



Board Binder Open Session

October 13, 2021

Agenda



**MIDLAND DEVELOPMENT CORPORATION AS AUTHORIZED BY CHAPTER 504 OF THE TEXAS
LOCAL GOVERNMENT CODE**

NOTICE OF SPECIAL MEETING

In accordance with Chapter 551, Texas Government Code, as amended, notice is hereby given to the public that the Board of Directors of the Midland Development Corporation will meet in special session, open to the public, in the Midland Chamber of Commerce board room, 303 West Wall Street, Suite 200, Midland, Texas, at 9:00 a.m. on October 13, 2021. A quorum of the Board of Directors of the Midland Development Corporation intends to be physically present at the aforementioned location.

Videoconference Information

Join Zoom Webinar

<https://us02web.zoom.us/j/89537799153?pwd=RkFleFp2eHdQd0hCcnArcGN3dmlyZz09>

Passcode: 536720

Or join by phone:

Dial (for higher quality, dial a number based on your current location):

US: +1 346 248 7799 or +1 669 900 9128 or +1 253 215 8782 or +1 301 715 8592 or +1 312 626 6799
or +1 646 558 8656

Webinar ID: 895 3779 9153

Passcode: 536720

International numbers available: <https://us02web.zoom.us/j/kcYyBq2iWX>

At such meeting, the Board of Directors may discuss, consider, and take action on any of the following items:

1. Call meeting to order.
2. Motion approving the minutes of the September 13, 2021, meeting of the Midland Development Corporation.
3. Resolution authorizing the execution of a purchase and sale agreement between the Midland Development Corporation and 42, LLC for the sale of an approximate 58.207-acre tract of land out of Section 11, Block 40, Township 2 South, T&P RR Co. Survey, Midland County, Texas; and authorizing the Chairman to execute any and all legal documents and instruments necessary and appropriate for the closing of the sale of said real property.
4. Presentation on the September 2021 monthly expenses and economic development activity report from the Midland Development Corporation Executive Director.



Posted this 8th day of October 2021.

Amy M. Turner
City Secretary

September 13th Minutes

MIDLAND DEVELOPMENT CORPORATION

MINUTES

September 13, 2021

The Board of Directors of the Midland Development Corporation convened in regular session at the Midland Chamber of Commerce conference room, 303 W. Wall Street, Suite 200, Midland, Texas, at 10:00 a.m. on September 13, 2021.

Board Members present: Director Stephen Lowery, Director Berry Simpson, Director Lourcey Sams, Director Chase Gardaphe, and Director Jill Pennington

Board Members absent: Chairman Wesley Bownds, Director Brad Bullock

Staff Members present: Assistant City Manager Tina Jauz, Assistant City Attorney Nicholas Toulet-Crump, Interim Finance Director Christy Weakland and Deputy City Secretary Vanessa White

Council Member(s) present: Mayor Patrick Payton and Council member Michael Trost

MDC Staff Members present: Executive Director Sara Harris, Marketing and Administrative Coordinator Kendall Gray

1. Call meeting to order.

First Vice Chairman Lowery called the meeting to order at 10:00 am

2. Motion approving the minutes of the August 02, 2021, meeting of the Midland Development Corporation.

Director Sams moved to approve the minutes of the July 12, 2021 meeting of the Midland Development Corporation; seconded by Director Gardaphe. The motion carried by the following vote: AYE: Lowery, Simpson and Pennington. NAY: None. ABSTAIN: None. ABSENT: Bownds and Bullock.

3. Resolution authorizing the execution of a promotional agreement with the Permian Basin Area Foundation to advertise and publicize the City of Midland for the purpose of developing new and expanded business enterprises.

Director Simpson moved to approve Resolution ED-392 authorizing the execution of a promotional agreement with the Permian Basin Area Foundation; seconded by Director Gardaphe. The motion carried by the following vote: AYE: Sams, Lowery and Pennington. NAY: None. ABSTAIN: None. ABSENT: Bownds and Bullock.

4. Presentation on the August 2021 monthly expenses and economic development activity report from the Midland Development Corporation Executive Director.

Ms. Harris reported that they received the final disbursement from the State for this fiscal year. The Annual Revenue is 11.6 million dollars, budgeted amount was 9 million dollars, which is a 2.6 million dollar excess over budgeted revenue for the fiscal year. There was a 1 million dollar disbursement to the City of Midland in the previous month for the Midland Draw Widening Economic Development Agreement. The agreement stated that when that project was put to bid, MDC would transfer those funds. That is the only noticeable disbursement this month.

Board recessed into executive session at 10:08 a.m.

5. Pursuant to Texas Government Code §551.101, the Board of Directors will hold an Executive Session, which is closed to the public to discuss the following matters as permitted under the following Texas Government Code Sections:
 - a. Section 551.072 Deliberation Regarding Real Property
 - i. Discuss the sale, exchange, lease or value of real property described as an approximate 53.62–acre tract of land out of Section 11, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas.
 - ii. Discuss the sale, exchange, lease or value of real property described as an approximate 374–acre tract of land out of Section 33, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas.
 - iii. Discuss the sale, exchange, lease or value of real property described as Lots 5 and 6, Block Thirty-Five (35), Original Town Midland, an addition to the City of Midland, Midland County, Texas.
 - iv. Discuss the sale, exchange, lease or value of real property described as lots 1A and 9-12, block 35, Original Town of Midland, an addition to the City of Midland, Midland County, Texas.
 - b. Section 551.087 Deliberation Regarding Economic Development Negotiations
 - i. Discuss business prospects that the Midland Development Corporation seeks to have, locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives, and discuss contract compliance on the part of the businesses.

Board reconvened into open session at 11:47 a.m.

All the business at hand having been completed, First Vice Chairman Lowery adjourned the meeting at 11:48 a.m.

Respectfully submitted,

Vanessa White, Deputy City Secretary

PASSED AND APPROVED the 4th Day of October 2021.

Berry Simpson, Secretary

Purchase and Sale Agreement

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A PURCHASE AND SALE AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND 42, LLC, FOR THE SALE OF AN APPROXIMATE 58.207-ACRE TRACT OF LAND OUT OF SECTION 11, BLOCK 40, TOWNSHIP 2 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS; AND AUTHORIZING THE CHAIRMAN TO EXECUTE ANY AND ALL LEGAL DOCUMENTS AND INSTRUMENTS NECESSARY AND APPROPRIATE FOR THE CLOSING OF THE SALE OF SAID REAL PROPERTY

WHEREAS, the Board of Directors finds it to be in the public interest to authorize the execution of a purchase and sale agreement with 42, LLC, for the sale of an approximate 58.207-acre tract of land out of Section 11, Block 40, Township 2 South, T&P RR Co. Survey, Midland County, Texas; and

WHEREAS, the Board of Directors finds it to be in the public interest to authorize the Chairman to execute any and all legal documents and instruments necessary and appropriate for the closing of the sale of said real property;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE MIDLAND DEVELOPMENT CORPORATION:

SECTION ONE. That the Chairman is hereby authorized and directed to execute, on behalf of the Midland Development Corporation, a purchase and sale agreement with 42, LLC. Said agreement shall be in a form substantially similar to that of Exhibit A, which is attached hereto and incorporated herein for all purposes.

SECTION TWO. That the Chairman is hereby authorized and directed to execute any and all legal documents and instruments necessary and appropriate for the closing of the sale of said real property.

On motion of Director _____, seconded by Director _____, the above and foregoing resolution was adopted by the Board of Directors of the Midland Development Corporation at a regular meeting on the _____ day of _____, A.D., 2021, by the following vote:

Directors voting "AYE":

Directors voting "NAY":

WESLEY BOWNDS,
Chairman of the Midland
Development Corporation

ATTEST:

BERRY SIMPSON,
Secretary of the Midland
Development Corporation

APPROVED AS TO FORM ONLY:

JOHN OHNEMILLER,
Attorney for the Midland
Development Corporation

AGREEMENT FOR PURCHASE AND SALE

THIS AGREEMENT FOR PURCHASE AND SALE (this "**Agreement**") is entered into as of the _____ day of _____, 2021 (the "**Execution Date**"), by and between **MIDLAND DEVELOPMENT CORPORATION**, a Type A Texas corporation pursuant to Chapter 504 of the Texas Local Government Code, as amended ("**Seller**"), and **42, LLC**, a Texas limited liability company d/b/a 42 Real Estate LLC, and/or its assigns ("**Purchaser**"), upon the terms and provisions set forth herein. For purposes of this Agreement, the "**Effective Date**" is the date a representative of the Title Company (as defined in Section 2.2 hereof) executes the Receipt and Acknowledgment attached to this Agreement, and Seller has delivered the Resolution to Purchaser. Purchaser and Seller are at times referred to herein, collectively, as the "**Parties**" or the "**parties.**"

ARTICLE 1 PURCHASE AND SALE

1.1 **Purchase and Sale.** Subject to the terms and conditions of this Agreement, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, that certain real property consisting of approximately 52.09 acres located in the City of Midland (the "**City**"), Midland County, Texas, as more particularly described and/or depicted on Exhibit A attached hereto and made a part hereto (the "**Land**"), together with all rights and appurtenances to the Land, including, without limitation, all rights, titles, estates and interests of Seller in and to the following, whether now owned or hereafter acquired:

(a) any and all alleys, strips or gores of land and to any land lying in the bed of any highway, street, road, avenue or alley, open or proposed, in, on, across from, in front of, abutting or adjoining the Land, whether owned or claimed by deed, limitation or otherwise and whether or not located inside or outside the Land;

(b) any and all easements, rights-of-way, rights of ingress or egress and other interests in, on or to any land, highway, street, road or avenue, open or proposed in, on, across from, in front of, abutting or adjoining the Land;

(c) any and all rights, titles, estates and interests of Seller in and to any condemnation award made or to be made after the Execution Date in connection with the Land and/or the interests described in the foregoing subparagraphs (a) and (b) and in and to any unpaid award for casualty damage to the Land and/or said interests pertaining to the Land;

(d) any and all rights to the present or future use of water, wastewater, wastewater capacity, drainage or other utility facilities that pertain to or benefit the Land, including, without limitation, all reservations, credits, commitments or letters covering any such use in the future;

(e) any and all reversionary rights attributable to the Land;

- (f) any and all Plans and Reports (as defined in Section 3.2(c));
- (g) any and all easements, licenses, development rights, entitlements, reimbursements, permits (grading, foundation, building or otherwise), credits, deposits, agreements and contracts relating to the Land or any of the foregoing;
- (h) all improvements, if any; and
- (i) all other rights, benefits, privileges, tenements, hereditaments and appurtenances thereon or in anywise appertaining to the Land or owned by Seller and used in connection with the Land or the ownership or development thereof.

Save and except, the Land shall not include: (i) the pad sites for the three (3) oil and gas wells pad sites ("Pad Sites"), which are located within the described boundaries of the Land; nor (ii) any interest in oil, gas, or other minerals, such interests being previously reserved as follows: (a) AS TO LOT 11: as reserved in Warranty Deed executed by Scharbauer Brothers & Co. to Industrial Foundation of Midland, Inc., dated January 1, 1979 and recorded in Volume 651, Page 659 of the Deed Records of Midland County, Texas; and (b) AS TO LOT 12: as reserved in Warranty Deed executed by John Scharbauer et al to Clarence Scharbauer dated March 30, 1937, and recorded in Volume 57, Page 538, Deed Records of Midland County, Texas; as reserved in Deed executed by Ruth Scharbauer to Scharbauer Brothers & Co., dated December 30, 1957, recorded in Volume 282, Page 223, Deed Records of Midland County, Texas; and as reserved in Deed executed by Clarence Scharbauer, Jr. to Scharbauer Brothers & Co., dated January 1, 1958, recorded in Volume 283, Page 302, Deed Records of Midland County, Texas. The Pad Sites shall be surveyed and excluded from the conveyance of the Land, at Closing and reflected in the Final Plat. The parties recognize that as result of such exclusion that, as of the Effective Date, the exact boundaries of the Land have not been determined but agree to work together in good faith to determine the same. Furthermore, notwithstanding the lack of specificity of the boundaries of the Land as of the Effective Date, the parties intend to be and are bound by the terms and provisions of this Agreement and hereby waive any and all defenses hereto which may be based upon the lack of specificity of the boundaries of the Land. The final metes and bounds description of the Land as reflected on the final agreed upon survey shall, upon approval thereof by Seller and Purchaser (each agreeing to act reasonably with regard to the granting of such approval) become the Land. The Pad Sites shall be excluded from the calculation of the Purchase Price below.

1.2 Property. The Land and all rights, titles, estates and interests listed in this Article 1, whether now owned or hereafter acquired by Seller, are hereafter collectively referred to as the "**Property**."

ARTICLE 2 PURCHASE PRICE AND EARNEST MONEY

2.1 Purchase Price. (a) The purchase price (the "**Purchase Price**") to be paid by Purchaser to Seller for the Property acquired pursuant to this Agreement shall Two Million One Hundred Sixty Six Thousand Three Hundred Dollars and no/100 (\$2,166,300.00).

(b) The Purchase Price shall be due and payable in cash at the Closing (as defined in Section 5.1 hereof) of the Property subject to the adjustments described in paragraph (a) above.

2.2 Earnest Money. Within five (5) business days after the Effective Date, Purchaser shall deliver earnest money to Republic Title of Texas, Inc., 2626 Howell Street, 10th Floor, Dallas, Texas 75204, Attention: Linda Williams (the "**Title Company**") in the amount of Seventy Five Thousand and No/100 Dollars (\$75,000.00) in immediately available funds (the "**Earnest Money Deposit**"). The Earnest Money Deposit shall be held in escrow by Title Company and may be deposited into an interest bearing, federally insured account with a national bank. The Earnest Money Deposit delivered hereunder, and all interest (if any) accrued thereon, shall hereinafter be sometimes collectively referred to as the "**Earnest Money.**" The Earnest Money shall be disbursed or released in accordance with the other terms of this Agreement. The Earnest Money shall be applied to the Purchase Price at the Closing.

2.3 Independent Contract Consideration. Purchaser and Seller acknowledge that One Thousand and No/100 Dollars (\$1,000.00) of the Earnest Money will be delivered to Seller upon termination of this Agreement for any reason (the "**Independent Consideration**"), which amount the Parties have bargained for and agreed upon as consideration for Seller's execution and delivery of this Agreement. The Independent Consideration is in addition to and independent of any other consideration or payment provided in this Agreement, is non-refundable but applicable to the Purchase Price, and shall be delivered to Seller, notwithstanding any other provision of this Agreement.

2.4 Anticipated Use. Purchaser has agreed to purchase the Property on the condition that Purchaser will be permitted to design, construct, develop and operate an approximately 200,000 square-foot, small-package sorting and distribution facility, together with associated uses, including, but not limited to, office space, loading and unloading, outdoor parking, and storage of tractors, trailers, trucks, automobiles, and other vehicles, for continuous 24-hour operations on all days of the year (the "**Anticipated Use**"). This will be the initial use for the Property. Purchaser's initial development of the Property shall be generally consistent with the improvements depicted on the site plan attached hereto as Exhibit E and incorporated herein for all purposes. Subject to the Development Approvals or Final Plat required to develop the Property for the Anticipated Use, Buyer warrants and agrees that the construction of said improvements shall commence within one (1) year following Closing subject to weather or force majeure events. If, prior to the Closing, but after the expiration of the Feasibility Period (as defined in Section 3.1 hereof), it is determined that any of the Development Approvals or Final Plat required to develop the Property for the Anticipated Use or any proposed or enacted law, bylaw, statute, rule, regulation or other requirement of any Governmental Authority (as defined in Section 3.5 hereof) does not, would not or will not permit Purchaser to develop the Property for the Anticipated Use, then Purchaser shall have the right, in its sole and absolute discretion, to terminate this Agreement and receive a return of the Earnest Money, following which this Agreement shall terminate and none of the Parties hereto shall have any further duties, liabilities or obligations to one another hereunder.

ARTICLE 3 FEASIBILITY PERIOD

3.1 Feasibility Period/Extension. Unless extended by mutual written agreement of the Parties, Purchaser shall have until 5:00 p.m. (Central Standard Time) on the date which is ninety (90) days from the Effective Date (the "**Feasibility Period**") and thereafter until Closing or termination of this Agreement to examine the Inspection Documents and the Property. Notwithstanding the foregoing, Purchaser shall have the right, upon written notice to Seller, to extend the Feasibility Period for two (2) sixty (60) day periods. Notice of the extensions must be provided in writing not less than five (5) days before the expiration of the Feasibility Period (as it may have been extended). If Purchaser exercises its option to extend the Feasibility Period, Purchaser must deposit an additional \$7,500.00 in escrow with the Title Company for each extension (the "**Extension Payments**"). The Extension Payments shall become a portion of the Earnest Money, shall be non-refundable to Purchaser except in the case of Seller's default or as otherwise provided for under this Agreement, and shall be applied to the Purchase Price at Closing.

3.2 Inspection Documents. The following documents constitute the documents to be reviewed and approved by Purchaser during the Feasibility Period and shall hereinafter collectively be referred to as the "**Inspection Documents**":

(a) Title Commitment. Not later than fifteen (15) days after the Effective Date, Purchaser shall, at its sole cost and expense, use best efforts to cause the Title Company to issue to Purchaser its Commitment for Title Insurance (the "**Title Commitment**"), together with true, correct, complete and best available copies of all documents affecting the Property and listed as title exceptions therein (the "**Exception Documents**"). The Title Commitment shall be in a form which contains the Title Company's express commitment to issue an Owner's Policy of Title Insurance (the "**Title Policy**," which term includes all endorsements required by Purchaser) to Purchaser at Closing.

