

MAR 22 2007

**CERTIFICATE OF FORMATION**

**OF**

**Corporations Section**

**THE EXCELSIOR  
CONDOMINIUM OWNERS ASSOCIATION, INC**

The undersigned natural person of the age of eighteen (18) years or more, acting as an incorporator of a non-profit corporation under the Texas Non-Profit Corporation Act (the "Act"), hereby adopts the following Certificate of Formation for such corporation:

**ARTICLE I**

The name of the corporation is the "The Excelsior Condominium Owners Association, Inc."

**ARTICLE II**

The corporation is a non-profit corporation.

**ARTICLE III**

The period of its duration is perpetual.

**ARTICLE IV**

The purpose for which the corporation is organized are (i) to act as the association of owners of condominium units in The Excelsior, A Condominium (the "Condominium"), in Galveston, Galveston County, Texas, including those purposes set forth in Section 82.102 of the Uniform Condominium Act of the State of Texas, and (ii) any other lawful purpose which is not inconsistent with the foregoing.

**ARTICLE V**

The corporation shall have members, which members shall be the owners of condominium units in the Condominium. Membership shall be subject to the requirements, qualifications and other matters set forth in (i) the Declaration of Condominiums filed of record in the Condominium Records of Galveston County, Texas, and (ii) the Bylaws of the corporation, as such Declaration and Bylaws may be amended from time to time.

**ARTICLE VI**

To the full extent permitted by Texas law, no director of the corporation shall be liable to the corporation or its members for monetary damages for an act or omission in such director's capacity as a director of the corporation, except that this Article VI does not eliminate or limit the liability of

a director to the extent the director is found liable for (i) a breach of duty of fiduciary duty or loyalty to the Association or its Members; (ii) an act or omission not in good faith or that involves intentional misconduct or a knowing violation of the law; (iii) a transaction from which such Director or Officer received an improper benefit, whether or not the benefit resulted from an action taken within the scope of directorship or office; or (iv) an act or omission for which the liability of such Director or Officer is expressly provided for by statute. Any repeal or amendment of this Article VI by the corporation shall be prospective only and shall not adversely affect any limitation on the liability of a director of the corporation existing at the time of such repeal or amendment. In addition to the circumstances in which the director of the corporation is not liable as set forth in this Article VI, the director shall not be liable to the full extent permitted by any provision of the statutes of Texas hereafter enacted that further limits the liability of the director of a corporation or its members for monetary damages shall not be deemed exclusive of any other rights or limitations or indemnity to which a director may be entitled under any other provision of these Articles of Incorporation or the Bylaws of the corporation, contract or agreement, vote of members and/or disinterested directors of the corporation, or otherwise.

To the full extent permitted by Texas law, no officer of the corporation shall be liable to the corporation or its members for monetary damages for an act or omission in such officer's capacity as an officer of the corporation, provided that the officer's conduct was exercised in good faith, with ordinary care, and in a manner the officer reasonably believed to be in the best interest of the corporation.

To the full extent authorized or contemplated by an Act and subject to the provisions of this Article VI, the corporation shall (i) indemnify its directors, (ii) indemnify its officers, employees and agents, (iii) indemnify persons serving or who served at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint, venture, sole proprietorship, trust, employee benefit plan or other enterprise, and (iv) advance, pay or reimburse incurred by any of the foregoing indemnified parties.

## ARTICLE VII

The street address of its initial registered office is 4141 Southwest Freeway, Suite 550, Houston, Texas 77027 and the name of its initial registered agent at such address is Omri Shafran.

## ARTICLE VIII

The number of directors constituting the initial Board of Directors is three (3), and the names and addresses of the persons who are to serve as directors are:

Omri Shafran  
4141 Southwest Freeway, Suite 550  
Houston, Texas 77027

Avraham Rozenman  
4141 Southwest Freeway, Suite 550  
Houston, Texas 77027

Michael Margolin  
4141 Southwest Freeway, Suite 550  
Houston, Texas 77027

**ARTICLE IX**

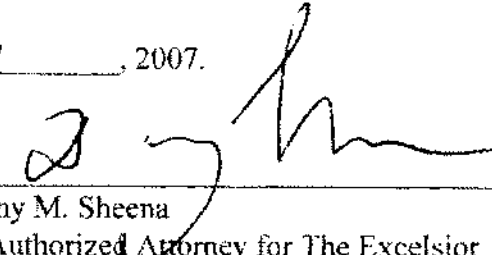
The name and address of the incorporator are:

Danny M. Sheena  
1001 Texas Avenue, Suite 240  
Houston, Texas 77002

This document will become effective when the document is filed by the secretary of state.

The undersigned signs this document subject to the penalties imposed by law for the submission of a false or fraudulent document.

SIGNED this the 2<sup>nd</sup> day of MARCH, 2007.

By:   
\_\_\_\_\_  
Danny M. Sheena  
As Authorized Attorney for The Excelsior  
Condominium Owners Association, Inc.

STATE OF TEXAS           §  
COUNTY OF HARRIS   §

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on this the 2<sup>nd</sup>  
day of MARCH, 2007.

  
\_\_\_\_\_  
Cristina D. Alvarado  
Notary Public for The State of Texas





**THE EXCELSIOR,  
A CONDOMINIUM**

**DECLARATION OF CONDOMINIUM**

**PREAMBLE**

This Declaration of Condominium is made on the 22 day of MARCH, 2007 at Galveston, Texas by YISHEAM, INC, a Texas corporation ("Declarant")

**RECITALS**

A. The Declarant is the owner of the Land and easement rights which are located in Galveston County, Texas, as more particularly described in Exhibit A and Exhibit A-1 attached hereto.

