

## **ECONOMIC DEVELOPMENT AGREEMENT**

THIS CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT ("Agreement") is entered into as of this 19th day of June, 2018 (the "Effective Date") by and between the **CITY OF KYLE, TEXAS**, a home rule city of the State of Texas ("City") and **MAJESTIC KYLE, LLC**, a Delaware limited liability company "Developer"). Collectively, the City and Developer may be referred to as "Parties" and individually as a "Party," acting by and through their respective authorized officers.

### **RECITALS**

**WHEREAS**, the Developer owns that certain 40.5 acre tract of land ("Property") located within the corporate limits of the City, as further described in "Exhibit A," attached and incorporated herein; and

**WHEREAS**, the Property is currently undeveloped, and the Developer wishes to develop the Property by designing and constructing infrastructure improvements within and outside the boundaries of the Property necessary to prepare the Property for light industrial, employment, and other commercial uses stated in this Agreement, proposed to be commonly known as the MAJESTIC PLUM CREEK BUSINESS PARK ("Project"); and

**WHEREAS**, as part of the Project, the Developer shall construct on the Property, approximately 500,000 square feet of speculative Class-A concrete tilt wall industrial buildings comprised of two or more buildings, and building uses will include manufacturing, light industrial, assembly, distribution, office, e-commerce, retail/wholesale sales and warehousing; and

**WHEREAS**, the Project will require construction of common public infrastructure that is required by the City-approved construction plans and permits, applicable City ordinances, codes, and regulations, and applicable local, state, and federal law, which provide enhanced mobility to the citizens of the greater Kyle area, and provide utilities and drainage infrastructure for the Property and the Project; and

**WHEREAS**, the Developer is willing to construct and pay for the Project, including the public works and improvements necessary to serve the Project, in exchange for the City reimbursing a portion of the costs of the Project in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, the City has the authority pursuant to Chapter 380, Texas Local Government Code, to enter this Agreement and this Agreement sets up a structured arrangement wherein annual economic development incentive payments will be made to Developer exclusively from property tax revenues collected by City from the property tax revenue created by Developer on the Property, subject to the terms and conditions of this Agreement; and

**WHEREAS**, the City hereby establishes a program pursuant to Chapter 380, Texas Local Government Code, to provide for a grant of City ad valorem property taxes to the Developer under the terms and conditions of this Agreement; and

**WHEREAS**, the City hereby finds that this Agreement will promote local economic development and stimulate business and commercial activity in the City.

**NOW, THEREFORE**, for and in consideration of the terms, conditions and covenants set forth herein, the parties agree as follows:

**ARTICLE I**  
**RECITALS; DEFINITIONS**

**Section 1.01. Recitals Incorporated.** The representations, covenants and recitations set forth in the recitals to this Agreement are material to this Agreement and are hereby found and agreed to be true and correct, and are incorporated into and made a part of this Agreement for all purposes.

**Section 1.02. Definitions.**

- a) “City” means the City of Kyle, a home rule municipal corporation of the State of Texas.
- b) “Property” means the real property described on Exhibit “A” attached hereto.
- c) “Project” means the multi-phased development of industrial and non-residential improvements and supporting improvements and infrastructure as generally described in the second, third, and fourth recital above, Section 2.01, and Section 4.01 to be located on the Property.
- d) “On-site” means on the Property and at the Project.
- e) “Certificate of Occupancy” shall mean the final document or documents issued by the City of Kyle, Texas entitled “Certificate of Occupancy” indicating that all building codes, regulations, and ordinances have been officially unconditionally, completely complied, within in all respects, with respect to construction and completion of the Project, and specifically shall not include any temporary or conditional document authorizing temporary or conditional occupancy.
- f) “Code” shall mean the City of Kyle Code of Ordinances.
- g) “Finance Department” means the Finance Department of the City of Kyle.
- h) “Comply” and “compliance” means timely, full, and complete performance of each requirement, obligation, duty, condition, or warranty as stated in this Agreement. “Comply” and “compliance” mean complete compliance in all material respects and do not mean substantial compliance, unless otherwise specifically stated.
- i) “Default” and “Act of Default” means failure in some material respect to comply timely, fully and completely with one or more requirements, obligations, duties, terms, conditions or warranties set forth in this Agreement.
- j) “Incentive Payment” and “Incentive Payments” mean the economic development incentive payments as described hereafter in Section 3.01 of this Agreement. Incentive Payments will be

made to Developer within 90-days of Developer making its property tax payment for the Property, subject to compliance with this Agreement. The effective date for the start of the 5-year Incentive Payment shall begin with the taxable valuation date of January 1, 2020, provided that the Developer has complied with the terms and conditions of this Agreement.

- k) “Construct” and “construction” mean construction in a good and workmanlike manner and in compliance with City-approved construction plans and/or permits, applicable federal, State and local laws, codes and regulations or valid waivers thereof or variances thereunder, and good engineering practices.
- l) “Property Tax” or “Property Taxes” shall mean the ad valorem taxes collected and received by the City on the taxable value of the Property as determined by the Hays County Appraisal District and the buildings, structures, and other fixtures that are erected or affixed to the Property that are included in the definition of real property set forth in Section 1.04(2), Texas Tax Code. The term “Property Tax” or “Property Taxes” shall not include tangible personal property, equipment or fixtures located on the Property that are not included in the definition of real property set forth in Section 1.04(2), Texas Tax Code.

