

CODE OF BYLAWS
OF
CACTUS POINTE HOMEOWNERS
ASSOCIATION, INC.

ARTICLE I

Name and Location

Section 1. The name of this corporation shall be CACTUS POINTE HOMEOWNERS ASSOCIATION, INC.

Section 2. The principal office and place of business of this Association shall be maintained in the City and County of El Paso, Texas.

Section 3. Other offices for the transaction of the business of the Association shall be located at such other places either within or outside the State of Texas as may be determined by the Board of Directors from time to time.

Section 4. The following terms used in these bylaws are defined as follows:

"**Articles**" shall mean and refer to the Articles of Incorporation of the Association.

"**Association**" shall mean and refer to Cactus Pointe Homeowners Association, Inc., a Texas nonprofit corporation, its successors and assigns.

"**Board of Directors**" shall mean and refer to the Board of Directors of the Association.

"**Common Areas**" shall mean and refer to Lot 1, Block 1, the landscaping easements as shown on Lots 1, 2, 3, 4, and 5, Block 2, and Lots 2 and 27, Block 1, as shown on the Map.

"**Common Assessment**" shall mean an assessment for Common Expenses.

"**Common Expenses**" shall mean and refer to: (a) the expenses of, or reasonable reserves for, the maintenance, management, operation, repair and replacement of those portions of the Property as to which it is the responsibility of the Association to maintain, manage, operate, repair and replace; (b) the cost of capital improvements which the Association may from time to time authorize; (c) the expenses of management and administration of the Association, including, without limitation, compensation paid by the Association to a manager, or accountants, attorneys, or other employees or agents; (d) any other item or items designated by or in accordance with other provisions of this Declaration or the Bylaws to be Common Expenses; and (e) any other expenses reasonably incurred by the Association on behalf of all Owners.

"Declaration" shall mean and refer to the Declaration of Covenant, Conditions and Restrictions for Cactus Pointe Addition, of record in the Real Property Records, El Paso County, Texas.

"Development Period" shall be the period of time from date hereof until such time as Cactus Point, Ltd. If the Board determines that the amount to be collected from regular assessments will be inadequate to defray the common expenses for the year because of the cost of any construction, unexpected repairs, replacements of capital improvements on the Common Elements, or for any other reason, it shall make a special assessment for the additional amount needed. Such special assessments shall be levied and collected in the same manner as regular assessments. is converted to a Class A member.

"Fiscal Year" shall mean June 1st to May 31st of each year.

"Lot" shall mean and refer to any numbered lot shown on the Map, excluding Lot 1, Block 1, designated on the Map as Open Space.

"Map" shall mean and refer to the map and plat of the Property, of record in Book 71, Page 51, of the Plat Records of El Paso County, Texas.

"Member" shall mean and refer to a member of the Association.

"Mortgage" shall include deeds of trust and recorded Contracts of Sale of Real Estate wherein the purchaser is entitled to possession of a Lot.

"Mortgagee" shall mean a person or entity to whom a Mortgage upon a Lot is granted and shall include the beneficiary of a Deed of Trust and the holder of a Vendor's interest in recorded Contracts of Sale of Real Estate wherein the purchaser is entitled to possession of a Lot.

"Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the payment or performance of an obligation.

"Property" shall mean Cactus Pointe Addition as set forth on the Map.

"Rules and Regulations" shall mean the Rules and Regulations governing the use of the Property or any portion thereof, duly adopted or as may be duly amended by the Board of Directors.

ARTICLE II

Membership and Assessments

Section 1. Each Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of a Lot. Ownership of a Lot shall be the sole qualification for membership. The membership held by an Owner shall not be transferred, pledged or alienated in any way, except upon the sale of such Lot, and then only to the purchaser of such Lot. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. Evidence of transfer of membership shall be furnished to the Association in the form of a certified copy of the recorded conveyance of a Lot signed by the current Owner thereof as reflected upon the books and records of the Association.

Section 2. The Association shall have two classes of voting membership with the voting rights hereinafter indicated:

Class A Members. Class A Members shall be all Owners with the exception of Cactus Pointe, Ltd. and each such Member shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in a Lot, all such persons shall constitute one Member, and the one (1) vote for such Lot shall be exercised as they among themselves shall determine, but in no event shall more than one vote be cast with respect to any such Lot.

