



Zoning and Platting Commission Recommendation
Concerning Milky Way at River Place

WHEREAS on October 31, 2019 the City Council approved Zoning Ordinance 20191031-044 rezoning the property located at Milky Way Drive from DR to SF-6-CO; and

WHEREAS the zoning ordinance limited development to 30 residential units unless there is 1) an additional emergency access point to an external street and 2) traffic is limited to 1,200 trips per day on Milky Way Drive as measured by the greater of the tube count taken at the time of site plan or the ITE Trip Generation Manual; and

WHEREAS on October 31, 2019 the property owner signed a public restrictive covenant specifying that development on the Property is subject to the recommendations contained in the Neighborhood Traffic Analysis (NTA) memorandum dated March 13, 2019; and,

WHEREAS the restrictive covenant requires a majority vote of the City Council to modify, amend, or terminate the agreement; and

WHEREAS on August 11, 2020 a restrictive covenant correction affidavit was signed without City Council approval, substituting the originally-referenced NTA memorandum, dated March 13, 2019, to a different NTA memorandum, dated July 22, 2019, effectively increasing the maximum unit count on the development from 45 to 134; and

WHEREAS the tube counts used to measure traffic on Milky Way Drive were collected in March of 2020, at least two years prior to site plan approval, and 8 months prior to the site plan application submission; and

WHEREAS in accordance with the restrictive covenant signed on June 9, 2000, the emergency access granted by Austin Christian Fellowship lacks prior written consent from the River Place HOA required to allow driveway access to River Place Blvd.

NOW, THEREFORE, BE IT RESOLVED that the Zoning and Platting Commission encourages the Austin City Council

- 1) to pause all clearing and development activity on the property, and
- 2) to publicly vote to accept or reject the changes to the restrictive covenant made by the staff, and
- 3) to instruct staff to deny any site plan in excess of 30 residential units until the developer proves compliance with all of the conditions of zoning.

Date of Approval: _____

Record of the vote:

Attest: _____

ORDINANCE NO. 20191031-044

AN ORDINANCE REZONING AND CHANGING THE ZONING MAP FOR THE PROPERTY LOCATED AT MILKY WAY DRIVE FROM DEVELOPMENT RESERVE (DR) DISTRICT TO TOWNHOUSE AND CONDOMINIUM RESIDENCE-CONDITIONAL OVERLAY (SF-6-CO) COMBINING DISTRICT.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. The zoning map established by Section 25-2-191 of the City Code is amended to change the base district from development reserve (DR) district to townhouse and condominium residence-conditional overlay (SF-6-CO) combining district on the property described in Zoning Case No. C14-2018-0124, on file at the Planning and Zoning Department, as follows:

32.429 acres of land (approximately 1,412,611 sq. ft.) in the R.L. Preece Survey No. 2, Abstract No. 2269, Travis County, Texas, said 32.429 acres of land being more particularly described by metes and bounds in **Exhibit “A”** incorporated into this ordinance (the “Property”),

locally known as Milky Way Drive in the City of Austin, Travis County, Texas, generally identified in the map attached as **Exhibit “B”**.

PART 2. The Property within the boundaries of the conditional overlay combining district established by this ordinance is subject to the following conditions:

- A. A subdivision or development on the Property shall have two access streets or access points to an external street, unless the Development Services Department director determines that the development includes not more than 30 residential units, or the director determines that:
 - 1. an additional emergency access point to an external street is provided; and
 - 2. the completed development or uses of the Property, considered cumulatively with all existing or previously authorized development and uses, generate traffic that will not exceed 1,200 trips per day on Milky Way Drive as measured by the tube count taken at the time of site plan or the number in the ITE Trip General Manual, whichever is greater.

B. Access streets on the Property shall:

1. have a minimum width of 20 feet and a clear height of 13 feet 6 inches;
2. be designed to accommodate the loads and turning radii for fire apparatus;
3. have a gradient negotiable by the fire apparatus as required by the adopted fire code; and
4. include a surface material acceptable to the Fire Marshal that would allow for the passage of emergency service vehicles and fire apparatus.

C. Access streets and other public or private streets within the Property shall be reviewed and approved by the Fire Marshal for the appropriate travel lane width of both the arrival of emergency vehicles and the evacuation of residential vehicles.