## **ARTICLE II** **IMPROVEMENTS**

**Section 2.01 Construction of Improvements.** Developer agrees to design and construct and install the Project, including all necessary public and private improvements, infrastructure and facilities needed to support the development, use and occupancy of the Project in compliance with City-approved construction plans and permits, applicable City ordinances (including ordinances the Plum Creek Planned Unit Development), codes and regulations, applicable local, state, and federal regulations, and good engineering practices. The Project may be constructed in phases, at the sole discretion of Developer, provided that the Project shall be completed by the deadline set forth in Section 4.01. The plans and specifications for the Improvements shall be subject to the review and approval of all governmental entities with jurisdiction.

**Section 2.02 Funding of Improvements:** Developer shall pay all Project costs.

## **ARTICLE III** **ECONOMIC INCENTIVES**

**Section 3.01 Economic Development Incentive:**

- a) In consideration for Developer undertaking all-at-once the complete planned Project, Developer will receive a 5-year rebate of Property Taxes that will extinguish proportionally as the buildings are leased, subject to compliance with the terms and conditions of this Agreement. Incentive Payments will begin the year following the year in which the Developer completes and receives a Certificate of Occupancy for the Project.

The annual Incentive Payment shall be calculated as follows, less the reduction due to leasing of the Project as provided in Section 3.01(b):

Year 1: 100% of Property Taxes

Year 2: 80% of Property Taxes

Year 3: 60% of Property Taxes  
Year 4: 40% of Property Taxes  
Year 5: 20% of Property Taxes

- b) The Incentive Payment shall be reduced by an amount equal to the percentage of space leased within the buildings on the Property. By way of example, if in Year 1 the Developer leases 50% of the rentable square footage of the buildings on the Property, then the Incentive Payment will be reduced by 50%.
- c) For each year in which the Developer is eligible for an Incentive Payment, at the time that the Developer pays its Property Taxes, the Developer shall submit to the City proof of the amount of rentable square footage leased for buildings on the Property in a form acceptable to the City, along with a certificate in the form provided by the City verifying compliance with this Agreement.
- d) Developer may not be delinquent in the payment of ad valorem taxes to the City.
- e) Compliance with Sections 3.01(c) and (d) shall be a condition of receiving an annual Incentive Payment.

#### **ARTICLE IV** **PERFORMANCE CRITERIA AND DEFAULT**

**Section 4.01 Performance Criteria.** a) The Developer agrees and covenants that it shall construct or cause to be constructed a minimum of 500,000 square feet of speculative Class-A concrete tilt wall industrial buildings comprised of two or more buildings substantially in compliance with Exhibit C. Anticipated tenant uses of the buildings include manufacturing, light industrial, assembly, distribution, office, e-commerce, retail/wholesale sales and warehousing at the southwest corner of Kohler Crossing and Kyle Crossing as depicted on Exhibit "A," with construction to commence within one year from the date the City of Kyle provides final approval of construction plans and building permits.

- b) The Project shall be completed and a CO obtained for the Project by the fifth year of the Effective Date of this Agreement.
- c) The Developer shall actively be marketing the Project and pursue obtaining tenants for the Project.

**Section 4.02 Forfeiture.** The Developer shall forfeit all rights to the Incentive Payments set forth in Section 3 of this Agreement if the Developer fails to meet the Performance Criteria set forth in Section 4(a) and (b) and Article II.

**Section 4.03 Remedies:** The Parties expressly recognize and acknowledge that a breach of this Agreement by either Party may cause damage to the non-breaching Party for which there will not be an adequate remedy at law. Accordingly, in addition to all the rights and remedies provided by the laws of the State of Texas, in the event of a breach hereof by either Party, the other Party shall be entitled but not limited to the equitable remedy of specific performance or a writ of mandamus to compel any necessary action by the breaching Party, as well as to any other legal or equitable remedy allowed by law.

**Section 4.04 Recapture.** In the event of Default by Developer under this Agreement, the City shall, after

providing Developer notice and an opportunity to cure, have the right to recapture Incentive Payments.

**Section 4.05 Audit.** The City shall, upon reasonable prior written notice to the Developer and during normal business hours, have the right to audit and inspect the Developer's records, books, and all other relevant records related to Incentive Payments and the amount of space being leased on the Property under this Agreement. The Parties agree to maintain the appropriate confidentiality of such records, unless disclosure of such records and information shall be required by a court order, a lawfully issued subpoena, State Law, municipal ordinance, or at the direction of the Office of the Texas Attorney General.

**Section 4.06 Notice.** Notices under this Agreement must be sent by certified mail, return receipt requested, or personal deliver; notice by certified mail, return receipt requested, however, is effective only as of the date delivery of the certified mail correspondence is initially attempted. Personal deliver is effective upon delivery. The Parties' addresses for notice are:

**City of Kyle:**

Attn: City Manager  
100 W Center St Kyle, TX 78640

**MAJESTIC REALTY CO.:**

Attn: Mike Durham  
Chief Financial Officer  
13191 Crossroads Parkway North,  
6<sup>th</sup> Floor  
City of Industry, CA 91746

**ARTICLE V**  
**COVENANTS AND DUTIES**

**Section 5.01 Developer's Covenants and Duties:** Developer makes the following covenants and warranties to the City and agrees to timely and fully perform the obligations and duties contained in Article V of this Agreement. Any false or substantially misleading statements contained herein or failure to timely and fully perform those obligations and duties within this Agreement shall be an act of Default by the Developer.

