



DATE: 18 June 2020

**TO: City Council
Planning Commission**

FROM: Oak Hill Association of Neighborhoods

RE: C14-2020-0023 and C14-85-288.56(RCA)

To Whom It May Concern:

The Oak Hill Association of Neighborhoods, at the June 17 2020 membership meeting, unanimously approved a motion in support of the agreement between Mountain Shadows Cove Owners Association and the applicant regarding approval of C14-2020-0023 and C14-85-288.56(RCA) as agreed upon by neighborhood stakeholders and as articulated in the attached documents.

If you have any additional questions, please email President@OHAN.org.

Cynthia Wilcox, President, OHAN

18 June 2020

Date

cc: Kate Clark, AICP, LEED AP, Senior Planner, City of Austin Planning & Zoning Department

June 10, 2020

Kate Clark

Senior Planner

City of Austin Planning and Zoning Department

P.O. Box 1088, Austin, Texas, 78767

Via email: kate.clark@austintexas.gov

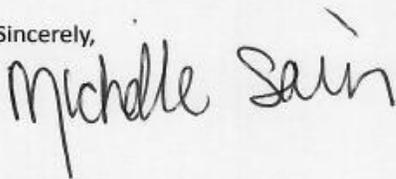
RE: File Number C14-2020-0023 and C14-85-288.56(RCA)

Dear Ms. Clark,

Based upon additional discussions and conditions agreed to with the developer of the proposed project, the Mountain Shadows Cove Neighborhood supports the rezoning and restrictive covenant amendment and is no longer in opposition to the proposed project. The Developer Has Agreed to the Attached Declaration of Covenants, Conditions and Restrictions the Mountain Shadows Cove Owners Association Members have agreed to.

Thank you for your assistance in this matter. If you need additional information, please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Michelle Sain". The signature is written in a cursive style with a large initial "M".

Michelle Sain

President of Mountain Shadows Cove Owners Association in Oak Hill, Austin

512-731-2330 michellesain@gmail.com

8809 A & B Mountain Shadows Cove, Austin, TX 78735

Within 200 feet of the subject tract for Case # C14-2020-0023

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

This Declaration of Covenants, Conditions, and Restrictions (this “Declaration”) is made as of the _____ day of _____, 2020, by Legacy DCS, LLC a Texas limited liability company (the “Declarant”)

RECITALS

WHEREAS, Declarant is the owner of the approximately 22 acres of land more particularly described on Exhibit “A” and “A-1” attached hereto and referred to as the “Property”;

WHEREAS, Declarant currently intends to develop a Multifamily Residence project on the Property (the “Project”) thereon consistent with the conceptual plan attached as Exhibit “B” (the “Concept Plan”), and is seeking LR-MU-NP zoning (Neighborhood Commercial-Mixed Use- Neighborhood Plan) and MF-1-NP zoning (Multifamily Residence Limited Density-Neighborhood Plan) from the City of Austin for the Project pursuant to City of Austin Zoning Case Number C14-2020-0023 (the “Zoning Case”) and associated amendment to an existing City of Austin restrictive covenant pursuant to City of Austin Restrictive Covenant Amendment Case Number C14-85-288.56(RCA) (the “Restrictive Covenant Amendment Case”) ; and

WHEREAS, in consideration of support by the Mountain Shadows Cove Neighborhood Association, Inc., a Texas nonprofit corporation (“MSC”) for the Zoning Case and the Restrictive Covenant Amendment Case, Declarant has agreed to establish certain restrictive covenants, which are described herein, in connection with the development of the Project.

NOW, THEREFORE, for and in consideration of MSC’s support before the City of Austin Planning Commission and City Council as described above, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned Declarant agrees to hold, sell and convey the Property subject to the following covenants, conditions, and restrictions, which are impressed upon the Property by this Declaration.

DECLARATION

I. Covenants, Conditions, and Restrictions

1.1 Development Standards. Subject to all of the terms and conditions of this Declaration, development on the Property consistent with the Concept Plan shall comply with the following requirements.

A. Access to Mountain Shadows Drive. The Project shall take access from Mountain Shadows Drive as extended from Highway 71 West into the Project as generally shown on the Concept Plan. Declarant may be required by the City of Austin to dedicate right-of-way for the future extension of Mountain Shadows Drive from Highway 71 West to the terminus of the existing Mountain Shadows Drive, however, in no event shall Declarant seek to construct the future extension of Mountain Shadows beyond the Project entrance noted above unless required by the City of Austin for emergency access. Nevertheless, the Project shall not take access to any portion of Mountain Shadows Drive except as shown on the Concept Plan.

B. Access to Sky Mountain Drive. In association with the development of the Project on the Concept Plan, Declarant shall seek to vacate the unconstructed portion of the City of Austin right-of-way for Sky Mountain Drive that is within the boundary of the Project as shown on the survey attached as Exhibit "C" and labeled as "[Q]" (the "Survey") unless required by the City of Austin for emergency access. The constructed portion of Sky Mountain Drive from Mountain Shadows Drive as shown on the Concept Plan shall not be vacated, however Declarant will not take access to the constructed portion of Sky Mountain Drive for the Project unless required by the City of Austin for emergency access.

