

PURCHASE AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into this 11th day of December 2020 (the "Effective Date"), by and between **Border States Industries, Inc.**, a North Dakota corporation ("Buyer") and **the Housing and Redevelopment Authority in and for the City of Marshall**, ("Seller").

1. **PROPERTY TO BE PURCHASED.** Seller agrees to sell and Buyer agrees to purchase, upon the terms and conditions and subject to the contingencies hereinafter set forth, the real property, and all other rights, privileges, easements, licenses and appurtenances, thereunto belonging, owned by Seller consisting of approximately 2.5 acres of Lot 2 Block 1, McLaughlin Industrial Park 2nd Addition to the City of Marshall, Lyon County, as legally described on Exhibit A and visually depicted on Exhibit B attached hereto (the "Property").

2. **PURCHASE PRICE.** The purchase price will be the sum of Thirty-seven Thousand and Five Hundred Dollars and 00/100 cents (\$37,500.00).

3. **EXCLUSIVITY.** Until such time, if any, as this Agreement is terminated, Seller will not, directly or indirectly, solicit, initiate, entertain, or accept any inquiries or proposals from, discuss or negotiate with, provide any information to, or consider the merits of any unsolicited inquiries or proposals from any person or entity relating to any transaction involving the sale or acquisition of the Property. A violation of this paragraph is a material breach of this Agreement.

4. **CONVEYANCE OF MARKETABLE TITLE; POSSESSION.** Seller shall convey the Property to Buyer or its assigns at Closing by General Warranty Deed. Notwithstanding the foregoing, any and all liens or encumbrances, such as mortgages, and construction liens, must be satisfied by Seller prior to or at Closing, and marketable title shall be conveyed to Buyer at Closing. Possession of the Property shall be delivered to Buyer immediately after the Closing. Seller will deliver possession of the Property to Buyer zoned appropriately to accommodate Buyer's planned development, with utilities stubbed to the edge of the site in a mutually agreeable location, the site rough graded, ready for Buyer to secure a building permit.

5. **SELLER DELIVERABLES.** Seller agrees to deliver to Buyer, within fifteen (15) days of the Effective Date, copies of (i) any existing surveys or plat documents in Seller's possession; (ii) any unrecorded leases, agreements or covenants that restrict the Property; (iii) any geotechnical, environmental, wetland delineation information, warranties, or maintenance documents or other property condition reports or letters in Seller's possession; (iv) any correspondence, notices, letters or development agreements from either the City of Marshall or Lyon County related to zoning, permitted uses, assessments or future plans for the Property; (v) any covenants, codes, restrictions, declarations, conditional use permits, variances, easements, licenses or other conditions or restrictions affecting the Property (collectively, the "Seller Deliverables").

Within fifteen (15) days after the Effective Date, Seller, at its expense, shall furnish Buyer with a title insurance commitment ("Title Commitment") from a national title insurance company, for issuance to Buyer of an ALTA Owner's Policy of Title Insurance without standard exceptions,

with respect to the Property, in the amount of the Purchase Price, showing Seller to be the sole owner of marketable and insurable title to the Property, free and clear of any liens and encumbrances, certified to the date of the filing of the warranty deed (the "Title Policy"). The Title Company shall also deliver to Buyer copies of all instruments or exception documents referenced in the Title Commitment.

The date of Buyer's receipt of both the Title Commitment and all Seller Deliverables will be memorialized as the "Seller Deliverable Date".

6. **DUE DILIGENCE CONTINGENCIES**. The obligation of Buyer to conclude the transaction for the purchase of the Property as contemplated by this Agreement is expressly made contingent upon the provisions of this section.

- (a) Within one hundred fifty (150) days from the Seller Deliverable Date (the "Due Diligence Period"), Buyer, at Buyer's expense, shall have determined in its sole discretion that Buyer is satisfied with the title, survey, and physical condition of the Property and Buyer has obtained all due diligence and feasibility inspection reports deemed necessary by Buyer (including, but not limited to, site assessments, engineering assessments, environmental site assessments, soils tests, well tests, agreement on tax abatement, building inspections, and review of documents, permits, licenses and special assessments), the results of which due diligence inspections must be satisfactory to Buyer in all respects.
- (b) Buyer shall have one hundred fifty (150) days from the Seller Deliverable Date, in which to provide Seller with any written objections to the status of title. Buyer shall be deemed to have waived any title objections not made within the applicable period provided for above, except that this shall not operate as a waiver of Seller's covenant to deliver a warranty deed. Objection to liens shall be presumed. Seller shall have a period of thirty (30) days in which to correct the title and make it marketable and insurable. If title to the Property cannot be made marketable and insurable within said period of time or such further time as may be granted by Buyer, Buyer may, in its sole discretion, proceed with the Closing without waiving any claim Buyer may have against Seller for said title objections, and/or seek any other remedy provided herein or by law, or may cancel the purchase contemplated by this Agreement, in which case Buyer shall have no further liability to Seller. If applicable, the Title Policy shall be issued as soon as possible after Closing.
- (c) From the Effective Date through the date of Closing, there shall not have occurred any material adverse changes in the condition of the Property or the title thereto, except as may have been requested, caused or suffered by Buyer.

