

**RESOLUTION NO. 3670**

**A RESOLUTION AUTHORIZING THE CITY OF MILES CITY TO ENTER INTO AN AGREEMENT ENTITLED "LANDLORD'S RELEASE AND CONSENT" WITH STOCKMAN BANK OF SIDNEY, MONTANA.**

*WHEREAS*, the City of Miles City previously passed Resolution 3653 assigning certain leases within the Industrial Site to Border Steel & Recycling, Inc., a Montana corporation;

*AND WHEREAS* Stockman Bank of Sidney, Montana, has lent money to Border Steel & Recycling, Inc., and has requested that the City of Miles City ensure that the lender has certain rights related to said leases, as well as certain obligations to the City of Miles City should Border Steel & Recycling, Inc., default under its lease with the City of Miles City;

**NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA AS FOLLOWS:**

1. The agreement entitled "Landlord's Release and Consent," attached hereto as Exhibit "A", and made a part hereof, is hereby approved and adopted by this Council.
2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said Agreement on behalf of the City of Miles City and bind the City of Miles City thereto; and
3. The Mayor of the City of Miles City is hereby empowered and authorized to execute such further documents as are necessary to carry out the terms of said Agreement and bind the City of Miles City thereto.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 11TH DAY OF MARCH, 2014.**

  
C.A. Grenz, Mayor

ATTEST:



Lorrie Pearce, City Clerk

Exhibit "A"

**LANDLORD'S RELEASE AND CONSENT**

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
	12-30-2013	01-01-2021	3040252097	802	0000108077-01	009	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.

Any item above containing "\*\*\*\*" has been omitted due to text length limitations.

**Borrower:** Border Steel & Recycling Inc  
2703 W Towne St  
Glendive, MT 59330-9594

**Lender:** Stockman Bank of Montana  
Sidney Office  
101 South Central Avenue  
Sidney, MT 59270  
(406) 433-8600

THIS LANDLORD'S RELEASE AND CONSENT is entered into among Border Steel & Recycling Inc ("Borrower"), whose address is 2703 W Towne St, Glendive, MT 59330-9594; Stockman Bank of Montana ("Lender"), whose address is Sidney Office, 101 South Central Avenue, Sidney, MT 59270; and City of Miles City, Montana ("Landlord"), whose address is 17 S Eighth St, Miles City, MT 59301. Borrower and Lender have entered into, or are about to enter into, an agreement whereby Lender has acquired or will acquire a security interest or other interest in the Collateral. Some or all of the Collateral may be affixed or otherwise become located on the Premises. To induce Lender to extend the Loan to Borrower against such security interest in the Collateral and for other valuable consideration, Landlord hereby agrees with Lender and Borrower as follows.

**COLLATERAL DESCRIPTION.** The word "Collateral" means certain of Borrower's personal property in which Lender has acquired or will acquire a security interest, including without limitation the following specific property:

- All Inventory, Chattel Paper, Accounts, Equipment (including all titled vehicles) and General Intangibles; and
- All Fixtures, including all existing or subsequently erected or affixed buildings and improvements.

**BORROWER'S ASSIGNMENT OF LEASE.** Borrower hereby assigns to Lender all of Borrower's rights in the Lease, as partial security for the Loan. The parties intend that this assignment will be a present transfer to Lender of all of Borrower's rights under the Lease, subject to Borrower's rights to use the Premises and enjoy the benefits of the Lease while not in default on the Loan or Lease. Upon full performance by Borrower under the Loan, this assignment shall be ended, without the necessity of any further action by any of the parties. This assignment includes all renewals of and amendments to the Lease or the Loan, until the Loan is paid in full. No amendments may be made to the Lease without Lender's prior written consent, which shall not be unreasonably withheld or delayed.

**CONSENT OF LANDLORD.** Landlord consents to the above assignment. If Borrower defaults under the Loan or the Lease, Lender may reassign the Lease with the consent of the Landlord, and Landlord agrees that such consent will not be unreasonably withheld or delayed. So long as Lender has not entered into possession of the Premises, Lender will have no liability under the Lease, including without limitation liability for rent. Whether or not Lender enters into possession of the Premises for any purpose, Borrower will remain fully liable for all obligations of Borrower as lessee under the Lease. While Lender is in possession of the Premises, Lender will cause all payments due under the lease to be made to Landlord and will be responsible for complying with all of the terms of the Lease, to include bring any past due lease amounts current. In the event past due rent is paid to Landlord by Lender, Borrower shall be liable to Lender for all such amounts paid. If Lender later reassigns the Lease with the Landlord's consent, Lender will have no further obligation to Landlord. In the event Lender vacates the Premises prior to assignment of the lease to a third party, the Borrower shall remain obligated to Landlord, and Lender will have no further obligation to Landlord. Lender acknowledges that it will not be entitled to reimbursement of any rents paid to Landlord during Lender's period of occupancy.

**LEASE DEFAULTS.** Both Borrower and Landlord agree and represent to Lender that, to the best of their knowledge, there is no breach or offset existing under the Lease or under any other agreement between Borrower and Landlord. Landlord agrees not to terminate the Lease, despite any default by Borrower, without giving Lender written notice of the default and an opportunity to cure the default within a period of sixty (60) days from the receipt of the notice. If the default is one that cannot reasonably be cured by Lender (such as insolvency, bankruptcy, or other judicial proceedings against Borrower), then Landlord will not terminate the Lease so long as Landlord receives all sums due under the Lease for the period during which Lender is in possession of the Premises, or so long as Lender reassigns the Lease to a new lessee reasonably satisfactory to Landlord.

