

**FIRST AMENDMENT TO NINTH AMENDED AND RESTATED LAKE POINTE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**ORIGINAL
FILED FOR RECORD**

Recitals

WHEREAS, Southwest Travis County, LTD., a Texas Limited Partnership ("Declarant") has previously placed of record that certain Ninth Amended and Restated Lake Pointe Declaration of Covenants, Conditions and Restriction recorded in Document No. 2004120217 of the Official Public Records of Travis County, Texas (the "Declaration");

WHEREAS, Declarant has been requested by the Board of Directors of the Association to effect amendments of the Declaration to provide for improvements to boundary fencing and maintenance of such fencing by West Travis County Municipal District Number 3 and West Travis County Municipal District Number 5, to provide for flexibility in the type of landscaping permitted on Lots that will require decreased water usage; to clarify that the restriction of use of Lots for single family purposes precludes use of any Lot or improvements thereon for short term rentals; to clarify that the grandfathering provisions of the Declaration apply to existing structures but not uses; and to make other technical and substantive changes, all as provided herein; and

WHEREAS, Declarant has the authority, pursuant to Section 9.02 of the Declaration, to effect an amendment of the Declaration,

NOW, THEREFORE, it is declared that the Declaration is amended only as expressly provided herein, and that in all other respects the Declaration shall remain in full force and effect according to its terms.

Definitions

Section 1. The terms used herein, whether in recitals or in any provision hereof, shall have the following meanings:

(a) Any word or term used herein shall have the meaning provided for it in Article I of the Declaration.

(b) The term "First Post-Restated Amendment" shall refer to this First Amendment to Ninth Amended and Restated Lake Pointe Declaration of Covenants, Conditions and Restrictions.

Amendments

Section 2.

Section 3.26 of the Declaration is amended to provide as follows in its entirety:

3.26 Boundary Fences.

(a) On each Lot which is adjacent to: (i) Sonoma Drive, (ii) Resaca Boulevard except in Lake Pointe Section Eight and Lake Pointe Section Nine, (iii) Napa Drive south of Sonoma Drive, and (iv) Bayton Drive south of Sonoma Drive, except for Lots 2 and 5 in Lake Pointe Phase II, boundary fencing (the "Boundary Fencing") shall be erected as provided herein. Boundary Fencing shall also be required on the side of each Lot which is adjacent to Bee Cave Road. Where required, the Boundary Fencing shall be constructed along the entirety of the side of each Lot adjacent to Bee Cave Road, Napa Drive south of Sonoma Drive, and Bayton Drive south of Sonoma Drive. On the side of each Lot adjacent to Sonoma Drive or Resaca Boulevard, the Boundary Fencing shall be constructed from the rear corner of the Lot to a point fifteen feet (15') behind the front building line on the Lot, except that Boundary Fencing on the Resaca Boulevard side of Lot 48 of Lake Pointe Section Seven shall be located as approved by the Architectural Committee, consistent with the adjacent Boundary Fencing. No trees, landscaping or other improvement that would interfere with the inspection, maintenance, repair or replacement of Boundary Fencing shall be installed or constructed within 18 inches of the Lot side of the Boundary Fencing. In the event that an owner of property crossed by the existing Boundary Fencing in Lake Pointe Section Seven conveys to a MUD an easement across such property from the location of the existing Boundary Fencing to Resaca Boulevard for the purpose of maintaining both landscaping in such easement area and the Boundary Fencing, then such MUD may assume the obligation and cost of such maintenance.