- a) Developer is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas and the United States of America during any term of this Agreement.
- b) The execution of this Agreement has been duly authorized by the Developer, and the individual signing this Agreement on behalf of the Developer is empowered to execute such Agreement and bind the company. Said authorization, signing, and binding effect is not in contravention of any law, rule, regulation, or of the provisions of Developer's company agreement, by-laws, or of any agreement or instrument to which Developer is a party to or by which it may be bound.
- c) The Developer is not a party to any bankruptcy proceedings currently pending or contemplated, and Developer has not been informed of any potential involuntary bankruptcy proceedings.
- d) Developer shall make diligent efforts to timely and fully comply with all of the terms and conditions of this Agreement. Developer also agrees to obtain or cause to be obtained, all necessary permits

and approvals from City and/or all other governmental agencies having jurisdiction over the construction of Project improvements on the Property which is within the City limits.

- e) Developer shall require approval of plans and specifications for the Project improvements prior to starting any construction.
- f) Developer agrees to require in sale and/or lease documents into which it enters that Tenants or their contractors shall be responsible for paying, or causing to be paid, as applicable, to City and all other governmental agencies the cost of all applicable permit fees and licenses required for construction of the Project, to the extent same are under the jurisdiction of the City. Developer shall require in sale or lease documents into which it enters that Tenants are to agree to comply with all City ordinances and rules in effect at the time this Agreement is executed.
- g) Developer shall have a continuing duty to cooperate with the City in providing all necessary information to assist City in complying with this Agreement; and to execute such other and further documents as may be reasonably required to comply therewith.

**Section 5.02 Representation and Warranties by the City of Kyle.** The City of Kyle represents and warrants that this Agreement is within the scope of its authority, and that it has been duly authorized and empowered to execute and enter into this agreement.

## **ARTICLE VI** **TERMINATION**

**Section 6.01 Termination:** This Agreement shall terminate upon the earliest occurrence of any one or more of the following: (a) The written agreement of the Parties; (b) The Agreement's Expiration Date; or (c) An uncured Default by the Developer.

## **ARTICLE VII** **GENERAL PROVISIONS**

### **Section 7.01 Default:**

- a) A party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such party fails to perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement.
- b) Before any failure of any party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within fifteen (15) days of the receipt of such notice. Upon a breach of this Agreement, the non-defaulting Party, in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained, may be awarded damages for failure of performance, or both. Except as otherwise set forth herein, no action taken by a Party pursuant to the provisions of this Section or pursuant to the provisions of any other Section of this Agreement shall be deemed to constitute an election of remedies; and all remedies set forth in this Agreement shall be cumulative and non-

exclusive of any other remedy either set forth herein or available to any Party at law or in equity. Each of the Parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other Party.

**Section 7.02 No Personal Liability of Public Officials:** No public official or employee shall be personally responsible for any liability arising under or growing out of this Agreement.

**Section 7.03 Liability of the Developer, its successors and assignees:** Any obligation or liability of the Developer whatsoever that may arise at any time under this Agreement or any obligation or liability which may be incurred by the Developer pursuant to any other instrument transaction or undertaking contemplated hereby shall be satisfied, if at all, out of the assets of the Developer only. No obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the property of any of partners, officers, employees, shareholders or agents of the Developer, regardless of whether such obligation or liability is contract, tort or otherwise.

**Section 7.04 Mediation:** If a dispute arises out of or relates to this Agreement or the breach thereof, the Parties shall first in good faith seek to resolve the dispute through negotiation between the upper management of each respective Party. If such dispute cannot be settled through negotiation, the Parties agree to try in good faith to settle the dispute by mediation before resorting to litigation or some other dispute resolution procedure; provided that a Party may not invoke mediation unless it has provided the other Party with written notice of the dispute and has attempted in good faith to resolve such dispute through negotiation. All costs of negotiation and mediation, collectively known as alternate dispute resolution (“ADR”), shall be assessed equally between the City and Developer with each party bearing their own costs for attorney’s fees, experts, and other costs of ADR and any ensuing litigation.

## **ARTICLE VIII** **MISCELLANEOUS PROVISIONS**

**Section 8.01 Limitations on Liability:** The City shall not be liable for consequential damages, specifically lost profits, and any damages claimed against the City shall be limited to amounts recoverable under §271.153 of the Texas Local Government Code. The parties agree that this Agreement shall not be interpreted as or otherwise claimed to be a waiver of sovereignty on the part of the City.

**Section 8.02 Force Majeure:** In the event either Party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, then the obligations of such Party, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused, to the extent provided, but for no longer period. As soon as reasonably possible after the occurrence of the force majeure relied upon, the Party whose contractual obligations are affected thereby shall give notice and the full of such force majeure to the other Party. Such cause, as far as possible, shall be remedied with all reasonable diligence.

- a) The term “force majeure” as employed herein shall mean and refer, without limitation, to acts of God; strikes and/or lockouts; acts of public enemies, orders of any kind of the government of the United States, the State of Texas or any civil or military authority (other than the City): insurrections; riots; lightning, earthquakes, fires, hurricanes, storms, floods and other natural disasters; washouts and other weather-related delays’ restraint of government and people; civil disturbance; explosions; or other causes not reasonably within the control of the party claiming such inability.

- b) If, because of force majeure, any party hereto shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then such party shall give written notice of the full of such force majeure to the other party within ten (10) days after the occurrence thereof. The obligations of the party giving such notice, to the extent effected by the force majeure, shall be suspended during the continuance of the inability claimed except as hereinafter provide, but of no longer period, and the party shall endeavor to remove or overcome such inability with all reasonable dispatch.
- c) It is understood and agreed that the settlement of strikes and lockouts shall entirely within the discretion of the party having the difficulty, and that the above requirement and any force majeure shall be remedied with all reasonable dispatch shall not require that the settlement be unfavorable in the judgement of the party having the difficulty.

