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14 PGS.

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS**
for
CACTUS POINTE ADDITION

Cactus Pointe, Ltd., a Texas limited partnership, acting by and through its General Partner, CACTUS POINTE TRUST, being the owner of the following described real property located in El Paso County, Texas, to-wit:

CACTUS POINTE ADDITION, a subdivision in El Paso County, Texas, according to the map and plat thereof of record in Book 71, Page 51, Plat Records of El Paso County, Texas

hereby covenants, agrees and declares that the Property shall hereinafter be subject to the covenants, conditions, restrictions, limitations and uses of this Declaration, which shall run with the land and shall be binding upon and inure to the benefit of Declarant, its successors and assigns, and any person or entity acquiring any right, title or interest in the Property, or any part thereof, their heirs, devisees, successors and assigns from the date of the recordation hereof in the Official Public Records of El Paso County, Texas until December 31, 2020, at which time the same shall be automatically extended for successive periods of ten (10) years, unless otherwise agreed by two-thirds (2/3) of the then Owners of Lots within the Property.

ARTICLE I

Definitions

The following terms used in this Declaration and in any document relating to the Property, unless otherwise provided or unless the context provides otherwise, are defined as follows:

- 1.1 "Articles" shall mean and refer to the Articles of Incorporation of the Association.
- 1.2 "Association" shall mean and refer to Cactus Pointe Homeowners Association, Inc., a Texas nonprofit corporation, its successors and assigns.
- 1.3 "Board of Directors" shall mean and refer to the Board of Directors of the Association.
- 1.4 "Building Site" shall mean that portion of a Lot, shown as the building site on the Grading Plan for the Lot, approved by the City of El Paso, Texas.
- 1.5 "Building Control Committee" shall mean the committee of at least 2, but not more than 5, persons appointed by Declarant for the purposes of Article XI. After termination of the Development Period, the Building Control Committee shall be appointed by the Board of Directors.
- 1.6 "Bylaws" shall mean and refer to the Bylaws of the Association.
- 1.7 "Common Areas" shall mean and refer to Lot 1, Block 1, and 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.
- 1.8 "Common Assessment" shall mean an assessment for Common Expenses.
- 1.9 "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.

1.10 "Declarant" shall mean and refer to Cactus Pointe, Ltd., its successors and assigns, if such successors or assigns should acquire each and every Lot from Declarant for the purpose of development.

1.11 "Detached Single Family Dwelling" or "Single Family Dwelling" shall mean a building or structure built and maintained for private, residential purposes and designed for occupancy by a single family.

1.12 "Development Period" shall be the period of time from date hereof until such time as Declarant is converted to a Class A member as contemplated and defined in Section 5.3 below.

1.13 "Improvement(s)" shall mean any and all alterations of the Property, other than interior modifications of existing structures, including, but not limited to, Single Family Dwellings, out buildings, ramadas, patios, garages, guest houses, servant's quarters, swimming pools, walls, fencing, landscaping and driveway, whether intended to be temporary or permanent.

1.14 "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.

1.15 "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.

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

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

1.18 "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.

1.19 "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.

1.20 "Parkway" shall mean the area between the street curb and sidewalks.

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

1.22 "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

General Purposes

The Property and each and every Lot therein is subjected to the covenants, conditions, restrictions, reservations, liens and charges hereby declared to insure the best use and the most appropriate development and improvement of each Lot, to protect each Owner against such improper use of surrounding Lots which may tend to depreciate the value of each Owner's Lot;

to ensure the highest and best development of the Property; to secure and maintain proper setbacks from streets and adequate open spaces between structures; and, in general, provide adequately for a high grade and quality of Improvements on each Lot and Building Site thereon within the Property and thereby to enhance the value of investments made by each Owner of a Lot.

ARTICLE III

Common Areas

3.1 **Development.** Declarant shall have the responsibility, at its sole cost and expense, to initially develop and landscape the Common Areas as Declarant deems appropriate.