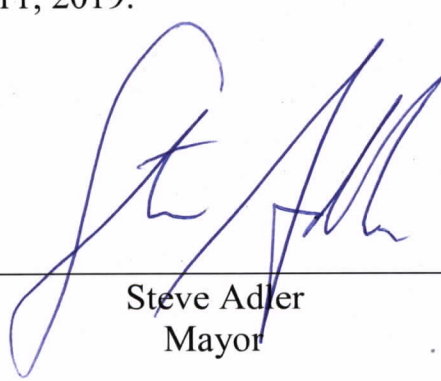
PART 3. Except as specifically restricted under this ordinance, the Property may be developed and used in accordance with the regulations established for the townhouse and condominium residence (SF-6) base district and other applicable requirements of the City Code.

PART 4. This ordinance takes effect on November 11, 2019.

PASSED AND APPROVED


_____, 2019

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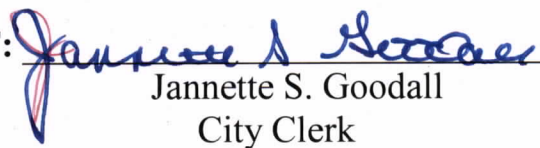
Steve Adler
Mayor

APPROVED:



Anne L. Morgan
City Attorney

ATTEST:



Jannette S. Goodall
City Clerk



RESTRICTIVE COVENANT CORRECTION AFFIDAVIT

STATE OF TEXAS
COUNTY OF TRAVIS

Recitals:

This Restrictive Covenant Correction Affidavit ("the Affidavit") is to be recorded pursuant to Section 5.028 of the Texas Property Code to correct a clerical error in the date of the Neighborhood Traffic Analysis ("NTA") memorandum referenced in Condition 1 of the original instrument attached as **Exhibit "1"** to the Affidavit ("the Restrictive Covenant"). The date of the NTA memo should correctly read "revised on July 22, 2019".

Other than the stated correction of the NTA memo date, this Affidavit is intended to restate in all respects the Restrictive Covenant, and the effective date of this Affidavit relates back to the effective date of the Restrictive Covenant.

The Affiant, by signing this Affidavit, represents that the Affiant has personal knowledge of the facts relevant to the correction of the original recorded Restrictive Covenant, and that date of the NTA memo was incorrect. The Affiant certifies that notice has been provided to the parties to the original instrument pursuant to Section 5.028 (d)(2) of the Texas Property Code.

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IN WITNESS WHEREOF, Owners have caused this instrument to be executed on
May 14 2020.

AFFLIANT:

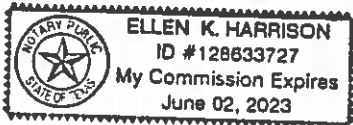
Milky Way Holdings GP, LLC, a Texas limited liability company

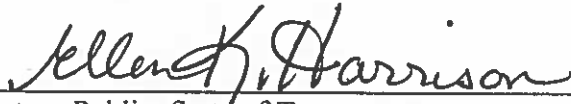
By: Milestone Community Builders, LLC, a Texas limited liability company, its manager

By: 
Garrett S. Martin, President

THE STATE OF TEXAS §
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COUNTY OF TRAVIS §

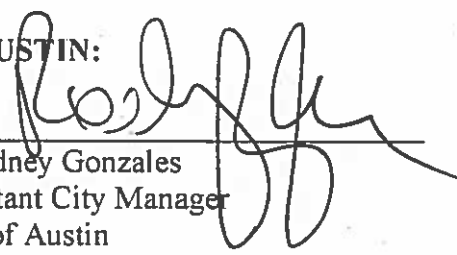
This instrument was acknowledged before me on this the 14th day of May 2020,
by Garrett S. Martin, as President of Milestone Community Builders, LLC, a Texas limited liability
company, manager of Milky Way Holdings, GP, LLC, a Texas limited liability company, on behalf
of said company.



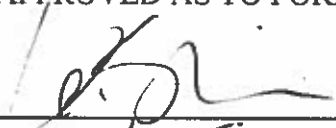

Notary Public, State of Texas

CITY OF AUSTIN:

By:


J. Rodney Gonzales
Assistant City Manager
City of Austin

APPROVED AS TO FORM:


Name: Lee Simmons
Assistant City Attorney
City of Austin

THE STATE OF TEXAS

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COUNTY OF TRAVIS

This instrument was acknowledged before me on this the 11th day of August, 2020, by J. Rodney Gonzales, as Assistant City Manager of the City of Austin, a municipal corporation, on behalf of said municipal corporation.