B. The Declarant hereby submits the Land and all improvements erected or to be erected thereon, together with all easements, rights and appurtenances belonging thereto, to the Condominium Regime hereby established under the Texas Uniform Condominium Act ("Act"), Tex. Prop. CODE ANN §82.001 *et seq*. All Land and Improvements which are now or hereafter become subject to this Declaration and the Condominium Regime hereby established shall hereinafter be referred to as the "Condominium."

C. By this Declaration, the Declarant intends to establish a plan of ownership for the Condominium consisting of individual ownership of residential Units and individual ownership of Common Elements among the Unit Owners.

D. By this Declaration, the Declarant intends to impose on the Condominium restrictions that are mutually beneficial to all Units and the Owner thereof. The Declarant further intends, in accordance with the terms set forth herein, that the Owners will govern the Condominium by means of an organization of Owners, as more particularly set forth below.

E. The Units and Common Elements of the Condominium are more particularly described in the Plat and Plans attached hereto as Exhibit B and Exhibit C, respectively. The allocation of each Unit of: (i) a fraction or percentage of undivided interest in the Common Elements of the Condominium; (ii) a fraction or percentage of undivided interest in the Common Expenses of the Association; and (iii) an allocation of votes in the Association, is set forth in Exhibit D attached hereto

NOW THEREFORE, the Declarant declares that the Land shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the covenants, conditions and restrictions set forth in this Declaration and the amendments hereto, all of which

are declared and agreed to be in furtherance of a plan for the establishment of the Condominium Regime, and for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Land. All of the covenants, conditions and restrictions set forth in this Declaration shall run with the Land and shall be binding on all parties having or acquiring any right, title or interest in or any part of the Land or a Unit and shall be for the benefit of the Declarant, the Association of each Owner, and shall inure to the benefit of and be binding on each successor in interest of the Declarant, the Association and each Owner.

**ARTICLE I  
NAME**

1.1 **Name.** The name of the Condominium is "The Excelsior, A Condominium."

**ARTICLE II  
DEFINITIONS AND CONSTRUCTION**

2.1 **Terms Defined.** As used throughout this Declaration, the following terms shall have the meanings set forth below or as otherwise defined herein, regardless of where such terms first appear.

"AAA" has the meaning set forth in Section 14.1(c) of this Declaration.

"Access Easement" means a perpetual and irrevocable easement and right of access to each Unit, from time to time as may reasonably be necessary, appropriate or desirable for: (i) the maintenance, repair or replacement of any of the Common Elements thereon or accessible therefrom, (ii) the making of Emergency repairs therein necessary to prevent harm or damage to the Common Elements, any Unit or any occupant, and (iii) such other reasonable purposes as are deemed by the Association to be necessary for the performance of the obligations of the Association as described in this Declaration, the Bylaws, the Regulations or the Act.

"Act" means the Texas Uniform Condominium Act, Texas Property Code Ann. § 82.001, *et seq*

"Allocated Interest" means the undivided interest in the Common Elements, the Common Expense Liability, and votes in the Association allocated to each Unit. Each Unit's Allocated Interest is set forth opposite the Unit's identifying number in Exhibit D attached hereto. The Allocated Interest was established by dividing the approximate square footage in such Unit by the approximate total square footage of all Units. In the event Units are added by (by subdivision or otherwise) or withdrawn from the Condominium, the Allocated Interest shall be recomputed and reallocated pursuant to the Reallocation Formula

"Arbitration Rules" has the meaning set forth in Section 14.1(c) of this Declaration.

"Articles" means the article of incorporation of the Association filed with the Secretary of State for the State of Texas, as amended.

"**Assessment**" means collectively, any Monthly Assessments and Special Assessments established under this Declaration, together with dues, fees, charges, interest, late fees, fines, collection cost, attorney's fees, and any other amount due to the Association by the Owner of a Unit or levied against a Unit by the Association.

"**Assignment of Rents**" has the meaning set forth in Section 5.6 of this Declaration.

"**Association**" means The Excelsior Condominium Owners Association, Inc., a Texas non-profit corporation.

"**Base Building Improvements**" mean the original improvements comprising the Condominium.

"**Board of Directors**" means the Board of Directors of the Association, whether such Board is appointed by the Declarant or elected by the Association, and includes their successors, as duly appointed or elected and qualified from time to time.

"**Building**" means generally, the physical structure within which Units and/or Common Elements are located.

"**Bylaws**" means the Bylaws of the Association adopted by the Board of Directors, as amended.

"**Common Elements**" means all portions of the Condominium other than the Units, including both the General Common Elements and the Limited Common Elements.

"**Common Expense Liability**" means the liability for Common Expenses allocated to each Unit.

"**Common Expenses**" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

"**Condominium Regime**" means the form of real property ownership established by this Declaration in which portions of the Land and Improvements are designated for separate ownership or occupancy and the remainder of the Land and improvements are designated for common ownership or occupancy in undivided ownership percentage interest.

"**Declarant**" has the meaning set forth in the Preamble of this Declaration and includes any successor party to whom the Declarant shall expressly assign, in a writing filed for records, in the in the Condominium Records of Galveston County, Texas, the rights, powers, privileges, duties, obligations, and/or prerogatives of the Declarant. Any such successor party will be required to assume in writing all obligations and duties of Declarant under this Declaration. The conveyance of a Unit to an Owner will not constitute a conveyance of any rights, privileges, powers, prerogatives, duties or obligations of the Declarant under this Declaration.

