



Dyana Limon-Mercado

Dyana Limon-Mercado, County Clerk
Travis County, Texas

Jul 24, 2023 03:05 PM Fee: \$50.00

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Electronically Recorded

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

DECLARATION OF WALK-THROUGH EASEMENT

STATE OF TEXAS §

COUNTY OF TRAVIS §

AGREEMENT made on the day, month and year hereinafter written, by **J. LLOYD MOORE** of Travis County, Texas ("Declarant"), upon the following terms and provisions, and thus

WITNESSETH:

WHEREAS, Declarant owns Unit 1, together with the undivided interest in and to the General Common Elements and Limited Common Elements appurtenant thereto, of PHASE ONE, THE PENINSULA ON LAKE AUSTIN, a condominium project in Travis County, Texas, according to the Amended and Restated Declaration for Condominium Regime (together with all amendments, the "**Declaration of Condominium**"), recorded in Volume 12441, Page 1217 of the Real Property Records of Travis County, Texas (the "**Phase One Unit 1**");

WHEREAS, Section 4.1(d) of the Declaration of Condominium describes certain Phase One Limited Common Elements for the exclusive use of Units 1 and 2; and

WHEREAS, subject to the terms and conditions of this Declaration of Walk-Through Easement, Declarant wishes to declare and establish, and grant and convey, for the benefit of owners of Units described in the Declaration of Condominium ("**Owner(s)**") and for the benefit of the Peninsula on Lake Austin Common Area Council of Owners, Inc. (the "Common Area Council") a non-exclusive, perpetual easement only to walk-through, over and across the portions of access ways currently existing within the Phase One Limited Common Elements. The designated walk-through area is identified by cross-hatching on Exhibit A attached hereto (the "Easement Area").

NOW, THEREFORE, for and in consideration of the mutual agreements contained herein and other good and valuable consideration, it is agreed as follows:

1. All words and terms used and capitalized herein but not expressly defined herein shall have the meaning ascribed to them in the Declaration of Condominium.
2. Subject to the terms and conditions of this Declaration of Walk-Through Easement, including the restrictions listed in Exhibit B attached hereto, Declarant for himself and his heirs,

legal representatives, successors, and assigns has and by these presents does declare and establish, and grant and convey, for the benefit of each Owner a non-exclusive, perpetual walk-through easement over and across the Easement Area for pedestrian uses and purposes only (the "Access Easement").

3. The Access Easement is not intended by Declarant, and it is not and shall not be, an easement declared and granted for the public's benefit.

4. Declarant reserves for himself and his heirs, legal representatives, successors, and assigns the right (a) to use the Easement Area for any uses and purposes not inconsistent with the uses and purposes of the Access Easement; and (b) to maintain the Easement Area to the extent required by the Declaration of Condominium. The use of the Access Easement shall not unreasonably or materially interfere with or restrict the use by and enjoyment of Declarant of the Phase One Limited Common Elements, and Declarant's use of the Access Easement area shall not unreasonably or materially interfere with Owners' and the Common Area Council's use of the Access Easement pursuant to the terms hereof.

5. The Access Easement shall be appurtenant to Units and shall be a burden against Phase One Unit 1. The Access Easement and all rights and privileges appurtenant thereto shall, subject to the limitations set forth herein, constitute a covenant running with the land.

6. The Access Easement shall not be used by Owners or Occupants if such use creates (a) a public or private nuisance, (b) noise or sounds that could be objectionable to a reasonable person due to intermittence, beat, frequency, shrillness, or loudness, (c) obnoxious odors, or (d) dangerous hazards or conditions.

7. **EXCEPT TO THE EXTENT ARISING OUT OF THE NEGLIGENT ACTS OR OMISSIONS, INTENTIONAL MISCONDUCT, OR ILLEGAL ACTS OF THE INDEMNIFIED PERSON(S) (AS DEFINED BELOW), AND/OR ANYONE FOR WHOM THE INDEMNIFIED PERSON IS LEGALLY RESPONSIBLE, THE COMMON AREA COUNCIL SHALL DEFEND, PROTECT, INDEMNIFY, AND HOLD HARMLESS THE INDEMNIFIED PERSON FROM AND AGAINST ANY AND ALL ACTIONS, INJURIES, PENALTIES, DAMAGES, CLAIMS, COSTS, AND EXPENSES OF ANY NATURE, OR OTHER LIABILITY OF ANY KIND TO THE EXTENT ARISING FROM, OUT OF, OR AS A RESULT OF THE USE, CONDUCT, ACTIONS, OR INACTIONS BY ANY OWNER, THE OCCUPANTS OF SUCH OWNER'S UNIT, OR THE COMMON AREA COUNCIL'S CONTRACTORS AND SERVICE PROVIDERS WITHIN THE ACCESS EASEMENT; AND THE COMMON AREA COUNCIL SHALL PAY ALL COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES INCURRED BY THE INDEMNIFIED PERSON, TO ENFORCE THE RIGHT TO INDEMNITY HEREUNDER (COLLECTIVELY, THE "RIGHT TO INDEMNITY"). THE RIGHT TO INDEMNITY SHALL SURVIVE THE TERMINATION OF THIS DECLARATION OF EASEMENT AND/OR THE SURRENDER OF THE ACCESS EASEMENT TO THE EXTENT THAT THE INDEMNIFIED CLAIM AROSE DURING THE TERM OF THIS EASEMENT, AND THE TERMINATION OF THIS DECLARATION OF WALK-THROUGH EASEMENT AND/OR THE SURRENDER OF THE ACCESS EASEMENT SHALL NOT BE**