**Section 8.03 Independent Contractors:** It is expressly understood and agreed by all Parties hereto that in performing their services hereunder the Developer or its subcontractors or tenants at no time will be acting as agents of the City or and that all consultants or contractors engaged by the Developer, its subcontractors or tenants will be independent contractors. The Parties hereto understand and agree that the City will not be liable for any claims that may be asserted by any third party occurring in connection with services performed by the Developer under this Agreement, unless any such claims are due to the fault of the City.

**Section 8.04 Interpretation:** Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which Party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, whatever its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.

**Section 8.05 Time is of the Essence.** Time is of the essence in the performance of this Agreement.

**Section 8.06 Section or Other Headings:** Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

**Section 8.07 Entire Agreement:** This Agreement contains the entire agreement between the parties with respect to the transaction contemplated herein. Any Exhibits attached hereto are incorporated by reference for all purposes.

**Section 8.08 Amendment:** This Agreement may only be amended, altered, or revoked by written instrument signed by the parties and as approved by the City Council of the City of Kyle, Texas.

**Section 8.09 Successors and Assigns:** This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns; provided however (i) the benefits of this Agreement in favor of the Developer may not be assigned to any party other than an affiliate of Developer without the written consent of the City of Kyle (which consent shall not be unduly withheld, provided the City is satisfied that any remaining obligations under the Agreement will be met); and (ii) notwithstanding the foregoing and any other provision of the Agreement to the contrary, any successor owner, occupant, tenant, licensee or invitee of any such portion of the Property (including, without limitation, any business that may operate from time to time thereon).

**Section 8.10 Applicable Law and Venue:** This Agreement is made and all obligations arising hereunder shall be construed and interpreted under the laws of the State of Texas and the venue for any action arising from the Agreement shall be Hays County, Texas.

**Section 8.11 Counterparts:** This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

**Section 8.12 No Additional Waiver Implied:** The failure of either Party to insist upon performance of any provision of this Agreement shall not be construed as a waiver of the future performance of such provision by the other Party.

**Section 8.13 Parties in Interest:** This Agreement shall be for the sole and exclusive benefit of the Parties and shall not be construed to confer any rights upon any third parties.

**Section 8.14 Merger:** This Agreement embodies the entire understanding between the Parties and there are no other representations, warranties or agreements between the Parties covering the subject matter of this Agreement.

**Section 8.15 Captions.** The captions of each section of this Agreement are inserted solely for convenience.

**Section 8.16 Severability:** If any provision of this Agreement or the application thereof to any person or circumstances is ever judicially declared invalid, such provision shall be deemed severed from this Agreement and the remaining portions of this Agreement shall remain in effect.

**Section 8.17 Indemnification. DEVELOPER COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, CITY AND (AND THEIR ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES), INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE BROUGHT BY ANY THIRD PARTY AND RELATING TO DEVELOPER'S ACTIONS ON THE PROJECT, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON CITY OR DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO DEVELOPER OR DEVELOPER'S TENANTS' NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF DEVELOPER OR DEVELOPER'S TENANTS, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANTS OF DEVELOPER OR DEVELOPER'S TENANTS, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY, UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE CITY AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. DEVELOPER SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST CITY, RELATED TO OR ARISING OUT OF DEVELOPER OR DEVELOPER'S TENANTS' ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT DEVELOPER'S COST TO THE EXTENT REQUIRED UNDER THE INDEMNITY IN THIS PARAGRAPH. CITY SHALL HAVE THE RIGHT, AT THEIR OPTION AND AT THEIR OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING DEVELOPER OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.**

**IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH, SHALL NOT BE AN INDEMNITY EXTENDED BY DEVELOPER TO INDEMNIFY, PROTECT AND HOLD HARMLESS CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE OR INTENTIONAL MISCONDUCT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL APPLY ONLY, TO THE EXTENT OF ANY COMPARATIVE NEGLIGENCE STATUTES AND FINDINGS, WHEN THE NEGLIGENT ACT OF CITY IS A CONTRIBUTORY CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE, AND IT SHALL HAVE NO APPLICATION WHEN THE NEGLIGENT ACT OF CITY IS THE SOLE CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE. DEVELOPER FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE AND ON BEHALF OF CITY AND IN THE NAME OF CITY ANY CLAIM OR LITIGATION BROUGHT AGAINST CITY (AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES), IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH ABOVE.**

**IT IS THE EXPRESS INTENT OF THIS SECTION THAT THE INDEMNITY PROVIDED TO THE CITY AND THE DEVELOPER SHALL SURVIVE THE TERMINATION AND OR EXPIRATION OF THIS AGREEMENT AND SHALL BE BROADLY INTEREPRETED AT ALL TIMES TO PROVIDE THE MAXIMUM INDEMNIFICATION OF THE CITY AND / OR THEIR OFFICERS, EMPLOYEES AND ELECTED OFFICIALS PERMITTED BY LAW.**

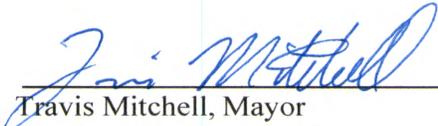
**Section 8.18 Anti-Boycott Verification.** To the extent this Agreement constitute a contract for goods or services within the meaning of Section 2270.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2270 of the Texas Government Code, and subject to applicable Federal law, Developer represents that neither Developer nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Developer (i) boycotts Israel or (ii) will boycott Israel through the term of this Amendment or the Agreement. The terms “boycotts Israel” and “boycott Israel” as used in this paragraph have the meanings assigned to the term “boycott Israel” in Section 808.001 of the Texas Government Code, as amended.