**"Declarant Control Period"** means the period commencing on the date of this Declaration and continuing until the date which is one hundred twenty (120) days after the date that deeds to seventy-five percent (75%) of the Units (in number) have been recorded in the Condominium Records of Galveston County, Texas

**"Declarant Extended Rights Period"** means the period commencing on the date of this Declaration and continuing until the date which is one hundred twenty (120) days after the date the deed to convey the last Unit owned by Declarant to a Purchaser has been recorded in the Condominium Records of Galveston County, Texas.

**"Declarant-Owned Unit"** means any unit that Declarant has not yet conveyed to a Purchaser.

**"Declaration"** means this Declaration of Condominium for the Excelsior, A Condominium and all recorded amendments thereto

**"Development Rights"** means a right or combination of rights reserved by the Declarant in this Declaration to (i) add real property and withdraw real property from the Condominium; (ii) create Units, Common Elements or Limited Common Elements within the Condominium; (iii) subdivide Units or convert Units into Common Elements; (iv) withdraw real property from the Condominium; and (v) exercise any other Development Rights reserved in favor of the Declarant under this Declaration or the Act.

**"Easement"** means collectively the Access Easement, the Vertical Access Easement, the Support Easement, the Utility Easement, the Parking Easement and the Roof-Top Easement.

**"Emergency"** means circumstances of an extraordinary nature, including without limitation (i) circumstances where the health, safety and/or welfare of an Owner, Owner's Invitee, Tenant, Tenant's Invitee or other Invitee on the Land is imminently at issue and/or (ii) circumstances where there is imminent possible damage to a Unit or the Common Elements. During the Declarant Control Period, determination of the existence or non-existence of an Emergency shall be within the sole discretion of the Declarant; *provided however*, that in the event the Declarant is not readily available, the Manager shall make such determination and the Manager's determination shall be subject to review and modification by the Declarant. Upon the expiration of the Declarant Control Period, determination of the existence or non-existence of an Emergency shall be within the sole discretion of the Board of Directors, provided however, that in the event that the Board of Directors is not readily available, the Manager shall make such determination and the Manager's determination shall be subject to review and modification by the Board of Directors. Notwithstanding the foregoing, at all times appropriate public health and safety officials (e.g., police department, fire department, etc.) acting in their official capacity shall have the right to declare emergencies for purpose of this Declaration

**"First Lien Indebtedness"** means any indebtedness secure by a first and prior lien or encumbrance upon a Unit.

**"First Mortgagee"** means any bank, savings, and loan association, credit union, insurance company, mortgage corporation or similar institution that regularly makes residential mortgage loans and holds a First Lien indebtedness

**"General Common Elements"** means all portions of the Common Elements that are not Limited Common Elements.

**"Improvements"** means all buildings, structure, pavement, fencing, landscaping, plumbing, electrical lines, telephone lines, data transmission lines, computer cables and any other fixture or Systems affixed to the Land

**"Insurance Proceeds"** means any and all proceeds received by an Owner from an insurance company as a result of a casualty loss to a Unit.

**"Land"** means that certain real property referenced in the Recitals which is located in Galveston County, Texas as more particularly described in Exhibit A attached hereto, and included all Improvements erected or to be erected thereon and all easements, rights and appurtenances belonging thereto as more particularly described in Exhibit A-1 attached hereto

**"Life Safety Systems"** means any and all emergency lighting, audio, visual, and data signals, safety systems, sprinklers and smoke detection systems, together with all conduits, wiring, electrical connections and systems related thereto, which are now or hereafter installed in a Building, whether or not within the Units. Without limiting the generality of the foregoing, when the context shall allow, the Life Safety Systems shall also be deemed to include all means of emergency ingress and egress, which shall include stairways and stair landings. Such Life Safety Systems, regardless of where located, shall constitute and remain Common Elements hereunder. No reference herein to "Life Safety Systems" shall be deemed or construed to obligate Declarant: (i) to install or otherwise provide in the Condominium such Life Safety Systems; or (ii) in the event that such Life Safety Systems are not installed or otherwise provided in the Condominium, to provide any replacement systems therefore or compensation for the loss thereof. Nothing herein shall be deemed to represent, suggest or imply that the Condominium included or will ever include all or any portion of the Life Safety Systems described above

**"Limited Common Elements"** means those portions of the Common Elements which are allocated by the Act, this Declaration, the Plat, or Plans for the exclusive use of one (1) or more, but less than all of the Units. Such Limited Common Elements include, by way of example and without limitations: (i) all parking spaces assigned to a specific Unit as provided herein; (ii) all balconies appurtenant to a single Unit; and (iii) the portion of any system (exclusive of the Life Safety Systems) which services a single Unit, shall all be a Limited Common Element of such Unit

**"Manager"** means the person selected by the Declarant or the Association that is responsible for the day-to-day management, operation and administration of the Condominium.

**"Manager's Suite"** means a Declarant-Owned Unit or a Unit owned by the Association which is made available for use by the Manager or the management company engaged by the



Association to manage the Condominium. Such use and occupancy shall be subject to the payment by the Association or user of rent or other charge established by the Owner of the Unit, and the execution of a lease agreement or other writing in form and substance satisfactory to the Owner of the Unit. A Unit designed for use as a Manager's Suite need not be dedicated for such use on a permanent basis and such Unit may be also or alternatively used for any purpose permitted under this Declaration.

**"Monthly Assessment"** means the Assessment established by the Board of Directors pursuant to Section 8.1 of this Declaration.

**"Owner"** means any Person (including the Declarant) owning fee title to a Unit, but does not include any Person having an interest in a Unit solely as security for an obligation. Whenever the term "Owner" is used in the granting of licenses, Easements, or rights to use the Unit's Owner and any occupant of such Unit (including a Tenant), together with such Owner's or occupant's family, guests, employees, contractors, agents and invitees, who, subject to the provisions of this Declaration, the Bylaws and the Regulations, shall also be entitled to the licenses, Easements and rights so granted.