(b) Survey. Not later than ten (10) days after the Effective Date, Seller shall furnish Purchaser a copy of the most recent survey of the Property in Seller's possession, if any. Purchaser, at Purchaser's option and expense, may obtain a new or updated survey (the "**Survey**") of the Property prepared by a licensed professional engineer or surveyor.

(c) Property/Development Information. Within ten (10) days after the Effective Date (to the extent not previously delivered to Purchaser), Seller shall, at its sole cost and expense, deliver to Purchaser legible copies of all of the following information to the extent then in Seller's or Seller's Representatives' possession, custody or control (collectively, the "**Plans and Reports**"), if any: (i) all soils, geotechnical and environmental and engineering reports, studies, surveys, inspections or analyses conducted on or prepared with respect to the Property and the name, address and telephone number of the professional who has conducted or prepared such reports, studies, inspections or analyses, if any; (ii) all ad valorem tax and assessment statements relating to the Land for the previous tax year and the current tax year, if any; (iii) any information regarding any current valuation of the Land for ad valorem tax

and assessment purposes or notices relative to an anticipated change in valuation for any and all ad valorem tax and assessment, if any; (iv) a list of all litigation or threatened litigation against Seller or the Property that affects or may affect the Property as of the Execution Date, if any; (v) all items described in or associated with the interests referenced in Subsections 1.1(a) - 1.1(i) above, if any; (vi) copies of all outstanding work orders, notices, directives or letters of non-compliance issued by any Governmental Authority affecting the Property or the development thereof, if any; (vii) all other agreements, leases, contracts, reports, studies, investigations, inspections, analyses, drawings, plans, specifications, surveys and other materials prepared with respect to the Property or the development thereof, including, without limitation, copies of all entitlements, proposed development plans, recent bank surveys/appraisals, all electronic/editable versions of the master planning of the area surrounding the Land and financial data and reports, marketing studies, feasibility reports, engineering studies and relevant correspondence, if any; (viii) any and all agreements (including amendments, if any) relating to the production of oil, gas or other minerals on or in the Property, if any; and (ix) the items and data set forth on **Exhibit B** attached hereto and incorporated herein, if any. To the extent Seller receives or creates additional Plans and Reports after the expiration of 10 days after the Effective Date, Seller shall provide the same from time to time, but such supplementing shall not serve to extend the Feasibility Period.

(d) Evidence of Authority. Within thirty (30) days after the Effective Date, Seller shall deliver to Purchaser copies of all documents, instruments, certificates and affidavits evidencing Seller's authority to execute this Agreement and to consummate the transactions contemplated herein ("**Seller's Authority Documents**").

3.3 Purchaser's Initial Title Objections. Seller has agreed to convey to Purchaser good and indefeasible fee simple title to the Property, free and clear of any and all liens, security interests, encumbrances, conditions, restrictions, assessments, claims, encroachments, easements, rights-of-way, agreements, leases and other interests whatsoever except the Permitted Encumbrances (as defined in Section 3.4 hereof). Purchaser shall have thirty (30) days after the receipt of the Title Commitment, Exception Documents, and Survey (the "**Notification Date**") to examine the title to the Property as reflected in the Title Commitment and the Survey. If, on or before the Notification Date, Purchaser shall notify Seller, in writing ("**Purchaser's Notice**"), of any objection with respect to any of the matters reflected in the Title Commitment or Survey (the "**Initial Title Objections**"), then Section 3.4 shall be applicable. If Purchaser fails to notify Seller of any Initial Title Objections on or before the Notification Date, Purchaser shall be conclusively deemed to have accepted Seller's title to the Property as reflected in the Title Commitment and the Survey, subject, however, to Purchaser's rights to raise any New Title Objections (as defined in Section 4.2 hereof) pursuant hereto and Seller's obligation to cure the Mandatory Cure Items. Notwithstanding anything else contained in this Agreement to the contrary, Seller will be obligated to satisfy (A) all matters that consist of liens that secure liquidated sums, (B) any judgment of record against Seller in the county or other applicable jurisdiction in which the Property is located that would affect Seller's ability to perform under this Agreement, (C) all matters that arose by, through or under Seller on or after the date of this Agreement without the written consent of Purchaser, and (D) all matters that Seller has delivered written notice to Purchaser that Seller will

cure such matter (collectively, the "**Mandatory Cure Items**"). In no event shall the Mandatory Cure Items be deemed a Permitted Encumbrance.

3.4 Seller's Curative Actions of the Initial Title Objections. If Purchaser provides Seller with Purchaser's Notice of any Initial Title Objections, Seller shall deliver written notice to Purchaser within ten (10) days thereafter stating whether, prior to Closing, Seller shall remove, at Seller's sole cost and expense, such Initial Title Objections from title to the Property or otherwise cure the same in a manner reasonably satisfactory to Purchaser. Seller's failure to timely deliver notice of its election to so remove or cure all Initial Title Objections as aforesaid shall be deemed Seller's election not to so remove or cure. Anything contained herein to the contrary notwithstanding, except for the Mandatory Cure Items, Seller shall not be obligated to remove or cure any of the Initial Title Objections. If Seller elects or is deemed to have elected not to so remove or cure any or all Initial Title Objections prior to Closing, Purchaser, at its election, shall have until the expiration of the Feasibility Period to either: (i) waive its prior disapproval of those Initial Title Objections that Seller elected or was deemed to have elected not to remove or cure and proceed to consummate this transaction; or (ii) receive a return of the Earnest Money, following which this Agreement shall terminate and none of the Parties hereto shall have any further duties, liabilities or obligations to one another hereunder except the Surviving Duties. All matters shown on the Title Commitment or Survey that Purchaser does not object to, or, having objected thereto, subsequently waives pursuant to this Section 3.4, are herein referred to collectively as "**Permitted Encumbrances**".

3.5 Inspections and Investigations. During the Feasibility Period and through the Closing, Purchaser and Purchaser's employees, agents, representatives and any third party engaged by Purchaser (collectively, "**Purchaser's Representatives**") shall, with notice to Seller, have the right and permission to enter the Property to conduct such surveys and to make such investigations, inspections, drillings, borings, tests and studies of the Property that Purchaser deems necessary or advisable, in its sole and absolute discretion, including, without limitation, conducting engineering inspections, making soil and substrata drillings and borings and performing environmental inspections both non-invasive and invasive. Purchaser shall provide Seller at least three (3) business days' advance written notice prior to performing any invasive testing on the Property Seller reserves the right to have a representative present at any time Purchaser or an agent of Purchaser is on the Property for the purposes stated herein. All such surveys, investigations, inspections, drillings, borings, tests and studies shall be at Purchaser's sole cost and expense. Purchaser agrees to: (i) repair any damage to the Property caused by such surveys, investigations, inspections, drillings, borings, tests and studies; and (ii) indemnify and hold Seller harmless from any and all claims and expenses arising or resulting from such surveys, investigations, inspections, drillings, borings, tests and studies, excluding, however, any of the foregoing caused by the acts or omissions of Seller or its invitees or Seller's employees, agents, representatives and any third party engaged by Seller (collectively, "**Seller's Representatives**") or relating to pre-existing conditions upon the Property. During the Feasibility Period and through the Closing, Purchaser and Purchaser's Representatives may: (i) make inquiries of and to third parties, including, without limitation, any local, municipal, regional, provincial, state or federal governmental or quasi-governmental authority, or any political subdivision thereof, and any other department, commission, board, agency, authority, instrumentality or other political subdivision or district having jurisdiction over Purchaser, Seller or the Property or the development thereof (individually, a "**Governmental Authority**" and, collectively, "**Governmental Authorities**"), in order to

investigate any aspect of the Property or the development thereof; (ii) accompany, assist or participate with Seller or any of Seller's Representatives in any meetings or discussions that Seller or Seller's Representatives may have with any Governmental Authorities (and Seller shall give Purchaser reasonable prior notice of any such meetings or discussions); and (iii) contact, consult with and/or hire any agent, representative or third party consultant of, or utilized by, Seller or Seller's Representatives in connection with the testing, investigation, inspection, planning, design or development of the Property or any Plans and Reports related thereto (save and except, Seller shall be under no obligation to permit access to any agent, representative or third party consultant of, or utilized by, Seller or Seller's Representatives which would serve to waive any legal privilege). Seller agrees to provide Purchaser with any letters of consent or authorization as may be requested or desired by Purchaser authorizing Purchaser or Purchaser's Representatives the right to access and inspect, and obtain the release of, information pertaining to the Property or the development thereof which is on file with any Governmental Authority. If, prior to the expiration of the Feasibility Period, Purchaser furnishes Seller and Title Company with a written notice of its election to terminate this Agreement, the Title Company shall immediately return the Earnest Money to Purchaser, this Agreement shall terminate and thereafter none of the Parties hereto shall have any further duties, liabilities or obligations to one another hereunder.

3.6 Acceptance of the Property. BY EXECUTING THIS AGREEMENT PURCHASER AGREES AND ACKNOWLEDGES THAT PURCHASER IS TAKING THE PROPERTY "AS IS" AND "WHERE IS" WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE IS NO WARRANTY, EXPRESS OR IMPLIED BEING MADE BY SELLER THAT THE PROPERTY IS FIT FOR A PARTICULAR PURPOSE. PURCHASER ACKNOWLEDGES, BY EXECUTING THIS AGREEMENT, THAT OTHER THAN THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN ANY DOCUMENT DELIVERED BY SELLER AT CLOSING ("SELLER'S EXPRESS REPRESENTATIONS"), PURCHASER IS NOT RELYING UPON ANY REPRESENTATION MADE BY SELLER WITH RESPECT TO THE CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY), BUT IS RELYING UPON PURCHASER'S EXAMINATION OF THE PROPERTY. PURCHASER ALSO RECOGNIZES BY EXECUTING THIS AGREEMENT, THAT, OTHER THAN SELLER'S EXPRESS REPRESENTATIONS, PURCHASER IS AGREEING TO ACCEPT THE PROPERTY "AS IS" AND "WHERE IS," THAT PURCHASER AGREES TO MAKE PURCHASER'S OWN APPRAISAL OF THE PROPERTY, AND TO ACCEPT THE RISK THAT PURCHASER MAY BE WRONG. EXCEPT FOR SELLER'S EXPRESS REPRESENTATIONS, SELLER GIVES NO ASSURANCES, EXPRESS OR IMPLIED CONCERNING THE VALUE OR CONDITION OF THE PROPERTY SOLD. IN NO EVENT SHALL PURCHASER HAVE A RIGHT TO RECOVER CONSEQUENTIAL DAMAGES. THEREFORE, PURCHASER SHALL TAKE THE PROPERTY UNDER THE EXPRESS UNDERSTANDING THE PROPERTY IS ACCEPTED "AS IS" AND "WHERE IS" AND WITH ALL FAULTS, EXCLUDING SELLER'S EXPRESS REPRESENTATIONS. FURTHER, PURCHASER COVENANTS AND AGREES THAT, EXCEPT FOR SELLER'S EXPRESS REPRESENTATIONS, SELLER HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, COVENANTS OR GUARANTEES OF ANY KIND WHATSOEVER REGARDING SOLID WASTE, AS DEFINED BY THE U.S. ENVIRONMENTAL

PROTECTION AGENCY REGULATIONS, OR THE DISPOSAL OR EXISTENCE, IN OR ON THE PROPERTY, OF ANY HAZARDOUS SUBSTANCE, AS DEFINED BY THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED, OR APPLICABLE STATE LAWS.

**ARTICLE 4
CLOSING CONDITIONS**

4.1 Conditions to Obligations of Seller. The obligations of Seller under this Agreement to sell the Property shall be subject to the satisfaction of the following conditions on or before the Closing Date (as defined in Section 5.1 hereof), except to the extent that any of such conditions may be waived by Seller or the period of time for satisfaction thereof extended by Seller, in writing, on or before Closing:

(a) Representations, Warranties and Covenants of Purchaser. All representations and warranties of Purchaser in this Agreement shall be true and correct in all material respects as of the Closing Date, with the same force and effect as if such representations and warranties were made anew as of the Closing Date, and Purchaser shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by Purchaser prior to the Closing Date.

(b) No Orders. No order, writ, injunction or decree directed against Purchaser shall have been entered and be in effect by any court of competent jurisdiction or any applicable Governmental Authority, and no statute, rule, regulation or other requirement shall have been promulgated or enacted and be in effect, that restrains, enjoins or invalidates the transaction contemplated by this Agreement.

4.2 Conditions to Obligations of Purchaser. The obligations of Purchaser under this Agreement to purchase the Property shall be subject to the satisfaction of the following conditions (the "**Closing Conditions**") on or before the Closing Date (and, in the case of items (a), (b) and (c), such conditions shall additionally exist as of the last day of the Feasibility Period), except to the extent that any of such Closing Conditions may be waived by Purchaser or the period of time for satisfaction thereof extended by Purchaser, in writing, on or before Closing:

(a) Representations, Warranties and Covenants of Seller. All representations and warranties of Seller in this Agreement shall be true and correct in all material respects, with the same force and effect as if such representations and warranties were made anew as of the Closing Date, and Seller shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by Seller prior to or on the Closing Date ((i) including, without limitation, causing the Final Plat to be recorded in the real property records of Midland County, Texas; (ii) but excluding the Seller's covenants in Section 6.2(n)); provided, further, notwithstanding that certain representations and warranties hereunder may be "to Seller's knowledge," the existence or non-existence, as applicable, of all of the items described in any such representations and warranties are conditions of any obligation for Purchaser to close under this Agreement.

(b) No Orders. No order, writ, injunction or decree directed against Seller or any of the Property or proposal to change the permitted use or zoning of any of the Property (other than the Development Approvals as defined in Section 6.2(n) hereof, or as approved, in writing, by Purchaser) shall be pending or threatened or shall have been proposed or entered into and be in effect by any court of competent jurisdiction or any applicable Governmental Authority and no statute, rule, regulation, ordinance or other requirement shall be pending or threatened or shall have been proposed, promulgated or enacted and be in effect, that could or does adversely affect, prohibit, restrain, enjoin or invalidate the transaction contemplated by this Agreement, including, without limitation, the ability of Purchaser to develop the Property for the Anticipated Use.

(c) No Suits. No suit or other proceeding before any court or applicable Governmental Authority shall be pending or threatened by any third party seeking to declare illegal, restrain or prohibit the transactions contemplated herein, including, without limitation, the ability of Purchaser to develop the Property for the Anticipated Use, or seeking damages against Seller in connection with the transactions contemplated by this Agreement or in connection with any other transaction relating to the Property, including, without limitation, the ability of Purchaser to develop the Property for the Anticipated Use.

(d) Condition of Property. There shall have been no material adverse change in the condition of the Property after the expiration of the Feasibility Period.

(e) Environmental Condition. No Environmental Condition (as defined in Section 6.1(k) hereof) shall exist in, on, under or about the Property.

(f) New Title Objections. No additional matters affecting title to the Property shall have arisen after the initial issuance of the Title Commitment ("**New Title Objections**"); provided, further, if any such New Title Objections shall have arisen, then, in addition to and not in limitation of Purchaser's other rights and remedies hereunder, Seller shall be obligated to cure the New Title Objections to the reasonable satisfaction of Purchaser on or before the Closing Date or Purchaser shall not be obligated to acquire the Property.

(g) Moratorium. No moratorium shall exist which would affect Purchaser's immediate development of the Property for the Anticipated Use.

(h) Title Policy. The Property shall be in compliance with the provisions hereof and the Title Company shall be irrevocably and unconditionally prepared to issue to Purchaser the Title Policy, with liability in the full amount of the Purchase Price, showing that Purchaser owns fee simple title subject only to the Permitted Encumbrances.

(i) Entitlements for Anticipated Use. On or before the Closing Date, Purchaser shall have determined that Purchaser will be permitted to develop the Property for the Anticipated Use, and Purchaser shall have obtained the entitlements

for Anticipated Use which are desired by Purchaser (the "**Anticipated Use Entitlements**") and the Development Approvals.

4.3 Non-Satisfaction of Closing Conditions. If all of the Closing Conditions contained in Section 4.2 above do not exist at or are not satisfied by the Closing Date or such earlier date as set forth herein, Purchaser may, in addition to and not in limitation of Purchaser's other rights and remedies hereunder, elect to either: (a) waive in writing the failure of such Closing Conditions and consummate the transactions contemplated in this Agreement; (b) extend the Closing until the Closing Conditions are satisfied whereby the Closing occurs within five (5) days after all Closing Conditions are satisfied; or (c) terminate this Agreement following which none of the Parties hereto shall have any further duties, liabilities or obligations to one another hereunder. In the event Purchaser terminates this Agreement as a result of a failure of any of the Closing Conditions, Purchaser shall receive the Earnest Money. If the failure of a Closing Condition is also a default by Seller hereunder, Purchaser shall also have those remedies set forth in Section 7.1 hereof.

ARTICLE 5 CLOSING

5.1 Closing Date. Unless extended by the mutual written agreement of the Parties and provided the Closing Conditions have been satisfied or the Closing Conditions have been waived by Purchaser, the consummation of the purchase and sale contemplated hereby (the "**Closing**") shall be held at the offices of the Title Company or such other location as Purchaser and Seller may mutually agree no later than forty-five (45) days after the expiration of the Feasibility Period (the "**Closing Date**").