3.2 **Conveyance to Association.** Prior to Declarant's conveyance of the first Lot to an Owner, Declarant shall convey to the Association fee simple title to the Common Areas, subject to current real property taxes and reservations, easements, covenants and conditions and restrictions then of record, including those set forth in this Declaration. Such conveyance shall not relieve Declarant of its responsibility to complete the initial development of the Common Areas within a reasonable time thereafter.

3.3 **Owner's Easement of Enjoyment.** Each Owner and the members of each Owner's family who reside in a Single Family Dwelling shall have an easement of enjoyment in and to the Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

(a) The right of the Board of Directors to establish and enforce compliance with uniform Rules and Regulations governing the use of the Common Areas not inconsistent with the terms of this Declaration, and to amend such Rules and Regulations from time to time. A copy of such Rules and Regulations shall be delivered or mailed to each Owner and Mortgagee of whom the Association has record notice, promptly upon the adoption thereof.

(b) The easements upon the Common Areas according to the Map and those easements and reservations contained in this Declaration.

3.4 **Delegation of Use.** An Owner may delegate such Owner's easement of enjoyment in and to the Common Areas to an Owner's tenants or contract purchasers who reside in the Owner's Single Family Dwelling, but such Owner shall notify the Association in writing of the name of any such delegee.

3.5 **Alienation or Hypothecation.** Except as herein otherwise specifically provided, no portion of the Common Areas may be alienated, released, transferred, hypothecated, or otherwise encumbered without the approval of two-thirds (2/3) of both the Class A and Class B Members present at any annual meeting (or special meeting called for such purpose) at which a quorum (as defined in the Bylaws) is present.

ARTICLE IV

Duties of the Association; Duties of an Owner

4.1 **Duties of the Association.** The Association, acting by and through its Board of Directors, shall be responsible for the proper and efficient management and operation of the Common Areas as more particularly described herein. The Association shall be responsible for:

(a) landscaping and installing watering systems upon the Common Areas;

(b) operating, maintaining and rebuilding walls, rock facing and other improvements originally constructed by Declarant or thereafter constructed by the Association;

(c) paying real estate taxes, assessments and other charges against the Common Areas;

(d) insuring all improvements which the Association is obligated to maintain against damage by fire or other insurable casualty with such companies and with such limits as the Association deems appropriate;

(e) hiring, firing, supervising and paying employees and independent contractors to carry out the obligations set forth herein;

(f) maintaining such insurance as the Association deems necessary to protect the Association and the Board of Directors of the Association from any liability from occurrences or happenings on or about the Common Areas (including, but not limited to, errors and omissions insurance for the Board of Directors of the Association);

(g) enforcing the provisions of this Declaration;

(h) providing and paying for all utility services to the Common Areas; and

(i) entering into such agreements and taking such actions as are reasonably necessary and convenient for the accomplishment of the obligations set forth above and the operation and maintenance of the Property as a first class residential subdivision.

Notwithstanding anything in this Declaration to the contrary, in the event the need for maintenance, repairs or replacements required to be performed by the Association shall be caused by the negligent or tortious acts or neglect of an Owner, a member of an Owner's family, or an Owner's agent, employee, invitee, licensee or tenant, then such Owner shall be responsible for all of such damage. Furthermore, notwithstanding anything in this Declaration to the contrary, the Association shall not be liable to any Owner for any delay in the completion of any repair, restoration or replacement due to causes beyond the reasonable control of the Association, its contractors or subcontractors. Specifically, the Association shall not be liable for delay occasioned by weather, shortage or unavailability of materials and strikes or work stoppages.

4.2. Duties of Owners.

(a) Each Owner shall be responsible for the upkeep and maintenance of all Improvements and landscaping upon each Owner's Lot.

(b) When casualty damage shall occur to a Single Family Dwelling, the Owner thereof shall within thirty (30) days thereafter commence and diligently pursue to completion the restoration thereof.