(b) On or about May 8, 2008, the Association, MUD 3 and MUD 5 entered into that Lake Pointe Boundary Fence Agreement (the "Replacement Agreement"), a true and correct copy of which is attached hereto as Exhibit "A," for the replacement of the existing Boundary Fencing with masonry fencing approved by the Architectural Committee. The existing Boundary Fencing may be replaced to comply with the requirements of this Declaration on the terms provided in the Replacement Agreement. Prior to performance pursuant to the Replacement Agreement, except as set forth in the following sentence, Boundary Fencing, consisting of stucco textured columns and wood cedar fencing, was constructed in all areas where Boundary Fencing is required in compliance with the standards and specifications provided in the Declaration then in effect. Boundary Fencing on Resaca Boulevard in Lake Pointe Section Seven, comprised of a masonry wall, was constructed approximately 30 feet back from Resaca Boulevard; the design and location of such boundary fencing on Resaca Boulevard in Lake Pointe Section Seven is hereby affirmed and shall be maintained in the same manner as all other Boundary Fencing. (Such existing masonry Boundary Fencing on Resaca Boulevard in Lake Pointe Section Seven is not intended, pursuant to the terms of the Replacement Agreement, to be replaced at the time other Boundary Fencing is replaced pursuant to that agreement).

(c) Pursuant to that certain Assignment and Assumption of Rights (the "Assignment") executed by the Association and each of MUD 3 and MUD 5 (a true and correct copy of which is attached hereto as Exhibit "B"), the Association has assigned to MUD 3 and MUD 5 all of its right and obligation to construct, alter, and maintain the Boundary Fencing and to enter onto property for such purpose, which assignment is to be effective: (i) as to any part of the existing Boundary Fencing other than the masonry Boundary Fencing on Resaca Boulevard in Lake Pointe Section Seven, when such part of such existing Boundary Fencing is replaced pursuant to the Replacement Agreement; and (ii) as to the existing masonry Boundary Fencing on Resaca Boulevard in Lake Pointe Section Seven, on the date the Replacement Agreement was executed. All Boundary Fencing ever constructed with masonry materials (whether currently existing or hereinafter replaced pursuant to the Replacement Agreement) shall be maintained or re-constructed of masonry materials in a design approved by the Architectural Committee. For any part of the Boundary Fencing that was neither constructed of masonry materials prior to the effective date of the Replacement Agreement nor replaced with masonry fencing pursuant to the Replacement Agreement, such Boundary Fencing shall be maintained, replaced or repaired either with materials similar to those being maintained, replaced, or repaired, or masonry materials matching any then existing masonry Boundary Fencing. Pursuant to the Assignment, MUD 3 and MUD 5 shall be responsible for the maintenance and repair of all masonry Boundary Fencing (including the existing Boundary Fencing on Resaca Boulevard in Lake Pointe Section Seven and all Boundary Fencing replaced with masonry fencing pursuant to the Replacement Agreement). It is intended that Boundary Fencing shall have a uniform appearance as seen from any common area of the Property (except as to the different appearance of the Boundary Fencing in Lake Pointe Section Seven).

(d) Until a part of the Boundary Fencing on a Lot is replaced with masonry fencing in conformance with the Replacement Agreement as provided in this Section 3.26, the provisions of Section 3.26 of the Declaration in effect on January 1, 2009 regarding the obligations of each Owner of a Lot to be responsible to treat the sides of all Boundary Fencing boards facing such Lot with a sealant, to replace damaged pickets, and to maintain the appearance of the Boundary Fencing visible from common areas shall continue in effect on the terms provided therein as to any Boundary Fencing not comprised of masonry materials. For the limited purpose provided in this subsection (d), the provisions of Section 3.26 of the Declaration in effect prior to January 1, 2009 are incorporated herein as though fully set forth herein.

(e) An Owner of a Lot on which masonry Boundary Fencing is located shall repair or replace, as appropriate, any Boundary Fencing on the Owner's Lot damaged by the negligence of or willful conduct of the Owner, or the Owner's tenants or invitees. The Owner of each such Lot shall maintain the part of the Boundary Fencing facing the Owner's Lot in a condition and appearance consistent with the overall appearance of such Boundary Fencing. The Owner's

failure to maintain, repair, or replace the fencing as required by this subsection (e) shall be a violation of the Declaration, subject to the Association's powers of enforcement granted by the Declaration, including but not limited to, Section 5.04 (E) of the Declaration.