**"Owner's Invitee"** means collectively, the Owner's family, guest, employee, contractors, agents and other invitees.

**"Parking Easement"** means a perpetual and irrevocable easement covering the parking area, as shown on the Plat or Plans, for the purpose of maintenance and repair of such area.

**"Past Due Rate"** means the maximum lawful rate of interest under Texas law. If there is no maximum lawful rate of interest under Texas law, the Past Due Rate means eighteen percent (18%) per annum.

**"Party"** or **"Parties"** has the meaning set forth in Section 14.1 of this Declaration.

**"Person"** means any natural person, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association, or other entity, and any fiduciary acting in such capacity on behalf of any of the foregoing.

**"Plans"** means the Condominium plans (including the parking plans) attached hereto as Exhibit C.

**"Plat"** means the plat attached hereto as Exhibit B.

**"Purchaser"** means a Person, other than the Declarant, who by means who by means of a voluntary transfer acquires a legal or equitable interest in a Unit, other than a leasehold interest or as security for an obligation.

**"Reallocation Formula"** means the methodology for computing and reallocating each Unit's Allocation Interest after the addition of Units to the Condominium (by subdivision or otherwise) or the withdrawal of Units from the Condominium. In either event, the Allocated

Interest for each Unit shall be computed by dividing the approximate square footage of such Unit by the approximate total square footage of all Units that remain after such addition or withdrawal. Such recomputed fractions or percentages shall thereafter be the Allocated Interest for each Unit. The foregoing Reallocation Formula shall be repeated each time Units are added to or withdrawn from the Condominium.

**"Regulations"** means the rules and regulations of the Association adopted by the Board of Directors, as amended.

**"Rents"** means any and all consideration payable to or received by an Owner in connection with leasing that Owner's Unit to a Tenant.

**"Roof-Top Easement"** has the meaning set forth in Section 4.4 of this Declaration.

**"Roof-Top Site(s)"** has the meaning set forth in Section 4.4 of this Declaration.

**"Special Assessments"** means Assessments established by the Board of Directors under the provisions of Section 8.3 of this Declaration.

**"Special Declarant Rights"** means rights reserved for the benefit of the Declarant to: (i) complete Improvements shown on the Plans and Plans filed with the Declaration; (ii) exercise any Development Right; (iii) make the Condominium a part of a larger condominium or a planned Community; (iv) maintain sales, management and leasing offices, signs advertising the Condominium, and models; (v) use easements through the Common Elements for the purpose of making improvements within the Condominium or within real property that may be added to the Condominium; (vi) appoint or remove any officer or member of the Board of Directors of the Association during the Declarant Control Period; (vii) designate Roof-Top Sites and grant Roof-Top Easements; and (viii) exercise any other Special Declarant rights reserved in favor of the Declarant under this Declaration and the Act.

**"Support Easement"** means a perpetual and irrevocable easement for maintenance, repair, replacement and improvement of all foundations, footings, columns, girders, support beams, and any and all other structural members that support, uphold or are a part of the Improvements.

**"Systems"** means all fixtures, equipment, chutes, flues, ducts, pipes, lines, wires, cables, conduits, Life Safety Systems and other devices used in the production, heating, cooling and/or transmission of air, water, gas, electricity, communications, wastewater, sewage, audio, video, and data signals.

**"Tenant"** means a Tenant's family, guest, employees, contractors, agents and invitees.

**"Tenant's Invitee"** means a Tenant's family, guests, employees, contractors, agents and invitees.

"Unit" means a physical portion of the Condominium designated for separate fee simple ownership by an Owner. To the extent the context permits, when used in this Declaration, the term "Unit" shall also include an undivided ownership interest appurtenant to such Unit in and to the Common Elements. The term "Unit" does not include any Roof-Top Site or Roof-Top Easement.

"Utility Easement" means all existing recorded easements for utilities and any additional utility easements that the Declarant may grant.

"Vertical Access Easement" means a perpetual and irrevocable easements for access through the stairways, the elevators, the elevator shafts, fire rooms, fire systems, and lobbies located within the Improvements.

"Working Capital Contributions" means an amount equal to the Monthly Assessments multiplied by two (2), to be contributed to the Association by each Owner other than the Declarant as provided in Section 8.9 of this Declaration.

2.2 **Use of Number and Gender.** Whenever used herein, and unless the context shall otherwise provide, the singular number shall include the plural, the plural number shall include the singular, and the use of any gender shall include all genders.

2.3 **Statutory Definitions.** All terms used herein that are defined in Section 82.002(a) of the Act shall have the respective meanings specified in the Act, to the extent not expressly modified herein.

### ARTICLE 3 THE CONDOMINIUM

3.1 **Land Subject to Declaration.** All of the Land described in Exhibit A this Declaration shall be subject to this Declaration and the Condominium Regime hereby created. The Condominium is located entirely within Galveston County, Texas.

3.2 **Units.** The Condominium is divided into fee simple estates comprised of separately designated Units as reflected in the Plat, Plans and Exhibit D. In addition to any other reservations provided herein, the Declarant reserves the right to create a maximum of 26 Units in the Condominium.

(a) **Unit Boundaries.** The boundaries of each Unit run to the Unit's perimeter walls, floors and ceilings as depicted on the Plans and include (i) all Systems which exclusively serve such Unit and (ii) the finish materials, fixtures and appliances contained within the Unit; but exclude, (x) any Life Safety Systems, (y) any structural components (including bearing walls and columns) of the Building in which such Unit is located and (z) Systems which serve more than one (1) Unit.