**Section 8.19 Iran, Sudan and Foreign Terrorist Organizations.** To the extent this Agreement constitute a governmental contract within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252 of the Texas Government Code, and except to the extent otherwise required by applicable federal law, Developer represents that neither Developer nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Developer is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.

IN WITNESS, WHEREOF, the Parties hereto have executed this Agreement in multiple copies, each of equal dignity, to be effective on the latest date of execution. Any party may change the address which notices are to be sent by giving the other parties written notice in the manner provided in Section 4.06.

**EXECUTION PAGE FOLLOWS:**

THE CITY OF KYLE, TEXAS

  
\_\_\_\_\_  
Travis Mitchell, Mayor

ATTEST/SEAL:

  
\_\_\_\_\_  
Jennifer Vetrano, City Secretary

APPROVED AS TO FROM:

  
\_\_\_\_\_  
Paige Saenz, City Attorney

Agreed to and accepted on June 19, 2018.

MAJESTIC KYLE, LLC

\_\_\_\_\_

Name: Edward P. Roski, Jr.

Title: Manager

Agreed to and accepted on 30 July, 2018.

Exhibit A: Property Description Tracts 1, 2, and 3

Exhibit B: Project Site Plan

**Exhibit A**  
**Property Description**

# MAJESTIC INDUSTRIAL PARK FINAL PLAT HAYS COUNTY, TEXAS

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF HAYS

That we, MOUNTAIN PLUM, LTD., a limited partnership organized and existing under the laws of the State of Texas, with its home address at 4040 Broadway #501, San Antonio, TX 78209, being the owner of 185.77 acres of land conveyed by Deed without Warranty dated August 25, 2003, from William Negley to Mountain Plum, Ltd., of record in Volume 2297, Page 139, Official Public Records, Hays County, Texas, in the Thomas G. Allen Survey No. 1, Abstract No. 26, the Jesse Day Survey, Abstract No. 152, the Jesse Day Survey, Abstract No. 159, and the John King Survey No. 20, Abstract No. 276, situated in Hays County, Texas, do hereby subdivide 46.232 acres of land to be known as:

"MAJESTIC INDUSTRIAL PARK"

in accordance with the plat shown hereon, subject to any and all easements or restrictions heretofore granted, and do hereby dedicate to the public the use of the streets and easements shown hereon, subject to any easements and/or restrictions heretofore granted and not released.

WITNESS BY MY HAND this the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_ A.D.

Mountain Plum, Ltd., a Texas limited partnership  
By: MP General, LLC, a Texas limited liability company  
General Partner

Name: \_\_\_\_\_, Manager

Name: \_\_\_\_\_, Manager

By: MountainCityLand, LLC, a Texas limited liability company, Manager

Name: \_\_\_\_\_, Manager

THE STATE OF TEXAS  
THE COUNTY OF HAYS

I, the undersigned authority, on this the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_ A.D. did personally appear \_\_\_\_\_, Manager of MP General, LLC, known to me to be the person whose name is subscribed to the foregoing instrument of writing, and he acknowledged before me that he executed the same for the purposes and consideration therein expressed.

Notary Public

Printed Name/Commission Expires

THE STATE OF TEXAS  
THE COUNTY OF HAYS

I, the undersigned authority, on this the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_ A.D. did personally appear \_\_\_\_\_, Manager of MP General, LLC, known to me to be the person whose name is subscribed to the foregoing instrument of writing, and he acknowledged before me that he executed the same for the purposes and consideration therein expressed.

Notary Public

Printed Name/Commission Expires

THE STATE OF TEXAS  
THE COUNTY OF HAYS

I, the undersigned authority, on this the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_ A.D. did personally appear \_\_\_\_\_, Manager of MountainCityLand, LLC, Manager of MP General, LLC, known to me to be the person whose name is subscribed to the foregoing instrument of writing, and he acknowledged before me that he executed the same for the purposes and consideration therein expressed.

Notary Public

Printed Name/Commission Expires

THE STATE OF TEXAS  
THE COUNTY OF HAYS

I, Judd T. Willmann, am authorized under the laws of the State of Texas to practice the profession of engineering, hereby certify that proper engineering consideration has been given this plat.

A portion of this subdivision is within the boundaries of the 100-year floodplain according to the Federal Flood Administration FIRM Panel 48209C0290F dated September 2, 2005.

Date: \_\_\_\_\_

Judd T. Willmann, P.E.  
Texas Registration No. - P.E. 90356  
LandDev Consulting, LLC, TBPE FIRM No.: F-16384  
5508 Highway 290 West, Suite 215  
Austin, TX 78720  
(512) 872-6696

Surveyor's Note:  
This subdivision lies within the boundaries of the City of Kyle corporate city limits.

THE STATE OF TEXAS  
THE COUNTY OF HAYS

I, Jeffrey J. Curci, am authorized under the laws of the State of Texas to practice the profession of surveying, hereby certify that this plat is true and correct, that it was prepared from an actual survey of the property made by me or under my supervision on the ground during the months of January - March 2018 and that all necessary survey monuments are correctly set or found as shown hereon.