- (d) No action, suit, or proceeding before any court or any governmental body or authority, pertaining to the transaction shall have been instituted or threatened by Closing.
- (e) As of date and hour of Closing, title to the Property shall be marketable, insurable to the extent of the Purchase Price and subject to no easements, reservations, restrictions, encroachments or other matters, except for those that are deemed acceptable by Buyer.
- (f) Buyer's ability to obtain city/government approvals for its intended use and satisfaction with related requirements, including two (2) ingress/egress points on London Road as shown on Exhibit B.
- (g) Buyer's satisfaction that it's intended use including bulk outside storage of material will be allowable without undue burden.
- (h) Upon the date of Closing, at Seller's expense, the Property will be platted as a separate tax parcel in accordance with Exhibit B, zoned appropriately for Buyer's intended use, with all platting/subdivision/development fees paid by Buyer including any sewer or water access fees or sewer line cost recovery fees.

Buyer shall give notice to Seller, on or before the dates set forth above, if a contingency has not been satisfied by such date. If any contingency has not been satisfied to Buyer's satisfaction, Buyer may elect to terminate this Agreement and the parties shall have no further obligations to each other. Alternatively, Buyer may waive any one or all of the contingencies described above and close the transaction pursuant to the terms of this Agreement.

7. **PROPERTY TAXES.** The general real estate taxes due and payable in the year of Closing, regardless of when payable, shall be prorated to the date of Closing, with Buyer being responsible for such taxes beginning the day after Closing. Other taxes and balances of any special assessments, whether for prior years or pending, planned, or levied, shall be paid by Seller on or before Closing.

8. **REPRESENTATION AND WARRANTIES.** As a material inducement to cause Buyer to enter into this Agreement, Seller warrants and represents to Buyer, with respect to the Property as follows (Seller's warranties and representations are true and correct in all material respects on the Effective Date and shall be true and correct in all material respects on the Closing date and shall survive the Closing of the transaction contemplated hereby):

- (a) There are no actions, lawsuits, judgments, liens, suits, claims, investigations or other proceedings pending or threatened against Seller or the Property which relates to Seller or the ownership, maintenance, or operation of the Property or might in any way affect the Property or this transaction.

(b) To Seller's knowledge, there is no environmental condition, situation or incident that could in any manner give rise to any action or liability under any environmental law, and Seller is not subject to and is not currently operating under any compliance or consent order, schedule, decree or agreement issued or entered into under any environmental law. The Property has never been used as a landfill or as a garbage dump.

(c) No building or other improvement encroaches on the Property, nor does any improvement which is part of the Property encroach on lands of others or on any public or private road or right of way.

(d) Seller is not a foreign person within the meaning of § 1445 of the Internal Revenue Code of 1986, as amended. Seller shall complete an appropriate Certificate of Non-Foreign Status at Closing confirming the accuracy of this representation.

(e) Seller has good and marketable title to the Property. Seller has the full right, power and authority to sell, convey and transfer the Property herein and to execute, deliver and carry out the provisions of this Agreement. No leases or right of possession affect the Property. Seller is not aware of any unrecorded contracts, options, easements or other arrangements or interests relating to the Property. No person or entity has provided labor or materials to the Property within six (6) months prior to closing whose claim for such labor or material has not been fully paid.

(f) Each individual executing this Agreement on behalf of Seller is duly authorized to execute and deliver the same on behalf of Seller, and the members, managers, or governors, as applicable, of Seller have executed proper resolutions authorizing this transaction.

(g) There are no water wells, septic systems, or underground or above-ground storage tanks located in or on the Property.

(h) Seller and any occupant of the Property have complied in all material respects with, and are not in violation in any material respect of, any applicable federal, state, or local statutes, laws, and regulations (including, without limitation, any applicable building, zoning, or other law, ordinance, or regulation) affecting the Property, including any requirements of the State of Minnesota.