(b) **Ownership and Possession of Units.** Each Owner shall be entitled to the exclusive ownership and possession of the Owner's Unit and shall have the common right to

share, with all other Owners, in the use of the Common Elements (other than the Limited Common Elements), in accordance with the purpose for which they are intended and the provisions hereof, without hindering or encroaching upon the lawful rights of other Owners. Any Unit may be jointly or commonly owned by more than one Person in any form of ownership recognized by the laws of the State of Texas, *however* no Unit may be subdivided, except by the Declarant prior to the sale of such Unit by Declarant to a Purchaser.

(c) Inseparability of Units; No Partition Each Unit and the Common Elements appurtenant thereto shall be inseparable and shall be acquired, owned, conveyed, transferred, leased, and encumbered only in their entirety.

(1) One Owner In the event a Unit is owned or conveyed to one (1) Owner, then such Owner shall own one hundred percent (100%) of the Unit and the Unit's Allocated Interest of Common Elements.

(2) Multiple Owners In the event a Unit is owned by more than one (1) Owner, then each Owner shall own an undivided interest in the Unit and an equal undivided interest in the Unit's Allocated Interest of Common Elements. If the applicable conveyancing documents fail to describe the percentage or fraction of undivided ownership owned by each Owner, then it shall be presumed that each Owner owns an equal percentage or fraction of undivided ownership. In no event shall a Unit owned by more than one (1) Owner be subject to physical partition and no Owner or Owners shall bring or be entitled to maintain an action for the partition or division of a Unit or the Common Elements. Any purported conveyance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the Common Elements without the Unit to which the interest is allocated, is void. Additionally, any purported conveyance, judicial sale or other voluntary or involuntary transfer of an undivided interest in a Unit without an equal undivided interest in the Unit's Allocated Interest of Common Elements, is void.

(d) Alteration of Unit Boundaries If the Declarant owns Units which adjoin horizontally (on the same floor), the Declarant shall have the right to relocate the boundaries between such adjoining Units by removing and relocating all or any part of any intervening partition, notwithstanding the fact that such partition may in whole or in part be a Common Element, so long as those acts do not impair the structural integrity of Systems or lessen the support of any portion of the Unit or the Building, *provided, however*, that the Declarant shall have the right to relocate certain Common Elements which are located within the said partition (such as pipes, flues, conduits, shafts, vents, ducts, wiring and the like) so long as such relocation is performed in a good and workmanlike manner by a capable and experienced workman and such Common Elements are fully operational upon completion of such relocation. In the event any damage is caused to any load-bearing wall, System, Common Element, or another Owner's Unit as a result of the Declarant's exercise of the rights granted hereunder, all such damages shall be repaired at the sole cost and expense of the Declarant. No Owner or Owners (other than the Declarant) shall have any of the foregoing rights described in this subparagraph, except as set forth below. Upon expiration of the Declarant Extended Rights Period, the rights of Declarant set forth in this Section 3.2(d) may be exercised by the Association as to Units owned by the

Association. If the Association exercises such rights, it automatically assumes the obligations arising under this Section 3.2(d).

(e) Unit Size. By acceptance of the deed to his Unit, each Owner acknowledges and agrees that the square footage, size and dimension of each Unit as set out and shown in this Declaration (including the Plat, Plans and Exhibit D) are approximate and are shown for descriptive purposes only, and that the Declarant does not warrant, represent or guarantee that any Unit actually contains the area, square footage or dimensions thereby indicated. Additionally, by acceptance of the deed to his Unit, each Owner further acknowledges and agrees that he is under a duty and has had a full opportunity to inspect and examine such Unit prior to his purchase thereof and agrees that the Unit is purchased as such Unit actually and physically exist at the time of purchase. Each Owner expressly waives any claim or demand which he may have against Declarant, the Association, or any other Person whatsoever, on account of any difference, shortage or discrepancy between the Unit as actually and physically existing and as it is shown or described in this Declaration (including the Plat, Plans and Exhibit D). It is specifically agreed that in interpreting deeds, mortgages, deeds of trust and other instruments for any purpose whatsoever or in connection with any matter, the existing physical boundaries of the Unit or of any Unit reconstructed in substantial accordance with the Base Building Improvements, shall be conclusively presumed to be such Unit's legal boundaries, regardless of settling, rising or lateral movements of the Building and regardless of variances between the boundaries shown on the Plat, Plans or Exhibit D and the Building as actually and physically existing. Further, the Declarant reserves the right during the Declarant Extended Rights Period to amend this Declaration, the Plat, Plans and/or Exhibit D to correct any such discrepancies. In such event, an appropriate instrument of amendment to this Declaration shall be prepared, executed and recorded in accordance with provisions of Article 13 thereof.

(f) Description of Units. The legal description of a Unit shall contain: (i) the name of the Condominium; (ii) the recording date for this Declaration, the Plat, Plans and any amendments thereto; (iii) the county in which the condominium is located, and (iv) the identifying number of the Unit. Such description shall be deemed to include all rights, obligations and interests appurtenant to the Unit that were created by this Declaration and the Bylaws.

(g) Mortgage of Unit. An Owner shall be entitled to mortgage a Unit, but any lien created thereby shall be subject to the terms and provisions of this Declaration. Any mortgagee or other lien holder who acquires a Unit through judicial foreclosure, public sale or other means shall be subject to the terms and provisions of this Declaration. An owner who mortgages a Unit shall notify the Association, giving the name and address of said Owner's mortgagee. The Association shall maintain such information in a book entitled "Mortgagees of Unit's" and shall notify an Owner's First Mortgagee, writing, of any default by such Owner's First Mortgagee has requested in writing such notice from the Association.