Date: 5/07/2018

Jeffrey J. Curci  
Registered Professional Land Surveyor  
No. 5516 - State of Texas  
Geomatics Surveying and Mapping Inc.  
10415 Old Manchaca Road #202  
Austin, Texas 78748  
(512) 917-0184



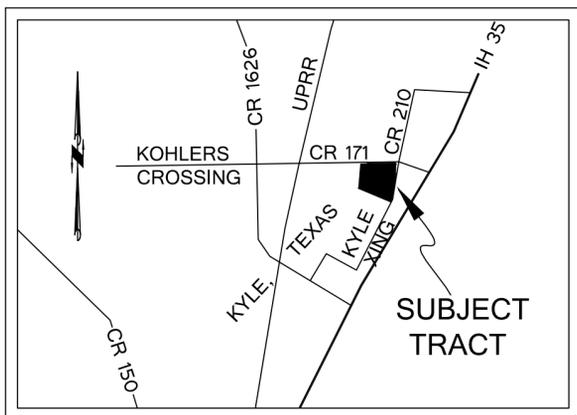
Reviewed by: City Engineer

Reviewed by: Director of Public Works

This final plat has been submitted to and considered by the planning and zoning commission of the City of Kyle, Texas, and is hereby approved by such planning and zoning commission.

Dated this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Chairperson



VICINITY MAP - NTS

LEGAL DESCRIPTION:

A DESCRIPTION OF A 46.232 ACRE TRACT OF LAND, LOCATED IN THE THOMAS G. ALLEN SURVEY No. 1, ABSTRACT No. 26, THE JESSE DAY SURVEY, ABSTRACT No. 152, THE JESSE DAY SURVEY, ASBTRACT No. 159, AND THE JOHN KING SURVEY No. 20, ABSTRACT No. 276 OF HAYS COUNTY, TEXAS. SAID 46.232 ACRE TRACT, BEING A PORTION OF THAT CERTAIN TRACT OR PARCEL OF LAND DESCRIBED AS CONTAINING 185.77 ACRES OF LAND IN A DEED WITHOUT WARRANTY, RECORDED AUGUST 25, 2003, FROM WILLIAM NEGLEY TO MOUNTAIN PLUM, LTD., OF RECORD IN VOLUME 2297, PAGE 139, OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS. SAID 46.232 ACRES, AS SHOWN ON THE ACCOMPANYING SURVEY PLAT, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING**, at a 1/2 inch iron rod (Grid Coordinates = N: 13,922,101.25 E: 2,329,315.78) found monumenting an angle point in the south line of said 185.77 acre tract and the north line of that certain tract or parcel of land described as containing 126.130 acres of land (Tract 1) in a Warranty Deed recorded June 30, 2004, from Harvey and Gloria Evans, Trustees to Sheldon-Tanglewood, Ltd., of record in Volume 2495, Page 677, Official Public Records, Hays County, Texas, from which an iron rod with cap stamped "LAI" found monumenting a southeast line of said 185.77 acre tract, a northwest line of said 126.130 acre tract and the south line of that certain tract or parcel of land described as a 100-foot wide right of way in a Right of Way Agreement recorded October 20, 1972, from Richard and Laura Negley to Lower Colorado River Authority, of record in Volume 254, Page 254, Official Public Records, Hays County, Texas, bears, S 46° 04' 08" W, a distance of 960.76 feet, and from said point of beginning the southwest corner of said Thomas G. Allen Survey and the northwest corner of said John King Survey, bears APPROXIMATELY, S 46° 04' 08" W, a distance of 528 feet (NO EVIDENCE OF THE ORIGINAL SURVEY CORNER WAS FOUND);

**THENCE**, N 04° 37' 50" E, over and across said 185.77 acre tract, a distance of 1039.47 feet to a 1/2 inch iron rod with cap stamped "GEOMATICS 5516" set to monument the south right of way of Kohlers Crossing (County Road No. 171), a varying width public right of way, being that certain tract or parcel of land described as containing 1.347 acres of land (Parcel 5, Tract 2) in a Special Warranty Deed Dedication of Right of Way recorded July 30, 2007, from Plum Creek Development Partners, Ltd. to the City of Kyle, Texas, of record in Volume 3218, Page 810, Official Public Records, Hays County, Texas, from which an "X" cut in concrete found monumenting said south right of way of Kohlers Crossing, a southeast corner of that certain tract or parcel of land described as containing 0.498 acre of land (Parcel 5, Tract 1) in said Special Warranty Deed Dedication of Right of Way and the west right of way of Marketplace Avenue, an 80 foot wide public right of way, bears, S 89° 49' 13" W, a distance of 889.11 feet;

**THENCE**, with said south right of way of said Kohlers Crossing, continuing over and across said 185.77 acre tract, the following four (4) courses:

1. N 88° 54' 12" E, a distance of 265.19 feet to a 1/2 inch iron rod with cap stamped "LAI" found,
2. N 01° 05' 48" W, a distance of 18.00 feet to a 1/2 inch iron rod with cap stamped "GEOMATICS 5516" set,
3. N 88° 54' 12" E, a distance of 1191.46 feet to a 1/2 inch iron rod with cap stamped "GEOMATICS 5516" set, and
4. S 44° 33' 01" E, a distance of 33.55 feet to a 1/2 inch iron rod with cap stamped "GEOMATICS 5516" set to monument the east line of said 185.77 acre tract and the west right of way of Kyle Crossing (County Road 210), a varying width public right of way;

