

BY-LAWS  
OF  
EXCELSIOR WAY  
HOMEOWNERS' ASSOCIATION, INC.  
(a Texas Non-Profit Corporation)

ARTICLE I

NAME

The name of the organization shall be EXCELSIOR WAY HOMEOWNERS' ASSOCIATION, INC., hereinafter called "Association".

ARTICLE II

PURPOSE AND OWNER OBLIGATION

2.1 PURPOSE. The purpose for which this non-profit Association was formed is to govern the real property (the "Property") situated in the County of Dallas, State of Texas, which Property is described on the attached Exhibit "A", which by this reference is made a part hereof for all purposes.

2.2 OWNER OBLIGATION. All present and future owners or any other person who might reside in the Property are subject to the regulations set forth in these By-Laws. The mere acquisition of any of the residential lots (the "Lots") comprising the Property or the mere act of occupancy of any residential dwellings (the "Homes") on the Lots will signify that these By-Laws are accepted, ratified and will be strictly followed.

ARTICLE III

DEFINITIONS AND TERMS

3.1 MEMBERSHIP. Any person on becoming an Owner of a Lot shall automatically become a Member of this Association and be subject to these By-Laws. The Declarant (defined below) shall be a member for so long as it owns Lots. Such membership shall terminate without any formal Association action whenever such person ceases to own a Lot. Such termination shall not relieve or release any such former Owner from any liability or obligation incurred under or in any way connected either with the Association or the Lots during the period of such ownership and membership herein, or impair any rights or remedies which the Board of Directors of the Association or others may have against such former Owner and Member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto. No certificates of stock shall be issued by the Association, but the Board of Directors, if it so elects, may issue one (1)

Membership Card per Lot to the Owner(s) of the Lot. Such Membership Card shall be surrendered to the Secretary whenever ownership of the Lot designated thereon is terminated.

3.2 VOTING. The Association shall have two classes of voting. Class A shall consist of Owners of the Lots; each Owner shall be entitled to cast one (1) vote per Lot in the affairs of the Association. Voting shall not be split among more than one (1) Lot Owner. The total number of votes that can be cast by the Owners is fifty two (52). Class B shall consist of Excelsior Way Joint Venture and its successors and assigns (the "Declarant"). The Declarant shall be entitled to three (3) votes per Lot in the affairs of the Association; provided, however, they shall cease being a Class B member and shall become a Class A member on the earlier of (i) when the total number of votes held by the Class A members is equal to the total number of votes held by the Declarant or (ii) five (5) years from the date hereof. The total number of votes that can be cast by the Declarant is one hundred fifty six (156).

3.3 QUORUM. Except as otherwise provided in these By-Laws, the presence in person or by proxy of sixty-six and two-thirds percent (66-2/3%) of the outstanding votes held by the members of the Association shall constitute a quorum.

3.4 PROXIES. Votes may be cast in person or by proxy. Proxies must be filed with the Secretary before the appointed time of each meeting.

#### ARTICLE IV

##### ADMINISTRATION

4.1 ASSOCIATION RESPONSIBILITIES. The Owners of the Lots will constitute the Members of the Association, who will have the responsibility of administering the Property through a Board of Directors. The Board of Directors shall govern the Association in accordance with the Declaration of Covenants, Conditions and Restrictions (the "Declaration").

4.2 PLACE OF MEETINGS. All annual and special meetings of the Association shall be held at the principal office of the Association or at such other suitable and convenient place as may be permitted by law and from time to time fixed by the Board of Directors and designated in the notices of such meetings.

4.3 ANNUAL MEETINGS. Annual meetings shall be held on the first Tuesday in March of each year. The first annual meeting shall be held in 1992.

4.4 SPECIAL MEETINGS. It shall be the duty of the President to call a special meeting of the Owners as directed by resolution of the Board of Directors or upon a petition signed by at least one-tenth (1/10) of the outstanding votes and presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose

thereof. No business shall be transacted at a special meeting except as stated in the notice unless by consent of four-fifths (4/5) of the outstanding votes present, either in person or by proxy.

4.5 NOTICE OF MEETINGS. The Secretary shall mail notices of annual and special meetings to each Member of the Association, directed to his last known post office address, as shown on the records of the Association, by uncertified mail, postage prepaid. Such notice shall be mailed not less than ten (10) days nor more than twenty (20) days before the date of such meeting and shall state the date, time and place of the meeting and the purpose or purposes thereof. In lieu of mailing notice as herein provided, such notice may be delivered by hand or left at his residence in his absence. If requested, any Mortgagee of record or its designee may be entitled to receive similar notice.