(h) Subdivision of Units by Declarant. Notwithstanding anything herein to the contrary, Declarant has the right, but not the obligation, subject to Section 3.2(d) above, to subdivide any Declarant Owned Unit into two (2) or more Units as Declarant, acting on its sole discretion, deems appropriate. In conjunction with such subdivision, Unit identification numbers

shall be assigned to the newly created Units and the Allocated Interest for all Units shall be adjusted pursuant to the Reallocation Formula following such subdivision. The rights provided in this subsection exist exclusively in favor of Declarant and do not exist as to any other Owner, except as set forth below. Upon expiration of the Declarant Extended Rights Period, the rights of the Declarant set forth in this Section 3.2(h) may be exercised by the Association as to Units owned by the Association. If the Association exercises such rights, it automatically assumes the obligations arising under this Section 3.2(h).

**3.3 Common Elements.** Each Owner shall be entitled to an undivided interest in the Common Elements equal to the Unit's Allocated Interest. The Allocated interest of each Owner in and to the Common Elements is set forth opposite each Unit's identifying number in Exhibit D. The Allocated interest of each Owner in the Common Elements, as expressed in Exhibit D, shall have a permanent character and shall not be altered without the consent of the Declarant during the Declarant Extended Rights Period and thereafter, by the Association, expressed in an appropriate instrument of amendment to this Declaration to be prepared, executed and recorded in accordance with the provisions of Article 13 hereof. The Allocated Interest shall not be separated from the Unit to which it pertains and shall be deemed to be conveyed, encumbered or released from liens with the Unit, even though the interest is not expressly mentioned or described in the conveyance or other instrument.

**3.4 Limited Common Elements.** The Common Elements designated as Limited Common Elements in Exhibit B and/or Exhibit C hereto are reserved for the exclusive use of the Owners of the Units to which they are appurtenant. However the designation of an area as a Limited Common Element shall not allow the Owner(s) of the Unit(s) to which such Limited Common Element is appurtenant to preclude passage through such areas as may be needed from time to time for Emergency ingress and egress, or for the maintenance, repair, replacement, alteration and/or operation of any Systems which are most conveniently serving by accessing such areas and an Access Easement is hereby reserved for such purpose. For purpose of this Section 3.4, during the Declarant Control Period, determination of convenience shall be within the sole discretion of the Declarant; *provided, however*, that in the event the Declarant is not readily available, the Manager shall make such determination and the Manager's determination shall be subject to review and modification by the Declarant. Upon expiration of the Declarant Control Period, determination of convenience shall be within the sole discretion of the Board of Directors; *provided, however*, that in the event that the Board of Directors is not readily available, the Manager shall make such determination and the Manager's determination shall be subject to review and modification by the Board of Directors.

**3.5 Parking.** Included in the reservation of Developments Rights shall be the exclusive right, exercisable by Declarant during the Declarant Extended Period, to assign any parking spaces as a Limited Common Element for the exclusive use of the Owner of the Unit designated by the Declarant to which the parking space shall be appurtenant. Any parking space assignment may contrary to the preceding provision is void, unless otherwise expressly permitted hereon. Parking spaces assigned by the Declarant for the exclusive use of an Owner of a unit to which they are appurtenant, shall be perpetually appurtenant to that Unit, except for transfer of parking spaces among Units as provided herein. Any conveyance of a Unit shall be deemed to also convey such appurtenant parking spaces, even when such conveyance is made without

specifically referring to same. An Owner may convey his Unit's exclusive right to use a specific parking space, but only to another Owner and in such event the specific parking space shall be perpetually appurtenant to the Unit owned by such grantee Owner. However, in no event shall an Owner have the right to transfer all parking spaces appurtenant to his Unit to another Owner or Owners; it being required that each Unit have appurtenant to it at all times at least one (1) parking space. Any transfer in violation of the preceding sentence is void. In the event of any such transfer or assignment, an appropriate instrument of amendment to this Declaration shall be prepared, executed and recorded in accordance with the provisions of Article 13 hereof. Such instrument of amendment shall designate the parking space(s) and storage unit(s) the exclusive use of which was conveyed. Notwithstanding the rights of exclusive use as Limited Common Elements herein created for parking spaces, any garage in which any such parking spaces are located shall be and always remain a General Common Element. Any parking spaces not assigned by the Declarant to be exclusively appurtenant to a specific Unit before the expiration of the Declarant Extended Rights Period shall thereafter be under the exclusive control and administration of the Association. The Association may thereafter lease such parking spaces to any Owner or may use such parking spaces in the manner determined by the Board of Directors. All rental payments or other income received by the Association from the leasing or other use of parking spaces shall be used to pay Common Expenses. A parking space assigned to a specific Unit may be relocated at any time and from time to time, by the Declarant during the Declarant Control Period and thereafter by the Board of Directors, to comply with applicable Federal, State and local laws and regulations concerning or affecting, among other things, handicapped accessibility. The maintenance of parking spaces shall be a Common Expense.

**3.6 Partition of Common Elements.** The Common Elements, both General and Limited, shall remain undivided and shall not be the object of an action for partition or division of ownership so long as the Land remains a Condominium. In any event, all mortgages must be paid prior to the bringing of an action for partition or the consent of all mortgages must be obtained.