Landlord agrees that Lender, its successors and assigns, are exempt from any defaults arising under Sections: D. Maintenance; I. Indemnification; and K. Environmental Warranty, except to the extent that Lender, its successors and assigns have contributed to the deficiencies under these sections of the Lease for the period during which Lender, its successors and assigns, are in possession of the Premises.

**DISCLAIMER OF INTEREST.** Landlord hereby consents to Lender's security interest (or other interest) in the Collateral and disclaims all interests, liens and claims which Landlord now has or may hereafter acquire in the Collateral. Landlord agrees that any lien or claim it may now have or may hereafter have in the Collateral will be subject at all times to Lender's security interest (or other present or future interest) in the Collateral and will be subject to the rights granted by Landlord to Lender in this Agreement.

Notwithstanding the above provisions, the terms under Section IV, Letter E. "Improvements To Remain" of the Lease will prevail as it pertains to fixtures or improvements to the Premises following the expiration of the Lease. **ENTRY ONTO PREMISES.** Landlord and Borrower grant to Lender the right to enter upon the Premises for the purpose of removing the Collateral from the Premises or conducting sales of the Collateral on the Premises. The rights granted to Lender in this Agreement will continue until a reasonable time after Lender receives notice in writing from Landlord that Borrower no longer is in lawful possession of the Premises. If Lender enters onto the Premises and removes the Collateral, Lender agrees with Landlord not to remove any Collateral in such a way that the Premises are damaged, without either repairing any such damage or reimbursing Landlord for the cost of repair.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Agreement: This Agreement shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Agreement. The covenants of Borrower and Landlord respecting subordination of the claim or claims of Landlord in favor of Lender shall extend to, include, and be enforceable by any transferee or endorsee to whom Lender may transfer any claim or claims to which this Agreement shall apply. Lender need not accept this Agreement in writing or otherwise to make it effective. This Agreement shall be governed by and construed in accordance with the laws of the State of Montana. If Landlord is other than an individual, any agent or other person executing this Agreement on behalf of Landlord represents and warrants to Lender that he or she has full power and authority to execute this Agreement on Landlord's behalf. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is in writing and signed by Lender. Without notice to Landlord and without affecting the validity of this Consent, Lender may do or not do anything it deems appropriate or necessary with respect to the Loan, any obligations on the Loan, or any Collateral for the Loan; including without limitation extending, renewing, rearranging, or accelerating any of the Loan indebtedness.

**AMENDMENTS.** This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**NO WAIVER BY LENDER.** Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Landlord, shall constitute a waiver of any of Lender's rights or of any of Landlord's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**SEVERABILITY.** If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that

finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code:

**Agreement.** The word "Agreement" means this Landlord's Release and Consent, as this Landlord's Release and Consent may be amended or modified from time to time, together with all exhibits and schedules attached to this Landlord's Release and Consent from time to time.

**Borrower.** The word "Borrower" means Border Steel & Recycling Inc and includes all co-signers and co-makers signing the Note and all their successors and assigns.

**Collateral.** The word "Collateral" means all of Borrower's right, title and interest in and to all the Collateral as described in the Collateral Description section of this Agreement.

**Landlord.** The word "Landlord" means City of Miles City, Montana, and is used for convenience purposes only. Landlord's interest in the Premises may be that of a fee owner, lessor, sublessor or lienholder, or that of any other holder of an interest in the Premises which may be, or may become, prior to the interest of Lender.

**Lease.** The word "Lease" means those certain leases of the Premises, dated October 28, 2003 and June 30, 2005 between Landlord and Borrower.

**Lender.** The word "Lender" means Stockman Bank of Montana, its successors and assigns.

**Loan.** The word "Loan" means any and all loans and financial accommodations from Lender to Borrower whether now or hereafter existing, and however evidenced.

**Note.** The word "Note" means the Note dated December 30, 2013 and executed by Border Steel & Recycling Inc in the principal amount of \$1,284,346.00, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement.

**Premises.** The word "Premises" means the real property located in Custer County, State of Montana, commonly known as Commercial Property, Miles City, MT 59301.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Loan.

BORROWER AND LANDLORD ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS LANDLORD'S RELEASE AND CONSENT, AND BORROWER AND LANDLORD AGREE TO ITS TERMS. THIS AGREEMENT IS DATED DECEMBER 30, 2013.

**BORROWER:**

**BORDER STEEL & RECYCLING INC**

By: Bret A. Smelser  
Bret A. Smelser, President of Border Steel & Recycling Inc

By: Brady Smelser  
Brady Smelser, Vice President of Border Steel & Recycling Inc

**LANDLORD:**

**CITY OF MILES CITY, MONTANA**  
By: C. A. Sheng  
Authorized Signer for City of Miles City, Montana

By: \_\_\_\_\_  
Authorized Signer for City of Miles City, Montana

**LENDER:**

**STOCKMAN BANK OF MONTANA**  
x Garth N Kallevig  
Garth N Kallevig, President