Class B Members. Cactus Pointe, Ltd. shall be a Class B Member and shall be entitled to three (3) votes for each Lot owned. The Class B Membership shall cease and be converted to a Class A Membership on the happening of either of the following events, whichever occurs earlier:

(1) When the total votes outstanding in the Class A Membership equals the total votes outstanding in the Class B Membership; or

(2) Should Cactus Pointe, Ltd. notify in writing all Members of Cactus Pointe, Ltd.'s election to convert from a Class B Member to a Class A Member;

and (unless the next annual meeting of the Association shall come within one hundred twenty (120) days after such conversion) a special meeting of the Members shall be called by the Board of Directors within not more than one hundred twenty (120) days after such conversion for the purpose of electing a new Board of Directors.

Section 3. The voting rights of any Member shall be automatically suspended during any period during which such Member shall be delinquent in the payment of assessments due the Association.

ARTICLE III

Membership Meetings

Section 1. An annual meeting of the membership shall be held during the month of April. Special meetings may be called by the Board of Directors of the Association upon the giving of thirty days' written notice to the membership. At the annual meeting, the Members shall elect the Directors for the ensuing year and transact such other business as may come before the meeting.

Section 2. Members holding 20% of the votes which may be cast at any meeting shall constitute a quorum at such meeting. If a quorum is not present at any meeting of members, a majority of the members present may adjourn the meeting from time to time without further notice.

Section 3. At any meeting of members, a Member may vote by proxy executed in writing by the Member or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

ARTICLE IV

Board of Directors

Section 1. The Board of Directors shall be at least three in number and may consist of any number greater than three.

Section 2. The members of the Board of Directors shall be elected by the Membership and shall hold office for a term of one year or until their successors are duly elected and are qualified. After the Development Period all members of the Board of Directors shall be Members.

Section 3. If the office of any Director becomes vacant for any reason, the Board of Directors shall choose a successor shall hold office for the unexpired term in which such vacancy occurred.

Section 4. The Board of Directors shall meet at least once each year. The annual meeting shall be held immediately following the annual meeting of the membership, and at such meeting, the Board of Directors shall elect the Officers of the Association for the ensuing year. The Board of Directors shall also meet when called by any two members of the Board, and unless waived, notice of such meeting shall be at least ten days in advance of the called date. A quorum for the transaction of business shall be two-thirds of the Directors.

Section 5. The Board of Directors shall have control and management of the affairs of the funds of this Association and all its functions. The Board of Directors shall have the authority to appoint and confirm special committees of the Board of Directors to exercise within the area

of their appointment all the powers of the Board of Directors. The Board of Directors shall have the authority, from time to time, to make reasonable rules and regulations regarding the use and enjoyment of the Common Areas which are not inconsistent with the Declaration or the Articles which rules and regulations shall be binding upon all Members.

Section 6. The Board of Directors may employ a professional management agent to perform such duties and services as the Board of Directors shall direct, including, but not limited to the collection of and accounting for assessments made by the Association. Any such management agreement shall provide for a rate of compensation to be established and/or approved by the Board of Directors, and shall further provide for the right of the Association to terminate the same with cause upon not more than thirty (30) days written notice and without cause upon not more than sixty (60) days written notice.

ARTICLE V

Officers

Section 1. Officers of the Association shall be:

President
One or more Vice Presidents
Secretary and one or more Assistant Secretaries
Treasurer and one or more Assistant Treasurers

Any two or more offices may be held by the same person, except the offices of President and Secretary. These Officers shall be elected by a majority vote of the Board of Directors at the annual meeting of the Board of Directors.

Section 2. Each officer shall hold office during the ensuing year or until his successor shall have been duly elected and qualified.

Section 3. After the Development Period, no person shall be eligible to hold office in this Association unless such person is a Member.

Section 4. Any Officer elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interests of the Association would be served thereby.

Section 5. A vacancy in any office because of death, resignation, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

ARTICLE VI

Duties of Officers

Section 1. President. The President shall preside over the meetings of the Board of Directors. The President shall have general direction and control of the affairs of the Association. He shall preside at all meetings of the Association. He shall perform such other duties as are usual to his office, including the execution of documents, contracts or instruments authorized by the Board of Directors.