**THENCE**, with the west right of way of said Kyle Crossing, the west line of that certain tract or parcel of land described as containing 0.353 acre of land (Parcel 2) in a Special Warranty Deed with Vendor's Lien, recorded April 13, 2006, from Mountain Plum, Ltd. to Plum Creek Development Partners, Ltd., of record in Volume 2902, Page 563, Official Public Records, Hays County, Texas, over and across said 185.77 acre tract, the following six (6) courses:

1. along a curve to the left, an arc distance of 80.43 feet, having a radius of 1007.50 feet, a central angle of 04° 34' 26", and a chord which bears, S 04° 05' 56" W, a distance of 80.40 feet to a 1/2 inch iron rod with cap stamped "LOOMIS AUSTIN" found monumenting a point of tangency,
2. S 01° 54' 46" W, a distance of 197.58 feet to a 1/2 inch iron rod with cap stamped "LOOMIS AUSTIN" found,
3. S 00° 44' 42" E, a distance of 160.31 feet to a 1/2 inch iron rod found monumenting a point of curvature of a curve to the right,
4. Along said curve to the right, an arc distance of 358.09 feet, having a radius of 2835.00 feet, a central angle of 07° 14' 13", and a chord which bears, S 05° 56' 33" W, a distance of 357.85 feet to a 1/2 inch iron rod with cap stamped "GEOMATICS 5516" set to monument a point of tangency,
5. S 09° 25' 10" W, a distance of 658.92 feet to an iron rod with cap stamped "HAYS COUNTY" found monumenting a point of curvature of a curve to the right, and
6. Along said curve to the right, an arc distance of 193.60 feet, having a radius of 937.00 feet, a central angle of 11° 50' 18", and a chord which bears, S 15° 34' 36" W, a distance of 193.26 feet to a 1/2 inch iron rod with cap stamped "LOOMIS AUSTIN" found monumenting the south line of said 185.77 acre tract, the north line of said 126.130 acre tract, the southwest corner of said 0.353 acre tract, and the northwest corner of that certain tract or parcel of land described as containing 0.390 acre of land (Parcel 3) in a Donation Deed recorded June 13, 2006, from Sheldon-Tanglewood Ltd. to Hays County, Texas, of record in Volume 2941, Page 666, Official Public Records, Hays County, Texas;

**THENCE**, with said south line of said 185.77 acre tract, and said north line of said 126.130 acre tract, the following two (2) courses:

1. N 67° 08' 37" W, a distance of 1118.28 feet to a 1/2 inch iron rod with cap stamped "GEOMATICS 5516" set, and
2. N 67° 06' 10" W, a distance of 353.86 feet to the **POINT OF BEGINNING** of the herein described tract and containing 46.232 acres of land, more or less.

GENERAL NOTES:

1. Setbacks not shown hereon shall conform to the City of Kyle Zoning Ordinance.
2. Prior to construction of any improvements on lots in this subdivision, site development permits and building permits will be obtained from the City of Kyle.
3. No objects, including signage, buildings, accessory buildings, fencing or landscaping which would interfere with conveyance of storm water shall be placed or erected within any drainage easements without the prior approval of the City of Kyle.
4. Each property owner of a lot on which drainage easement(s) are platted shall be responsible for keeping grass and weeds neatly cut and easement area free of debris and tree/brush regrowth.
5. Owner(s) of property with drainage and utility easement(s) shall allow access for inspection, repair, maintenance and reconstruction as may be necessary.
6. A fifteen (15) foot PUE is hereby dedicated adjacent to all street R.O.W., a five (5) foot PUE is hereby dedicated along each side lot line and a ten (10) foot PUE is hereby dedicated adjacent to all rear lot lines on all lots.
7. Typical landscape maintenance, cutting and trimming, within the subdivision, all easements, detention ponds and rights of way to the pavement to be the responsibility of property owners and/or property owners associations.
8. Sidewalks, pedestrian crossings and other public amenities to be dedicated to the City of Kyle shall meet or exceed all 2010 ADA Standards of Accessibility Design and all current federal and state laws regarding access for people with disabilities to Title II entities.
9. Sidewalks shall be installed on the subdivision side of Kohlers Crossing and Kyle Crossing. Those sidewalks not abutting a residential, commercial or industrial lot shall be installed when the adjoining street is constructed. Where there are double frontage lots, sidewalks on the street to which access is prohibited are also required to be installed when the streets in the subdivision are constructed.
10. Property lies within the Bunton Branch-Plum Creek Watershed.
11. Post-construction stormwater control measures shall have a maintenance plan. The maintenance plan must be filed in the real property records of the county in which the property is located. The owner or operator of any new development or redeveloped site shall develop and implement a maintenance plan addressing maintenance requirements for any structural control measures installed on site. Operation and maintenance performed shall be documented and retained on site, such as at the office of the owner or operator, and made available for review by the city.
12. The property owner(s) and/or the property owner's association are solely responsible for any and all maintenance and/or repairs to all drainage easements and detention/retention ponds within the property.

THE STATE OF TEXAS  
THE COUNTY OF HAYS

I, Liz Gonzalez, County Clerk of Hays County, Texas, do hereby certify that the foregoing instrument in writing with its certificate of authentication, was filed for record in my office on the \_\_\_\_\_ day of \_\_\_\_\_,

201\_\_ A.D., at \_\_\_\_\_ o'clock \_\_.M., in the plat records of Hays County, Texas, as Instrument

No. \_\_\_\_\_

Witness my hand and seal of office, this the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_ A.D.

Liz Gonzalez,  
County Clerk  
Hays County, Texas

DATE OF PREPARATION: March 30, 2018

SUBMITTED: May 4, 2018

**GEOMATICS**

SURVEYING AND MAPPING INC.

