the Announced Controlling Party. The rights of the State upon a
4 Change of Control Event will include, among other rights, the proportional
5 right to vote alongside all other Senior Term Lenders on matters related to
6 any Change of Control Event. The Commission and the Authority shall not have
7 the right to seek the establishment of the Escrow Account if a majority of
8 the Senior Term Lenders inclusive of the State but not including those
9 affiliated with the Sponsor or the Announced Controlling Party, commit in
10 writing to permit assumption of their respective debts by the Announced
11 Controlling Party on the same or substantially similar terms and conditions
12 as those in existence immediately prior to the execution of definitive
13 documents related to the Change of Control Event. A majority of the Senior
14 Term Lenders shall be determined by the amounts due by the Sponsor to each
15 such Senior Term Lender inclusive of the State but not including those
16 affiliated with the Sponsor or the Announced Controlling Party immediately
17 prior to the execution of definitive documents related to the Change of
18 Control Event.

19
20 14.3. Assumption Prior to Investment Requirement Being Met. If a
21 Change of Control Event is announced by the Sponsor prior to the Investment
22 Requirement having been met and the Announced Controlling Party shall agree
23 in writing to assume all of the rights and obligations of the Sponsor
24 pursuant to this Agreement and all related agreements executed in connection
25 with the Project, but the Commission and the Authority reasonably determines
26 that the Announced Controlling Party is unlikely to achieve and maintain the
27 Employment Target or the Compensation Target, the Sponsor shall, upon written
28 notice by the Commission and the Authority, cause the Announced Controlling
29 Party, prior to consummation of the Change of Control Event, to fund the
30 Escrow Account in an amount calculated as follows: the product of the total
31 amount disbursed by the State pursuant to the Grants divided by fifteen (15)
32 and then multiplied by the number of years remaining until the expiration of
33 the Test Period with such years remaining until the expiration of the Test
34 Period to be no greater than fifteen (15). In any year during the Test
35 Period in which the Announced Controlling Party shall fail to achieve and
36 maintain the Employment Target or the Compensation Target, the Commission and

1 the Authority shall withdraw an amount from the Escrow Account equal to the
2 amount determined pursuant to the applicable Repayment Calculations for that
3 particular year. If the Announced Controlling Party shall achieve and
4 maintain the Employment Target and the Compensation Target for the six (6)
5 consecutive years following the later of the end of the Preliminary Period
6 and the establishment of the Escrow Account, all amounts in the Escrow
7 Account shall be released and returned to the Announced Controlling Party.
8 If the Announced Controlling Party shall fail to achieve and maintain the
9 Employment Target and the Compensation Target for the three (3) consecutive
10 years following the later of the end of the Preliminary Period and the
11 establishment of the Escrow Account, all amounts in the Escrow Account shall
12 be released to the State and shall become the property of the State and
13 neither the State, the Commission, nor the Authority shall have any
14 obligation to make any of such funds available to the Announced Controlling
15 Party or any other Person. The Commission and the Authority shall have the
16 right to seek the establishment of the Escrow Account whether or not a
17 majority of the Senior Term Lenders commit in writing to permit assumption of
18 their respective debts by the Announced Controlling Party on the same or
19 substantially similar terms as those in existence immediately prior to the
20 execution of definitive documents related to the Change of Control Event.

21
22 14.4. Assumption Prior to End of Availability of Economic Incentives.

23 If a Change of Control Event is announced by the Sponsor, any economic
24 incentives, including proceeds from the Amendment 82 Financing, set forth in
25 this Agreement that have not been previously made available to the Sponsor
26 prior to the announcement of the Change of Control Event shall no longer be
27 available to either the Sponsor or the Announced Controlling Party. If the
28 announced Change of Control Event shall not be consummated and no more than
29 nine (9) months have elapsed since the Change of Control Event was first
30 announced and the Sponsor provides written notice that the announced Change
31 of Control Event shall not be consummated, any economic incentives, including
32 proceeds from the Amendment 82 Financing, set forth in this Agreement that
33 have not been previously made available to the Sponsor shall be reinstated
34 and shall be available to the Sponsor as set forth in this Agreement, to the
35 extent consistent with applicable law.