Section 2. Vice Presidents. The First Vice President shall perform the duties of the President in the absence or inability of the President. The Second Vice President shall perform these duties in case of the absence or inability of the First Vice President, et cetera.

Section 3. Secretary. The Secretary shall keep the records of the Association. He shall perform such other duties as may be required of him for the proper conduct of his office.

Section 4. Treasurer. The Treasurer shall supervise the receipt and care of all funds of the Association and shall approve the disbursement of the same upon checks and vouchers. He shall keep an accurate account of the funds and may be required by the Board of Directors to give a bond in such amount as the Board of Directors may determine. He shall report regarding the funds in his possession whenever required to do so by the Board of Directors or the President.

ARTICLE VII

Assessments

Section 1. The Board of Directors shall have the responsibility and authority to assess each Lot for Common Expenses and the Owners of such Lots shall be personally liable for the payment of such assessments levied during the time any such Owner owns a Lot and the assessment applicable to each Lot shall be a charge and continuing lien upon each such Lot.

Section 2. Not less than thirty (30) days prior to the beginning of each Fiscal Year the Board of Directors shall, after taking into consideration all anticipated items of Common Expense, for such Fiscal Year, together with a reasonable reserve for contingencies, fix and establish the amount of the Common Assessment for the ensuing Fiscal Year. Each Owner shall be required to pay each Owner's proportionate part thereof which shall be a fraction, the numerator of which is the number of Lots owned by each such Owner and the denominator of which is the total number of Lots.

Following the establishment of the Common Assessment, each Owner shall be given notice of the Common Assessment and each Owner's proportionate part thereof, but the failure of an Owner to receive such notice shall not affect such Owner's liability for the payment of each Owner's proportionate part thereof. Each Owner's proportionate part of the Common Assessment

shall be due and payable by each Owner (excluding Cactus Pointe, Ltd.) in equal installments as determined by the Board of Directors, but such installments shall be payable no more frequently than quarterly during the Fiscal Year.

During the course of a Fiscal Year should the Board of Directors determine that the Common Assessments theretofore assessed will be inadequate, the Board of Directors from time to time may increase the Common Assessment for such Fiscal Year and each Owner's proportionate part. Conversely, should the Board of Directors during the course of a Fiscal Year determine that the Common Assessments theretofore assessed will create a surplus in excess of that necessary as a reserve for contingencies, the Board of Directors from time to time may decrease the Common Assessment and each Owner's proportionate part. In either such event, the Board of Directors shall notify each Owner of the adjustment and the revised amount of each quarterly installment thereafter due by each Owner.

Section 3. If the Board of Directors shall fail to fix and establish the Common Assessment and the proportionate part due by each Owner of a Lot as herein provided, the Common Assessment and the proportionate part due by each Owner of a Lot for the previous Fiscal Year shall be automatically established immediate prior to the commencement of the Fiscal Year so that there will be no interruption in the payment by an Owner of the quarterly installments due paying such Owner's proportionate part of the Common Assessment.

Section 4. Each Owner of a Lot purchased from Cactus Pointe, Ltd., on the date of the purchase, shall become liable to the Association for a pro rata part of the Common Assessment attributable to such Lot then established by the Board of Directors; such pro rata part being a fraction, the numerator of which is the number of calendar days until the next ensuing June 1, and the denominator of which is 365. The prorated quarterly payment for the quarter in which a Lot is purchased shall be due and payable by each such Lot Owner within ten (10) days after receipt from the Association of a statement therefor.

Section 5. Cactus Pointe, Ltd., during the Development Period, shall have no obligation to pay to the Association the proportionate part of the Common Assessment applicable to Lots owned by Cactus Pointe, Ltd. Cactus Pointe, Ltd. shall, however, during the Development Period, pay to the Association from time to time, as required, any amounts necessary (over and above payments to the Association by other Lot Owners) to satisfy the Association's current operating expenses on a cash basis. During the Development Period, Cactus Pointe, Ltd. shall have no obligation to contribute any sums to the Association on account of reserves. At the termination of the Development Period, the Lots then owned by Cactus Pointe, Ltd., if any, shall bear their full proportionate share of Common Assessments and Special Assessments.

Section 6. No Owner shall be exempt from liability for assessments duly established by the Association. Further, no diminution or abatement of assessments shall be allowed or claimed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Areas or Lots or from any action taken to comply with any law, ordinance or order of a governmental authority.