ARTICLE V

Association

5.1 Administration of Common Areas. The Common Areas shall be administered by the Association, acting by and through its Board of Directors, who shall be elected in accordance with the Bylaws, and whose duties will be governed by the terms of this Declaration, the Articles and the Bylaws. Provided, however, the Association may employ a professional management agent to perform, subject to the supervision of the Board of Directors, 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.

5.2 Membership. 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.

5.3 Voting Rights. 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 Declarant 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. Declarant 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 Declarant notify in writing all Members of Declarant'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.

5.4 Suspension of Voting Rights. 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.

5.5 Rules and Regulations. 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 this Declaration or the Articles or Bylaws of the Association which rules and regulations shall be binding upon all Owners.

ARTICLE VI

Assessments

6.1 Establishment. 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.

6.2 Annual Common Assessment. Not less than thirty (30) days prior to the beginning of each fiscal year (to be determined in accordance with the Bylaws) 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 being 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 Declarant) in equal installments as determined by the Board of Directors, but such installments shall be payable no more frequently than quarterly during the calendar 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.

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 immediately 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.

Each Owner of a Lot purchased from Declarant, on the date of the purchase thereof, 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 January 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.

Anything contained in this Declaration to the contrary notwithstanding, Declarant, 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 Declarant. Declarant 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, Declarant 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 Declarant, if any, shall bear their full proportionate share of Common Assessments.

6.3 No Exemptions. 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.

6.4 Vendor's Lien. In each deed of a Lot by Declarant to an Owner there shall be expressly reserved a vendor's lien (the "Vendor's Lien") to secure payment of all assessments due and to become due pursuant to this Declaration, which Vendor's Lien shall be transferred and assigned to the Association. By the acceptance of a deed from Declarant, each Owner (and such Owner's subsequent grantees) assumes and agrees to pay such assessments in accordance with the terms and provisions of this Declaration.

6.5 **Subordination.** If any Lot subject to the Vendor's Lien reserved for the payment of assessments due and to become due pursuant to the terms of this Declaration shall be subject to the lien of a Mortgage: (i) the foreclosure of the Vendor's Lien reserved herein shall not operate to affect or impair the lien of such Mortgage; and (ii) the foreclosure of the lien of the Mortgage or the acceptance of a deed in lieu of foreclosure thereof shall not operate to affect or impair the Vendor's Lien reserved herein. Any purchaser at such a foreclosure sale or recipient of a deed in lieu of foreclosure shall be deemed an Owner of the Lot acquired and shall be responsible for payment of all assessments accrued prior to and after the foreclosure sale or deed in lieu of foreclosure.

6.6 **Delinquent Assessments.** 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 this 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.

6.7 **Collection of Assessments.** 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.

6.8 **Assessment Roll.** 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 VII

Mortgages

7.1 **Notices.** Any Owner who shall give a Mortgage upon such Owner's Lot shall furnish the Association the name and address of such Mortgagee, and the Association shall maintain such information in a book entitled "Mortgages of Lots." Upon written request from any Mortgagee, the Association shall report to such Mortgagee: (a) any unpaid assessments due from the Owner of such Lot at the same time as the Association makes demand of the Owner thereof for the payment of such assessment; and (b) any other default by its Owner-Mortgagor in the performance of such Owner's obligations under the terms and provisions of this Declaration which shall not have been cured within thirty (30) days after written notice to such Owner-Mortgagor by the Association specifying such default. Likewise, upon written request from any Mortgagee, any such Mortgagee shall also be entitled to prompt written notification from the Association of: (a) the calling of all meetings of the Members (and each such mortgagee shall be entitled to designate a representative to attend such meetings); (b) the

occurrence of substantial damage to the Common Areas; and (c) the taking of any portion of the Common Areas by a condemning authority.