4.6 ADJOURNED MEETING. If any meeting of Owners cannot be organized because a quorum has not attended, the Declarant and the Owners who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is attained.

4.7 ORDER OF BUSINESS. The order of business at all meetings of the Owners shall be as follows:

- a. Roll call.
- b. Proof of notice of meeting or waiver of notice.
- c. Reading of minutes of preceding meetings.
- d. Reports of officers.
- e. Reports of committees.
- f. Election of Directors.
- g. Unfinished business.
- h. New business.

#### ARTICLE V

##### BOARD OF DIRECTORS

5.1 NUMBER AND QUALIFICATION. The affairs of this Association shall be governed by a Board of Directors composed initially of two (2) persons. The following persons shall act in such capacity and shall manage the affairs of the Association until their successors are elected, to-wit:

NAME

Larry R. Taylor

Phillip W. Duncan

ADDRESS

16200 Dallas Parkway  
Suite 160  
Dallas, Texas 75248

16200 Dallas Parkway  
Suite 160  
Dallas, Texas 75248

5.2 POWERS AND DUTIES. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and for the operation and maintenance of the Property. The Board of Directors may do all such acts and things that are not by these By-Laws or by the Declaration directed to be exercised and done by the Owners.

5.3 OTHER POWERS AND DUTIES. The Board of Directors shall have the following duties:

a. To administer and enforce the covenants, conditions, restrictions, uses, limitations, obligations and all other provisions set forth in the Declaration;

b. To establish, make and enforce compliance with rules necessary for the orderly operation, use and occupancy of the Property. (a copy of such rules and regulations shall be delivered or mailed to each Member promptly upon the adoption thereof);

c. To protect and defend the entire Property from loss and damage by suit or otherwise;

d. To enter into contracts within the scope of their duties and power;

e. To establish a bank account for the common treasury for all separate funds which are required or may be deemed advisable by the Board of Directors;

f. To keep and maintain full and accurate books and records showing all of the receipts, expenses or disbursements and to permit examination thereof at any reasonable time by each of the Owners and any Mortgagee, and to cause a complete audit of the books and accounts by a competent accountant, once each year. The Association shall cause to be prepared and delivered annually to each Owner an audited statement showing all receipts, expenses or disbursements since the last such statement. Such audited financial statements shall be available to any Mortgagee, on request, within ninety (90) days following the fiscal year end of the Project;

g. To meet at least once each quarter; and

h. In general, to carry on the administration of this Association and to do all of those things, necessary and reasonable, in order to carry out the communal aspect of residential dwelling ownership.

**5.4 ELECTION AND TERM OF OFFICE.** At the first (1st) annual meeting of the Association the term of office on one (1) of the Directors shall be fixed for one (1) year and the term of office of one (1) of the Directors shall be fixed at two (2) years. At the expiration of the initial term of office of each respective Director, his successor shall be elected to serve a term of three (3) years. The persons acting as Director shall hold office until their successors have been elected and hold their first (1st) meeting.

**5.5 VACANCIES.** Vacancies on the Board of Directors caused by any reason other than the removal of a Director by a vote of the Association shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum. Each Director so elected shall serve out the remaining term of his predecessor.

**5.6 REMOVAL OF DIRECTORS.** At any regular or special meeting duly called, any one (1) or more of the Directors may be removed with or without cause by sixty-six and two-thirds percent (66-2/3%) of the outstanding votes and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the Owners shall be given an opportunity to be heard at the meeting.

**5.7 ORGANIZATION MEETING.** The first (1st) meeting of a newly elected Board of Directors shall be held within ten (10) days of election at such place as shall be fixed by the Directors at the meeting at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, providing a majority of the whole Board of Directors shall be present.

**5.8 REGULAR MEETINGS.** Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors, but at least four (4) such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each Director, personally, by mail, telephone or telegraph, at least three (3) days prior to the day named for such meeting.

**5.9 SPECIAL MEETINGS.** Special meetings of the Board of Directors may be called by the President or Secretary, or upon the written request of at least two (2) Directors. The President or Secretary will give three (3) days' personal notice to each Director by mail, telephone or telegraph, which notice shall state the time, place (as hereinabove provided) and purpose of the meeting.