5.2 Seller's Obligations at the Closing. On the Closing Date, Seller shall do the following:

(a) Convey to Purchaser good and indefeasible fee simple title to the Property, free and clear of any and all liens, security interests, encumbrances, conditions, restrictions, assessments, claims, encroachments, easements, rights-of-way, agreements, leases and other interests whatsoever except the Permitted Encumbrances, by delivering to Purchaser a duly executed and acknowledged special warranty deed in the form attached hereto as Exhibit D (the "**Deed**").

(b) Deliver exclusive possession of the Property to Purchaser free and clear of all tenants, parties-in-possession, occupants (whether in possession of the Property or otherwise) and others claiming any interest therein or portion thereof except the Permitted Encumbrances, if any.

(c) Assign to Purchaser all of Seller's right, title and interest in and to all Plans and Reports which Purchaser, in its reasonable discretion, has approved or is deemed to have approved hereunder.

(d) Provide Purchaser with written evidence of the termination of all other possessory rights, plans, licenses, permits, agreements and contracts relating to the Property which Seller is obligated to terminate hereunder or has otherwise agreed to terminate.

(e) Intentionally Omitted.

(f) Execute and deliver, or obtain for delivery to Purchaser or the Title Company, any other instruments reasonably necessary to close the transactions contemplated herein that sellers customarily execute or obtain or which are requested by the Title Company or Purchaser, including, without limitation, closing statements, releases, affidavit of debts, liens and possession, evidence of the authority of the Parties executing instruments on Seller's behalf and the delivery of instruments required by the Title Company.

(g) Cause the Property to be in compliance with the provisions hereof and in compliance with the requirements of the Title Commitment so that the Title Company is irrevocably and unconditionally prepared to issue to Purchaser the Title Policy, with liability in the full amount of the Purchase Price, showing that Purchaser owns fee simple title subject only to the Permitted Encumbrances.

(h) Convey, transfer or assign to Purchaser the Anticipated Use Entitlements which are owned, held or possessed by Seller with such conveyance, transfer and/or assignment documentation to be reasonably acceptable to Purchaser.

(i) Pay all costs in releasing the Mandatory Cure Items.

(j) Deliver the Final Plat (as defined in Section 6.2(m) below) to Purchaser in form ready to be immediately recorded in the real property records of Midland County, Texas.

5.3 Purchaser's Obligations at the Closing. On the Closing Date, after all Closing Conditions have been satisfied, Purchaser shall do the following:

(a) Deliver to the Title Company evidence acceptable to the Title Company authorizing consummation by Purchaser of the purchase and sale transaction contemplated hereby and the execution and delivery of the closing documents on behalf of Purchaser.

(b) Deliver to Title Company for disbursement to Seller the Purchase Price in cash or other immediately available funds after Seller has delivered the documents and fulfilled all other obligations and duties as described in Section 5.2 above and complied with the other terms and obligations of this Agreement.

(c) Execute and deliver, or obtain for delivery to Seller or the Title Company, any other instruments reasonably necessary to close the transaction contemplated herein that purchasers customarily execute or obtain, or which are requested by the Title Company, including, without limitation, closing statements and evidence of the authority of the Parties executing instruments on Purchaser's behalf.

(d) Pay the entirety of the Title Company's escrow fee.

(e) Pay the basic premium for the standard Title Policy.

(f) Pay for any costs for endorsements to the Title Policy or removal of the "survey exception" therefrom which Purchaser requires.

(g) Pay for all recording fees which are not payable by Seller in accordance with Section 5.2 above.

(h) Pay all recording fees for any Purchaser financing documents, if any.

5.4 Prorations.

(a) General real estate taxes for the Property for the taxable year in which Closing occurs shall be prorated as of the Closing Date; provided, however, that if the Property constitutes only a portion of a tax parcel, the general real estate taxes for the entire tax parcel of which the Property is a part (the "**Tax Parcel**") for such taxable year shall be allocated between the Property and the rest of the Tax Parcel in proportion to their relative square footages. The portion of such taxes attributable to the Property shall be prorated as of the Closing Date, with Seller being responsible for all such taxes from the first day of such taxable year through the day before Closing, and Purchaser being responsible for such taxes from the Closing Date through the end of such taxable year. If taxes are not paid at or prior to Closing, Buyer shall pay taxes for the current year. Seller shall be responsible for all taxes attributable to the rest of the Tax Parcel (if applicable). If the Closing shall occur before the tax rate is fixed for the taxable year in which Closing occurs, the apportionment of taxes shall be upon the basis of the tax rate for the immediately preceding taxable year, applied to the latest assessed valuation of the Property or Tax Parcel, as applicable, provided that, if the taxes for the taxable year in which Closing occurs are more or less than the taxes for the preceding taxable year, Seller and Purchaser shall adjust the proration of such taxes and Seller or Purchaser, as the case may be, shall pay to the other any amount required as a result of such adjustment, and this covenant shall not merge with the deed delivered hereunder but shall survive the Closing. All special taxes or assessments assessed prior to the Closing Date shall be paid by Seller, and those assessed after the Closing Date shall be paid by Purchaser.

(b) If this sale or Purchaser's use of the Property after Closing results in the assessment of additional taxes, penalties or interest (the "Assessments") for periods prior to Closing, the Assessments will be the obligation of Seller. This obligation will survive Closing.

(c) Notwithstanding any contrary provision contained herein, Purchaser shall be responsible for the total value of the potential assessment of certain impact fees associated with the site plan to be submitted to the City of Midland for Purchaser's future development of the Property (the "**Impact Fees**"); however, Seller hereby agrees to credit an amount equal to the Impact Fees towards the Purchase Price (the "**Impact Fee Credit**"). Purchaser and Seller reasonably anticipate that the total assessment of the Impact Fees will range from \$250,000.00 to \$400,000.00; however, the parties acknowledge that the Impact Fees may differ from such estimated assessment. If the Impact Fees are determinable by Closing, then the Impact Fee Credit shall be applied

to the Purchase Price. If the Impact Fees are not determinable by Closing, then (i) prior to Closing, Purchaser and Seller shall work in good faith to agree upon an estimate of the Impact Fees, (ii) at Closing the parties shall enter into an escrow agreement (the "**Escrow Agreement**"), and (iii) Seller shall deposit from the closing proceeds the amount of the estimated Impact Fees in escrow with the Title Company. The Title Company shall hold such escrowed funds for payment of the Impact Fees and the escrowed funds shall be released to Purchaser within thirty (30) days following written notice from Purchaser, accompanied by a copy of the invoice or statement issued by the City of Midland evidencing the total Impact Fees assessed by the City of Midland. Furthermore, the Escrow Agreement will contain true-up provisions between Seller and Purchaser in the event that the estimated Impact Fees are more or less than the actual Impact Fees. The obligations set forth in this Section shall survive the Closing.

5.5 Seller and Purchaser shall deliver to each other drafts of the documents described above which are to be delivered on the Closing Date at least five (5) business days prior to the Closing Date so that each Party shall have an opportunity to comment on the same. No later than three (3) business days prior to the Closing Date, the Title Company shall deliver to Purchaser and Seller a pro-forma closing statement. In addition, subject to Section 9.9 hereof, Purchaser and Seller shall be responsible for the payment of their respective attorneys' fees.

REPRESENTATIONS, WARRANTIES AND COVENANTS

6.1 Seller's Representations and Warranties. Seller hereby represents and warrants to Purchaser as follows, with the understanding that Purchaser is relying upon the accuracy of such representations and warranties as of the Execution Date, except as noted otherwise, as of the last day of the Feasibility Period and as of the Closing Date:

(a) Seller is a corporation duly organized and validly existing under the laws of the State of Texas. Seller has the full right, power and authority to sell and convey the Property to Purchaser and to perform all of its obligations as provided in this Agreement without the joinder or consent of any other party, and the Party or Parties executing this Agreement on behalf of Seller has or have been duly authorized and empowered to bind Seller to this Agreement and the Agreement, once executed, shall constitute a valid, binding and enforceable obligation on Seller.

(b) Seller is not a foreign person.

(c) To the best of Seller's knowledge, no person, firm or entity has any right, title, interest or estate in any of the Property or has any right or option to acquire fee title to, or lease, or acquire any other right, title or interest to, the Property or any part thereof. There are no tenants or other parties in possession of any of the Property. There are no crops in the ground on any of the Property. There is no supplier, vendor, service provider, maintenance, mowing or similar contracts affecting the Property.

(d) To the best of Seller's knowledge, there are no taking, condemnation, zoning (unless approved in writing by Purchaser), betterment or assessment actions,

suits, arbitrations, claims, attachments or proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or any other litigation or proceedings, actual or proposed, pending or threatened, against Seller or the Property that would materially and adversely affect the use, value or operation of the Property or the Anticipated Use, or that would in any way constitute a lien, claim or obligation of any kind against the Property or affect Seller's ability to perform its obligations under this Agreement in any way. To the best of Seller's knowledge, there are no unpaid charges, debts, liabilities, claims or obligations arising from the occupancy, ownership, use or operation of the Property, that could give rise to any mechanic's or materialmen's or other statutory lien against the Property, or any part thereof, for which Purchaser could or would be responsible.

(e) To the best of Seller's knowledge, no portion of the Property or its available use is subject to any actual or proposed, pending or threatened zoning, litigation or other administrative, legal or judicial proceeding.

(f) To the best of Seller's knowledge, there are no taxes, assessments or levies of any type that have been or are anticipated to be imposed upon and collected from the Property arising out of or in connection with the ownership and operation or development of the Property, or any public improvements in the general vicinity of the Property, other than as may be reflected in the Permitted Encumbrances, ad valorem taxes on the Land for the calendar year in which the Closing occurs payable to the applicable taxing authorities and/or deferred assessments and/or payment of taxes attributable to periods prior to the Closing to a date subsequent to the Closing arising out of a change in use or ownership of the Property. To the best of Seller's knowledge, the conveyance of the Land contemplated hereunder shall not cause a reassessment, reevaluation or redesignation of the Land due to prior agricultural or open space use or valuation exemption that will increase the ad valorem or property taxes paid thereon other than Purchaser's change of Anticipated Use.

(g) To the best of Seller's knowledge there is access between the Property and a dedicated public roadway and no access point from the Property to any public rights-of-way is in violation of any applicable law, statute, rule, regulation or request or is being terminated or curtailed.

(h) Water, sanitary sewer, gas, and electricity are all available at the property line of the Land, with no special assessments or assessments for any previous installation of or prior work with respect thereto.

(i) To the best of Seller's knowledge: (i) no Environmental Conditions exist in, on, under or about the Property or any portion thereof; (ii) no Hazardous Materials (as defined below) have been "**Released**" (as defined below) at any time in, on, at, upon or under any of the Property or have migrated or emanated from any of the Property or to any of the Property from adjacent or other real properties at any time prior to or during the ownership or operation of the Property by Seller in a manner or quantity requiring reporting, permitting, investigation or remediation under, or in violation of, Environmental Laws (as defined below) and no Environmental Conditions have been

present at any time at the Property; (iii) no Hazardous Materials have been generated, stored, treated, manufactured, managed, transported, recycled, disposed of on-site, or sent off-site from, in, on, at or upon any of the Property at any time during the ownership or operation of the Property by Seller (nor to the best of Seller's knowledge, prior to the ownership or operation of the Property by Seller) in a manner or a quantity requiring reporting, permitting, investigation or remediation under, or in violation of, Environmental Laws; (iv) with respect to: (A) the Property, Seller is not aware of, and has not received notice of, any past, present or future events, conditions, circumstances, activities, practices, incidents, actions or plans which may result in or which may give rise to any common law or liability under Environmental Laws based on or related to any Environmental Condition; and (B) Seller or any portion of the Property or its ownership or operation thereof, no civil, criminal or administrative action, suit, claim, hearing, investigation or proceeding has been brought or been threatened nor have any settlements been reached by or with any parties alleging an Environmental Condition in violation of Environmental Laws or any other violation of Environmental Laws; (v) (A) none of the Property is located within 2,000 feet of a release of Hazardous Materials which has been reported or is required to be reported under any Environmental Requirements or a site at which there has been a significant disposal of Hazardous Materials or "industrial or solid waste," as those terms are defined under Environmental Laws; (B) no occurrence or condition on the Property or any real property adjoining or in the vicinity of the Property exists which could cause such Property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or Anticipated Use of such Property under any Environmental Laws; and (C) no Environmental Laws require the preparation or filing of any property investigation or property disclosure form related to environmental issues in connection with the transfer of any of the Property; and (vi) there are no environmentally sensitive areas on or adjacent to the Property and no habitat for endangered species are located on the Property.

"Environmental Condition(s)" mean(s): (i) the presence or existence in, on, at or under the Property of any Hazardous Materials, "industrial or solid waste" as that term is defined under applicable Environmental Laws, underground or above-ground storage tanks, wells, land fill, open dump, pits, covered-over surface impoundments or similar areas, incinerators, septic tanks or fields, cess pools or any "facility" or "waste management unit" as those terms are defined under applicable Environmental Laws; (ii) the presence or existence in, on, at or under the environment beyond the physical boundaries of the Property of any Hazardous Materials which migrated or emanated from the Property or to the Property from adjacent or other real properties; and (iii) any condition, activity or Release at the Property that is in violation of Environmental Laws.

"Environmental Laws" means any federal, state or local statute, law, rule, regulation, ordinance, code, directive and rule of common law in effect applicable to the Property and in each case as amended and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to the environment or natural resources or Hazardous Materials, including, without limitation, Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**"), 42 U.S.C. § 9601 *et seq.*; Solid Waste Disposal Act, 42 U.S.C. § 6901 *et seq.*; the Federal

Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. § 7401 *et seq.*; the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. § 3803 *et seq.*; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 *et seq.*; Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*; § 136 *et seq.*; the Endangered Species Act of 1973, 16 U.S.C. §1531 *et seq.*; and the regulations promulgated pursuant thereto and any state and local counterparts or substantial equivalents thereof including, without limitation, the Texas Solid Waste Disposal Act, Tex. Health & Safety Code Chapter 361 *et seq.*; the Texas Clean Air Act, Tex. Health & Safety Code Chapter 382 *et seq.*; the Texas Radiation Control Act, Tex. Health & Safety Code Chapter 401 *et seq.*; the Texas Oil Spill Prevention and Response Act of 1991, Tex. Natural Resources Code Chapter 40 *et seq.*; and the Texas Water Code, Chapters 5 and 26 *et seq.*

"Hazardous Materials" means any substance which is or contains: (i) any "hazardous substance" as now or hereafter defined in §101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("**CERCLA**") (42 U.S.C. §9601 *et seq.*) or any regulations promulgated under CERCLA; (ii) any "hazardous waste" as now or hereafter defined in the Resource Conservation and Recovery Act (42 U.S.C. §6901 *et seq.*) ("**RCRA**") or regulations promulgated under RCRA; (iii) any substance regulated by the Toxic Substances Control Act (15 U.S.C. §2601 *et seq.*); (iv) gasoline, diesel fuel, or other petroleum hydrocarbons; (v) asbestos and asbestos containing materials, in any form, whether friable or non-friable; (vi) polychlorinated biphenyls; (vii) radon gas; and any additional substances or materials which are now or hereafter classified or considered to be hazardous or toxic under Environmental Laws or the common law, or any other applicable laws relating to the Property. In addition to the foregoing, Hazardous Materials also shall include, without limitation, any substance the presence of which on the Property: (i) requires reporting, investigation, permitting or remediation under Environmental Laws; (ii) causes or threatens to cause a nuisance on any Property or adjacent property or poses or threatens to pose a hazard to the health or safety of persons on any Property or adjacent property; or (iii) which, if it emanated or migrated from the Property, could constitute a trespass.

"Release" means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching, or migration into or out of the Property of any Hazardous Material, including the movement of any Hazardous Material or other substance through or in the air, soil, surface water, groundwater or other property to or from the Property.

(j) Seller is in compliance with the requirements of Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 23, 2001) (the "**Order**") and other similar requirements contained in the rules and regulations of the office of Foreign Assets Control, Department of the Treasury ("**OFAC**") and in any enabling legislation or other Executive Orders or regulations in respect thereof (the Order and such other rules, regulations, legislation or orders are collectively called the "**Orders**").

(k) Neither Seller nor any beneficial owner of Seller:

(i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the "Lists");

(ii) is a person who has been determined by competent authority to be subject to the prohibitions contained in the Orders; or

(iii) is owned or controlled by, or acts for or on behalf of, any person on the Lists or any other person who has been determined by competent authority to be subject to the prohibitions contained in the Orders.

(l) The plat entitled MDC Business Park Addition, Sections 1 and 2 Plats, attached hereto as Exhibit "F", is true and correct to the best of the knowledge of the Seller and accurately represents the items represented thereon.

The representations and warranties of Seller herein shall be true and correct from and after the Execution Date, shall be a condition to Purchaser's obligation to close under this Agreement and shall survive the Closing of this Agreement. The liability of Seller for a breach of such representations and warranties shall not be affected by any investigation, verification or approval by any party hereto or by anyone on behalf of any party hereto; provided, further, notwithstanding anything contained herein to the contrary that Seller's representations and warranties are "to the best of Seller's knowledge," satisfaction of all of the items described therein are conditions of Purchaser's obligation to close under this Agreement unless otherwise waived in writing by Purchaser.

6.2 Seller's Covenants. Seller hereby covenants and agrees with Purchaser that from the Execution Date until the Closing that:

(a) Seller will not promote, advertise, market, option, transfer, lease or convey all or any portion of the Property or any interest therein, nor enter into any agreement to promote, advertise, market, option, transfer, lease or convey all or any portion of the Property or any interest therein.