Notary Public, State of Texas

EXHIBIT 1



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Zoning Case No. C14-2018-0124

RESTRICTIVE COVENANT

OWNER: Milky Way Holdings GP, LLC, a Texas limited liability company

OWNER ADDRESS: 9111 Jollyville Road, Suite 111
Austin, Texas 78759

CONSIDERATION: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which are acknowledged.

PROPERTY: 32.429 acres of land (approximately 1,412,611 sq. ft.) in the R.L. Preece Survey No. 2, Abstract No. 2269, Travis County, Texas, said 32.429 acres of land being more particularly described by metes and bounds in Exhibit "A" incorporated into this covenant.

WHEREAS, the Owner of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions;

NOW, THEREFORE, it is declared that the Owner of the Property, for the consideration, shall hold, sell, and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant ("Agreement"). These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, its heirs, successors, and assigns.

1. Development on the Property is subject to the recommendations contained in the Neighborhood Traffic Analysis ("NTA") memorandum from the Land Use Review-Transportation Section of the Development Services Department (the "Department"), dated March 13, 2019. The NTA memorandum shall be kept on file at the Department.
2. Exterior walls of dwelling units on the Property shall be constructed with one of the following materials:
 - A. Materials approved by the Fire Marshal for not less than 1-hour fire resistance-rated construction on the exterior side.
 - B. Non-combustible materials approved by the Fire Marshal.
 - C. Ignition-resistant or factory treated materials on the exterior side of a building or structure on the Property.

3. Wildfire fuels in the area up to 30' from any structure on the Property:
 - A. Trees must maintain a minimum of 18 feet between crowns and be pruned to a height of 10' from the ground or 1/3 the height of the tree crown, whichever is less.
 - B. Lawns, native grasses and other vegetation should be limited in height.
4. Wildfire fuels in the area up to 100' from any structure on the Property:
 - A. Trees must maintain a minimum 12 feet between crowns (or 30' between the crown of a group of trees) and be pruned to a height of 10' from the ground or 1/3 the height of the tree crown, whichever is less.
 - B. Lawns, native grasses, and other vegetation should be limited in height.
5. A water supply source available for use on the Property shall meet the requirements of the 2015 IFC with amendments as adopted by the City of Austin.
6. If any person or entity shall violate or attempt to violate this Agreement, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such Agreement, to prevent the person or entity from such actions, and to collect damages for such actions.
7. If any part of this Agreement is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this Agreement, and such remaining portion of this Agreement shall remain in full effect.
8. If at any time the City of Austin fails to enforce this Agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
10. This Agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin and (b) by the Owner of the Property, or a portion of the Property, subject to the modification, amendment, or termination at the time of such modification, amendment or termination.

EXECUTED this the 31ST day of OCTOBER, 2019.

Owner:

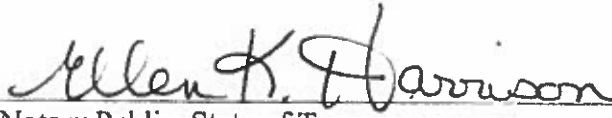
Milky Way Holdings GP, LLC, a Texas limited liability company

By: Milestone Community Builders, LLC, a Texas limited liability company, its manager

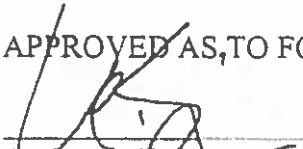
By: 
Garrett S. Martin, President

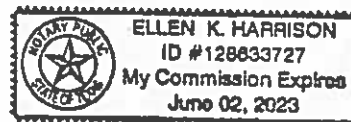
THE STATE OF TEXAS §
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COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 31ST day of OCTOBER 2019, by Garrett S. Martin, as President of Milestone Community Builders, LLC, a Texas limited liability company, manager of Milky Way Holdings, GP, LLC, a Texas limited liability company, on behalf of said company.