5.10 WAIVER OF NOTICE. Before or at any meeting of the Board of Directors, any Director may in writing, waive notice of such meeting and such waiver shall be deemed at any meeting equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board of Directors shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

5.11 BOARD OF DIRECTOR'S QUORUM. At all meetings of the Board of Directors, a majority of Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting, as originally called, may be transacted without additional notice.

5.12 FIDELITY BONDS. The Board of Directors may require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds. The premium on such bonds shall be paid by the Association.

## ARTICLE VI

### OFFICERS

6.1 DESIGNATION. The officers of the Association shall be a President, Vice President, Secretary, Assistant Secretary, and Treasurer, all of whom shall be elected by the Board of Directors.

6.2 ELECTION OF OFFICERS. The officers of the Association shall be elected annually by the Board of Directors at the organization meeting of each new Board of Directors and shall hold office at the pleasure of the Board of Directors.

6.3 REMOVAL OF OFFICERS. Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and his successor may be elected at any regular meeting of the Board of Directors or at any special meeting of the Board of Directors called for such purposes.

6.4 PRESIDENT. The President shall be the chief executive officer of the Association. He shall preside at all meetings of both the Association and the Board of Directors. He shall have all the general powers and duties which are usually vested in the office of president of an association, including, but not limited to, the power to appoint committees from among the Owners to assist in the administration of the affairs of the Association. He shall co-sign all promissory notes with the Secretary and co-sign all checks with the Treasurer.

6.5 VICE PRESIDENT. The Vice President shall perform all of the duties of the President in his absence and such other duties as may be required of him from time to time by the Board of Directors.

6.6 SECRETARY AND ASSISTANT SECRETARY.

a. The Secretary, or such Assistant Secretaries as may be appointed by the Board of Directors, shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Association. He shall have charge of such books and papers as the Board of Directors may direct and shall co-sign all instruments of conveyance; and he shall, in general, perform all the duties incident to the office of the Secretary.

b. The Secretary, or such Assistant Secretaries as may be appointed by the Board of Directors, shall compile and keep up to date at the principal office of the Association a complete list of Members and their last known addresses as shown on the records of the Association. Such list shall show opposite each Member's name, the street address of their lot. Such list shall be open to inspection by Members and other persons lawfully entitled to inspect the same at reasonable times during regular business hours.

6.7 TREASURER. The Treasurer shall receive and deposit in appropriate bank accounts all money of the Association and shall disburse such as directed by resolution of the Board of Directors; provided, however, that a resolution of the Board of Directors shall not be necessary for disbursements made in the ordinary course of business conducted within the limits of a budget adopted by the Board of Directors, including authority to: co-sign all checks; keep proper books of account; cause an annual statement of the Association's books to be made at the completion of each fiscal year; prepare an annual budget and a statement of income expenditures to be presented to the Membership at its regular annual meeting, and deliver a copy of each to the Members; and perform all other duties assigned to him by the Board of Directors.

ARTICLE VII

MANAGEMENT CONTRACT

The Board of Directors may enter into a management agreement with a management company at a rate of compensation agreed upon by the Board of Directors. In accordance with the Declaration and these By-Laws, the management company shall have, but shall not be limited to, the following functions, duties and responsibilities:

(a) Prepare an annual operating budget detailed to reflect expected operation for each month. This budget is established to show expected recurring receipts and operating disbursements. It is further used for comparison with actual monthly income and expenditures.

(b) Prepare monthly operating and cash position statements.

(c) Analyze and compare operating receipts and disbursements against the Board of Directors-approved budget. Where a significant variation is shown (10% above or below the budgeted amount), prepare explanations of variations from budgeted figures. Suggest corrective recommendations, if applicable.

#### ARTICLE VIII

##### INDEMNIFICATION OF OFFICERS AND DIRECTORS

The Association shall indemnify every Director or officer, his heirs, executors and administrators, against all loss, cost and expense, including counsel fees, reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a Director or officer of the Association, except in matters of gross negligence or willful misconduct. In the event of a settlement, indemnification shall be provided only in connection with such matters in which the Association is advised by counsel that the person to be indemnified has not been guilty of gross negligence or willful misconduct in the performance of his duty as such Director or officer in relation to the matter involved. The foregoing rights shall not be exclusive of other rights to which such Director or officer may be entitled. All liability, loss, damage, cost and expense incurred or suffered by the Association in connection with the foregoing indemnification provision shall be treated and handled by the Association as Common Expenses; provided, however, nothing contained in this Article VIII shall be deemed to obligate the Association to indemnify any Member or Owner of a Lot, who is or has been a Director or officer of the Association, with respect to any duties or obligations assumed or liabilities incurred by him under and by virtue of the Declaration as a Member or Owner of a Lot covered thereby.