(b) Seller will not enter into any agreement, written or oral, that will be or purport to be binding on Purchaser or the Property subsequent to the Closing.

(c) Seller will maintain the Property in a condition at least as good as its condition on the Execution Date and will continue to operate the Property as it has been operated.

(d) Seller will take all necessary steps to convey, and will convey, to Purchaser at Closing good and indefeasible fee simple title to the Property free and clear of all liens, security interests, encumbrances, conditions, restrictions, taxes, assessments, claims, encroachments, easements, rights-of-way, agreements, leases and other interests whatsoever except the Permitted Encumbrances.

(e) Except as may be requested by Purchaser, Seller will not take, approve or consent to any action or omission that would change the zoning, use, permits or licenses of or for the Property or that would otherwise adversely affect the Property in any way.

(f) Seller will promptly give Purchaser written notice of any notice or information Seller hereafter receives regarding zoning, uses, permits and licenses which would have a material impact on the ability of Purchaser to develop the Property for its Anticipated Use.

(g) Intentionally Deleted.

(h) Seller shall not place on any of the Property, any lien, encumbrance or other matter which would constitute an encumbrance or title exception to the Property that will not be satisfied and released at the Closing.

(i) Seller agrees not to take any action after the Execution Date and prior to Closing that will cause or prevent the Property from being in compliance with the provisions of this Agreement and in compliance with the requirements of the Title Commitment so that the Title Company is prepared to issue to Purchaser the Title Policy with liability in the full amount of the Purchase Price showing the Purchaser in title subject only to the Permitted Encumbrances.

(j) Seller shall not, without the prior written consent of Purchaser, disclose to any person or party any of the terms of this Agreement except as necessary to perform Seller's obligations hereunder. Notwithstanding any other provision to the contrary herein, this Agreement in no way restricts the obligation of Seller to comply with the Texas Public Information Act or any ruling or decision of the Texas Attorney General. The Parties hereby agree that Seller retains the right to exercise its sole discretion in determining its obligations under the Texas Public Information Act.

(k) Seller will comply in all respects with any agreement or instrument that now or hereafter affects, restricts or relates to Seller or the Property, whether or not filed of public record, including, without limitation, any mortgage, security agreement, encumbrance, forbearance agreement or otherwise, subject to applicable law.

(l) Seller hereby covenants and agrees that if Seller obtains knowledge that Seller is indicted, arraigned, or custodially detained on charges involving money laundering or predicate crimes to money laundering, Seller shall immediately notify Purchaser in writing, and in such event, Purchaser shall have the right to terminate this Agreement without penalty or liability to Seller immediately upon delivery of written notice thereof to Seller. In such event, the Earnest Money shall be returned to Purchaser.

(m) Commencing on the Execution Date of this Agreement, Seller, at Seller's expense, shall plat and/or replat the Property for uses satisfactory to Purchaser. In this regard, within thirty (30) days after the Execution Date, Seller shall submit to Purchaser the proposed final plat of the Property ("**Proposed Final Plat**") for

Purchaser's approval. If the Proposed Final Plat is not approved by Purchaser within five (5) business days after its submission by Seller to Purchaser, the Proposed Final Plat shall be deemed to be rejected by Purchaser and Purchaser and Seller shall then work closely and in good faith towards producing a final plat that is acceptable to the Parties. Upon written approval by Purchaser of the Proposed Final Plat, Seller hereby agrees to promptly submit to the City the Proposed Final Plat together with all other applicable applications or documents necessary to obtain City approval of the Proposed Final Plat. If the City has any changes to the Proposed Final Plat, Seller shall submit such changes to Purchaser for Purchaser's review and approval in accordance with the procedure set forth in this paragraph each time the City has changes to a previous version of the Proposed Final Plat. Once Purchaser approves such version of the Proposed Final Plat, Seller shall submit such revised Proposed Final Plat to the City until the City approves the Proposed Final Plat that was approved by Purchaser ("**Final Plat Approval**"), which Proposed Final Plat approved by Purchaser and the City is herein referred to as the "**Final Plat.**" Seller shall cause the Final Plat to be recorded in the real property records of Midland County, Texas, on or before Closing.

(n) Seller agrees to reasonably cooperate with Purchaser in Purchaser's effort to obtain Development Approvals for Purchaser's planned development of the Property (including, without limitation, the joinder in or execution of applications, requests, petitions, support letters and other submittals, initiation or joinder in other actions all as may be necessary or required in connection with Purchaser's pursuit of the Development Approvals). For purposes of this Agreement, the term "**Development Approvals**" means all the consents, approvals, permits, licenses, rights, agreements, plans, Final Plat Approval and other items required or desirable for Purchaser's Anticipated Use of the Property, including, but not limited to, zoning and environmental approvals and permits, and all site plan and plans and specifications approvals and permits, approvals by Texas Department of Transportation permitting curb cuts, decelerations lanes, turn lanes and other road improvements desired by Purchaser, and approvals to extend any public utilities to the Land in a manner that supports Purchaser's Anticipated Use (if necessary in Purchaser's sole discretion). The Parties agree to promptly deliver to each other all material written correspondence and notices either of them receives with respect to the Property from any and all Governmental Authorities prior to Closing. Notwithstanding anything to the contrary in this Section or this Agreement, prior to Closing Purchaser shall not complete any final rezoning or any other Development Approval affecting the Property that will burden the Property after Closing or termination of this Agreement without first obtaining Seller's written consent (not to be unreasonably withheld, conditioned or delayed); provided, however, the foregoing shall not restrict or prohibit Purchaser from commencing such activities or from engaging in preparatory work, plans, etc. related thereto including any and all of the additional plans, surveys and other work product generated by Purchaser related to the Property.

6.3 Purchaser's Representations. Purchaser hereby represents and warrants to Seller that:

(a) Purchaser is a limited liability company duly organized and validly existing under the laws of the State of Texas; and

(b) Purchaser has full power and authority to purchase the Property and to perform all of its obligations as provided in this Agreement and the party executing this Agreement on behalf of Purchaser has been duly authorized and empowered to bind Purchaser to this Agreement.

(c) Purchaser has sufficient funds to enable Purchaser to pay in full the Purchase Price as provided in this Agreement and otherwise to perform its obligations under this Agreement.

6.4 Purchaser's Construction Obligation. Purchaser hereby agrees to commence, or cause to be commenced, construction of the improvements generally consistent with the site plan attached hereto as **Exhibit E** and referenced in Section 2.4 within one (1) year following the Closing and diligently pursue the same until completion subject to weather and force majeure events. The obligation contained in this Section shall survive the termination of this Agreement and Closing.

ARTICLE 7 TERMINATION AND REMEDIES

7.1 Seller's Default.

(a) If Seller defaults in the performance of its obligations under this Agreement, Purchaser is not in default hereunder, and Seller fails to cure within fifteen (15) days after written notice from Purchaser to Seller specifying such default (with the Closing Date to be extended as necessary to provide for such cure period and closing obligations): (i) a default in the performance of any of its obligations under this Agreement; or (ii) a breach of any of Seller's representations and warranties hereunder, then Purchaser may (A) seek specific performance, or (B) terminate this Agreement, whereupon Purchaser shall receive the return of the Earnest Money less the Independent Consideration and any Extension Payments, and Seller shall reimburse Purchaser for all reasonable out-of-pocket costs and expenses incurred by Purchaser in connection with this Agreement and the transactions contemplated herein, up to \$350,000.00; provided, however, that Seller shall not be obligated to reimburse any such costs or expenses for which Purchaser fails to provide supporting documentation that properly itemizes and identifies said costs and expenses (to the reasonable satisfaction of Seller) within thirty (30) days after written notice from Purchaser to Seller specifying the default referenced above. Notwithstanding any contrary provision contained herein, the Parties acknowledge and agree that upon the Purchaser's election to terminate this Agreement, in accordance with the provisions hereof, the return of the Earnest Money (less the Independent Consideration and any Extension Payments) and Seller's reimbursement of the out-of-pocket costs and expenses pursuant to this Section

shall be Purchaser's sole and exclusive remedy, at law and in equity, for Seller's default or failure to perform its obligations under this Agreement.

(b) IN NO EVENT SHALL SELLER BE LIABLE TO PURCHASER OR ANY OTHER PERSON FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS, PAYMENTS OF LIQUIDATED DAMAGES OR OTHER NONPERFORMANCE PENALTY, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN AN ACTION FOR CONTRACT, STRICT LIABILITY OR TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. **THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.**

7.2 Purchaser's Default. If Purchaser defaults in the performance of its obligations under this Agreement, Seller is not in default hereunder, and Purchaser fails to cure such default within fifteen (15) days after written notice from Seller to Purchaser specifying such default (with the Closing Date to be extended as necessary to provide for such cure period and closing obligations), then Seller shall be entitled to: (i) terminate this Agreement and receive the Earnest Money as liquidated damages; and (ii) with respect to Purchaser's obligation contained in Section 6.4, seek Seller's rights provided for in Section 9.21 or seek specific performance.

7.3 Effect of Termination. If Seller or Purchaser elects to terminate this Agreement in accordance with this Article 7, after the appropriate disbursement of the Earnest Money, none of the Parties hereto shall have any further duties, liabilities or obligations to one another hereunder with respect to this Agreement.

ARTICLE 8 CONDEMNATION OR EMINENT DOMAIN

Upon the commencement of any condemnation or eminent domain proceedings with respect to any part or all of the Property for any public or quasi-public purpose at any time prior to the Closing Date that impairs Purchaser's ability to develop any of the Property in accordance with the Anticipated Use in Purchaser's sole discretion, Purchaser shall have the option, which must be exercised within ten (10) days of written notice from Seller:

(a) to receive a return of the Earnest Money, following which this Agreement shall terminate and none of the Parties hereto shall have any further duties, liabilities or obligations to one another hereunder; or

(b) to close the transaction contemplated by this Agreement, in which event the Purchase Price shall not be abated; provided, however, that Seller shall assign any condemnation or eminent domain award to Purchaser. Seller agrees not to enter into any settlement of any condemnation proceedings or eminent domain award without the prior written consent of Purchaser.

**ARTICLE 9
MISCELLANEOUS**

9.1 Entire Agreement. This Agreement embodies the entire agreement between the Parties and cannot be varied except by the written agreement of the parties. All prior agreements between the Parties relating to the Property are hereby terminated. No representation, promise, inducement or statement of intention has been made by Seller or Purchaser which is not embodied in this Agreement, or in the attached Exhibits, and neither Purchaser nor Seller shall be bound by or liable for any alleged representations, promise, inducement or statement of intention not so set forth. All representations, warranties and covenants herein provided shall survive the Closing and shall not merge into the Deed.

9.2 Time of the Essence. Purchaser and Seller have agreed that time is of the essence of this Agreement in accordance with the following. In the event of any breach of this Agreement by Seller or Purchaser, the provisions of Article 7 permit the termination of this Agreement by a non-defaulting party after delivery of notice of default and the failure of the defaulting party to cure its default within the time period contemplated. Seller and Purchaser agree that the time periods for cure of any defaults are made of the essence and, therefore, the cure periods provided in Article 7 must be strictly adhered to. However, until any such cure period has expired without cure by the defaulting Party or Parties, this Agreement will remain in full force and effect.

9.3 Notices. Any notice, consent, approval or request required or permitted to be delivered by Seller or Purchaser in connection with this Agreement must be in writing and may be given by Seller or Purchaser or their respective counsel by certified or registered mail, facsimile, hand delivery or by overnight courier and shall be deemed to be received: (i) if given by certified or registered mail, upon deposit in the United States mail, postage prepaid, certified mail, return receipt requested; or (ii) if given by electronic transmission (followed by U.S. mail), upon the date and time of such transmission; or (iii) if given by hand delivery, when such notice is received by the party to whom it is addressed; or (iv) if given by an overnight courier or delivery service, when deposited with such courier. Notices shall be sent to Seller or Purchaser and their respective counsel at the following addresses or telecopy number:

Notices to Seller shall be sent to:

Midland Development Corporation
200 N. Loraine Street
Suite 610
Midland, Texas 79701
Attention: Sara Harris
Telephone: 432-686-3579
Facsimile: 432-687-8214
Email: sharris@midlandtxedc.com

With copies to:

City Attorney's Office
City Hall

300 N. Loraine St., Suite 320
Attention: Nicholas Toulet
Email: ntcrump@midlandtexas.gov

Notices to Purchaser shall be sent to:

42 Real Estate, LLC
2030 Main Street, Suite 342
Dallas, Texas 75201
Attention: Scott Rohrman & Andrew Morgan
Email: sr@42realestate.com & amorgan@42realestate.com

With a copy to:

Andrews & Barth, PC
8235 Douglas Avenue, Suite 1120
Dallas, Texas 75225
Attention: Justin Tonick
Email: jtonick@andrews-barth.com

Seller, Purchaser and their respective counsel shall have the right to change its address by giving five (5) business days written notice to the other Parties. For purposes of this Agreement, notices to or from each Parties' respective counsel shall be deemed to be notice to or from such party, as applicable.

9.4 Gender; Numbers. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural and vice versa unless the context requires otherwise.

9.5 Headings. The captions used in connection with the articles and sections of this Agreement are for convenience only and shall not be deemed to construe or limit the meaning of the language of this Agreement.

9.6 Capitalized Terms. All capitalized terms shall have the meaning assigned to them in this Agreement.

9.7 Days. Except where business days are expressly referred to, references in this Agreement to days are to calendar days, not business days. Business day means any calendar day except a Saturday, Sunday or banking holiday in Midland County, Texas.

9.8 Holidays. If the final date of any period provided for herein for the performance of an obligation or for the taking of any action falls on a Saturday, Sunday or banking holiday in Midland County, Texas, then the time of such period shall be deemed extended to the next day which is not a Saturday, Sunday or banking holiday in Midland County, Texas.

9.9 Attorneys' Fees. **BY EXECUTING THIS AGREEMENT, THE PARTIES AGREE TO WAIVE AND DO HEREBY WAIVE ANY CLAIM THEY HAVE OR MAY**

HAVE IN THE FUTURE AGAINST EACH OTHER REGARDING THE AWARD OF ATTORNEY FEES THAT ARE IN ANY WAY RELATED TO THIS AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS AGREEMENT. THE PARTIES AGREE THAT IF A PARTY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED) OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, AS AMENDED, THAT SAID PARTY AGREES TO WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY FEES TO WHICH IT MIGHT OTHERWISE BE ENTITLED. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE CLOSING.

THE PARTIES AGREE THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. THE PARTIES ACKNOWLEDGE THAT THEY UNDERSTAND ALL TERMS AND CONDITIONS OF THE AGREEMENT. THE PARTIES FURTHER ACKNOWLEDGE AND AGREE THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE PARTIES. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

THE PARTIES ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY AGREES IT HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

9.10 Interpretation. The Parties acknowledge that each Party and its counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

9.11 Severability. If any provisions of this Agreement are held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement, provided that both Parties may still effectively realize the complete benefit of the transaction contemplated hereby.

9.12 Governing Law and Venue. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way to the subject matter of this Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. All

payments under this Agreement are deemed to have taken place in Midland County, Texas. The sole, exclusive, and mandatory venue for any claims, suits, disputes or any other action arising from, relating to or concerning in any way this Agreement or the performance of this Agreement shall be in Midland County, Texas. The provisions of this Section shall survive the Closing.

9.13 Amendments. No modification or amendment of this Agreement shall be effective unless made in writing and executed by Seller and Purchaser. If any approval or consent is required pursuant to any provision of this Agreement, such approval or consent shall be deemed given only if it is in writing, executed by the party whose approval or consent is required.

9.14 Multiple Counterparts. This Agreement may be executed in any number of identical counterparts each of which shall be deemed to be an original and all, when taken together, shall constitute one and the same instrument. A facsimile, email or similar transmission of a counterpart signed by a party hereto shall be regarded as signed by such party for purposes hereof.

9.15 Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto, and their respective heirs, legal representatives, successors and permitted assigns.

9.16 Assignability. Purchaser may assign its rights hereunder, upon prior written notice to Seller, to an entity in existence or to be formed, without Seller's consent, provided: (i) the assignee is (A) controlled by Purchaser or the owner(s) of Purchaser, or (B) an Alternate Developer; (ii) the Earnest Money is not affected; (iii) there is no delay in Closing as a result of the assignment; (iv) Seller incurs no additional expense; (v) the assignee and Purchaser represent and warrant at assignment and at further affirm at Closing that the Property shall be developed and used for the Anticipated Use; and (vi) Purchaser gives prior written notice to Seller, and certifies to Seller that Purchaser is in control of the assignee or that the assignee is an Alternate Developer. Except as provided below, such assignment shall not operate as a novation of such assignee, and assignor shall not be relieved of its obligations under this Agreement. Seller acknowledges that the Purchaser intends to create a leasehold interest in the Property and construct improvements through a tenant/developer agreement and/or lease; provided, however, for the avoidance of doubt, the Purchaser shall not be allowed to create a leasehold interest in the Property that is effective until after the Closing. If the intended tenant designates an alternate developer for completion of the purchase and construction of any improvements on the Property (the "**Alternate Developer**"), then subject to the conditions set forth above, the Purchaser may assign all of its rights in this Agreement to such Alternate Developer.

9.17 Waiver of Benefits. If any of the warranties, representations, covenants, agreements or conditions precedent (individually and collectively, the "**Requirements**") required herein are not true, correct, performed, satisfied or met, the party for whose benefit the Requirements are intended may, at its sole election, waive any such requirements in which event the Agreement shall continue in full force and effect.