(f) By action of a majority of the Board of Directors of the Association, the Association may provide for the installation of additional Boundary Fencing in areas where no Boundary Fencing exists or is required by the Declaration. The Association shall pay, or arrange for third parties (including MUD 3 and/or MUD 5) to pay the cost of such additional Boundary Fencing and shall thereafter maintain same. Any such additional Boundary Fencing shall be constructed in a manner approved by the Architectural Committee. The right of the Association to install additional Boundary Fencing shall be subject to the rights of any persons, if any, owning the property on which such additional Boundary Fencing is proposed to be located. No such additional Boundary Fencing shall be installed on any property unless the Association either (i) owns the property on which such Boundary Fencing is installed; or (ii) obtains an easement in the property on which such Boundary Fencing is to be installed for installation, maintenance, and repair of such Boundary Fencing. The Association may, at any time, assign to either MUD 3, MUD 5, or another governmental entity the Association's rights and obligations in such additional Boundary Fencing and the property on which it is located.

Section 3.

Section 3.28 of the Declaration is amended to provide as follows:

3.28 Other Fencing. Each backyard of a residence constructed on a Lot may be fully enclosed by a fence, which, if constructed, must be a cedar fence at least six feet (6') tall, but not taller than eight (8) feet and constructed by the Owner of the Lot at the Owner's expense. To the extent a Lot is required to have Habitat Fencing or Boundary Fencing constructed along one or more lines of the Lot, the requirement for the Habitat Fencing or Boundary Fencing shall apply to the Lot line(s) in question as required above. Chain link fences are prohibited. Any wood fencing shall be treated within thirty (30) days of installation with semi-transparent oil stain or other sealant of a color and type approved by the Architectural Committee. The Architectural Committee may, in its discretion, grant variances from the fencing requirements set forth in this Section 3.28, except that no variance may be granted to permit chain link fencing. All fencing required or permitted by this Section shall be the sole obligation of the Owner on whose Lot such fencing is located. The Owner's failure to maintain in good repair the fencing required or permitted by this Section 3.28 located upon the Owner's Lot shall be a violation of the Declaration, subject to the Association's powers of enforcement granted by the Declaration, including but not limited to, Section 5.04 (E). Additional or inconsistent requirements regarding fencing on Lots located in Lake Pointe Sections Seven (Vista Pointe), Eight (The Bluffs) and Nine (The

Pointe) are provided in the Supplemental Declarations applicable to those subdivisions.

Section 4. Subsections (b) and (c) of Section 3.31 of the Declaration are amended, and new subsection 3.31(d) is added, all to provide as follows:

(b) Prior to the occupancy of a residence located on a Lot, the front yard of such Lot and the side yard of such Lot (to the rear building line of the residence or to the front of the side yard fence, whichever is closer to the street) must be landscaped in a manner proposed for approval and approved by the Architectural Committee (which may, in the discretion of the Architectural Committee include grass, trees, shrubbery, ground cover, vines, native plants that require little irrigation, river rocks and other decorative improvements, and/or flowers). A proposal for new landscaping, or a substantial change in landscaping previously approved by the Architectural Committee or otherwise previously allowed by the Declaration, shall be submitted to the Architectural Committee for approval. In considering an application for approval of a landscaping plan or change thereto, the Architectural Committee may consider the environmental benefit of xeriscaping and other means proposed to reduce water usage in the maintenance of landscaping.