CONSTRUED TO RELIEVE THE COMMON AREA COUNCIL OF ITS OBLIGATIONS TO THE INDEMNIFIED PERSON UNDER THIS DECLARATION OF WALK-THROUGH EASEMENT FOR ALL INDEMNIFIED CLAIMS THAT AROSE DURING THE TERM OF THIS EASEMENT. The Common Area Council shall at all times maintain at its expense commercial general liability insurance with at least \$2,000,000 general aggregate limits and otherwise in compliance with Tex. Prop. Code § 82.111 (the “CGL Insurance Policy”) and provide proof of same upon request of any Phase 1 Unit Owner. The Right to Indemnity herein is limited to the extent coverage is provided for indemnification as described in this Paragraph 7 under the CGL Insurance Policy. The term “Indemnified Person(s),” as used herein, means the Owner of Phase One, Units 1 and 2, and such Owner’s heirs, legal representatives, successors, and assigns.

8. In the event of any breach or threatened breach by Declarant or any Owner, as the case may be, of this Declaration of Walk-Through Easement or the covenants stated herein, the non-defaulting party shall be entitled to invoke any right or remedy at law or in equity, or by statute or otherwise, either by suit in equity and/or by action at law, including but not limited to, an action for injunctive relief as a result of any such breach or threat of breach, and/or an action for specific performance, and all rights and remedies shall be cumulative and may be exercised concurrently and whenever and as often as occasion therefor arises, and the exercise of any remedy shall not preclude the simultaneous or later exercise of any other remedy. In the event the Common Area Council fails or refuses to provide proof that the CGL Insurance Policy complies with the provisions of Paragraph 7 hereof and such failure continues beyond ten (10) business days after notice thereof to the Common Area Council’s manager and board president, the Phase One Unit Owner may terminate the Access Easement by giving notice thereof to the Common Area Council.

9. The Access Easement is expressly subject and subordinate to the terms of any and all covenants, conditions, restrictions, and/or encumbrances, whether known or unknown, which are duly filed in the Official Records of Real Property of Travis County, Texas, to the extent the same are valid, apply to, and affect Phase One Unit 1.

10. This Declaration of Walk-Through Easement shall be governed, construed, interpreted, and applied in accordance with the laws of the State of Texas. The state district courts and authorities of Travis County, Texas, and/or the applicable United States District Court with jurisdiction in Travis County, Texas, shall have jurisdiction over all controversies which may arise with respect to the negotiation, execution, interpretation, and compliance with this Declaration of Walk-Through Easement, and the parties hereby waive any other venue to which they may be entitled by virtue of domicile or otherwise.

11. If there is litigation or any other dispute concerning the interpretation or enforcement of this Declaration of Walk-Through Easement or any portion hereof, the prevailing party is entitled to recover from the non-prevailing party its reasonable out-of-pocket law firm fees, court costs, and expenses.

12. No waiver of any rights or consents hereunder shall be deemed effective unless executed in writing by the waiving or consenting party. The waiver by any party hereto of a breach

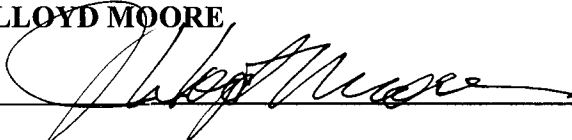
of any provision of this Declaration of Walk-Through Easement shall not operate or be construed as a waiver of any subsequent breach by any party.

13. All provisions of this Declaration of Walk-Through Easement, including the benefits and burdens set forth herein, shall be binding upon and shall inure to the benefit of Declarant and Owners and the Common Area Council and their respective heirs, legal representatives, successors, and assigns. Nothing in this agreement shall affect maintenance, repair and replacement duties related to the wrought iron fencing and access gate/pad located adjacent to the west portion of the access area; such duties lie with the Common Area Council.

IN WITNESS WHEREOF, this instrument is executed this 20th day of July, 2023.

DECLARANT:

J. LLOYD MOORE

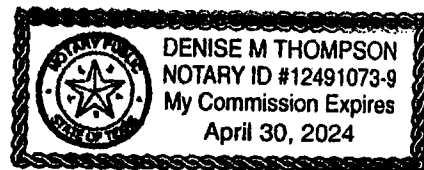


THE STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me on this the 20th day of July, 2023, by J. Lloyd Moore.