9.18 Waiver of Jury Trial. **TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF PURCHASER AND SELLER IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER**

BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO ANY OF THE PROVISIONS OF THIS AGREEMENT.

9.19 Real Estate Commissions. Each party hereto represents to the other that it has not retained a broker, agent or finder in connection with this Agreement, other than Clifford Fischer & Company d/b/a Fischer & Company ("**Purchaser's Broker**"). Seller shall have no responsibility or obligation to pay any commission, fee or other consideration with respect to the Purchaser's Broker. Except as set forth above, each party agrees to indemnify and hold harmless the other party from and against any and all claims, losses, damages, costs or expenses of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by such party or on its behalf with any other broker, agent or finder in connection with this Agreement or the transaction contemplated hereby. The indemnity obligations set forth in this Section 9.19 shall survive the Closing.

9.20 1031 Exchange. (a) If one party hereto desires to treat the Property as relinquished property or replacement property as part of a "like kind exchange" under Section 1031 of the Internal Revenue Code (Section 1031), the other party hereto agrees to cooperate with the first party as may be reasonably necessary (such as by executing and delivering typical exchange documents) so that the first party, at its sole cost and expense, may satisfy (or attempt to satisfy) the requirements of Section 1031. In connection therewith, each party agrees that such right of the other party to effectuate a like kind exchange shall include (but not be limited to) the right to assign its rights hereunder to a Qualified Intermediary or an Exchange Accommodation Titleholder as provided in the regulations under Section 1031. Notwithstanding the foregoing:

(i) The cooperating party shall not be required to acquire or sell, as the case may be, any interest whatsoever in any substitute property, it being understood that any such exchange shall be made with a Qualified Intermediary or an Exchange Accommodation Titleholder;

(ii) The cooperating party shall be exculpated from any and all liability in connection with any documentation or transaction it enters into not otherwise required by this Agreement to facilitate such like kind exchange; and

(iii) Such like kind exchange shall not delay the Closing or cause the cooperating party to incur any expense, liability or obligation in cooperating with such exchange.

(b) Seller and Purchaser agree to indemnify and save each other harmless from any and all loss, damage or expense that the other party may suffer or incur in connection with any actions taken beyond those previously set forth in this Agreement because of the tax free exchange hereunder, except for such loss resulting from Purchaser's or Seller's, as the case may be, willful default. The provisions of this Section 9.20 shall survive the Closing.

9.21 Right of Purchase.

(a) In the event Purchaser decides to either (i) not commence construction within one (1) year following Closing or has not developed the Property in

conformance with the Anticipated Use or (ii) request permits for the initial development of the Property for a purpose materially different from the Anticipated Use, then Seller shall have the right and first opportunity (“**Seller’s First Opportunity**”), upon the terms set forth below, to purchase the Property from Purchaser after Purchaser delivers written notice (“**SFO Notice**”) to Seller that it desires to not commence construction within one (1) year following Closing or change the Anticipated Use.

(b) If Seller desires to purchase the Property pursuant to Seller’s First Opportunity, Seller shall have sixty (60) days after the date Seller actually receives the SFO Notice from Purchaser to furnish Purchaser with written notice of Seller’s election to purchase the Property from Purchaser (the furnishing of such notice shall be hereinafter referred to as “Seller’s Election”).

(c) Within thirty (30) days of Seller’s Election, Seller and Purchaser shall execute a purchase and sale contract (the “New Purchase Agreement”) upon the following terms:

(i) the purchase price shall be equal to (A) the Purchase Price, plus (B) all closing costs incurred by Purchaser to acquire the Property, plus (C) actual costs of any plans, reports or Development Approvals obtained by Purchaser for the benefit of the Property.

(ii) the closing (“SFO Closing”) of the Property shall occur on or before sixty (60) days after Seller’s Election.

(iii) the earnest money shall be equal to the Earnest Money deposited under this Agreement and there shall be no feasibility period.

(iv) the Property shall be conveyed “AS IS, WHERE IS AND WITH ALL FAULTS” and Purchaser shall convey the Property free and clear of any lien, claim, charge or encumbrances.

(v) Seller shall pay all closing costs to acquire the Property, including, but not limited to, any insurance premium, recording costs, escrow fees or transfer costs.

(vi) Purchaser shall make representations and warranties therein substantially similar to those made by the Seller herein, and Seller shall make representations and warranties therein substantially similar to those made by the Purchaser herein.

(d) If Seller and Purchaser do not execute the New Purchase Agreement within sixty (60) days after Seller’s Election or Seller does not close on the Property on or before the date of the SFO Closing for any reason other than a default by Purchaser, then Purchaser may continue to not commence construction within one (1) year following Closing and sell the Property in its current state to any third party or develop the Property in any manner otherwise permitted. For the avoidance of doubt,

as long as Purchaser initially constructs the property for the Anticipated Use, there shall be no Seller's First Opportunity.

(e) The terms and provisions of this Section 9.21 shall survive the Closing and any subsequent assignment of the Property (and shall be binding upon any successors, heirs and assigns of the Property), a covenant running with the land, but shall expire upon the issuance of a Certificate of Occupancy for the Anticipated Use.

9.22 Governmental Function. THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT THE ENTIRETY OF SELLER'S PERFORMANCE AND OBLIGATIONS UNDER THIS AGREEMENT ARE GOVERNMENTAL FUNCTIONS. BY ENTERING INTO THIS AGREEMENT, PURCHASER RELEASES SELLER FROM ANY PRESENT OR FUTURE CLAIMS ASSERTING SELLER'S PERFORMANCE AND OBLIGATIONS UNDER THIS AGREEMENT ARE NOT GOVERNMENTAL FUNCTIONS. SELLER AND PURCHASER ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT IS IN THE PUBLIC INTEREST OF THE STATE OF TEXAS AND SERVES A PUBLIC PURPOSE IN PROMOTING THE WELFARE OF THE GENERAL PUBLIC ECONOMICALLY BY SECURING AND RETAINING BUSINESS ENTERPRISES AND AS A RESULT OF MAINTAINING A HIGHER LEVEL OF EMPLOYMENT, ECONOMIC ACTIVITY, AND STABILITY FOR THE STATE OF TEXAS. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE CLOSING AND/OR TERMINATION OF THIS AGREEMENT.

9.23 Notice of Alleged Breach; Statutory Prerequisites. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Purchaser, or its legal representatives, shall give the MDC Chairman notice in writing (consisting of one (1) original and two (2) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Purchaser will settle, the physical and mailing addresses of Purchaser at the time and date the claim was presented and the physical and mailing addresses of Purchaser for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Purchaser relies to establish its claims. Seller is under no obligation to provide notice to Purchaser that Purchaser's notice is insufficient or defective. Failure to so notify the MDC Chairman within the time and manner provided herein shall exonerate, excuse and except Seller from any liability whatsoever. Seller reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

9.24 Force Majeure. In the event that Seller or Purchaser shall be delayed, hindered in, or prevented from the performance of any act required hereunder by reason of an act of God, strike, lockout, labor trouble, inability to procure materials, unseasonable weather affecting construction or operation, failure of power, riot, insurrection, or war, then performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equal to the period of such delay.

9.25 Effective. This Agreement shall not be effective until approved by a resolution of the Board of Directors of the Midland Development Corporation (the "**Resolution**").

[Signatures on following page]

EXECUTED by Seller on this the ____ day of _____, 2021.

SELLER:

MIDLAND DEVELOPMENT CORPORATION

By: _____
Wesley Bownds, Chairman

EXECUTED by Purchaser on this the ____ day of _____, 2021.

PURCHASER:

42, LLC

By: _____
Name: _____
Title: _____

Schedule of Exhibits:

- Exhibit A - Land Description
- Exhibit B - Additional Plans and Reports
- Exhibit C - Reserved
- Exhibit D - Deed
- Exhibit E - Site Plan
- Exhibit F - Plat

RECEIPT AND ACKNOWLEDGEMENT BY TITLE COMPANY

The undersigned Title Company, named in the foregoing Agreement, hereby acknowledges receipt of a fully executed copy of this Agreement as of the date set forth below. In addition, the Title Company agrees to hold and disburse the Earnest Money in accordance with the terms of the Agreement.

RECEIVED, ACKNOWLEDGED and AGREED TO by the Title Company on this the _____ day of _____, 2021, which date shall be the Effective Date of this Agreement.

Republic Title of Texas, Inc.,

By: _____
Name: _____
Title: _____

A 58.207-ACRE TRACT OF LAND IN SECTION 11, BLOCK 40, T-2-S, T. & P. RR. CO. SURVEY, MIDLAND COUNTY, TEXAS

A 58.207-acre tract of land in Section 11, Block 40, Township 2-South, T. & P. RR. Company Survey, Midland County, Texas, being a portion of that certain 127.3922-acre tract of land conveyed to Midland Development Corporation, described in a special warranty deed recorded in Volume 2717, Page 565, of the Official Public Records of Midland County, Texas, said 58.207-acre tract being further described by metes and bounds as follows:

BEGINNING at a 1/2-inch iron rod with an aluminum cap marked "City of Midland" found in the north right-of-way line of Interstate Highway 20, described in a right-of-way deed recorded in Volume 422, Page 369 of the Deed Records of Midland County, Texas, at the southwest corner of a 49.14-acre tract conveyed to the City of Midland, described in a general warranty deed recorded in Instrument 2011-11208 of the Official Public Records of Midland County, Texas, for the southeast corner of this tract, said beginning point having coordinates of NORTHING: 10,674,827.14 and EASTING: 1,730,958.89, Texas Coordinate System, Central Zone 4203, North American Datum of 1983, whence a 1-1/2-inch iron pipe found at the southeast corner of said Section 11 bears *North 75 degrees 45 minutes 08 seconds East* a distance of 840.43 feet and *South 14 degrees 14 minutes 52 seconds East* a distance of 2006.43 feet;

(1) THENCE *South 59 degrees 43 minutes 30 seconds West*, along the north right-of-way line of said Interstate Highway 20, a distance of 1649.50 feet to a 1/2-inch iron rod with a plastic cap marked "PSC RPLS 6453" set for the southeast corner of Lot 1, Block 1, MDC Business Park, an addition to the City of Midland, Midland County, Texas, according to the map, plat and/or dedication deed thereof recorded in Plat Cabinet "L", Page 21 of the Plat Records of Midland County, Texas, for the southwest corner of this tract, whence a 1/2-inch iron rod with a yellow plastic cap found in the north right-of-way line of said Interstate Highway 20 at a chamfer corner in the west right-of-way line of Schlumberger Drive bears *South 59 degrees 43 minutes 30 seconds West* a distance of 649.45 feet and a 1/2-inch iron rod with a plastic cap marked "WEST" found at the southeast corner of Lot 4, Block 2, Agri-Empresa Subdivision, Section 2, according to the map, plat and/or dedication deed thereof recorded in Plat Cabinet "J", Page 16, bears *South 59 degrees 43 minutes 30 seconds West* a distance of 1817.67 feet;

(2) THENCE *North 14 degrees 10 minutes 25 seconds West* a distance of 1599.85 feet to a 1/2-inch iron rod with a plastic cap marked "PSC RPLS 6453" set in the south right-of-way line of Big Blue Avenue, dedicated with said plat of Agri-Empresa Subdivision, Section 2, for the northeast corner of said Lot 1, Block 1, MDC Business Park Addition, for the northwest corner of this tract, said point having coordinates of NORTHING: 10,675,546.69 and EASTING: 1,729,142.62, Texas Coordinate System, Central Zone 4203, North American Datum of 1983, whence a 1/2-inch iron rod found at the most northerly northeast corner of Lot 2, Block 2 of said Agri-Empresa Subdivision, Section 2 bears *South 59 degrees 43 minutes 12 seconds West* a distance of 649.46 feet;

(3) THENCE *North 59 degrees 43 minutes 12 seconds East*, along the south right-of-way line of said Big Blue Avenue, a distance of 1649.46 feet to a 1/2-inch iron rod with a plastic cap marked "PSC RPLS 6453" set for the northwest corner of said 49.14-acre tract and the northeast corner of this tract;

(4) THENCE *South 14 degrees 10 minutes 35 seconds East*, along the west line of said 49.14-acre tract, a distance of 1599.97 feet to the **POINT OF BEGINNING**. Bearings, coordinates, distance and areas called in this description are at grid, based on the Texas Coordinate System, Central Zone 4203, North American Datum of 1983. This survey is subject to any facts which may be disclosed by a full and accurate title search. Record documents other than those shown may affect these tracts.

EXHIBIT B

AGREEMENT FOR PURCHASE AND SALE

Additional Plans and Reports

1. A copy of all ad valorem/property tax bills and any special assessments with respect to the Property for the past three years.
2. Copies of all current management contracts, maintenance and repair contracts and all service and supply contracts or agreements relating to Property and any installations thereon.
3. Copies of all personal property leases, air rights agreements, installment sales contracts, mortgages, deeds of trust, related notes, security agreements, financing statements and ground leases, to the extent that any of the listed documents are now in full force and effect with respect to Property and to be assumed by Purchaser.
4. Copies of Certificates of Insurance for all fire, extended risk, liability, and other insurance policies covering the Property.
5. Soft-copy reproducible set, of all architectural and engineering plans/drawings for the Property (to the extent they are in the current possession of Seller).
6. Schedule of bank debt or ad valorem/property taxes due and any deposits owed.
7. Copies of all utility contracts, communications, and bills; statement of outstanding utility deposits and/or bonds.

Purchaser reserves the right to ask for additional information and supporting documentation as necessary in order to complete Purchaser's due diligence or any additional requirements as may be requested or required by Purchaser's agents, sub-contractors, lenders, or other consultants and partners in the analysis of the Property.

EXHIBIT C

AGREEMENT FOR PURCHASE AND SALE

Reserved

EXHIBIT D

AGREEMENT FOR PURCHASE AND SALE

DEED

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

THAT, MIDLAND DEVELOPMENT CORPORATION, a Type A Texas corporation pursuant to Chapter 504 of the Texas Local Government Code, as amended (hereinafter referred to as "**Grantor**"), for the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration to the undersigned in hand paid by _____ (hereinafter referred to as "**Grantee**"), whose address is _____, the receipt and sufficiency of which are hereby acknowledged, has GRANTED, SOLD and CONVEYED and by these presents does GRANT, SELL and CONVEY unto Grantee, that certain land (the "**Land**") situated in Midland County, Texas, and described on **Exhibit A** attached hereto and incorporated herein by reference, together with (i) any and all alleys, strips or gores of land and to any land lying in the bed of any highway, street, road, avenue or alley, open or proposed, in, on, across from, in front of, abutting or adjoining the Land, whether owned or claimed by deed, limitation or otherwise and whether or not located inside or outside the Land; (ii) any and all easements, rights-of-way, rights of ingress or egress and other interests in, on or to any land, highway, street, road or avenue, open or proposed in, on, across from, in front of, abutting or adjoining the Land; (iii) any and all rights, titles, estates and interests of Grantor in and to any condemnation award made or to be made in connection with the Land and/or the interests described in the foregoing subparagraphs (i) and (ii) and in and to any unpaid award for damage to the Land and/or said interests pertaining to the Land; (iv) any and all rights to the present or future use of water, wastewater, wastewater capacity, drainage or other utility facilities that pertain to or benefit the Land, including, without limitation, all reservations, credits, commitments or letters covering any such use in the future; (v) any and all reversionary rights attributable to the Land; (vi) any and all easements, licenses, development rights, entitlements, reimbursements, permits (grading, foundation, building or otherwise), credits, deposits, agreements and contracts relating to the Land or any of the foregoing; (vii) all improvements, if any; and (viii) all other rights, benefits, privileges, tenements, hereditaments and appurtenances thereon or in anywise appertaining to the Land or owned by Grantor and used in connection with the Land or the ownership or development

thereof (the Land, improvements, appurtenances and all of the foregoing set forth in the above subclauses (i)-(viii) are hereinafter collectively referred to as the "**Property**").

This conveyance and the warranties of title contained herein are expressly made subject only to those certain encumbrances, easements and other matters more particularly described on Exhibit B attached hereto and incorporated herein by reference (the "Permitted Exceptions"), but only to the extent that such Permitted Exceptions are valid, subsisting and, in fact, affect the Property.

This conveyance is expressly made subject to Grantee's initial obligation to design, develop and operate a 200,000 square-foot, small-package sorting and distribution facility on the Property, together with associated uses, including, but not limited to, office space, loading and unloading, outdoor parking, and storage of tractors, trailers, trucks, automobiles, and other vehicles, for continuous 24-hour operations on all days of the year. Grantee's initial development of the Property shall be generally consistent with the improvements depicted on the site plan attached hereto as Exhibit B and incorporated herein for all purposes. This conveyance is further made subject to Grantee's obligation to commence construction of the above-referenced facility within one (1) year of the date of execution of this Special Warranty Deed subject to weather and force majeure.

TO HAVE AND TO HOLD, the Property, subject to the Permitted Exceptions, unto Grantee and Grantee's heirs, executors, administrators, legal representatives, successors and assigns forever, and Grantor does hereby bind Grantor and Grantor's heirs, executors, administrators, legal representatives, successors and assigns to WARRANT AND FOREVER DEFEND, all and singular, the Property unto Grantee and Grantee's heirs, executors, administrators, legal representatives, successors and assigns, against every person whomsoever lawfully claiming or to claim the Property or any part thereof, by, through or under Grantor, but not otherwise.