(c) Landscaping (which may, in the discretion of the Architectural Committee include grass, trees, shrubbery, ground cover, vines, native plants that require little irrigation, river rocks and other decorative improvements, and/or flowers) and irrigation improvements shall be installed on each Lot adjacent to Sonoma Drive, Resaca Boulevard, Napa Drive south of Sonoma Drive, and Bayton Drive south of Sonoma Drive (hereinafter referred to as the "Collector Streets") prior to the occupancy of the residence located on such Lot. Landscaping required by this Subsection 3.31(c) shall be installed in accordance with plans and specifications approved by the Architectural Committee. Irrigation improvements shall include an underground irrigation system which shall provide irrigation to any portion of the front or side yards of the Lot which is visible from a Collector Street. The irrigation improvements and the proposed location thereof shall be approved in advance of installation by the Architectural Committee. For all Lots along Resaca Boulevard and/or Sonoma Drive, the required landscaping must be extended into the adjacent public right of way, to the curb line. The maintenance of all landscaping installed in the public right of way of Sonoma Drive and Resaca Boulevard shall be the obligation of the Association; however, the maintenance of the irrigation systems required by this Subsection 3.31 (c) on such Lots shall be the sole obligation of the Owner on whose Lot such irrigation system is located. The Owner's failure to maintain in good repair the irrigation system required by this subsection 3.31 (c) located upon the Owner's Lot shall be a violation of the Declaration, subject to the Association's powers of enforcement granted by the Declaration, including but not limited to, Section 5.04 (E). Landscaping and underground irrigation systems must be installed along the length of the boundary of all Lots adjacent to Resaca

Boulevard in Lake Pointe Section Seven (Vista Pointe). Additional landscaping requirements are applicable to Lots located in Lake Pointe Phase IV (The Estates), Lake Pointe Section Eight (The Bluffs) and Lake Pointe Section Nine (The Pointe) pursuant to the Supplemental Declarations.

(d) The Architectural Committee, in its discretion, may approve the size, type, shielding, materials for, and location of a composting device, rain barrel, rain harvesting device, or other appurtenance, subject only to the limitations on authority provided in Texas Property Code Section 202.007 or any State law restricting the authority of the Association.

Section 5 Section 3.39 of the Declaration is amended to provide as follows:

3.39 Rentals. Nothing in this Declaration shall prevent the rental of any Lot and the Improvements thereon by the Owner thereof for single family residential purposes. Notwithstanding the foregoing or any other provision of this Declaration, no Lot or Improvements may be used for hotel, motel, transient use or short-term rentals. Each of the following shall constitute a short-term rental, but shall not comprise all situations constituting a short term rental: (i) a lease or rental providing for occupancy of the Lot and Improvements thereon for a term of less than six (6) months; and (ii) any occupancy of a Lot and Improvements for a period of less than six (6) months in exchange for any remuneration. A bona fide temporary buyer or seller lease of a Lot for any duration, when entered into in connection with the sale of a Lot between the parties to such temporary lease, shall not constitute a short-term rental for the purpose of the prohibition on short term rentals.

Section 6 (a) Pursuant to Section 6.01(b) of the Declaration, and pursuant to that Formation of Architectural Control Committee for Vista Pointe Lake Pointe Section Seven and Partial Assignment of Declarant's Rights dated November 7, 2002 and recorded in Document No. 2002215433, Official Public Records of Travis County, Texas (the "Partial Assignment") Declarant created an Architectural Control Committee for Lake Pointe Section Seven and assigned the right to appoint and remove one member of such architectural control committee to Capital Pacific Holdings, L.L.C., a Delaware limited liability company ("CPH"). Such assignment to CPH provides that the right to appoint and remove shall automatically be assigned back to Declarant when CPH no longer owns any Lots in Lake Pointe Section Seven. On the date of this Post-Restated Amendment, CPH no longer owns any Lots in Lake Pointe Section Seven. Consequently, the power and authority to appoint and remove one member of the Vista Pointe Architectural Control Committee previously assigned to CPH has been assigned back to Declarant. Pursuant to Section 9.02 of the Declaration and pursuant to Section 3.02 of the Supplemental Declaration of Covenants, Conditions and Restrictions for Lake Pointe Section Seven recorded in Document No. 2000087044, Official Public Records of Travis County, Texas, as amended, Declarant adopts the following amendments provided in this Section 6.