10415 Old Manchaca Rd., #202, Austin, TX 78748  
(512) 917-0184 | TBPLS FIRM REGISTRATION No. 10194101 |

PAGE 1 OF 2



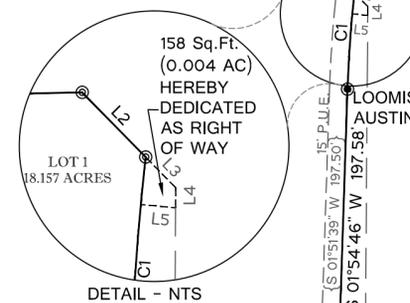
# MAJESTIC INDUSTRIAL PARK FINAL PLAT HAYS COUNTY, TEXAS

JOHN COOPER SURVEY  
ABSTRACT No. 100

CITY OF KYLE, TX  
2.844 ACRES  
VOL. 2926, PG. 240, O.P.R.H.C.T.

KOHLERS CROSSING (VARYING WIDTH R.O.W.) [C.R. 171]

JESSE DAY SURVEY  
ABSTRACT No. 152



LOT 1  
18.157 ACRES

LOT 3  
5.716 AC.

BENCHMARK: TRIANGLE CUT IN  
CONCRETE ELEVATION = 736.50'

MOUNTAIN PLUM LTD  
VOL. 2297, PG. 139  
O.P.R.H.C.T.

JESSE DAY  
SURVEY  
ABSTRACT  
No. 159

THOMAS G. ALLEN SURVEY No. 1  
ABSTRACT No. 26

LOT 2  
22.359 ACRES

LINE	BEARING	DISTANCE
L1	N 01°05'48" W	18.00'
L1	N 01°07'29" W	18.00'
L2	S 44°33'01" E	33.55'
L2&3	S 44°34'42" E	49.09'
L3	S 44°33'01" E	15.54'
L4	S 01°32'13" E	7.66'
L5	N 84°32'34" W	12.98'
{L5}	N 84°32'57" W	12.97'
L6	S 80°29'11" E	63.16'
L7	S 46°04'08" W	960.76'
L8	N 67°06'10" W	10.29'
L9	S 89°49'13" W	889.11'
L10	N 87°15'38" W	1896.63'

CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	80.43'	1007.50'	4°34'26"	S 04°05'56" W	80.40'
C2	358.09'	2835.00'	7°14'13"	S 05°56'33" W	357.85'
{C2}	358.08'	2835.00'	-----	S 05°53'27" W	357.85'
C3	193.60'	937.00'	11°50'18"	S 15°34'36" W	193.26'
{C3}	192.99'	937.00'	-----	S 15°24'36" W	192.65'

SHELDON-TANGLEWOOD, LTD  
TRACT I - 126.130 ACRES  
VOL. 2495, PG. 677  
O.P.R.H.C.T.

JOHN KING SURVEY No. 20  
ABSTRACT No. 276

OWNER: MOUNTAIN PLUM, LTD.  
4040 BROADWAY STREET  
SAN ANTONIO, TEXAS 78209

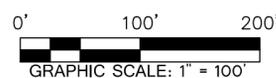
ACREAGE: 46.232  
PATENT SURVEY: THOMAS G. ALLEN SURVEY No. 1, ABSTRACT No. 26  
JESSE DAY SURVEY, ABSTRACT No. 152  
JESSE DAY SURVEY, ABSTRACT No. 159  
JOHN KING SURVEY No. 20, ABSTRACT No. 276

NUMBER OF BLOCKS: 1  
LINEAR FEET OF NEW STREET: 0'  
NUMBER OF LOTS: 3

SURVEYOR: GEOMATICS SURVEYING AND MAPPING, INC.  
10415 OLD MANCHACA ROAD #202  
AUSTIN, TEXAS 78748  
JEFFREY J. CURCI, R.P.L.S. 5516  
512-917-0184  
TBPLS FIRM REGISTRATION NO. 10194101

ENGINEER: LANDDEV CONSULTING, LLC  
5508 HIGHWAY 290 WEST, STE. 215  
AUSTIN, TEXAS 78735  
JUDD T. WILLMANN, P.E. 90356  
512-872-6696  
TBPE FIRM NO. F-16384

HAYS COUNTY, TEXAS  
PARCEL 3 - 0.390 ACRE  
VOL. 2941, PG. 666  
O.P.R.H.C.T.



**GEOMATICS**

SURVEYING AND MAPPING INC.

10415 Old Manchaca Rd., #202, Austin, TX 78748  
(512) 917-0184 | TBPLS FIRM REGISTRATION NO. 10194101



- LEGEND**
- IRON ROD FOUND (size noted)
  - ⊙ IRON ROD FOUND WITH CAP (as labeled)
  - "X" in CONCRETE FOUND
  - ⊗ IRON ROD SET WITH CAP "GEOMATICS 5516"
  - APPROXIMATE LOCATION SURVEY LINES
  - - - PUBLIC UTILITY EASEMENT
  - B.L. BUILDING SETBACK LINE
  - P.R.H.C.T. PLAT RECORDS, HAYS COUNTY, TEXAS
  - O.P.R.H.C.T. OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS
  - RECORD INFORMATION  
(VOL. 2297 PG. 139)  
{VOL. 2902 PG. 563}  
[VOL. 3218 PG. 810]

DATE OF PREPARATION: March 30, 2018  
SUBMITTED: May 4, 2018

**Exhibit B**  
**Project Site Plan**