Grantee shall pay all ad valorem taxes.

When the context requires, singular nouns and pronouns include the plural.

[SIGNATURE PAGE FOLLOWS]

EXECUTED to be effective as of the ____ day of _____, 2021.

GRANTOR:

MIDLAND DEVELOPMENT CORPORATION,
a Texas Corporation

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, the _____ of Midland Development Corporation, a Texas corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he or she executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this ____ day of _____, 2021.

SEAL

Notary Public in and for the State of Texas

My Commission Expires: _____

AFTER RECORDING, RETURN TO:

Attn: _____

EXHIBIT A

SPECIAL WARRANTY DEED

Survey

EXHIBIT B

SPECIAL WARRANTY DEED

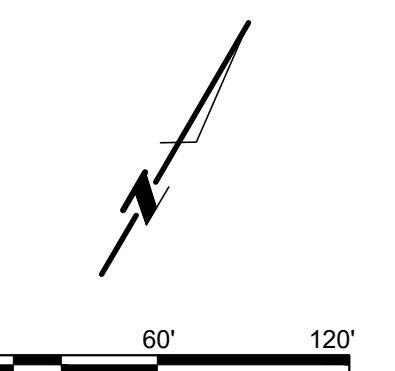
Site Plan

Project Name - Line 1
 Project Name - Line 2
 Project Name - Line 3
 Optional Project Description Line 1

CLIENT
 Client Name Line 1
 Client Name Line 2
 Project Address Line 1
 Project Address Line 2
 Project Address Line 3

PROJECT NO.
 0000.00

KEY PLAN



#	DATE	DESCRIPTION

Preliminary Site Plan
C-101

ZONING SUMMARY TABLE		
ZONING: 1-20 BUSINESS PARK DISTRICT, BP		
	REQUIRED	PROVIDED
FRONT SETBACK	35'	35'
REAR SETBACK	20'	20'
SIDE SETBACK	10'	10'
PARKING	251	485
ADA PARKING	7	10

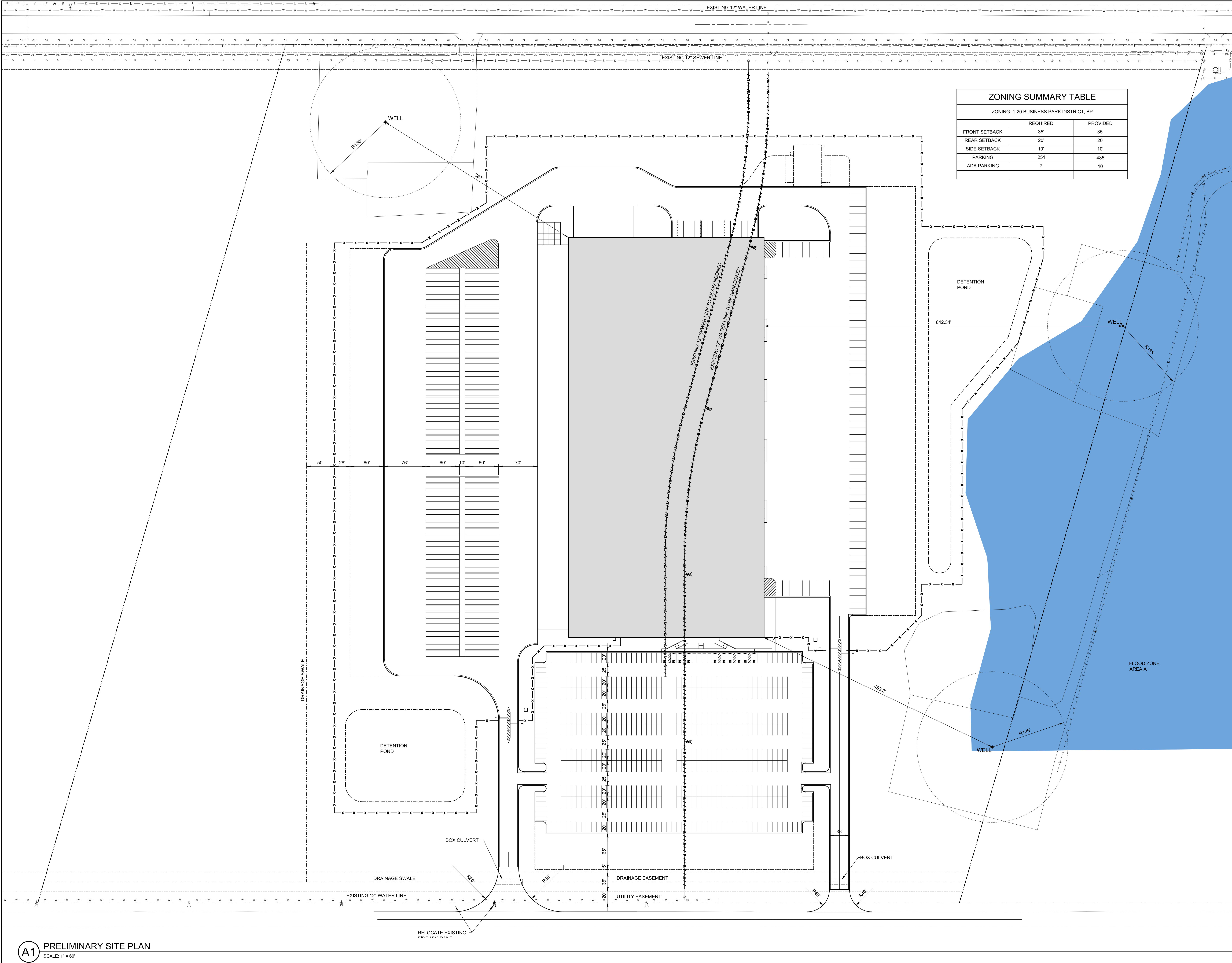


EXHIBIT E

AGREEMENT FOR PURCHASE AND SALE

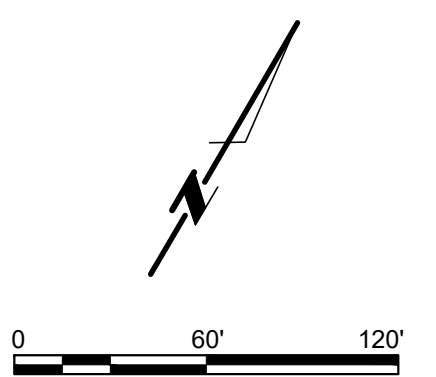
Site Plan

Project Name - Line 1
 Project Name - Line 2
 Project Name - Line 3
 Optional Project Description Line 1

CLIENT
 Client Name Line 1
 Client Name Line 2
 Project Address Line 1
 Project Address Line 2
 Project Address Line 3

PROJECT NO.
 0000.00

KEY PLAN



#	DATE	DESCRIPTION

Preliminary Site Plan
C-101

ZONING SUMMARY TABLE		
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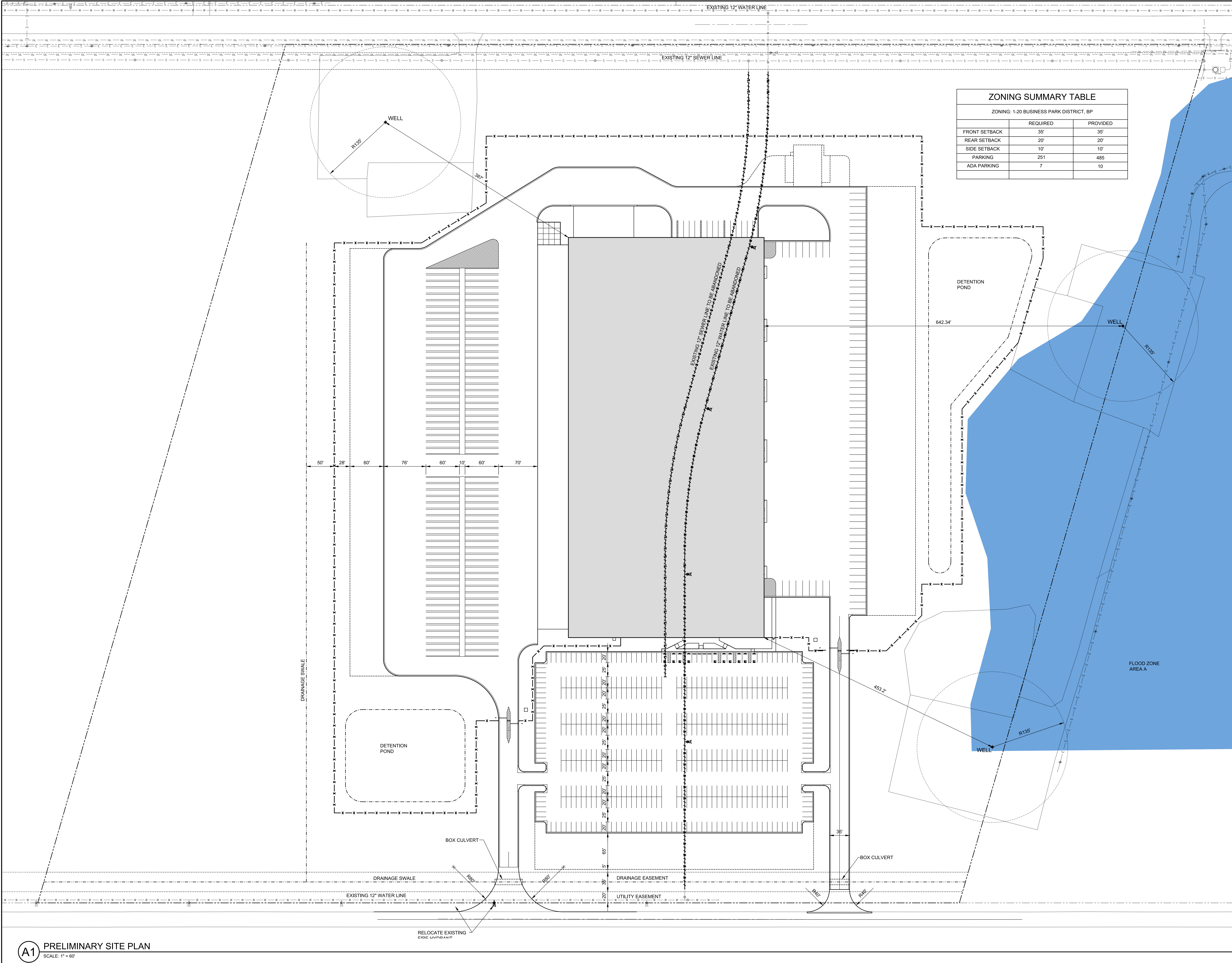


EXHIBIT F

AGREEMENT FOR PURCHASE AND SALE

Plat

Income Statement

MIDLAND DEVELOPMENT CORPORATION
INCOME STATEMENT FOR THE 12 MONTHS ENDED
September 30, 2021

	Sep-21	YTD	Budgeted Amount
Revenue	\$1,060,925.06	\$12,664,028.77	\$9,000,000.00
40100 - State Sales Tax	\$978,956.15	\$11,667,428.27	\$9,000,000.00
40600 - Public ROW Use Fees	\$0.00	\$3,858.40	\$0.00
43000 - Interest	\$0.00	\$3,209.08	\$0.00
43010 - Interest - Nonpooled Invest	\$581.91	\$12,889.02	\$0.00
46190 - Miscellaneous Rentals	\$81,387.00	\$976,644.00	\$0.00
4235150 - Midland Dvlpmnt Corp Revenue	\$1,060,925.06	\$12,664,028.77	\$9,000,000.00

Expense	\$334,854.45	\$13,266,069.29	\$22,656,815.00
51010 - Base Salary	\$19,020.84	\$483,236.21	\$692,150.00
51090 - Fica MDC Portion	\$1,455.09	\$30,750.80	\$65,456.00
51110 - Health Insurance	\$467.13	\$27,394.34	\$55,460.00
51135 - ACCE Profit Sharing	\$0.00	\$25,257.97	\$48,451.00
52010 - Office Supplies	\$889.55	\$3,833.47	\$11,000.00
52110 - Motor Vehicle Supplies	\$190.72	\$448.67	\$1,000.00
52115 - Minor Furniture & Fixtures	\$0.00	\$0.00	\$500.00
52155 - Minor Computer Hrdwre & Periph	\$0.00	\$0.00	\$5,000.00
52160 - Computer Software & Supplies	\$2,639.54	\$19,378.61	\$30,000.00
52620 - Postage	\$109.31	\$255.06	\$700.00
53010 - Communication	\$1,265.75	\$16,799.21	\$17,000.00
53030 - Light & Power	\$8.91	\$104.79	\$150.00
53110 - Insurance-External	\$119,608.58	\$159,383.18	\$190,000.00
53212 - Equipment Rental-External	\$345.34	\$4,141.68	\$5,000.00
53220 - Advertising	\$5,389.12	\$205,563.53	\$200,000.00
53370 - Grounds Maintenance	\$985.00	\$10,827.87	\$5,000.00
53405 - Software Maintenance	\$1,207.62	\$14,926.74	\$12,000.00
53440 - External Audit Fees	\$0.00	\$22,218.00	\$20,000.00
53450 - Consulting Fees	\$5,216.27	\$433,830.01	\$500,000.00
53510 - Travel & Entertainment	\$25.98	\$2,622.49	\$15,000.00
53520 - Dues & Subscriptions	\$3,751.88	\$21,988.53	\$20,000.00
53530 - Training,Registration Fees,Etc	\$1,145.00	\$2,819.89	\$10,000.00
53905 - Economic Development Incentive	\$2,000.00	\$8,352,318.23	\$18,553,329.00
53907 - Business Recruitment & Retentn	\$2,611.55	\$36,745.54	\$50,000.00
53920 - Rent	\$6,094.00	\$71,959.68	\$75,000.00
54010 - Building Maintenance	\$3,025.93	\$96,760.06	\$45,000.00
55120 - Maint. - Instruments & Appara.	\$0.00	\$446.09	\$3,000.00
56188 - MOTRAN	\$0.00	\$137,000.00	\$137,000.00
56202 - General Fund Services	\$32,557.08	\$390,684.96	\$390,619.00
56410 - Payment of Principal	\$0.00	\$0.00	\$60,000.00
56420 - Interest Expense	\$0.00	\$0.00	\$12,000.00
56910 - Depreciation Expense	\$37,344.26	\$410,786.91	\$0.00
56995 - Project Non Capital - Promotions	\$87,500.00	\$456,432.70	\$27,000.00
57000 - Capital Land Purchases	\$0.00	\$20,812.50	\$0.00
57001 - Capital Buildings & Structures	\$0.00	\$893,181.70	\$0.00
57002 - Capital Improve Other Than Bldg	\$0.00	\$150,926.47	\$1,400,000.00
57070 - Construction in Process	\$0.00	\$762,233.40	\$0.00
235235 - Midland Development Corp	\$334,854.45	\$13,266,069.29	\$22,656,815.00

September 2021 Net Income: \$726,070.61

Year-to-Date Net Income: (\$602,040.52)

Balance Sheet

MIDLAND DEVELOPMENT CORPORATION
BALANCE SHEET FOR THE PERIOD ENDED
September 30, 2021
(Used for Internal Purposes Only)

ASSETS

Current Assets

Cash and cash equivalents	23,396,553	
Sales tax receivable	2,186,318	
Prepaid expenses	107,133	
Accounts receivable	-	
	-	25,690,003

Non-Current Assets

Capital Assets, net	21,951,664	
Forgivable Loans		
Made to Primary Government	-	
Made to Other	506,579	
Total Forgivable Loans	506,579	
		22,458,243

Total Assets		\$ 48,148,246
--------------	--	---------------

LIABILITIES AND NET POSITION

Liabilities

Accounts payable	30,000	
Retainage Payable	36,612	
Capital Leases payable	173,698	
Commitments payable		
Due within one year	7,038,493	
Due in more than one year	9,920,962	
Total Commitments Payable	16,959,455	
		17,199,766

Net Position

Net investment in capital assets	21,951,664	
Restricted for Forgivable Loans	506,579	
Restricted for Capital Leases	173,698	
Promotions	1,755,755	
Unrestricted	6,560,784	
	6,560,784	30,948,480