Notary Public, State of Texas

APPROVED AS TO FORM:


Assistant City Attorney
City of Austin



RESTRICTIVE COVENANT

THE STATE OF TEXAS §
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 COUNTY OF TRAVIS §

KNOW ALL MEN BY THESE PRESENTS

THIS RESTRICTIVE COVENANT (the "Restrictive Covenant") is made by **FIRST RIVER PLACE RESERVE, LTD.**, a Texas limited partnership ("FRPR") and is as follows

RECITALS

WHEREAS, FRPR is the owner of that certain tract of property consisting of approximately 2 1203 acres of land located at the intersection of Riverplace Blvd and Bonaventure Drive and being more particularly described in Exhibit "A" attached hereto and incorporated herein for all purposes (the "Property"),

WHEREAS, FRPR desires to impress certain restrictive covenants upon the Property, and

WHEREAS, such restrictions shall inure to the benefit of and bind FRPR and the owner of the Property, and their successors and assigns, and this Restrictive Covenant shall run with the land, encumbering the Property and each and every part thereof

NOW, THEREFORE, for and in consideration of the above promises and covenants set forth herein, FRPR states as follows

1 In no circumstance or event shall vehicular access be permitted from River Place Boulevard, a public thoroughfare, over, across, or to the Property. Unless consented to in advance and in writing by the River Place Residential Community Association, Inc., (i) no curb cut or driveway shall be constructed along River Place Boulevard adjacent to the Property; and (ii) no portion of the Property may be used to access River Place Blvd. In addition no sign, fence or any other improvements shall be erected upon the Property without the advanced written consent, which shall not be unreasonably withheld, of the River Place Residential Community Association, Inc. Notwithstanding any provision set forth herein to the contrary, access from River Place Boulevard necessary or required to service the Property shall only be permitted if the Property is developed in its entirety for single-family residential use, and the then owner of the Property complies with all applicable state, county, city, or governmental requirements regarding the location and construction of such access

2 Assignment FRPR may assign, in whole or in part, any of its privileges, exemptions, rights and duties under this Restrictive Covenant to River Place Residential Community Association, Inc.

3 Enforcement or Restriction If any person, persons, corporation or entity of any other character shall violate or attempt to violate the restriction set forth in Paragraph 1 hereof, it shall be lawful for FRPR, its successors or assigns, to prosecute proceedings at law or in equity against said person, entity or anyone violating or attempting to violate such restriction. Any action taken to enforce the restriction set forth in Paragraph 1 hereof shall be at the sole cost and expense of the party initiating such action.

4 Attorney's Fees In the event of any controversy, claim, or dispute relating to this instrument or the breach thereof, the prevailing party shall be entitled to recover from the non-prevailing party reasonable expenses, attorney's fees, and costs.

5 Waiver Failure to enforce the covenants and restrictions contained herein shall not constitute a waiver of the right of enforcement.

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6 Miscellaneous The provisions contained herein shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular All captions and titles used in the foregoing agreement and covenant are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any of the paragraphs hereof

Amendment This instrument may be modified, amended or terminated only by joint action of FRPR, its successors or assigns and the then owner of the Property

Executed to be effective this the 5th day of June, 2000

ACCEPTED

FRPR:

REALTEX VENTURES, INC.
A Texas corporation

FIRST RIVER PLACE RESERVE, LTD.,
a Texas limited partnership

BY

James D. Mills
James D. Mills
President

By

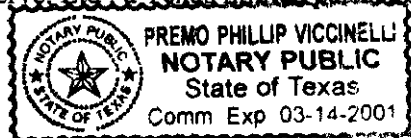
TEXAS HIGHLANDS, INC , a Texas corporation
its General Partner

By

John W. Gravenor
John W Gravenor, Authorized Agent

THE STATE OF TEXAS §
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This instrument was acknowledged before me on June 9, 2000 by John W Gravenor, Authorized Agent of Texas Highlands, Inc , a Texas corporation, General Partner of First River Place Reserve, Ltd, a Texas limited partnership, on behalf of said corporation and partnership



(seal)

[Signature]
Notary Public Signature

After Recording, Return to

Robert D Burton
Armbrust Brown & Davis, L L P
100 Congress Avenue, Suite 1300
Austin, Texas 78701
#83315/DATE \@ "MMddy"/33902 0100

EXHIBIT "A"

BEING 2 1203 ACRES OF LAND OUT OF AND A PART OF THE R. L. PREECE SURVEY NO. 2 IN TRAVIS COUNTY, TEXAS, SAID 2 1203 ACRES OF LAND BEING ALSO OUT OF AND A PART OF THAT CERTAIN 1441.33 ACRE TRACT CONVEYED UNTO FIRST RIVER PLACE PRESERVE, LTD. BY SPECIAL WARRANTY DEED RECORDED IN VOLUME 11379, PAGE 0379 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS, AND THAT CERTAIN 10 FOOT STRIP CONVEYED UNTO FIRST RIVERPLACE RESERVE LIMITED BY SPECIAL WARRANTY DEED RECORDED IN VOLUME 12077, PAGE 0009 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS, SAID 2 1203 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS

BEGINNING at a 1/2" diameter iron pin found at the point-of-tangency on the south right-of-way line of Bonaventure Drive of the return curve at the intersection of said south right-of-way line of Bonaventure Drive and the east right-of-way line of River Place Blvd., according to the subdivision plat of River Place Section One as recorded in Volume 84, Page 103A of the Plat Records of Travis County, Texas,

THENCE with the north line hereof and the south right-of-way line of said Bonaventure Drive, S 52°-38'-49" E 141.03 feet to a 1/4" diameter iron pin set at the southeast corner of Bonaventure Drive right-of-way on the west line of that certain 0.021 of an acre tract conveyed unto Travis County, Texas by Street Deed recorded in Volume 10672, Page 0811 of the Real Property Records of Travis County, Texas, said iron pin being also on the west line of said 10 foot strip conveyed unto First Riverplace Reserve Limited by Special Warranty Deed recorded in Volume 12077, Page 0009 of the Real Property Records of Travis County, Texas;

THENCE with the west and south line of said 0.021 of an acre tract, the following two (2) calls,

- 1 With the west line of said 10 foot strip, S 29°-34'-00" W 5.04 feet to a 1/4" diameter iron pin found at the southwest corner of said 0.021 of an acre tract,
- 2 Crossing said 10 foot strip, S 52°-40'-19" E 10.10 feet to a 1/4" diameter iron pin set for the northeast corner hereof at the southeast corner of said 0.021 of an acre tract on the east line of said 10 foot strip of land and the west line of that certain 5.00 acre tract conveyed unto Realtex Ventures, Inc. by Deed recorded in Volume 13009, Page 2610 of the Real Property Records of Travis County, Texas, said iron pin set being also on the west line of that certain original 39.605 acre tract conveyed unto Robert V. Thurmond, Jr. by Deed recorded in Volume 2722, Page 486 of the Deed Records of Travis County, Texas;

THENCE with the east line hereof, the east line of said 10 foot strip and the west line of said 5.00 acre tract, along and near an existing wire fence, S 29°-43'-27" W 667.90 feet to a 1/2" diameter iron pin found at the southwest corner of said 5.00 acre tract on the west line of said 39.605 acre Thurmond tract,

THENCE continuing with the east line hereof, the east line of said 10 foot strip and the west line of said 39.605 acre Thurmond tract, along and near said fence, S 29°-44'-25" W 158.77 feet to a 1/4" diameter iron pin found at the southeast corner hereof,

THENCE with the south line hereof, crossing said 10 foot strip, N 60°-21'-52" W 10.19 feet to a 1/4" diameter iron pin found on the curving east right-of-way line of said River Place Blvd. for the southwest corner hereof,

THENCE with the west line hereof and the east right-of-way line of said River Place Blvd., the following six (6) calls

- 1 With a curving line to the left with a radius of 400 feet, a chord that bears N 21°-20'-22" E 128.02 feet to a 1/4" diameter iron pin found at a point-of-tangency,
- 2 N 12°-19'-04" E 409.43 feet to a 1/4" diameter iron pin set at a right angle offset,
- 3 S 77°-43'-38" E 5.00 feet to a 1/4" diameter iron pin set at a right angle offset and point-of-curvature to the right,
- 4 With a curving line of the right with a radius of 665 feet, a chord that bears N 24°-48'-47" E 288.78 feet to a 1/4" diameter iron pin set at a point of tangency,
- 5 N 37°-21'-11" E 33.87 feet to a 1/4" diameter iron pin set at a the point-of-curvature of said return curve at the intersection of said Bonaventure Drive,
- 6 With a curving line to the right with radius of 15 feet, a chord that bears N 82°-21'-11" E 21.21 feet to the Point-of-Beginning

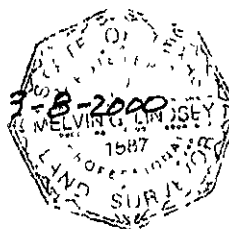
As surveyed by

POINT-LINE SERVICES, INC.

Melvin G. Lindsey
Melvin G. Lindsey, RPLS #1587

GF No 99100265
Job No 21741099

Point Line 2000 Plsknotes



FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

06-20-2000 12 30 PM 2000095338
DAVILAM \$15 00
DANA DEBEAUVOIR, COUNTY CLERK
TRAVIS COUNTY, TEXAS

Recorders Memorandum-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

Unofficial Document