(i) Seller has not received any notice of the creation of any special assessment district for future improvements for which the property may be assessed. To the best of Seller's knowledge, there are no proceedings in which special assessment districts affecting the property are currently under consideration for future improvements to be made by Lyon County or the City of Marshall.

(j) Seller has not: (i) made a general assignment for the benefit of its creditors; (ii) filed any voluntary petition in bankruptcy or suffered the filing of an

involuntary petition in bankruptcy; (iii) suffered the appointment of a receiver to take possession of all or substantially all of Seller's assets; (iv) suffered the attachment or other judicial seizure of all or substantially all of Seller's assets; (v) admitted in writing its inability to pay the estate's debts as they become due; or (vi) made an offer of settlement, extension or composition to its creditors generally.

(k) To the best of Seller's knowledge, the Property has not been contaminated with any Hazardous Substances; the Property is not subject to any federal, state, or local lien or proceedings, any claim, liability, action, or threat of remediation, respecting any Hazardous Substances allegedly impacting the Property or adjacent real estate; Seller has not received any written notice from any governmental body of the presence or release of any hazardous substances that would cause the Property, or any portion thereof, to be in violation of any applicable environmental laws, nor has Seller received written notice from any applicable governmental body or has any actual knowledge that the Property is not in compliance with applicable environmental laws; and to the best of Seller's knowledge, no Hazardous Substances have leaked, escaped or been discharged, emitted or otherwise released from the Property onto any adjoining properties or from any adjoining property onto the Property. For purposes of this Agreement, the term "Hazardous Substance" shall mean any hazardous waste, toxic substances, polychlorinated biphenyls, asbestos, petroleum products, and any element, compound, mixture, or substance regulated by any federal, state, or local law, rule, or regulation because of its toxicity, corrosiveness, reactivity, or carcinogenic effect, and also includes, but is not limited to substances defined as "hazardous substances" or "toxic substance" in the Comprehensive Environmental Response Compensation Liability Act of 1980, as amended 32 U.S.C. §9601, et seq., Hazardous Materials Transportation Act, 49 U.S.C. Appx. or as "hazardous substance," "hazardous waste" or "pollutant or contaminate" under Minnesota law.

(l) There are no underground or above-ground storage tanks located in or on the Property.

(m) There is a right of access to the Property from a public right-of-way.

(n) There is no present violation of any restrictions relating to the use or condition of the Property.

(o) The Property does not lay in a 100-year flood plain area.

9. **RISK OF LOSS.** The risk of loss or damage to the Property or for any liability relating to the Property shall remain with Seller until Closing. If prior to closing, any substantial portion of the Property is damaged by fire or other casualty or taken or threatened by condemnation or eminent domain, the Buyer, at its sole discretion, may terminate this Agreement through written notice to Seller.

10. **BROKERAGE.** No real estate brokers were involved in the negotiation of this Agreement, other than Dialect, Inc., a licensed real estate broker in Minnesota, representing Buyer. No brokerage fees will be due by either party as part of this Agreement.

11. **CLOSING DATE; CLOSING COSTS.** The closing ("Closing") of the transaction contemplated by this Agreement shall occur within thirty (30) days after the date that the Due Diligence Period lapses or is earlier waived in writing by Buyer, or on such other date and at a reasonable time as may be agreed to by both Buyer and Seller. The location of the closing shall be at the Title Company, unless the parties mutually agree to another location. Seller shall be responsible for the payment of the following Closing costs: (i) preparation of the Warranty Deed (ii) preparation of and recording expense of all releases, satisfactions and corrective documents, (iii) any transfer fees and/or taxes assessed or to be assessed in connection with the conveyance of the Property, (iv) one-half (½) of the closing fees, (v) Seller's attorney fees, (vi) the cost of issuing the Title Commitment, and (vii) Buyer shall be responsible for the payment of the following Closing costs: (i) costs for recording the Warranty Deed, (ii) one-half (½) of the closing fees, (iii) the title insurance premium, for an owner's policy of title insurance in an amount equal to the Purchase Price; (iv) Buyer's attorney fees.

12. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement by and between the parties and any other prior representations or agreements are deemed merged herein and those not specified herein do not represent any agreements or promises or covenants or representations on the part of either party hereto.

13. **AMENDMENTS, MODIFICATIONS OR WAIVERS.** No amendment, modification or waiver of any condition, provision or term shall be valid or of any effect unless made in writing signed by the party or parties to be bound or a duly authorized representative and specifying with particularity the extent and nature of such amendment, modification or waiver. Any waiver by any party of any default of another party shall not affect or impair any right arising from any subsequent default. Except as expressly and specifically stated otherwise, nothing herein shall limit the remedies and rights of the parties thereto under and pursuant to this Agreement.