36

1 15. Confidentiality and Non-Disclosure. The Parties recognize that
2 certain information and records provided by the Sponsor to the Commission or
3 the Authority include trade secrets or other information which, if disclosed,
4 would give advantage to competitors of the Sponsor, or include records
5 related to the Sponsor's planning, site location, expansion, operations,
6 product development or marketing (collectively, "Confidential Business
7 Information"). Such records are generally exempt from public disclosure
8 under the terms of the Arkansas Freedom of Information Act, A.C.A. § 25-19-
9 101 et seq. Neither the Parties to this Agreement nor any Related Entity,
10 affiliate, or representative of any Party, shall make any disclosure of
11 Confidential Business Information without the prior written consent of any
12 other Party; provided however, that a Party may make such a disclosure
13 without the consent of any other Party if the disclosure is: (a) compelled by
14 legal, accounting, or regulatory requirements applicable to and beyond the
15 reasonable control of the Party; (b) necessary to proceed with the intentions
16 and agreements contained in this Agreement as they specifically relate to any
17 Related Entity, affiliate, or representative of any Party; (c) necessary to
18 obtain legislative approval of the undertakings set forth in this Agreement;
19 or (d) required under applicable law binding upon the disclosing Party. The
20 Party making a disclosure described in (c) of this Section 15 shall give
21 prior written notice of the proposed disclosure to the other Party. The
22 Party making a disclosure described in (a) or (d) of this Section 15 shall
23 give prior written notice of the proposed disclosure to the other Party if
24 the disclosing Party can do so and still comply with the requirement or law
25 compelling the disclosure; otherwise the disclosing Party shall give written
26 notice contemporaneously with or as soon as reasonably practicable following
27 the disclosure.

28
29 16. Incentives Not Accepted. To the extent that the Sponsor shall
30 not accept for whatever reason any portion of the funds or economic
31 incentives set forth in this Agreement, neither the State, the Commission,
32 nor the Authority shall have any obligation to replace the value of the funds
33 or economic incentives not accepted, inclusive of the value of any matching
34 funds, with other funds or economic incentives.

35
36 17. Public Reporting Requirements. The Sponsor acknowledges and

1 *agrees to comply with the public reporting, monitoring, auditing, and other*
2 *reporting requirements of the Act set forth in A.C.A. §§ 15-4-3206 (2011*
3 *Revision), 15-4-3221 (2011 Revision), and 15-4-3224 (2011 Revision). The*
4 *Sponsor shall reasonably cooperate with the State by providing such*
5 *documents, records, and other information to the State as may be necessary to*
6 *comply with the public reporting, monitoring, auditing, and other reporting*
7 *requirements of the Act set forth in A.C.A. §§ 15-4-3206 (2011 Revision), 15-*
8 *4-3221 (2011 Revision), and 15-4-3224 (2011 Revision). The Sponsor shall*
9 *reasonably cooperate with all audits and verifications by the State,*
10 *including without limitation the Commission and the Authority, of all*
11 *accounts related to the construction, operation, and maintenance of the*
12 *Project. The Sponsor shall maintain and make available all documents,*
13 *records, and other information pertaining to items contained in the terms and*
14 *conditions of this Agreement for annual audit by the Chief Fiscal Officer,*
15 *and upon request, but no more often than annually, by the Office of Economic*
16 *and Tax Policy or a Person retained by the Office of Economic and Tax Policy.*
17 *The Sponsor shall comply with all auditing and reporting requirements of any*
18 *state or federal regulatory agency or other Governmental Authority that may*
19 *have jurisdiction over the Sponsor. The Sponsor shall cause all Related*
20 *Entities of Sponsor who receive Amendment 82 Financing to comply with the*
21 *reporting requirements of the Act set forth in A.C.A. §§ 15-4-3206 (2011*
22 *Revision), 15-4-3221 (2011 Revision), and 15-4-3224 (2011 Revision).*

23
24 *18. Reporting of Independent Direct Positions. The Sponsor shall*
25 *cause each Person that employs or contracts with an individual holding an*
26 *Independent Direct Position to provide to the State such documents, records,*
27 *and other information as may be necessary to comply with the audit*
28 *requirements of the Act, including those set forth in A.C.A. §§ 15-4-3206*
29 *(2011 Revision). For the purposes of Sections 4 and 11 of this Agreement no*
30 *position or job may be counted as an Independent Direct Position unless the*
31 *person who employs or contracts the individual holding such position or job*
32 *fully complies with the State's requests for information necessary to comply*
33 *with the audit and reporting provisions of the Act.*

34
35 *19. Representations and Warranties. In order to induce the State to*
36 *enter into this Agreement, the Sponsor hereby represents and warrants to the*

1 State as follows:

2
3 19.1. Names. The correct legal name of the Sponsor is "Big River
4 Steel, LLC".