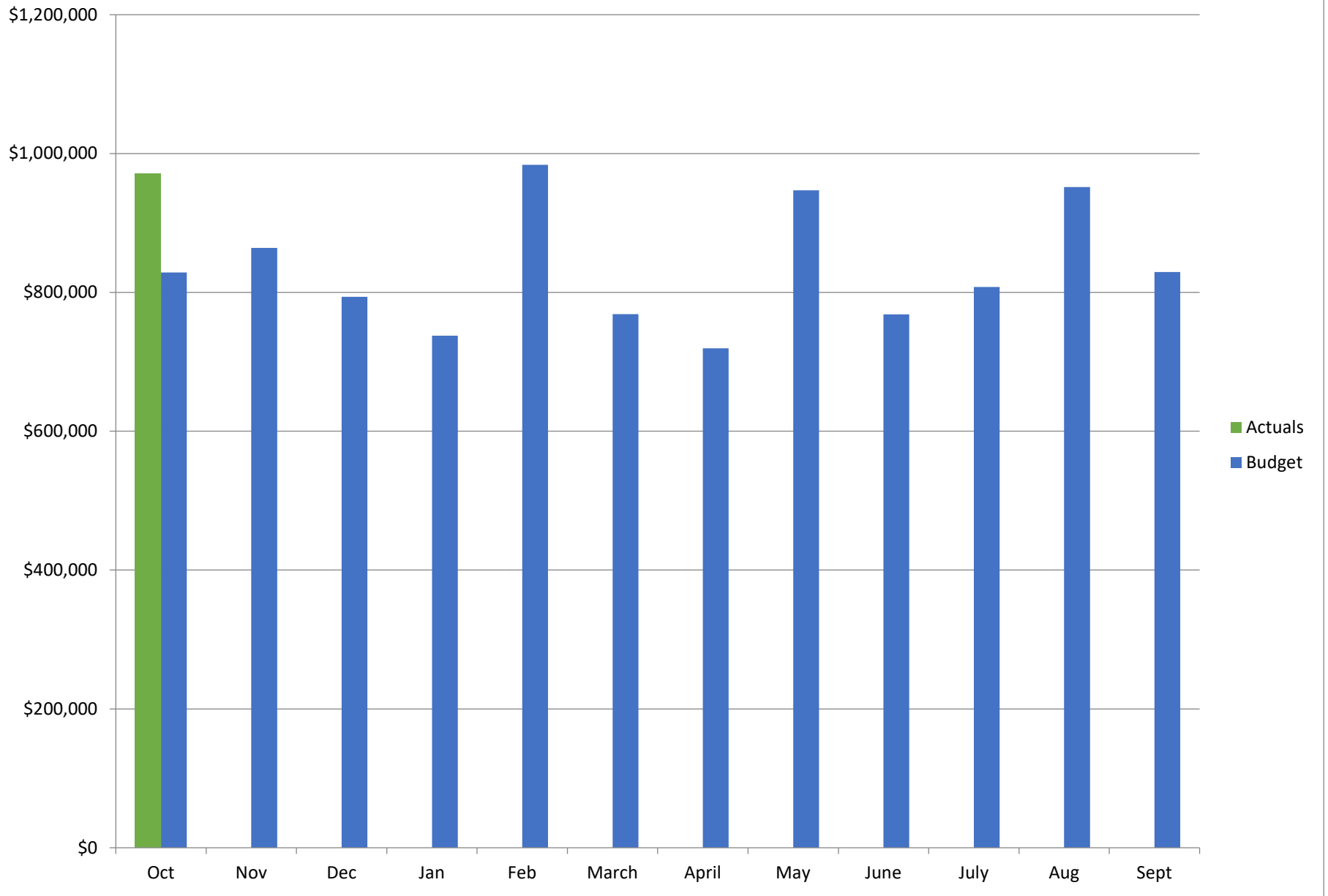
Total Liabilities and Net Position		\$ 48,148,246
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Sales Tax

Sales Tax Variance

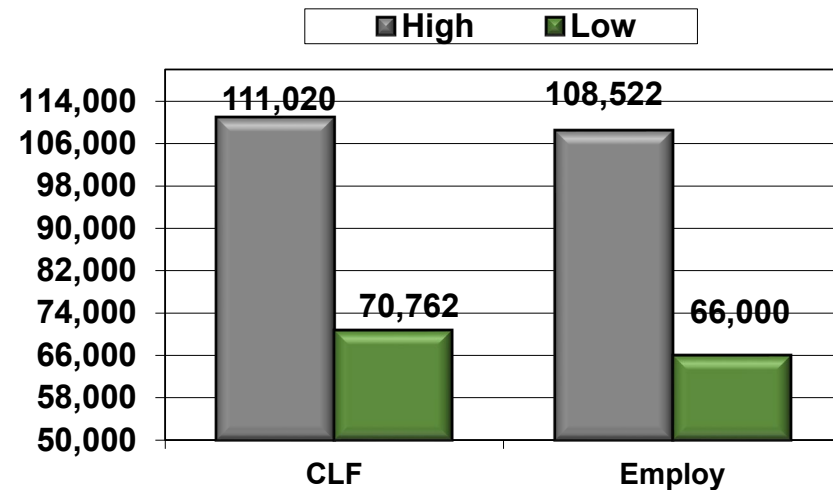
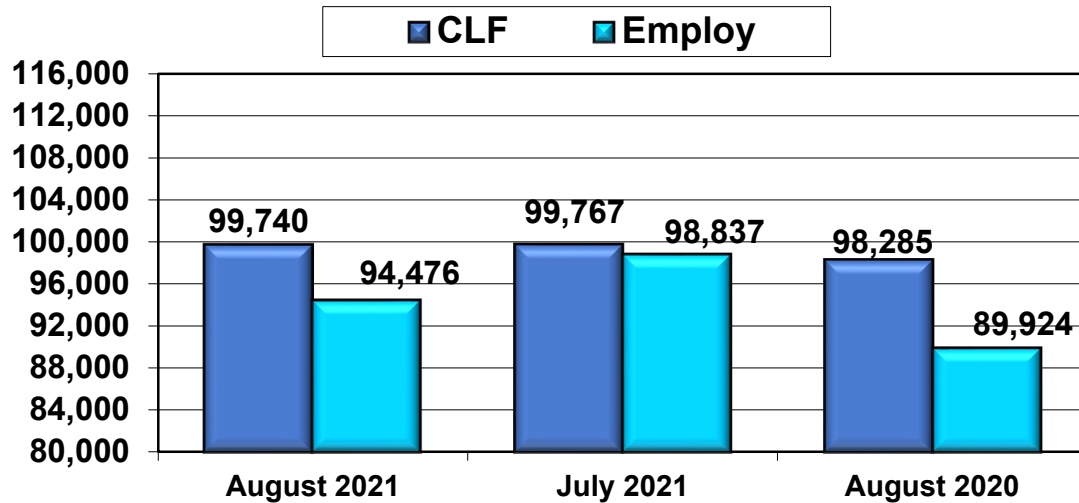
	2019-2020	2020-2021	% Change	2020-2021	2021-2022	% Change	YTD Change
October	\$1,219,993.44	\$1,203,058.10	-1.39%	\$1,203,058.10	\$971,343.63	-19.26%	-19.26%
November	\$1,266,357.10	\$983,259.60	-22.36%	\$983,259.60			
December	\$1,263,226.93	\$843,087.27	-33.26%	\$843,087.27			
January	\$1,036,178.70	\$752,584.05	-27.37%	\$752,584.05			
February	\$1,279,615.49	\$1,224,314.99	-4.32%	\$1,224,314.99			
March	\$966,824.94	\$783,914.25	-18.92%	\$783,914.25			
April	\$1,006,559.17	\$687,198.37	-31.73%	\$687,198.37			
May	\$1,251,139.57	\$1,198,336.79	-4.22%	\$1,198,336.79			
June	\$897,050.21	\$927,060.71	3.35%	\$927,060.71			
July	\$876,285.08	\$909,387.44	3.78%	\$909,387.44			
August	\$1,074,175.26	\$1,176,070.55	9.49%	\$1,176,070.55			
September	\$834,182.16	\$978,956.15	17.36%	\$978,956.15			
Annual Total	\$12,971,588.05	\$11,667,228.27	-10.06%	\$11,667,228.27	\$971,343.63		

Sales Tax Actuals vs Budget Estimates



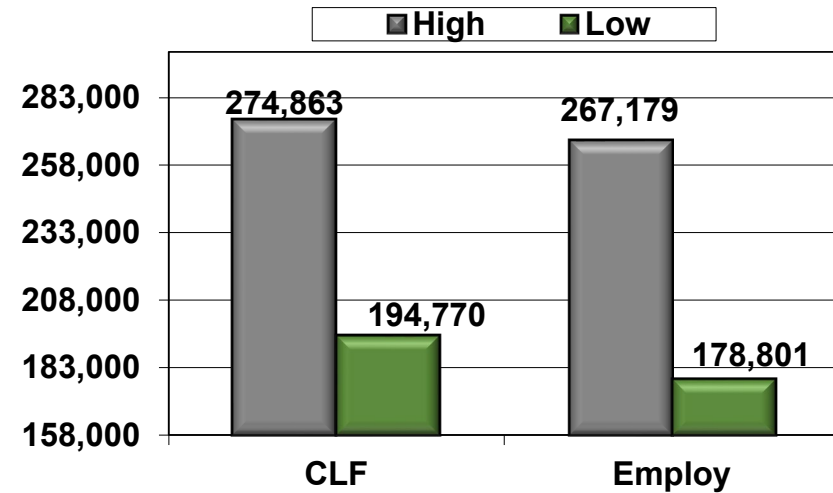
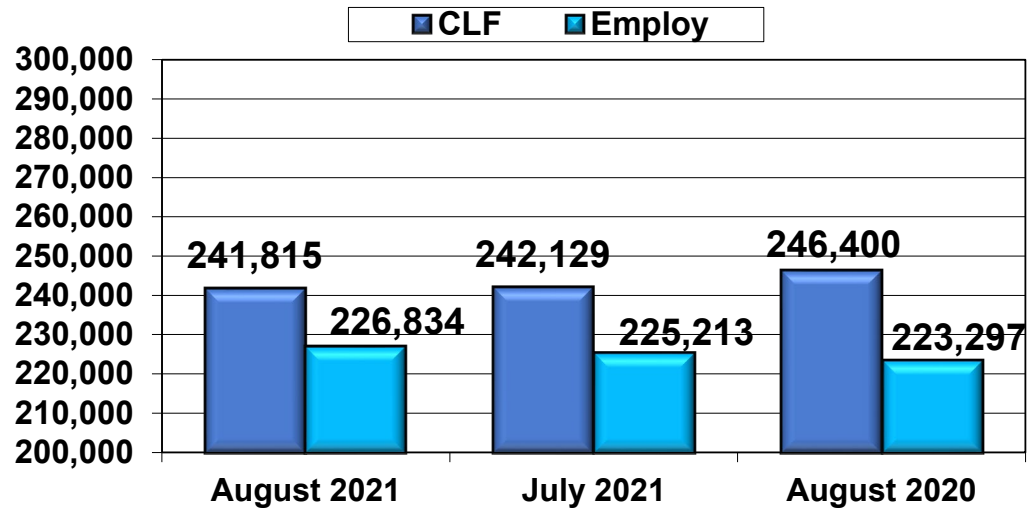
Activity Report

August 2021 Midland MSA Employment Information



	August 2021	July 2021	August 2020	High	Low
Civilian Labor Force	99,740	99,767	98,285	111,020 (Feb 2020)	70,762 (Jan 2010)
Employment	94,476	93,837	89,924	108,522 (Dec 2019)	66,000 (Jan 2010)
Unemployment	5,264	5,930	8,361	11,912 (May 2020)	1,788 (May 2019)
Unemployment Rate	5.3%	5.9%	8.5%	12.3% (May 2020)	1.7% (Apr 2019)

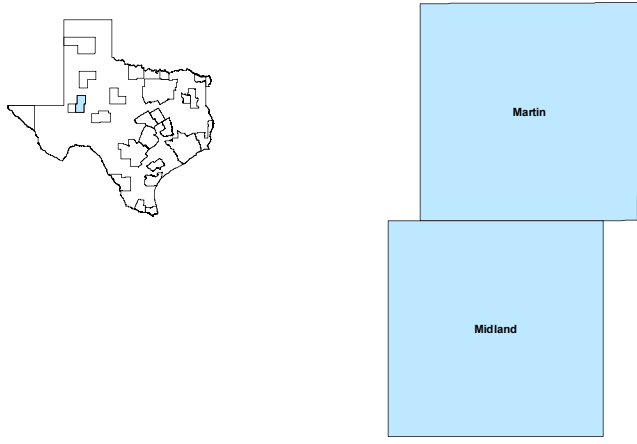
August 2021 Permian Basin Workforce Development Area Employment Information



	August 2021	July 2021	August 2020	High	Low
Civilian Labor Force	241,815	241,815	246,400	274,863 (Feb 2020)	194,770 (Jan 2010)
Employment	226,834	225,213	223,297	267,179 (Feb 2020)	178,801 (Jan 2010)
Unemployment	14,981	16,916	23,103	32,215 (May 2020)	5,115 (Apr 2019)
Unemployment Rate	6.2%	7.0%	9.4%	13.2% (May 2020)	1.9% (Apr 2019)

Midland MSA

August 2021

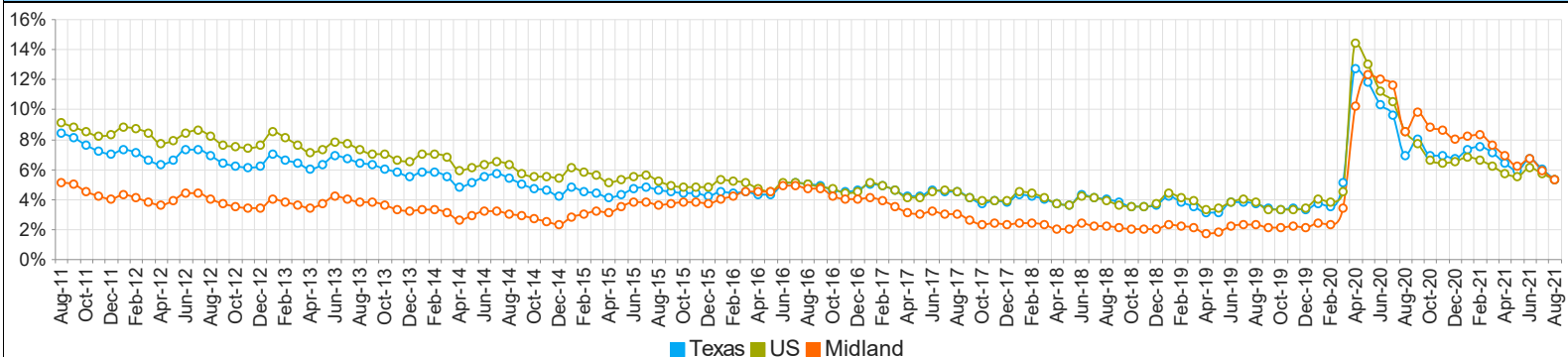


MSA Labor Force Statistics				
	Aug-21	Jul-21	Aug-20	Yearly Change
Civilian Labor Force	99,740	99,767	98,285	1,455
Employed	94,476	93,837	89,924	4,552
Unemployed	5,264	5,930	8,361	-3,097
Unemployment Rate	5.3%	5.9%	8.5%	-3.2%

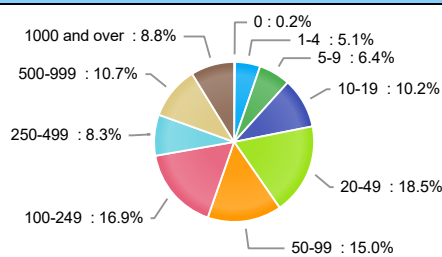
Texas Labor Force Statistics				
	Aug-21	Jul-21	Aug-20	Yearly Change
Civilian Labor Force	14,192,497	14,191,587	14,090,773	101,724
Employed	13,433,358	13,341,020	13,117,102	316,256
Unemployed	759,139	850,567	973,671	-214,532
Unemployment Rate	5.3%	6.0%	6.9%	-1.6%

US Labor Force Statistics				
	Aug-21	Jul-21	Aug-20	Yearly Change
Civilian Labor Force	161,788,000	162,817,000	160,966,000	822,000
Employed	153,232,000	153,596,000	147,224,000	6,008,000
Unemployed	8,556,000	9,221,000	13,742,000	-5,186,000
Unemployment Rate	5.3%	5.7%	8.5%	-3.2%

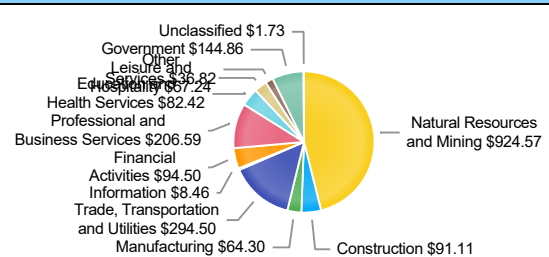
Historical Unemployment Rates



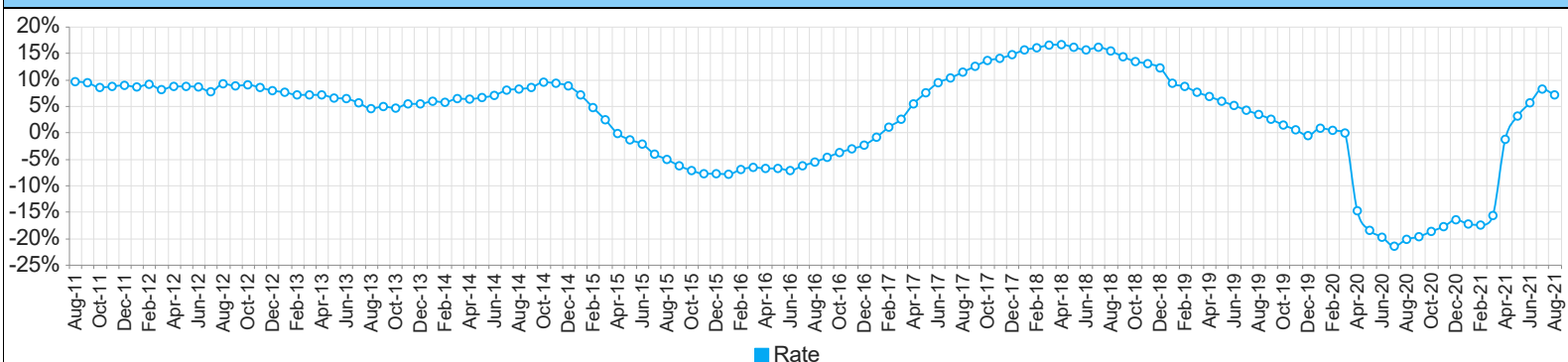
Employment by Size Class (1st Quarter 2021)