7.2 Records and Statements. All Mortgagees shall be entitled to inspect the books and records of the Association during normal business hours, and upon request shall be entitled to receive from the Association an annual financial statement of the Association certified by an officer or a Director of the Association to be true and correct within ninety (90) days following the end of each fiscal year of the Association.

ARTICLE VIII

Powers Reserved in Declarant

Declarant reserves the right to make such changes in the boundaries and designations of Lots not sold to others and in the Common Areas, as Declarant deems advisable, provided that any such changes shall not have a material adverse effect upon the boundaries or the beneficial use and enjoyment of any Lot then owned by Owners other than Declarant, and provided that such changes shall have been approved by the governing regulatory agencies exercising jurisdiction thereof.

ARTICLE IX

Use Restrictions

9.1 Use Restrictions. The Property and every portion thereof shall be subject to the Use Restrictions contained in this Article IX.

9.2 Single Family Dwelling. No structures shall be erected, altered, placed or permitted to remain on any Lot other than one Single Family Dwelling for private use, together with other customary improvements. No Lot or Lots shall be subdivided. The living area of any Single Family Dwelling shall not be less than 2800 square feet.

9.3 Setbacks. No Single Family Dwelling shall be located in such a manner that any part of such dwelling shall be closer than five (5') feet to any Lot line abutting an adjacent Lot. Nor shall any Single Family Dwelling be located in such a manner that any part of such dwelling shall be: (i) closer than twenty (20') feet nor further than thirty (30') feet from the front Lot line; (ii) closer than twenty-five (25') feet from the rear Lot line and, except for Lots 10, 19, 20 and 21, Block 1, closer than fifteen (15') feet from the rear line of the Building Site; or (iii) should a street abut a side Lot line, closer than fifteen (15') feet from such side Lot line abutting a street, except for Lot 12, Block 1, on which the Single Family Dwelling shall not be closer than twenty (20') feet from the Lot line abutting Cactus Hill Drive. No Improvements, other than fences or landscaping, on a Lot shall be located within five (5') feet of any front or side property line. Except on Lots 10 and 20, Block 1, no Improvement, other than fences or landscaping, which would impede or affect the view from any adjoining Lot shall be located so that any part of the Improvement is closer than twenty-five (25') feet from the rear Lot line and fifteen (15') feet from the rear line of the Building Site.

9.4 Construction. All Single Family Dwellings and other Improvements shall be built and maintained as follows:

(a) All private driveways shall be surfaced with concrete, asphalt or other similar hard surfaced material.

(b) All exterior lights must be located and maintained so as not to be directed toward or interfere with surrounding properties or the Common Area, including streets.

(c) After completion of the Single Family Dwelling on a Lot, each Owner shall install and maintain landscaping or appropriate ground cover on the improved portion of the Building Site. Grass, weeds, vegetation and other landscaping on each Lot shall be

maintained and trimmed at regular intervals. Trees, shrubs, vines and plants which die shall be promptly removed from the Lot. Fences and walls must be repaired and maintained.

(d) Any aerial masts, satellite receiving stations, radio and television antennae must not be visible from any street.

(e) Construction of Improvements shall be prosecuted diligently from the commencement thereof until completion. The primary residence and related improvements on any Lot, once commenced, shall be completed in not more than eighteen (18) months from the date of commencement.

9.5 Mineral Exploration. No minerals of any kind including sand, gravel, oil, natural gas, metals or otherwise may be removed from any Lot or the Common Areas for commercial purposes or for resale nor may they be removed in substantial quantities for any reason, except when necessary for construction of Improvements.

9.6 Mechanical Equipment. All mechanical equipment including evaporative coolers, air conditioning equipment, heating equipment, ducts, collectors or solar panels, wherever placed, shall be concealed from view from streets and other Lots.

9.7 Height Restrictions. No Single Family Dwelling shall exceed thirty three (33') feet in height as measured from the finished floor elevation of the Lot as shown on the Grading Plan for the Lot approved by the City of El Paso. No structure of any kind shall exceed the height of the roof line of the Single Family Dwelling located on the Lot on which the structure is constructed.