**3.7 Manager's Suite.** Notwithstanding the provisions of Section 5.3, a Declarant-Owned Unit or a Unit owned by the Association may be designated from time to time for use as a Manager's Suite. The Declarant shall have the right (but not the obligation) to convey ownership of any Manager's Suite to the Association. The use and occupancy of a Manager's Suite shall be subject to the payments by the Association or user of rent or other charges established by the Owner of the Unit, and the execution of a lease agreement or other writing in form and substance satisfactory to such Owner. A unit designated for use as a Manager's Suite need not be dedicated for such use on a permanent basis and such Unit may be also or alternatively used for any purpose permitted under this Declaration. Notwithstanding the provisions of Section 5.4, the rights of the Declarant which are set forth in this Section shall exist at all times that the Declarant owns a Declarant-Owned Unit, and shall not terminate upon the expiration of the Declarant Extended Rights Period.

#### ARTICLE 4 EASEMENTS, ENCROACHMENTS AND LIENS

THE EXCELSIOR, A CONDOMINIUM  
Declaration of Condominium  
Page 12 of 32

**4.1 Declarant and Association.** Notwithstanding any other easements created herein, the Declarant and the Association shall have by virtue of the recordation of this Declaration, and there is hereby granted and conveyed by the Owner of each Unit at the time each Owner accepts the deed to his Unit, the Access Easement, the Utility Easement, the Parking Easement, the Vertical Access Easement, the Support Easement and the Roof-Top Easement. Each Owner, by acceptance of the deed to his Unit, hereby grants to the Declarant during the Declarant Extended Rights Period and thereafter, to the Association, an irrevocable power of attorney, coupled with an interest, with full power and authority to locate, grant create and convey any additional utility easements. In addition, the Declarant shall have an easement through the Common Elements as may be reasonably necessary for discharging the Declarant's obligations or exercising the Special Declarant Rights under the Act of this Declaration.

**4.2 Owner.** Each Owner shall have a non-exclusive easement for the use and enjoyment of the General Common Elements and for ingress, egress and support over and through the General Common Elements. These easement shall be appurtenant to and shall pass with the title to each Unit and shall be subordinate to the exclusive easements granted elsewhere in this Declaration, as well as to any rights reserved in or to the Association to regulate time and manner of use, and to perform its obligations under this Declaration.

**4.3 Third Parties.** The Declarant or the Association may grant to third parties easement in, on the Common Elements for the purpose of constructing, installing or maintaining necessary utilities and services. Each Owner, in accepting the deed to the Unit, expressly consents to such easements. No such easement may be granted, however, if it would interfere in a material and adverse way with any exclusive easement or with any Owner's use, occupancy or enjoyment of the Owner's Unit.

**4.4 Roof-Top Sites and Roof-Top Easement.** Notwithstanding the provision of Section 5.3, the Declarant has the right, but not the obligation, exercisable at any time prior to the expiration of the Declarant Extended Rights Period, to designate up to two (2) "Roof-Top Sites" on the roof of each building tower. Each Roof-Top Site shall not exceed twenty-five (25) square feet in area and once designated, the boundaries of each shall be clearly marked by a painted border or other reasonable method. Included with each Roof-Top Site is a perpetual and irrevocable easement ("Roof-Top Easement") and right of access, from time to time as may reasonable be necessary, appropriate, or desirable for: (i) the use and enjoyment of each Roof-Top Site; (ii) constructing, installing, servicing, maintaining or replacing fixtures appurtenant to such Roof-Top Site; (iii) construction, installing, servicing and maintaining utility servicing to such Roof-Top Site; (iv) the making of Emergency repairs necessary to prevent harm or damage to such fixtures, the Common Elements, any Unit or any occupant. No Allocated Interest will be assigned to a Roof-Top Site or Roof-Top easement, nor will a Roof-Top Site or Roof-Top Easement share in the payment of Common Expenses. The designation of an area as a Roof-Top Site shall not be deemed to limit or defined its permitted uses and, notwithstanding any provision herein to the contrary, a Roof-Top Site may be used for any lawful purpose, including non-residential purposes. The provisions in this Declaration concerning Allocated Interest, voting, assessments, and/or restricting the use or alteration of Units shall not apply to Roof-Top Sites or Roof-Top Easements. By acceptance of a deed to a Unit, each Owner acknowledges that the physical areas designated as Roof-Top Sites or Roof-Top Easement are so small as to render



Monthly Assessments, Special Assessments, or the assignment of Allocated Interest to Roof-Top Sites or Roof-Top Easements impractical. Each Roof-Top Site, the Roof-Top Easement appurtenant thereto and all revenues derived therefrom shall be the sole and exclusive property of Declarant. Declarant shall have the exclusive right, but not the obligation, to rent lease or license the use of Roof-Top Sites and Roof-Top Easements to third parties without the consent or approval of the Association or any Owner. Each Owner, by accepting the deed to the Unit, expressly consents to such Roof-Top Sites and Roof-Top Easements. No Roof-Top Site may be designated or Roof-Top Easement granted, however, if it would interfere in a material and adverse way any Owner's use, occupancy or enjoyment of the Owner's Unit. However, the placement of towers, antennas, receiving dishes and similar structures or devices on a Roof-Top Site shall not constitute material or adverse interference within the meaning of this Section 4.4.

**4.5 Recorded Easements.** A description of and recording data for recorded easement and licenses appurtenant to or included in the Condominium, or to which any portion of the Condominium is or may become subject by reservation in this Declaration, are set forth in Exhibit A-1 and Exhibit E attached hereto.

**4.6 Encroachments.** None of the rights and obligations of the Owners created in this Declaration or by the deeds granting the Units shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of such encroachments so long as they shall exist, provided, however, that in no event shall a valid easement for an encroachment be created in favor of any Owner if the encroachment occurred because of the willful conduct of the Owner.