5
6 19.2. Organization of the Sponsor. The Sponsor is a limited liability
7 company duly organized, validly existing, and in good standing pursuant to
8 the laws of the State of Delaware. The Sponsor is duly licensed and
9 qualified as a foreign limited liability company with the State.

10
11 19.3. Authorization. The Sponsor has full power and authority to
12 execute and deliver this Agreement and to perform the obligations of the
13 Sponsor pursuant to this Agreement. The Sponsor has duly authorized the
14 execution, delivery, and performance of this Agreement. This Agreement
15 constitutes the valid and legally binding obligation of the Sponsor
16 enforceable in accordance with its terms and conditions. The undersigned
17 officer of the Sponsor is the lawful agent of the Sponsor with the authority
18 to execute and deliver this Agreement.

19
20 19.4. Purpose. The funds disbursed to, or for the benefit of, the
21 Sponsor pursuant to the Grants shall be used by the Sponsor solely for
22 purposes of the Qualifying Site Preparation Costs and the Infrastructure
23 Costs. The funds disbursed to, or for the benefit of, the Sponsor pursuant
24 to the Incentive Loan shall be used solely for the engineering, design,
25 procurement, installation, fabrication, and erection of the Incentive Loan
26 Collateral and related purposes.

27
28 19.5. Non-contravention. Neither the execution and delivery of this
29 Agreement, nor the consummation of the transactions contemplated by this
30 Agreement shall: (a) violate any applicable law including the Amendment 82
31 Requirements; (b) conflict with, result in a breach of, constitute a default
32 under, result in the acceleration of, create the right to accelerate,
33 terminate, modify, cancel, or require any notice pursuant to the Capital
34 Commitment Documents and any other material contract or lease to which the
35 Sponsor may be a party or by which the Sponsor may be bound or to which the
36 Incentive Loan Collateral may be subject; or (c) violate or conflict with the

1 *articles of organization, the operating agreement, and other governing*
2 *documents of the Sponsor.*

3
4 *20. General Covenants. In addition to the covenants of the Sponsor*
5 *set forth elsewhere in this Agreement, the Sponsor covenants and agrees as*
6 *follows:*

7
8 *20.1. Change of Name. The Sponsor shall not change its legal name*
9 *unless the Sponsor shall have provided advance notice to the Commission and*
10 *the Authority at least ninety (90) days prior to the change of its name.*

11
12 *20.2. State of Organization. The Sponsor shall not change the*
13 *jurisdiction of the organization of the Sponsor unless the Sponsor shall have*
14 *provided advance notice to the Commission and the Authority at least ninety*
15 *(90) days prior to the change of its jurisdiction.*

16
17 *20.3. Eligible Business. The Sponsor shall qualify as an “eligible*
18 *business” as defined in the Consolidated Incentive Act prior to the receipt*
19 *of the Amendment 82 Financing.*

20
21 *20.4. Environmental. The Sponsor shall cause the Project to comply*
22 *with the relevant environmental standards of applicable law. It is also*
23 *intended that representations shall be made by the Project’s primary*
24 *technology provider that its technology meets the relevant environmental*
25 *standards of the World Bank Group.*

26
27 *20.5. Employment Laws. The Sponsor agrees to comply with all relevant*
28 *and applicable employment laws.*

29
30 *21. General Provisions.*

31
32 *21.1. Governing Law. This Agreement shall be governed by and*
33 *interpreted pursuant to the laws of the State without regard to principles of*
34 *conflicts of laws that would require or permit the application of the laws of*
35 *a state other than the State.*