(b) Subsection (b) of Section 6.01 of the Declaration is amended and new subsection (c) of such Section 6.01 is added to provide as follows:

(b) Until the completion of construction of a single family residence on each single family residential Lot in Lake Pointe Section Seven, the Vista Pointe Architectural Control Committee ("VPACC"), which shall consist of five (5) members, shall have the power and authority and shall discharge the rights, duties and obligations in connection with the construction or installation of new or additional improvements on property located in Lake Pointe Section Seven that the Architectural Committee has and discharges with regard to other property (excluding Lake Pointe Section Nine) located in the Property. The Association, or its designated manager, may invoice and collect fees charged by the VPACC pursuant to Section 6.07 in connection with any review. While the VPACC exists, the Board shall have the power and authority to appoint and/or remove the members of the VPACC. Four of the members of the VPACC shall be residents of Lake Pointe Section Seven, and one member shall be a member of the Architectural Committee. No person with any pecuniary interest in the construction of a new home (whether as owner, designer, or builder) on any part of the Property shall be eligible to serve on the VPACC. In the event that such a pecuniary interest arises after a member of the VPACC is appointed to serve on the VPACC, such member shall disclose such interest and the term of office of such member shall terminate effective with the existence of such pecuniary interest. In no event shall a member of the VPACC be entitled to act on any application or submission to the VPACC while such member has a pecuniary interest in the construction of a new home on any part of the Property. Members of the VPACC shall serve a term of office (and shall be subject to the provisions for early termination of office) as provided in Section 6.03 of the Declaration applicable to members of the Architectural Committee. On the earlier of the completion of construction of a single family residence on each single family residential Lot in Lake Pointe Section Seven, or January 1, 2012 the VPACC shall then immediately disband and cease to function in any capacity, at which time the Architectural Committee shall assume all functions previously performed by the VPACC. A quorum of the VPACC shall be comprised of not less than three (3) members appointed to the VPACC. The VPACC shall have the authority, subject to all restrictions provided in the Declaration and any Supplemental Declaration applicable to Lake Pointe Section Seven, to adopt rules of procedure for the conduct of the authority of the VPACC. On the date that Declarant no longer owns any property in the Property, the Association, acting through its board of directors, shall assume all of Declarant's power and authority with regard to the VPACC.

(c) Notwithstanding the provisions for term of office set forth in subsection (b) of this Section 6.01, at any time during the period of 180 days after the recording in the Official Public Records of the First Amendment to Ninth Amended and Restated Lake Pointe Declaration of Covenants, Conditions and Restrictions affecting the Property (the "First Post-Restated Amendment")

executed by Declarant (recorded in or around January, 2009) the Association, acting through its board of directors, may appoint members of the VPACC to serve new terms of office. Such newly appointed members of the VPACC shall be comprised of persons eligible to hold the office as set forth in subsection (b) of this Section 6.01, but need not include any person serving as a member of the VPACC on the date of recording of the First Post-Restated Amendment. The term of office of any VPACC member replaced by action of the Board pursuant to this subsection (c) shall expire upon appointment of the replacement member.

Section 7. Exhibit B to the Declaration is deleted and shall neither constitute an exhibit to the Declaration as amended by this First Post-Restated Amendment nor provide for any requirement regarding Boundary Fencing.

Section 8. Subsection (b) of Section 9.02 of the Declaration is amended to provide as follows:

(b) **By Owners.** In addition to the method in Section 9.02 (A), this Declaration may be amended by the recording in the Official Records of Travis County, Texas or any applicable successor repository for the filing of records affecting an interest in real property in Travis County, Texas, of an instrument executed and acknowledged by the President and Secretary of the Association, setting forth the amendment and certifying that such amendment(s) have been approved by the vote of not less than 51% of all votes cast by Members entitled to vote. No such instrument setting forth any amendment(s) shall be filed unless such amendment(s) were properly adopted as follows: A notice of the proposed amendment(s) and procedure for voting thereon, together with a ballot setting out the complete language of the amendment(s) and providing for spaces next to each amendment to indicate Afor@ or Aagainst@ shall be forwarded in conformance with the provisions of Section 9.03 to each Owner not less than 40 days prior to the deadline for casting ballots. The notice shall state the address and facsimile number to which completed ballots are to be forwarded, and shall set forth the deadline by which ballots must be either received by hand-delivery or by facsimile, or postmarked if forwarded by mail. Only such amendments as receive the approval by a written indication of Afor@ on ballots representing not less than 51% of all votes cast in such election shall be adopted. The Owner shall indicate the Owner=s address or Lot number on the ballot. All ballots shall be preserved for a period of not less than three years following the vote. No section of this Declaration may be amended by the Owners for a period of two years following the defeat of a proposed amendment of such section by vote of the Owners. Notice of any amendments adopted by the Owners pursuant to this Subsection 9.02(b) shall be forwarded to Owners in the same manner as provided in Subsection 9.02(a). A proposed amendment shall be put to a vote of the Members as provided in this ' 9.02(b): (i) when a resolution proposing that such amendment(s) be submitted to a vote of the Members is approved by not less than 6/7 of the members of the Directors of the Association; or (ii) when a petition,

signed during a period of not more than sixty (60) days by the Owners of Lots representing not less than twenty five percent (25%) of all votes entitled to be cast on an amendment of this Declaration, containing the full text of such amendment(s) and requesting a vote on such amendment(s) is presented to the Board of Directors.

Section 9. Section 9.07 of the Declaration is amended to provide as follows:

9.07 Grandfathering. Any permanent Improvement that was constructed in compliance with or was approved pursuant to an amended or superseded restriction or regulation shall not be rendered out of compliance or subject to an enforcement action or fine as a result of being out of compliance with any of the Restrictions adopted or enacted after the construction or installation of such Improvement. The Owner shall be responsible to maintain and provide to the Association, on request, evidence of the date of an approval or of construction of such an Improvement to establish any rights pursuant to this Section 9.07. Notwithstanding the foregoing, nothing in the Declaration shall preclude application of then current restrictions and regulations to any *use* of a Lot or Improvements thereon, or enforcement of any fine penalty or other remedy for a violation of any such *use* restriction or regulation, it being the intention herein that only structures may be protected pursuant to this Section 9.07.

General

Section 10. The provisions of this First Post-Restated Amendment 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.

Section 11. Except as expressly amended herein, the Property (as that term is defined in the Declaration) shall be held, transferred, sold, conveyed, occupied, and used subject to the covenants, restrictions, charges and liens as set forth in the Declaration.

Section 12. The terms and provisions of this First Post-Restated Amendment are not intended to require an existing Owner to remedy any existing permanent Improvement (not *use*) which violates the terms and provisions hereof if the permanent Improvement was not a violation under the terms and provisions of the Declaration in effect prior to the date this First Post-Restated Amendment is recorded in the Official Public Records of Travis County, Texas.

IN WITNESS WHEREOF, Declarant has executed this First Post-Restated Amendment on the date of acknowledgment set forth below, to be delivered and effective on the dated recorded pursuant to the terms of Section 9.02 of the Declaration.

DECLARANT:

SOUTHWEST TRAVIS COUNTY, LTD.,
a Texas limited partnership

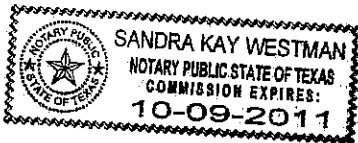
By: STC Management, Inc., a Texas
Corporation, General Partner

By: *Donald C. Walden*
Donald C. Walden
President

THE STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on this 10th day of February, 2009, by Donald C. Walden, President of STC Management, Inc., a Texas corporation, as General Partner of Southwest Travis County, Ltd., a Texas limited partnership, on behalf of said partnership.



Sandra Kay Westman
Notary Public Signature

My Commission Expires: 10/9/11

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2009 Feb 11 12:20 PM 2009020406

SIFUENTEZY \$52.00

DANA DEBEAUVOIR COUNTY CLERK
TRAVIS COUNTY TEXAS