9.8 Trash Containers. All Owners shall keep all trash containers concealed from view at all times. All trash, including lawn clippings and dead vegetation, shall be disposed of in proper containers.

9.9 Temporary Occupancy. No temporary house, dwelling, garage, out building, house trailer, tent or other structure shall be placed permanently or temporarily on any Lot. No residence shall be occupied in any manner while in the course of construction nor at a time prior to being fully completed. Any structure damaged by fire or other cause shall be repaired, replaced or removed as soon as practicable from the time of damage.

9.10 Animals. No animals, livestock, birds, or fowl of any kind other than customary domesticated household pets belonging to the family owning a Lot in a reasonable number, as determined by the Board of Directors, shall be kept, raised, bred or maintained on any part of the Property.

9.11 Commercial Vehicles, Trailers, Boats and Other Types of Vehicles. Commercial vehicles, tractors, mobile homes, motor homes, trailers (either with or without wheels), campers, camper trailers, buses, boats and other watercraft, boat trailers and similar vehicles shall not be placed, even temporarily, upon any Lot unless stored within an enclosed structure. No motor vehicles of any kind shall be kept or operated on any part of the Property if the use of that vehicle or the operation of the vehicle is unreasonably disturbing to the Owner or Owners of any neighboring Lot or is damaging to the Common Areas. The Association shall have the right to order the removal or cessation of use of such vehicle which is objectionable or causes damage.

9.12 Nuisance. No Owner Shall permit the development of any unclean, unhealthy, unsightly or unkept condition of such Owner's Lot and/or the improvements thereon. No Lot and/or the improvements thereon shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot and/or improvements thereon to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept upon any Lot and/or the improvements located thereon which will omit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the

peace, quiet, safety, comfort or serenity of surrounding Owners. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to any Owner adjacent thereto.

9.13 Fences. No fence, wall or hedge shall be built or maintained on any Lot which is in front of the front wall line of the Single Family Dwelling on the Lot, not including: (i) decorative walls or fences which are part of the architectural design of the Single Family Dwelling, and which are not to be built or maintained nearer than 20 feet to the front property line of the Lot; (ii) fences built along the boundary line of a Lot which do not exceed twenty-four (24") inches in height; or (iii) retaining walls.

No fence, wall or hedge shall be built or maintained on any Lot which is behind the front wall line on the single Family Dwelling which: (i) exceeds five (5') feet in height, exclusive of any portion which is a retaining wall; or (ii) which is located behind the top of the slope at the rear of the Building Site (which on some Lots may be behind the rear line of the Building Site). All fences, other than fences which are part of the architectural design of the Single Family Dwelling, shall be constructed of gray quarried rock with a Del Norte SL3 Terra Cotta (or equal) slump stone block cap.

No fence, wall or hedge or shrub planting which obstructs sight lines shall be placed or permitted to remain on any corner Lot within the triangular areas formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines or in the case of a rounded property corner, from the intersection of the street line extended; the same line limits shall apply on any Lot with the edge of a driveway pavement. No trees or bushes shall be permitted to remain within such distance of such intersections, unless the foliage is maintained at sufficient height to prevent obstruction of such sight lines.

9.14 Signs. No signs of any type shall be permitted other than the name of the Owner and address and temporary "for sale" signs. In the event a Lot is offered for sale, a temporary sign not larger than four (4) square feet may be placed on the Lot. No sign shall be placed on any Common Area.

9.15 Commercial Usage. No commercial use shall be permitted, whether for profit or nonprofit which is visible from the street or requires employee, customer, or supplier presence on a Lot.

9.16 Other Improvements. All Improvements appurtenant to a Single Family Dwelling on a Lot shall correspond in style and architecture to the Single Family Dwelling to which it is appurtenant, and shall be of the same exterior materials, both walls and roof, as such Single Family Dwelling. No Improvement shall exceed the Single Family Dwelling to which it is appurtenant in height or number of stories.