36

1 21.2. Interpretation. This Agreement shall be interpreted as follows:
2 (a) as though the Parties shared equally in the negotiation and preparation
3 of this Agreement; (b) gender or lack of gender of any word shall include the
4 masculine, feminine, and neuter; (c) singular shall include plural and plural
5 shall include singular; (d) the words "include" and "including" mean, in
6 addition to any regularly accepted meaning, "without limitation" and
7 "including but not limited to"; (e) references to Sections refer to Sections
8 of this Agreement; (f) subject headings, captions, and titles shall not
9 affect the interpretation of this Agreement; (g) as a solicitation for offers
10 until this Agreement shall have been executed and delivered by all Parties;
11 (h) the definition of any term in this Agreement shall apply to all uses of
12 such term whenever capitalized; and (i) any Exhibits to this Agreement shall
13 be incorporated into this Agreement as though fully set forth word for word
14 in this Agreement.

15
16 21.3. Business Day. If any provision of this Agreement shall require
17 the performance of an obligation or the exercise of a right on a date that
18 shall be a legal holiday pursuant to applicable law, a Party may postpone the
19 performance of such obligation or the exercise of such right until the next
20 business day pursuant to applicable law.

21
22 21.4. Currency. Any reference to dollars or money in this Agreement
23 shall mean legal tender of the United States of America. Any amount required
24 to be paid by a Party pursuant to this Agreement shall be paid by check or
25 electronic transfer payable to the order of the Party to receive such amount.

26
27 21.5. Time for Performance. Time shall be of the essence.

28
29 21.6. Brokers. The State shall not be obligated for the payment of any
30 broker, agent, consultant, finder, or other Person engaged by the Sponsor.
31 The Sponsor shall not be obligated for the payment of any broker, agent,
32 consultant, finder, or other Person engaged by the State.

33
34 21.7. Expenses. Except as provided in this Agreement, each Party shall
35 pay all expenses incurred by such Party with respect to: (a) the
36 negotiation, preparation, execution, delivery, and performance of this

1 Agreement; and (b) the transactions contemplated by this Agreement.

2
3 21.8. Force Majeure. A Party shall bear no responsibility or liability
4 for non-performance of obligations under this Agreement caused by, and during
5 the duration of, major events beyond its reasonable control, such as an act
6 of God, emergency, fire, casualty, lockout or strike, unavoidable accident,
7 riot, war, terrorism, financial market disruption, computer virus or similar
8 threat, or other force majeure. A Party affected by such a major event shall
9 send written notice to all Parties of the nature and extent of the major
10 event within sixty (60) days after the occurrence of the major event and
11 again within sixty (60) days following the conclusion of the major event.
12

13 21.9. Notice. All notices, demands, requests, and other communications
14 required by this Agreement shall be in writing and shall be delivered to a
15 Party by either: (a) personal delivery; (b) overnight delivery service with
16 delivery costs and expenses prepaid and receipt of delivery requested; (c)
17 certified or registered mail with postage prepaid and return receipt
18 requested; or (d) by electronic mail to the persons then holding the titles
19 below. All notices, demands, requests, and other communications permitted or
20 required by this Agreement shall be delivered to the Parties at the following
21 addresses unless another address shall be designated by a Party by notice
22 pursuant to the provisions of this Section:
23

24 If to the State: Office of the Governor
25 State Capitol Room 250
26 Little Rock, Arkansas 72201

27
28 AND

29
30 Office of the Attorney General
31 323 Center Street, Suite 200
32 Little Rock, Arkansas 72101

33
34 AND

35
36 Arkansas Department of Finance and

1 *Administration*
2 *Office of the Director*
3 *1509 West Seventh Street, Suite 401*
4 *Little Rock, Arkansas 72203-3278*

5
6 *AND*

7
8 *Arkansas Economic Development Commission*
9 *Attn: Executive Director*
10 *900 West Capitol Avenue, Suite 400*
11 *Little Rock, Arkansas 72101*

12
13 *AND*

14
15 *Arkansas Development Finance Authority*
16 *Attn: President*
17 *900 West Capitol Avenue, Suite 310*
18 *Little Rock, Arkansas 72101*

19
20 *If to the Commission:* *Arkansas Economic Development Commission*
21 *Attn: Executive Director*
22 *900 West Capitol Avenue, Suite 400*
23 *Little Rock, Arkansas 72101*