Signing to acknowledge consent hereto:

Phase One Unit 2 co-owners:

LISA MARIE YOUNGBLOOD

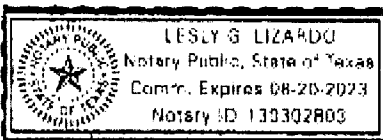
Lisa Marie Youngblood

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 30th day of July, 2023, by Lisa Marie Youngblood.

Lesly G. Lizardo



WESLEY SPENCER YOUNGBLOOD

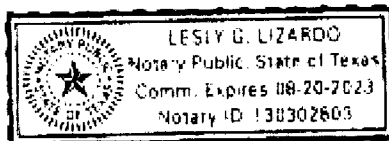
Wesley Spencer Youngblood

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

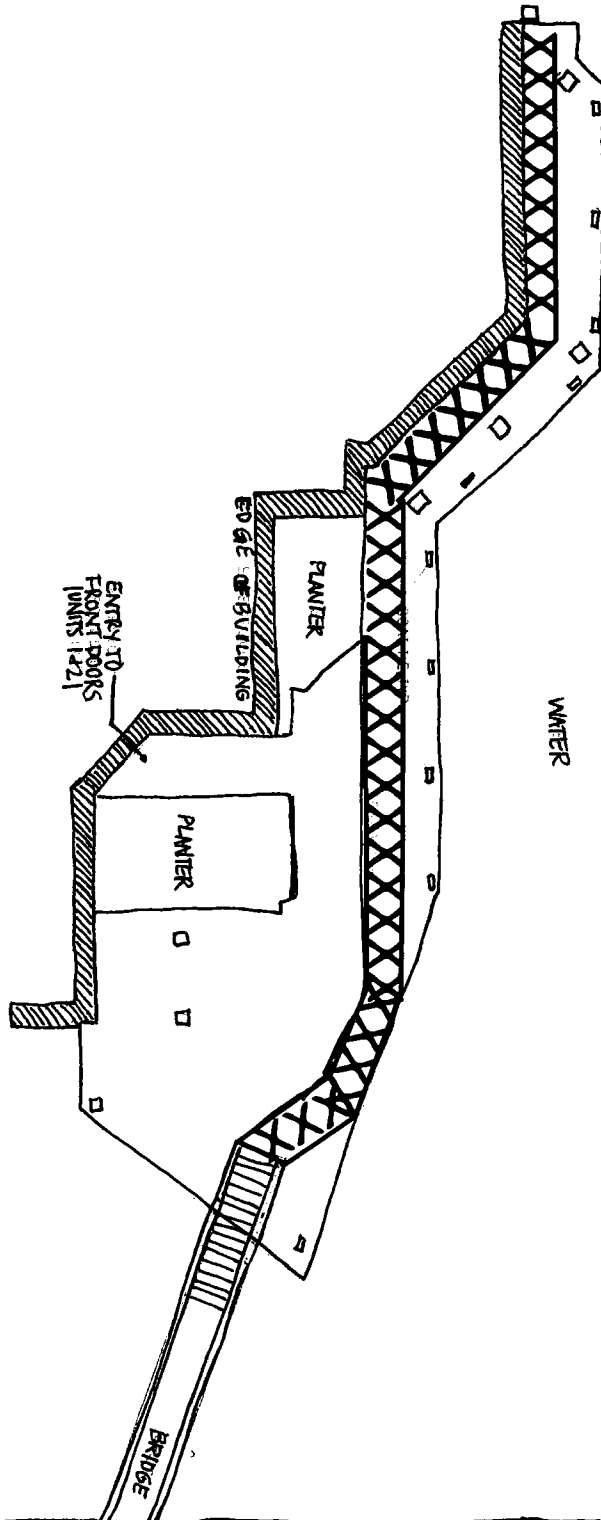
This instrument was acknowledged before me on this the 10th day of July, 2023, by Wesley Spencer Youngblood.

Lesly G. Lizardo



Upon Recordation, Return To:

Marvin D. Nathan, Esq.
Nathan Sommers Jacobs
2800 Post Oak Blvd., 61st Floor
Houston, Texas 77056



1. PROPERTY

EXHIBIT
A

A2.1	MOORE RESIDENCE 2329 WESTLAKE DRIVE <small>DATE: 10/1/10</small>	 BOROWICZ
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EXHIBIT B

Rights, Limitations, and Obligations of the Access Easement

1. The Access Easement may only be used by Unit owners and their accompanied guests, and Common Area Council contractors and service providers, to walk through for ingress and egress to and from the bridge to the peninsula.
2. The Access Easement may only be used by Unit owners and their accompanied guests and Common Area Council contractors and service providers during the hours from sunrise to sunset.
3. Any dogs or other pets or animals, including service animals, must be always on leashes.
4. No standing, sitting, or remaining on the Access Easement is permitted; such easement is for walking through only.
5. Notwithstanding 2. above, in the event that the middle bridge is closed due to required repairs or maintenance to the bridge, provided that the Common Area Council diligently and expeditiously pursues such work and reopens the bridge at the earliest reasonable opportunity, the Access Easement may be used by Unit Owners and their accompanied guests and Common Area Council contractors and service providers 24-hours per day during such period.