#### ARTICLE IX

##### OBLIGATIONS OF THE OWNERS

###### 9.1 GENERAL.

a. Each Owner shall comply strictly with the provisions of the Declaration.

b. Each Owner shall always endeavor to observe and promote the cooperative purposes for which the Property was developed.

9.2 DESTRUCTION OR OBSOLESCENCE. Each Owner shall, if necessary, execute a power of attorney in favor of the Association, irrevocably appointing the Association his Attorney In Fact to deal with the Owner's Dwelling upon its destruction, obsolescence or condemnation.

## ARTICLE X

### AMENDMENTS TO PLAN OF DWELLING OWNERSHIP

10.1 AMENDMENT WITH VOTE OF THE MEMBERS. These By-Laws may be amended by the Association at a duly constituted meeting for such purpose, and no amendment shall take effect unless approved by the members holding at least sixty-six and two-thirds percent (66-2/3%) of the outstanding votes except for those amendments which require the approval of Owners and Mortgagees as provided in the declaration. In no event shall the By-Laws be amended to conflict with the Declaration. In the event of a conflict between the two (2) documents, the Declaration shall govern and control.

10.2 AMENDMENT WITHOUT VOTE OF THE MEMBERS. These By-Laws may be unilaterally amended by the Board of Directors to correct any clerical or typographical error or omission, or to change any provision to meet the requirements of Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Veterans Administration or Federal Housing Administration.

## ARTICLE XI

### MORTGAGES

11.1 NOTICE TO ASSOCIATION. An Owner who mortgages his Lot shall notify the Association through the President of the Association giving the name and address of his Mortgagee. The Association shall maintain such information in a book entitled "Mortgagees of Lots".

11.2 NOTICE OF UNPAID ASSESSMENTS. The Association shall, at the request of a Mortgagee, report any unpaid assessments due from the Owner of such Lot.

## ARTICLE XII

### NON-PROFIT ASSOCIATION

This Association is not organized for profit. No Owner, Member, Director, or person from whom the Association may receive any property or funds shall receive or shall be lawfully entitled to receive any pecuniary profit from the operation thereof, and in no event shall any part of the funds or assets of the Association be paid as a salary or as compensation to, or distributed to or inure to the benefit of any Owner, Member, or Director; provided, however, always (i) that reasonable compensation may be paid to any Member while acting as an agent or employee of the Association for services rendered in effecting one (1) or more of the purposes of the Association and

(ii) that any Director may, from time to time, be reimbursed for his actual and reasonable expenses incurred in connection with the administration of the affairs of the Association.

#### ARTICLE XIII

##### PRINCIPAL OFFICE

The principal office of the Association shall be located at 16200 Dallas Parkway, Suite 160, Dallas, Texas 75248, but may be located at such other suitable and convenient place as shall be permitted by law and designated by the Board of Directors.

#### ARTICLE XIV

##### EXECUTION OF INSTRUMENTS

The persons who shall be authorized to execute any and all instruments of conveyance or encumbrances, including promissory notes, shall be the President with the co-signature of the Secretary of the Association.

#### ARTICLE XV

##### CORPORATE SEAL

The Board of Directors shall provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Association.

#### ARTICLE XVI

##### DEFINITIONS OF TERMS

16.1 The terms used in these By-Laws, to the extent they are defined in the Declaration, shall have the same definition as set forth in the Declaration, as the same may be amended from time to time, recorded in the office of the County Clerk of Dallas County, Texas.

#### CERTIFICATE

I HEREBY CERTIFY that the foregoing is a true, complete and correct copy of the By-Laws of EXCELSIOR WAY HOMEOWNERS' ASSOCIATION, INC., a Texas non-profit corporation, as adopted by the initial Board of Directors at its organization meeting effective on the 24th day of October, 1992.

IN WITNESS WHEREOF, I hereunto set my hand and affix the Seal of the Corporation, effective this the 24th day of October, 1992.

  
Phillip W. Duncan, Secretary