9.17 Maintenance of Parkway. Each Owner shall maintain the Parkway abutting his Lot. All Parkways shall be landscaped with river rock similar to that used on the landscaping easements described in Article 10.3

9.18 Garages. All Single Family Dwellings shall have an enclosed garage for the parking of vehicles. No garage shall be used for any purpose other than vehicle parking and storage of personal property and shall not be converted to or used for residential or living purposes.

9.19 Soils Testing. Prior to the construction of any Improvement on a Lot, each Owner shall conduct all necessary soil tests on the Lot and shall be responsible for the design and construction of any Improvement in accordance with prudent engineering and construction practices in light of the soil conditions of the Lot.

9.20 Easement Maintenance. The Owner of Lot 9, Block 1 shall: (i) install and maintain landscaping or appropriate ground cover on the thirty (30') foot utility easement located

on this Lot; and (ii) not construct any Improvement on the easement other than the driveway, fences or similar improvements associated with landscaping or ground cover.

ARTICLE X

Easements

10.1 Utility Easements. Utility Easements are established and reserved by the Declarant as shown on the Map for utility purposes, with access thereto for installing, repairing and maintaining all utility facilities, including, but not limited to, water, gas, sewer, electricity and telephone.

10.2 Conveyance. Declarant shall convey the herein established and reserved landscape easements to the Association prior to the conveyance of the first Lot to an Owner.

10.3 Landscaping Easements. Declarant has established in favor of the Association, the landscape easements on Lots 2 and 27, Block 1, and Lots 1, 2, 3, 4, and 5, Block 2. These easements are established and reserved by Declarant as shown on the Map for the purpose of installing, repairing and maintaining landscaping and related improvements as part of the Common Area.

ARTICLE XI

Building Control

11.1 No Construction Without Approval. Except for improvements or alterations undertaken by Declarant, no Improvement shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration thereto be made until detailed plans and specifications showing the nature, kind, shape, height and location of the same shall have been submitted to and approved in writing as to compliance with the provisions of this Declaration by the Building Control Committee.

11.2 Plan Approval. Prior to the start of construction of any Improvement, whether such improvement be the initial improvement or subsequent alteration, modification or other change, an Owner shall be required to obtain the approval of the Building Control Committee. Each Owner shall submit to the Building Control Committee one complete set of plans for proposed Improvements, and plot plans all of which shall be to scale and shall include the location of Improvements on the Lot and Building Site. The sequence for plan approval shall be as follows:

(a) Initial Approval - Site plans, elevation plans and building plans shall be submitted to the Building Control committee for initial approval prior to submittal to the City of El Paso.

(b) Final Approval - After approval by the City of El Paso authorizing construction, the plans approved by the City of El Paso shall be submitted to the Building Control Committee for final approval.

Approval of the plans and specifications shall be evidenced by the written approval of the Building Control Committee made on the plans and specifications. No changes or deviations in or from the approved plans and specifications, insofar as the exterior of the Improvements is concerned, shall be made without the written approval of the Building Control Committee.

11.3 Minimum Criteria All plans must meet the following minimum criteria:

(a) Depict the location, shape and height of the Improvements on the Building Site and show the location and height of all fences.

(b) Be in such other detail to permit the Building Control Committee to make its determination that the proposed Improvements are in accordance with the provisions of the Declaration.

ARTICLE XII

Default

12.1 **Default and Remedies.** Failure to comply with any of the terms of this Declaration, the Articles, the Bylaws or the Rules and Regulations referenced herein, shall constitute an event of default and shall be grounds for relief, which may include without limitation an action by the Association or any aggrieved Owner to recover sums due for damages and injunctive relief, or any combination thereof.

12.2 **Costs.** In any proceeding arising because of any alleged default by an Owner, the Association or any aggrieved Owner, if successful, shall be entitled to recover the costs of the proceedings and reasonable attorneys' fees from such Owner.