Wages by Industry (in millions) (1st Quarter 2021)



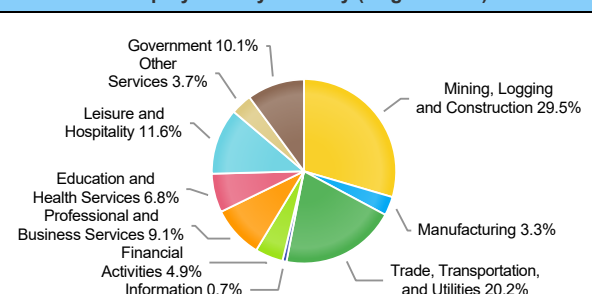
Annual Growth Rate Total Non-agricultural employment



Employment by Industry (August 2021)

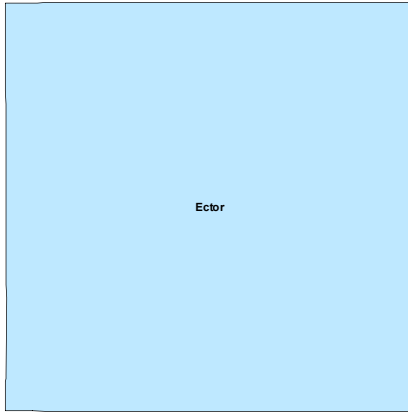
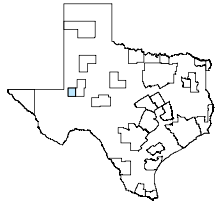
Industry	Current Month Employment	% Monthly Change	% Yearly Change
Total Nonfarm	97,900	0.2%	7.1%
Mining, Logging and Construction	28,900	0.0%	11.2%
Manufacturing	3,200	-3.0%	3.2%
Trade, Transportation, and Utilities	19,800	2.6%	5.9%
Information	700	0.0%	0.0%
Financial Activities	4,800	0.0%	9.1%
Professional and Business Services	8,900	0.0%	-1.1%
Education and Health Services	6,700	1.5%	0.0%
Leisure and Hospitality	11,400	0.0%	20.0%
Other Services	3,600	0.0%	2.9%
Government	9,900	-2.9%	1.0%

Employment by Industry (August 2021)



Odessa MSA

August 2021

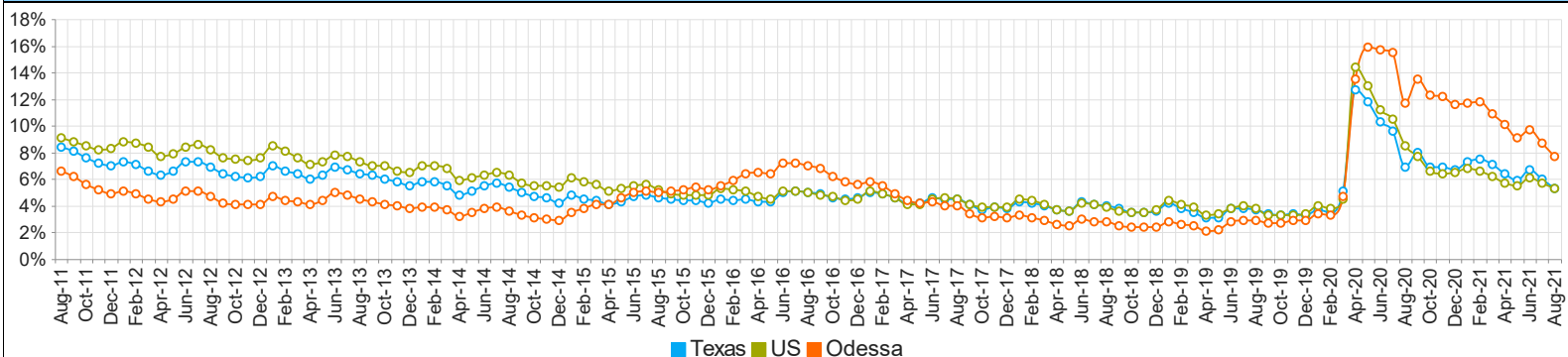


MSA Labor Force Statistics				
	Aug-21	Jul-21	Aug-20	Yearly Change
Civilian Labor Force	78,073	78,449	80,897	-2,824
Employed	72,076	71,658	71,417	659
Unemployed	5,997	6,791	9,480	-3,483
Unemployment Rate	7.7%	8.7%	11.7%	-4.0%

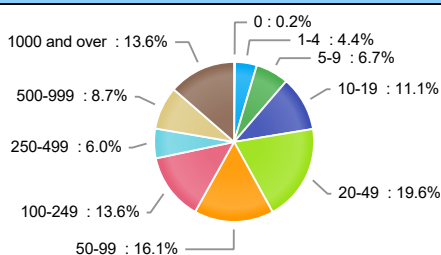
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	Aug-21	Jul-21	Aug-20	Yearly Change
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Employed	13,433,358	13,341,020	13,117,102	316,256
Unemployed	759,139	850,567	973,671	-214,532
Unemployment Rate	5.3%	6.0%	6.9%	-1.6%

US Labor Force Statistics				
	Aug-21	Jul-21	Aug-20	Yearly Change
Civilian Labor Force	161,788,000	162,817,000	160,966,000	822,000
Employed	153,232,000	153,596,000	147,224,000	6,008,000
Unemployed	8,556,000	9,221,000	13,742,000	-5,186,000
Unemployment Rate	5.3%	5.7%	8.5%	-3.2%

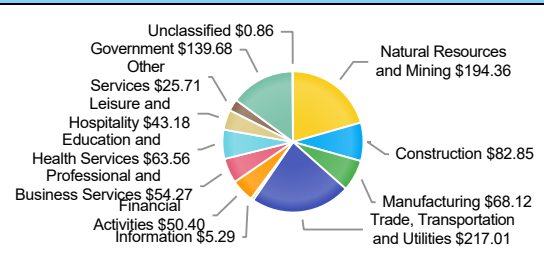
Historical Unemployment Rates



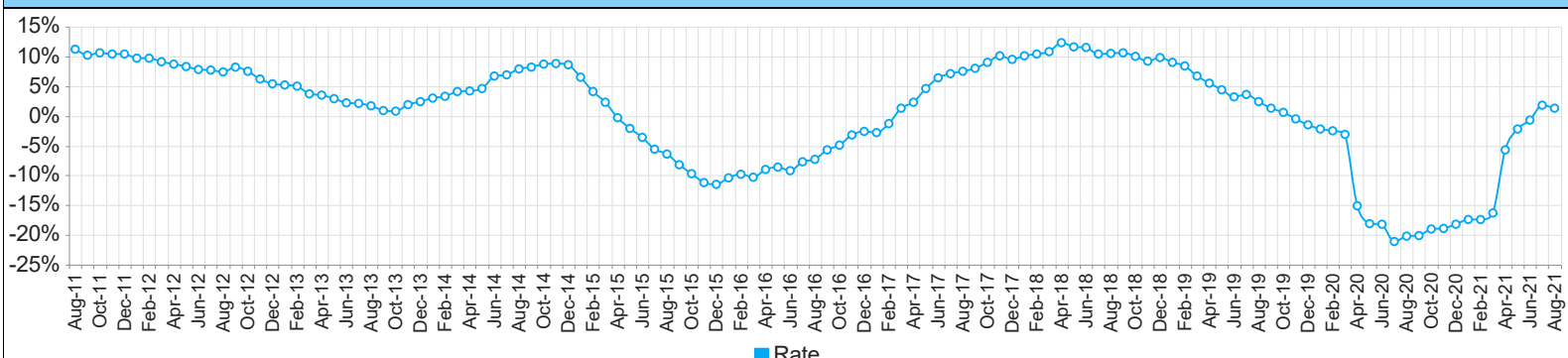
Employment by Size Class (1st Quarter 2021)



Wages by Industry (in millions) (1st Quarter 2021)



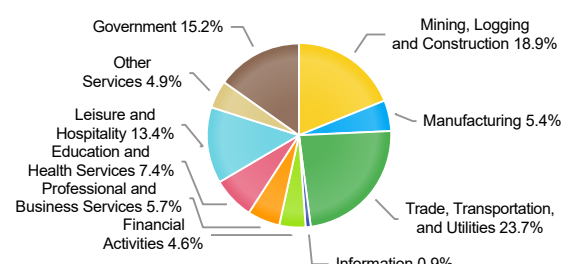
Annual Growth Rate Total Non-agricultural employment



Employment by Industry (August 2021)

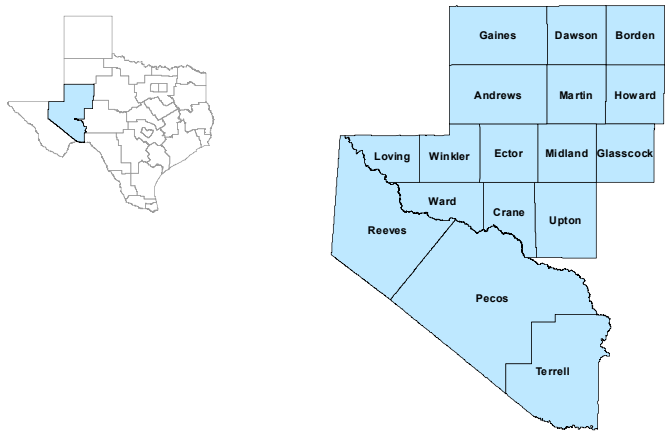
Industry	Current Month Employment	% Monthly Change	% Yearly Change
Total Nonfarm	67,900	0.3%	1.3%
Mining, Logging and Construction	12,800	1.6%	-2.3%
Manufacturing	3,700	0.0%	-2.6%
Trade, Transportation, and Utilities	16,100	-0.6%	0.0%
Information	600	0.0%	20.0%
Financial Activities	3,100	0.0%	3.3%
Professional and Business Services	3,900	0.0%	2.6%
Education and Health Services	5,000	0.0%	-2.0%
Leisure and Hospitality	9,100	0.0%	13.8%
Other Services	3,300	0.0%	3.1%
Government	10,300	1.0%	-1.0%

Employment by Industry (August 2021)



Permian Basin Workforce Development Area

August 2021



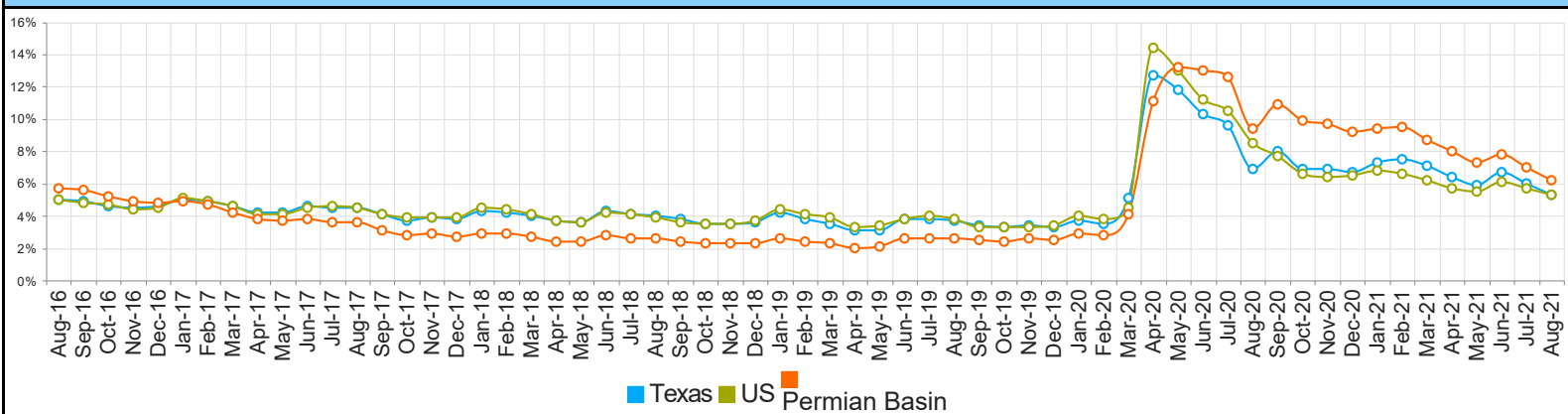
WDA Labor Force Statistics				
	Aug-21	Jul-21	Aug-20	Yearly Change
Civilian Labor Force	241,815	242,129	246,400	-4,585
Employed	226,834	225,213	223,297	3,537
Unemployed	14,981	16,916	23,103	-8,122
Unemployment Rate	6.2%	7.0%	9.4%	-3.2%

Texas Labor Force Statistics				
	Aug-21	Jul-21	Aug-20	Yearly Change
Civilian Labor Force	14,192,497	14,191,587	14,090,773	101,724
Employed	13,433,358	13,341,020	13,117,102	316,256
Unemployed	759,139	850,567	973,671	-214,532
Unemployment Rate	5.3%	6.0%	6.9%	-1.6%

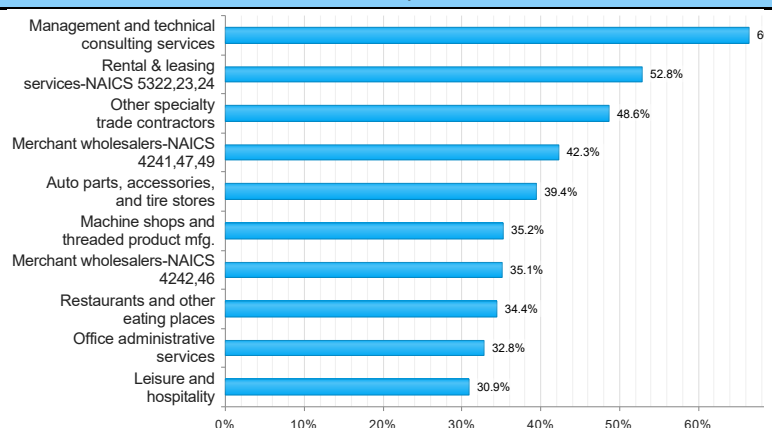
US Labor Force Statistics				
	Aug-21	Jul-21	Aug-20	Yearly Change
Civilian Labor Force	161,788,000	162,817,000	160,966,000	822,000
Employed	153,232,000	153,596,000	147,224,000	6,008,000
Unemployed	8,556,000	9,221,000	13,742,000	-5,186,000
Unemployment Rate	5.3%	5.7%	8.5%	-3.2%

Continued Claims for the Week of the 12th				
	Aug-21	Jul-21	Aug-20	Yearly Change
WDA	1,637	2,033	22,319	-20,682
Texas	119,054	139,012	796,520	-677,466

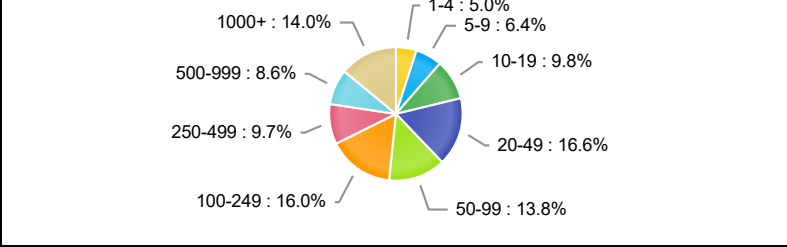
Historical Unemployment Rates



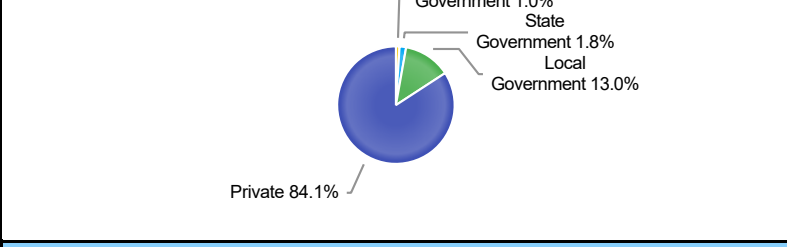
Projected Top Ten Fastest Growing Industries in WDA (% Growth 2018-2028)



Employment by Size Class (1st Quarter 2021)



Employment by Ownership (1st Quarter 2021)



Average Weekly Wage (1st Quarter 2021)

	Q1 2021	Q4 2020	Q1 2020	Quarterly Change	Yearly Change
WDA	\$1,335	\$1,354	\$1,387	-\$19	-\$52
Texas	\$1,261	\$1,294	\$1,231	-\$33	\$30
US	\$1,289	\$1,339	\$1,221	-\$50	\$68

Employment by Industry (1st Quarter 2021, Percent Change)

Industry	Employment	% of Total	% Quarterly Change	% Yearly Change
Natural Resources and Mining	40,366	18.9%	3.4%	-27.2%
Construction	15,680	7.3%	0.2%	-25.1%
Manufacturing	8,684	4.1%	4.9%	-19.0%
Trade, Transportation and Utilities	47,029	22.0%	-0.9%	-11.4%
Information	1,481	0.7%	-7.1%	-33.0%
Financial Activities	9,468	4.4%	3.5%	-11.0%
Professional and Business Services	15,836	7.4%	5.5%	-10.5%
Education and Health Services	38,660	18.1%	1.3%	-1.0%
Leisure and Hospitality	22,566	10.6%	-1.3%	-9.0%
Other Services	6,238	2.9%	0.2%	-12.2%
Public Administration	7,407	3.5%	-0.8%	-0.8%

Employment by Industry (1st Quarter 2021)