24
25 *AND*

26
27 *Arkansas Economic Development Commission*
28 *Attn: Bryan Scoggins*
29 *900 West Capitol Avenue, Suite 400*
30 *Little Rock, Arkansas 72101*
31 *bscoggins@ArkansasEDC.com*

32
33 *If to the Authority:* *Arkansas Development Finance Authority*
34 *Attn: President*
35 *900 West Capitol Avenue, Suite 310*
36 *Little Rock, Arkansas 72101*

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*If to the Sponsor: Big River Steel, LLC
Attn: Mr. John Correnti
Chairman and Chief Executive Officer
1425 Ohlendorf Road
Osceola, Arkansas 72370*

21.10. Amendment. This Agreement may be modified or amended only by a subsequent written agreement executed and delivered by all Parties in accordance with the requirements of the Act. The course of dealing and the course of performance among the Parties shall not modify or amend this Agreement in any respect.

21.11. Waiver. The provisions of this Agreement may be waived only by a subsequent written agreement executed and delivered by all Parties. Any delay or inaction by a Party shall not be construed as a waiver of any of the provisions of this Agreement. A waiver of any provision of this Agreement: (a) shall not be construed as a waiver of any other provision of this Agreement; (b) shall be applicable only to the specific instance and for the specific period in which the waiver may be given; (c) shall not be construed as a permanent waiver of any provision of this Agreement unless otherwise agreed by all Parties in a subsequent written agreement executed and delivered by all Parties; (d) shall not affect any right or remedy available to a Party; and (e) shall be subject to such terms and conditions as provided in a subsequent written agreement executed and delivered by all Parties.

21.12. Binding Effect. The Parties executed and delivered this Agreement with the intent to be legally bound to its provisions. This Agreement shall inure to the benefit of, shall be binding on, and shall be enforceable by the heirs, successors, and assigns of the Parties.

21.13. Third Party Beneficiary. The Parties do not intend to create any rights pursuant to this Agreement for the benefit of any third party beneficiary except as expressly provided in this Agreement.

1 21.14. Severability. Each provision of this Agreement shall be
2 severable from all other provisions of this Agreement. The invalidity or
3 unenforceability of any provision of this Agreement shall not affect the
4 validity or enforceability of any other provision of this Agreement. If any
5 provision of this Agreement shall be determined to be invalid or
6 unenforceable by a Governmental Authority in any litigation among the
7 Parties, such provision shall be amended, without further action by the
8 Parties, to the extent necessary to cause such provision to be valid and
9 enforceable.

10
11 21.15. Remedies. The remedies provided in this Agreement and the
12 Act shall be cumulative and not exclusive of any remedies otherwise available
13 to the Parties pursuant to applicable law.

14
15 21.16. Conflicts. If there shall be an irreconcilable conflict
16 between the provisions of this Agreement and the provisions of any other
17 document with respect to the transactions contemplated by this Agreement
18 including the Formal Proposal and the Letter of Commitment, the provisions of
19 this Agreement shall prevail and the conflict shall be resolved by reference
20 only to the provisions of this Agreement. To the extent there may be an
21 irreconcilable conflict between the Amendment 82 Requirements and the
22 provisions of this Agreement, the Amendment 82 Requirements shall prevail.
23 To the extent there may be an irreconcilable conflict between the
24 requirements of the Consolidated Incentive Act and the provisions of this
25 Agreement, the requirements of the Consolidated Incentive Act shall prevail.

26
27 21.17. Entire Agreement. This Agreement contains the entire
28 agreement of the Parties on the subject matters of this Agreement, and any
29 oral or prior written understanding on the subject matters of this Agreement
30 shall not be binding on the Parties. Each Party represents, warrants, and
31 covenants that such Party has not been influenced to enter into this
32 Agreement by any Person and has not relied on any representation, warranty,
33 or covenant of any Person other than as set forth in this Agreement.

34
35 The remainder of this page is intentionally blank.