12.3 **No Waiver.** The failure of the Association or of any Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration, the Articles, the Bylaws or the Rules and Regulations, shall not constitute a waiver of the right of the Association or of any such Owner to enforce such right, provision, covenant or condition in the future.

12.4 **Rights Cumulative.** All rights, remedies and privileges granted to the Association or any Owner pursuant to the provisions of this Declaration, the Articles, the Bylaws or the Rules and Regulations referenced herein, shall be deemed to be cumulative and the exercise of any one or more of such rights, remedies and privileges shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other additional rights, remedies or privileges, as may be available to such party at law or in equity.

ARTICLE XIII

General Provisions

13.1 **Acceptance of Governing Rules.** The Association, all present or future Owners, tenants or future tenants, or any other persons using the Property are subject to and shall comply with this Declaration, the Articles, the Bylaws and the Rules and Regulations referenced herein, and the acquisition, occupancy or rental of a Lot shall signify that all such documents are accepted and ratified. In the event of a conflict in any of the provisions of any such documents, the documents shall govern or control in the following order or preference: (i) this Declaration; (ii) the Articles; (iii) the Bylaws; and (iv) the Rules and Regulations referenced herein.

13.2 **Amendments.** During the Development Period, Declarant shall have the right to amend this Declaration and thereafter, this Declaration may be amended from time to time by a written instrument executed and acknowledged by Owners of Lots having not less than the seventy-five (75%) percent of the total votes held by all members of the Association.

13.3 **Delivery of Notices.** All notices or other documents required herein to be delivered by the Association to Owners may be delivered either personally or by mail. If delivered personally, the same shall be deemed to have been delivered when actually received by the Owner or when left at the front door of such Owner's Single Family Dwelling. If mailed, the same shall be deemed delivered when deposited in the United States Mail addressed to the Owner at such Owner's address as it appears on the records of the Association, with postage thereon prepaid.

13.4 **Severability.** If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase or word, or the application thereof in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration, and the

application of any provisions, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

13.5 Paragraph Titles. Paragraph titles used in this Declaration are for convenience of reference and are not intended to limit, enlarge or change the meaning of the contents of the various paragraphs.

IN WITNESS WHEREOF, Declarant has duly executed this Declaration this 10th day of October, 1996.

CACTUS POINTE, LTD.

By: CACTUS POINTE TRUST,
Its General Partner

By: [Signature]
John Cullers, Trustee

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

BEFORE ME, the undersigned authority, a Notary Public in and for El Paso County, Texas, on this day personally appeared JOHN CULLERS, Trustee of CACTUS POINTE TRUST (General Partner of CACTUS POINTE, LTD), known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of said corporation, as General Partner of CACTUS POINTE, LTD., and that he executed the same as the act of such Trust, as General Partner of CACTUS POINTE, LTD., for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 10th day of October, 1996.



[Signature]
Notary Public in and for
The State of Texas

c:\jck\corporat\cactuspo.int\declarat.3RD

After recording, please return to:
Lawyers Title of El Paso, Inc.
301 East Yandell
El Paso, Texas 79902

RE: LT #96-2743
HB

EL PASO COUNTY TEXAS



OCT 25 1996

ANY PROVISIONS HEREIN WHICH RESTRICTS THE SALE, RENTAL
OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR
OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW
STATE OF TEXAS
COUNTY OF EL PASO
I hereby certify that this instrument was filed on the date and time
stamped hereon by me and was duly recorded in the volume and page
of the Official Public Record of Real Property El Paso County, Texas.

Doc# 96066850
Pages: 14
Date : 10-25-1996
Time : 04:31:40 P.M.
Filed & Recorded in
Official Records
of EL PASO County, TX.
HONORABLE HECTOR ENRIQUEZ, JR.
COUNTY CLERK
Rec. \$ 35.00