Section 7. The payment of an assessment shall be considered delinquent if not paid upon the due date thereof and shall bear interest from such date at the rate of twelve (12%) percent per annum until paid. The Association shall also be entitled to collect a late charge in such amounts and upon such conditions as the Board of Directors may from time to time determine. Each Owner (whether one or more) shall be and remain personally liable for the payment of all assessments which may be levied against such Owner's Lot by the Association in accordance with the terms and provisions of the Declaration until the same shall be paid in full, both principal and interest. In the event of sale or conveyance of a Lot the purchaser of same shall be required and entitled to cause such delinquent assessments to be paid out of the sales price and, failing this, such purchaser shall become personally liable for payment of such delinquent assessments by such purchaser's acceptance of a deed to such Lot from an Owner in default.

Section 8. The Association may enforce collection of delinquent assessments by suit at law for a money judgment and may seek the appointment of a receiver and/or judicial foreclosure of the Vendor's Lien to be reserved and transferred to the Association. Failure to seek judicial foreclosure of such Vendor's Lien in any suit at law for a money judgment shall not operate to waive such Vendor's Lien, but the same shall remain in full force and effect to secure the payment of all assessments due or to become due by an Owner.

Section 9. The assessments against all Owners shall be set forth upon a roll of the Lots which shall be available in the office of the Association for inspection at all reasonable times by Owners and Mortgagees or their duly authorized representatives. Such Assessment Roll shall indicate for each Lot the name and address of the Owner or Owners, the assessments for all purposes and the amounts of all assessments paid and unpaid. A certificate signed by an officer of the Association as the status of an Owner's assessment account shall limit the liability of any person for whom made other than the Owner. The Association shall issue such certificates to such persons as an Owner may request in writing and shall be entitled to charge a reasonable fee therefor in such amount as shall be determined by the Board of Directors from time to time.

ARTICLE VIII

Contracts, Checks, Deposits and Funds

Section 1. The Board of Directors may authorize any officer or officers, agent or agents of the Association, in addition to the officers so authorized by these bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association. Such authority may be general or confined to specific instances.

Section 2. Checks and Drafts. All checks, drafts or orders for the payment of money, notes, or other evidences issued in the name of the Association shall be signed by such officer or officers, agent or agents of the Association and in such manner as shall from time to time be determined by resolution of the Board of Directors. In the absence of such determination by the Board of Directors, such instruments shall be signed by the Treasurer or an Assistant Treasurer and countersigned by the President or a Vice President of the Association.

Section 3. All funds of the Association shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board of Directors may select.

ARTICLE IX

Amendments to Bylaws

Section 1. These Bylaws may be amended from time to time as required.

Section 2. In any case in which it is desired to amend these Bylaws, the Board of Directors, by a majority vote of a quorum thereof, shall first approve the proposed amendment for submission to the Members at an Annual or Special Meeting thereof. Notice of the time, place and purposes of any such meeting shall be as set forth in Article III hereof, except that notice of an Annual Meeting to amend the Bylaws shall state said purposes.

Section 3. The proposed amendment shall be put to a vote of the Members present at said meeting and if said amendment shall receive the affirmative votes of at least two thirds of the Members present (provided such Members shall constitute a quorum), the amendment shall be declared adopted.

ARTICLE X

Seal

Section 1. The official seal of this Association shall consist of a design consistent with the approval of the Board of Directors.

ARTICLE XI

Indemnification of Directors and Officers

Section 1. To the extent permitted by law, each director and officer or former director and officer of the Association may be indemnified, defended and held harmless by the Association against liabilities imposed upon him or her and against him or her (including attorney's fees), or any action, of his or her service as a director or officer, and against such sums as independent counsel selected by the Board of Directors shall deem reasonable payment made in settlement of any such claim, action, suit or proceeding; provided, however, that no director or officer shall be indemnified with respect to matters which shall be settled by the payment of the sums which counsel for the Association may deem unreasonable payment or with respect to matters for which such indemnification would be against public policy or in contravention of Tex.Rev.Civ.Stat.Ann. art. 1396-2.22A, as amended.

Section 2. The Association may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the Association against any liability asserted against him or her and incurred by them in any such capacity or arising out of their status as such, whether or not the Association would have the power to indemnify them against such liability.