14. **CONSTRUCTION OF AGREEMENT.** Whenever the singular number is used herein, the same shall include the plural where appropriate, and the words of any gender shall include any other genders where appropriate. Captions contained herein are inserted only for the purpose of convenient reference, and in no way define, limit or describe the scope of this Agreement or any part thereof.

15. **BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, successors and assigns.

16. **COUNTERPARTS; FACSIMILE AND E-MAILED SIGNATURES.** This Agreement may be executed in two (2) or more counterparts each of which, upon execution and delivery as prescribed, shall be deemed to be an original for all purposes. In proving this Agreement, it shall be necessary to account for only one such counterpart. Buyer and Seller agree that e-mailed (.pdf) signatures will be binding on the parties.

17. **TIME IS OF THE ESSENCE.** Time is of the essence of each provision of this Agreement and of all the conditions thereof.

18. **REMEDIES.** Subject to the contingencies provided in this Agreement, if Buyer defaults and fails to carry out its obligations pursuant to the terms of this Agreement, the Seller shall have the right to terminate this Agreement and neither party to this Agreement shall have any further right or obligation to the other. If Seller defaults and fails to carry out its obligations pursuant to the terms of this Agreement, Buyer shall have all rights and remedies available at law or in equity, including the right to seek specific performance of this Agreement.

19. **MUTUAL COOPERATION.** Buyer and Seller will, in good faith, mutually cooperate with one another to the extent reasonably necessary to facilitate the consummation of the transactions described in this Agreement. From time to time after the Closing, Buyer and Seller will execute, deliver and acknowledge such further documents or instruments, and perform such further acts or deeds, as may be reasonably necessary to consummate the transactions described in this Agreement and carry out the purposes and intent of this Agreement.

20. **INTERPRETATION AND SEVERABILITY.** The provisions of this Agreement will be applied and interpreted in a manner consistent with each other so as to carry out the purposes and intent of the parties. If, for any reason, any provision of this Agreement is determined to be unenforceable or invalid, that provision (or such part thereof as may be unenforceable or invalid) will be deemed severed from this Agreement, and the remaining provisions of this Agreement will be carried out with the same force and effect as if that provision (or such part thereof) had not been a part of this Agreement.

21. **BENEFIT.** This Agreement will inure to the benefit of and will be binding upon each of the parties and their respective successors and assigns.

22. **ASSIGNMENT.** Upon written notice to Seller, Buyer may assign this Agreement and its rights hereunder to any person or entity that is affiliated or associated with Buyer.

23. **GOVERNING LAW.** This Agreement will be construed and enforced in accordance with the laws of the State of Minnesota without regard to conflicts-of-laws principles that would require the application of any other law.

24. **ATTORNEY FEES.** If either party defaults in its performance hereunder and the other party employs an attorney because of such default, the parties agree to pay, on demand, all costs, charges and expenses, including reasonable attorney and paralegal fees, incurred at any time by the prevailing party because of the default.

25. **NOTICES.** All notices, demands and communications provided for herein or made hereunder shall be deemed effective upon delivery by the other party, either by electronic mail, personal delivery or upon receipt if mailed first class with postage prepaid, addressed in each case as follows, until some other addresses shall have been designated in a written notice given in a like manner, and shall be deemed to have been given or made when emailed or mailed to the following addresses:

Buyer: Border States Industries, Inc.
2400 38th St. S
Fargo, ND 58104
c/o James Sipe, Vice President of Operations
jsipe@borderstates.com

COPY: Dialect, Inc.
441 2nd St
Excelsior, MN 55331
c/o Dan Johnson
djohnson@dialectRE.com

Seller: City of Marshall, HRA
Attn: Sharon Hanson, Executive Director
344 W. Main Street
Marshall, MN 56258

[the rest of this page intentionally left blank]

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the Effective Date.

BUYER:

Border States Industries, Inc.
a North Dakota corporation

Signed: James C. Sipe

Printed: James C. Sipe

Title: Senior VP Supply Chain

SELLER:

**Housing and Redevelopment Authority in
and for the City of Marshall**

Signed: _____

Printed: Sharon Hanson

Title: Executive Director

Exhibit A

Lot Two (2) of Block One (1), McLaughlin Industrial Park Second Addition EXCEPT the
Northeasterly 40 feet thereof according to the recorded plan thereof, City of Marshall, Lyon
County, Minnesota