36

1 *EXECUTED and DELIVERED as of March ____, 2013.*

2
3 *THE STATE*
4 *THE STATE OF ARKANSAS*

5
6 _____
7 *By: Governor, Mike Beebe*

8
9 _____
10 *By: President Pro Tempore of the Senate,*
11 *Michael Lamoureux*

12
13 _____
14 *By: Speaker of the House of Representatives,*
15 *Davy Carter*

16
17 _____
18 *By: Chief Fiscal Officer and Director of the*
19 *Department of Finance and Administration,*
20 *Richard Weiss*

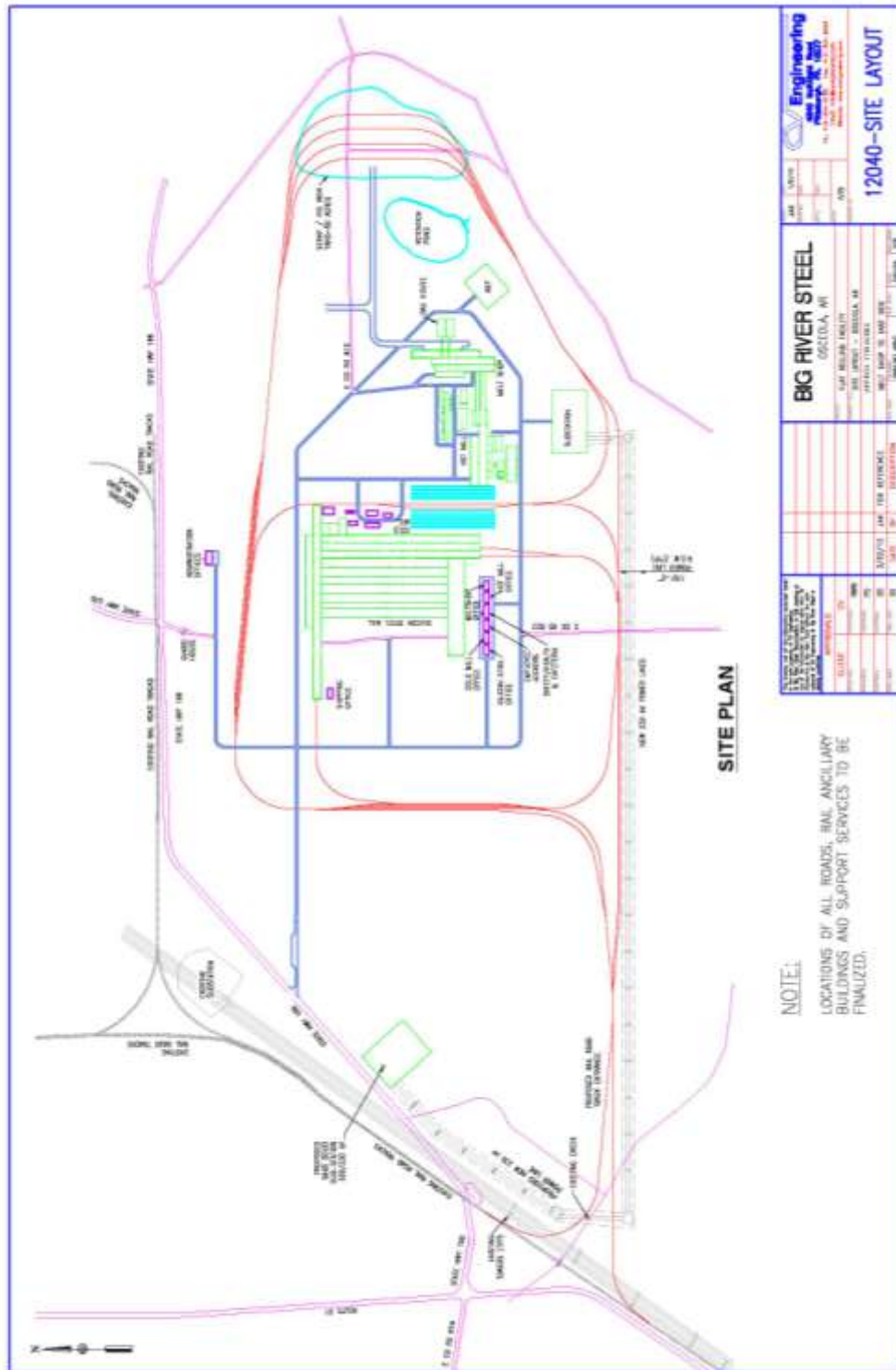
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22 _____
23 *By: Director of the Arkansas Economic*
24 *Development Commission,*
25 *Grant Tennille*