C. Multifamily Building Location. A building used for Multifamily Residence use as defined by Chapter 25-2 of the Austin City Code as of the date hereof, may not be closer than 100 feet from the existing portion of Mountain Shadows Drive as generally shown on the Concept Plan.

D. Construction Access. All vehicles related to construction of the Project shall take access from Highway 71 West or from the portion of Mountain Shadows Drive that will be extended from Highway 71 West to the Project entrance with the exception of necessary and required improvements that may include, but are not limited to items such as utilities, trails, sidewalks, or other work that cannot reasonably be accessed from Highway 71 West or as required by the City of Austin.

E. Subparts A, B, C or D above shall be null and void if the Property is developed for a use permitted in SF-6 or less intense zoning (as such zoning categories exist on the date hereof).

F. Lighting. All outdoor lighting fixtures above 100 watts shall be hooded and shielded to reduce light pollution. All outdoor lighting fixtures shall be hooded, shielded, or screened to eliminate light source visibility from the single-family residences which are adjacent to the northern boundary line of the Property and across Mountain Shadows Drive. The maximum allowable wattage of any single outdoor fixture is 400 watts. The uniformity ratio of average to minimum illumination at ground level will be no more than 8:1, except that building fronts and ground signage may be floodlit from the ground, provided that any such floodlights are aimed at improvements on the Property and not at any adjacent single-family residence.

II. Conditions on Effect; Exhibits as Examples

2.1 Zoning Case. Notwithstanding any other provision of this Declaration to the contrary, the agreements of Declarant reflected herein are conditioned upon final approval (i.e., third reading) of the Zoning Case and of the Restrictive Covenant Amendment Case by the City of Austin City Council in a form acceptable to Declarant.

2.2 Exhibits. Any Concept Plan, drawing, or depiction of the Project attached hereto as an exhibit is attached only for such purpose, and does not necessarily constitute the final design of the Project as it will be built (unless and to the extent this Declaration expressly provides otherwise). Without limiting the foregoing, but subject to the limitations of Article I of this Declaration, neither Declarant nor any developer is required to build any building, structure or improvement, as may be shown on an exhibit hereto.

III. General Provisions

3.1 Enforcement of Declaration. If Declarant shall violate this Declaration, it shall be lawful for the MSC as its sole and exclusive remedy, to enforce this Declaration through a claim for actual damages or injunctive relief against the Declarant. Notwithstanding the foregoing, the MSC may not enforce its remedies until after it has delivered a written notice to the Declarant, informing it of the alleged violations of this Declaration. Within thirty (30) days after receiving such a notice of violation, the Declarant shall send a written response to the MSC informing it of what actions, if any, it plans to take in order to remedy the alleged violation(s). If the Declarant notifies the MSC that it intends to cure the alleged violation, then the Declarant shall have a reasonable period of time, not to exceed ninety (90) days from the date of notice (or if such violation can not be cured within ninety (90) days despite the Declarant's commercially reasonable efforts, then as long as reasonably necessary) in which to cure the alleged violation, during which period, if the Declarant timely commences the cure and is using commercially reasonable efforts to cure the violation, then the MSC shall not enforce any remedy. If the Declarant fails to cure the default within the 90-day or extended period, as applicable, then the MSC may enforce its remedies as provided herein. The prevailing party in any litigation hereunder shall be entitled to reasonable attorney's fees actually incurred in the enforcement or defense of this Declaration. Except for Declarant and the MSC and their respective successors and assigns, this Declaration shall not be enforceable by any other person or entity.

3.2 Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be sent by either facsimile, with verification that the facsimile has been received, or mailed by certified or registered mail, postage prepaid, overnight delivery by a national delivery company, or express mail, addressed as follows:

If to Declarant:

Legacy DCS, LLC

Attn: Cass Brewer, Managing Member

205 Wild Basin Road South, Bldg. One

Austin, Texas 78746

Phone: (512) 848-7221

Email: cassbrewer@legacydcs.com

If to MSC: Mountain Shadows Cove Neighborhood Association

c/o Current President of Association

Austin, Texas 78___

3.3 Binding Effect. It is intended that the provisions of this Declaration shall run with the land and be binding upon Declarant's successors and assigns.

3.4 Modification. This Declaration may be modified, amended, or terminated only by joint action of both (a) the MSC, or any successor association, and (b) by the fee simple owner(s) of at least seventy-five percent (75%) of the gross land area of the Property at the time of such modification, amendment or termination.

3.5 Partial Invalidity. If any part of this Declaration is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this Declaration, and such remaining portion of this Declaration shall remain in full effect.

3.6 Controlling Law. This Declaration has been made and entered into under the laws of the State of Texas, and said laws shall control the interpretation thereof.

3.7 No Third Party Beneficiary. The provisions of this Declaration are for the exclusive benefit of the MSC or any successor association, and not for the benefit of any third person, nor shall this Declaration be deemed to have conferred any rights, express or implied, upon any third person the public.