26
27 _____
28 *By: President of the Arkansas Development*
29 *Finance Authority, Mac Dodson*

30
31 *THE SPONSOR*
32 *BIG RIVER STEEL, LLC*

33
34 _____
35 *By: Chairman and Chief Executive Officer,*
36 *John Correnti*

EXHIBIT 1
DEVELOPMENT PLAN



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*EXHIBIT 2
INCENTIVE LOAN COLLATERAL*

<i>Hot Mill Complex Buildings Including Siding, Roofing, Roof Monitors, Mandors, Overhead Doors and Grouting</i>	
<i>001</i>	<i>Meltshop</i>
<i>002</i>	<i>Tunnel Furnace Building</i>
<i>003</i>	<i>Hot Mill / Roll Shop Building</i>
<i>Total</i>	<i>\$44,100,000</i>

<i>Cold Mill Complex Buildings Including Siding, Roofing, Roof Monitors, Mandors, Overhead Doors and Grouting</i>	
<i>Total</i>	<i>\$30,000,000</i>

Total Collateral Value for Incentive Loan = \$74,100,000

*EXHIBIT 3
PROJECT SITE*

ALL OF SECTION 19, SOUTH OF HWY 198, containing in the aggregate 485 acres, more or less. THIS PORTION OF SECTION 19 IS LESS AND EXCEPT THE W1/2 OF THE W1/2 being 155 acres, more or less.

THE S1/2 and the E1/2 of the NE1/4 OF SECTION 20, containing 383 acres, more or less.

ALL OF SECTION 21, containing 452 acres, more or less. LESS AND EXCEPT LEVEE AND RIVER EROSION, containing 150 acres, more or less.

THE NW1/4 OF SECTION 22, LESS AND EXCEPT RIVER EROSION, containing 67 acres, more or less.

1 THE NE1/4 NE1/4 OF SECTION 29 WEST OF LEVEE containing 29 acres, more or
2 less; and THE N1/2 OF SECTION 29 EAST OF LEVEE containing 166 acres, more or
3 less.

4
5 THE N1/2 OF SECTION 30, containing in the aggregate 210 acres, more or less.
6 THIS PORTION OF SECTION 30 IS LESS AND EXCEPT THE W1/2 OF THE NW1/4
7 containing 80 acres, more or less; AND ALSO LESS AND EXCEPT A PARCEL IN THE
8 SE ¼ SE ¼ being 47 acres, more or less.

9
10 ALL OF THE ABOVE SECTIONS ARE IN TOWNSHIP 12 NORTH, RANGE 11 EAST of the
11 Osceola District of Mississippi County, Arkansas.

12
13 Containing in the aggregate 1792 acres, more or less."
14

15 SECTION 9. EMERGENCY CLAUSE. It is found and determined by the
16 General Assembly of the State of Arkansas that unemployment levels within
17 this state are unacceptably high; that additional incentives are needed to
18 encourage the location and expansion of manufacturing facilities within this
19 state and to provide additional job opportunities for our citizens; that this
20 act is designed to provide the incentives needed to encourage certain
21 manufacturers to locate their facilities within this state thereby creating
22 additional job opportunities for our citizens; that the development and
23 completion of a mini-mill steel manufacturing facility by Big River Steel,
24 LLC is important to the economic health of the state and its citizens; and
25 that this act is immediately necessary because any delay in the effective
26 date of this act will delay completion of the mini-mill steel manufacturing
27 facility by Big River Steel, LLC and the creation of new jobs in the state.
28 Therefore, an emergency is declared to exist, and this act being immediately
29 necessary for the preservation of the public peace, health, and safety shall
30 become effective on:

31 (1) The date of its approval by the Governor;

32 (2) If the bill is neither approved nor vetoed by the Governor,
33 the expiration of the period of time during which the Governor may veto the
34 bill; or

35 (3) If the bill is vetoed by the Governor and the veto is
36 overridden, the date the last house overrides the veto.

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/s/Burnett

APPROVED: 04/11/2013