DECLARANT:

Legacy DCS, LLC

a Texas limited liability company

By: _____

Name: _____

Title: Managing Member

STATE OF TEXAS §

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COUNTY OF TRAVIS §

This instrument was acknowledged before me this ____ day of _____, 2020, by _____, Managing Member of Legacy DCS, LLC, a Texas limited liability company on behalf of said limited liability company.

Notary Public, State of Texas

Exhibit "A" and "A-1" Property

Exhibit "B" Concept Plan

Exhibit "C" Survey

AGREED TO AND ACCEPTED:

MOUNTAIN SHADOWS COVE NEIGHBORHOOD ASSOCIATION

By: _____

Name: _____

Title: _____

Date: _____

STATE OF TEXAS §

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COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the _____ day of _____, 2020, by _____, as _____ of the Mountain Shadows Cove Neighborhood Association, a Texas nonprofit corporation, on behalf of said corporation.

Notary Public, State of Texas

Exhibit "A"

Property Description

Lots 1 and 2, Cedar Oaks Subdivision, a subdivision in Travis County, Texas according to the plat or map thereof recorded in Volume 60, Page 17 of the plat records of Travis County, Texas; and Ridgelea Properties, Inc., "Tract 7", Volume 12843, Page 1479, Deed Records of Travis County, Texas, attached and incorporated as Exhibit "A-1"

Block M and Q, Mountain Shadows Subdivision, a subdivision in Travis County, Texas according to the plat or map thereof recorded in Volume 25, Page 2 of the plat records of Travis County, Texas

Block K, Mountain Shadows Subdivision, a subdivision in Travis County, Texas according to the plat or map thereof recorded in Volume 25, Page 2 of the plat records of Travis County, Texas

Block L and P, Mountain Shadows Subdivision, a subdivision in Travis County, Texas according to the plat or map thereof recorded in Volume 25, Page 2 of the plat records of Travis County, Texas

Block H, Mountain Shadows Subdivision, a subdivision in Travis County, Texas according to the plat or map thereof recorded in Volume 25, Page 2 of the plat records of Travis County, Texas

Exhibit "A-1"

TRACT 7

A tract of land being a 2.92 acre tract or parcel of land, more or less, out of the A. Bowles Survey # Ninety-three (93), Abstract One Hundred One (101), and the Evan Williams Survey # Two Hundred Eighty-Four (284), Abstract Eight Hundred Thirty (830), and situated in Travis County, Texas, being also a portion of that certain tract or parcel of land conveyed to Helen Rice by deed recorded in Vol. 3266, Page 2310 of the Deed Records of Travis County, Texas, said 2.92 acres described by metes and bounds as follows:

Beginning at an iron stake found under fence in the north right-of-way line of U.S. Highway 71 far southeast corner hereof, said point being also the southeast corner of Lot Two (2) of Cedar Oaks Subdivision, a subdivision in Travis County, Texas according to the map or plat thereof recorded in Book Sixty (60), Page Seventeen (17) of the Plat Records of Travis County, Texas;

Thence: S 59 deg 29 min E with the average of fence in the north right-of-way line of said Hwy. 71, 50.0 ft. to a steel pin set under fence for southeast corner hereof;

Thence: N 31 deg. 15 min 30 sec E, 852.43 ft. to a steel pin set under fence in north line of said Rice tract being also in the south line of Lot 1, Mountain Shadows Subdivision, a subdivision in Travis County, Texas, according to the map or Plat thereof recorded in Book Twenty-Five (25), Page Two (2) of the Plat Records of Travis County, Texas;

Thence: N 61 deg 09 min 30 sec W with the average of fence in south line of said Lot 1 at 255 ft. passing the east right-of-way line of Mountain Shadows Drive (50' r.o.w.) 305.90 ft. in all to an iron stake found under fence corner for northwest corner hereof;

Thence S 29 deg 39 min 30 sec W with average of fence along west line of said Rice tract and east line of an 11.29 acre tract of land conveyed to Donald Max by deed recorded in Vol. 3792, Page 65, of the Deed Records of Travis County, Texas, 331.45 ft. to a steel fin found under fence for southwest corner hereof and northwest corner of said Lot Two (2) Cedar Oaks Subdivision.

Thence: S 59 deg 29 min E with North line of said Lot Two (2) 210.0 ft. to a steel pin found for inside corner hereof and northeast corner of said Lot Two (2);

Thence: S 31 deg 05 min W along East line of said Lot Two (2) and west line hereof, 511.30 ft. to an iron stake and point of beginning of this survey containing 2.92 acres of land, more or less. As surveyed on the ground May 30, 1975 by Chase Baromeo (sic), Jr., Registered Professional Engineer.

Being the same property conveyed to Robert O. Hammack by instrument of record in Volume 5180, Page 977, Deed Records of Travis County, Texas.

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Exhibit "B" – Concept Plan



SKY MOUNTAIN
AUSTIN, TX • LEGACY

KELLY GROSSMAN
ARCHITECTURE, PLANNING & LANDSCAPE ARCHITECTURE
11000 N. MOORE AVENUE, SUITE 100, DALLAS, TEXAS 75243 • 972.382.1000