**4.7 Mechanic's Liens; Indemnification.** No labor performed or materials furnished and incorporated in a Unit with the consent or at the request of an Owner (including Owner's invitee), his agents or representatives, shall be the basis for filing of a lien against the Unit of any other Owner not expressly consenting to or requesting the same, or against the Common Elements. Each Owner shall indemnify and hold harmless each of the Owners, the Declarant and the Association from and against all liabilities and obligations, including attorney's fees, arising from the claim of any lien against the Unit of such other Owners or the Common Elements.

## ARTICLE 5 RESTRICTIONS ON USE AND OCCUPANCY

**5.1 Recorded Easements.** The rights of Owners, Owner's invitees, Tenants and Tenant's invitees to occupy or use a Unit or to use the Common Elements or any of the facilities on the Common Elements, is subject to the following general restrictions.

**5.2 Designation of Occupant(s).** In the event the record Owner of a Unit or a Tenant of a Unit is other than a natural person, then prior to any occupancy of such Unit, the Owner thereof shall give notice to the Association of natural person(s) who shall be entitled to occupy such Unit for residential purposes. Such occupancy shall be subject to the provisions of Section 5.5 below. In no event shall any Unit be occupied for short-term, temporary or transient purposes, including without limitation, occupancy as a "corporate suite" or other similar use (collectively "Excessive Use"). The determination of Excessive Use shall be at the reasonable discretion of

the Declarant during the Declarant Control Period and thereafter, the Board of Directors. In determining Excessive Use, the Declarant and the Board of Directors may consider, among other things, the rate of turn-over of occupants in the Units in relation to the estimated rate of turn-over of occupants of other Units

**5.3 Residential Use Only.** Except as provided in Section 3.7 and 5.4, no Owner, Owner's Invitee, Tenant or Tenant's Invitee shall have the right to occupy or use the Owner's Unit, or permit the Unit or any part of it, to be occupied or used for any purpose, to her than single-family residential purposes. Except as set forth in Sections 3.7 and 5.4, no Unit shall be used for any commercial, business or professional purpose, or for charitable church purposes. The use of a Unit for the maintenance of a personal library, or for the keeping of personal or business records, or for the handling of personal, business or professional telephone calls or correspondence, when used in conjunction of this provision; provided however, regular consultation with clients or other commercial activities in a Unit are prohibited.

**5.4 Declarant's Use.** Notwithstanding the provisions of Section 5.3, at all times during the Declarant Extended Rights Period, the Declarant may, without charge or assessment: (i) maintain management offices, sales offices, models and other sales and management facilities in any Declarant-Owned Units; and/or (ii) conduct within the General Common Elements sales and/or leasing activities. Declarant shall be entitled to locate and relocate its management offices, sales offices, models, and other sales and management facilities in any one (1) or more Declarant-Owned Units, at the sole discretion of the Declarant. Declarant shall have and hereby reserves the right to remove its management offices, sales offices, models and other sales and managements facilities at any time within the Declarant Extended Rights Period, subject to agreement between Declarant and a Purchaser. The provisions of this Section 5.4 are not intended to limit the rights of the Declarant which are described in Section 3.7.

**5.5 Compliance with Declaration, Bylaws and Regulations.** Each Owner, Owner's Invitee, Tenant, Tenant's Invitee and other occupant of a Unit automatically shall be deemed to have agreed to comply strictly with the provisions of this Declaration, the Bylaws and the Regulations. A failure or refusal to so comply with the provisions of any such instrument shall be grounds for (i) eviction of non-Owners, (ii) an action to recover damages or sums due, including attorney's fees, with interest thereon at the Past Due Rate, and/or (iii) an action for injunctive relief, with action may be maintained by the Association. In addition, the Association, may suspend an Owner's voting rights in the Association during the period of such noncompliance

**5.6 Leasing by Owner.** Nothing in this Declaration shall prevent the Owner from leasing or renting the Owner's Unit to third parties, provided that, the Unit is not used for: (i) short-term, temporary or transient purpose, or as a "corporate suite," as described in Section 5.2; or (ii) leased for any term of less than six (6) months (except by a First Mortgagee following a foreclosure of liens securing First Lien Indebtedness). No Owner shall lease less than an entire Unit. Any such lease shall be in writing and shall expressly state, among other things: (x) that the lease is subject in all respects to the provisions of this Declaration, the Bylaws and regulations; (y) that any failure by such Tenant or such Tenant's Invitee to comply with the terms and provisions of this Declaration, the Bylaws or the Regulations shall constitute a default under

the lease; and (z) that the Association may, upon default and written notice to the Unit's Owner as provided in Section 8.7 (with a copy to the Tenant at the Unit's address), collect Rents due such Owner directly from the Tenant and apply such Rents against any amounts owed to the Association. To facilitate the foregoing subsection (z), each Owner by acceptance of a deed to a Unit shall be deemed to have assigned all rents, issue and profits ("Assignment of Rents") arising from such Unit to the Association, which Assignment of Rents shall become absolute and enforceable by the Association upon default of the Owner's or Tenant's obligation arising under this Declaration. Each Owner shall be responsible for the compliance of his Tenant and such Tenant's invitee with this Declaration, the Bylaws and the Regulations and shall indemnify and hold the Declarant and the Association harmless from any loss, cost, expense, damage or liability incurred by the Declarant or the Association as a result of such Tenant's or Tenant's invitee's acts or omissions. In addition, the Association may (xx) bring an action to evict a Tenant for the Tenant's or the Tenant's invitee's violation of this Declaration, the Bylaws or the Regulations; (yy) bring an action to evict a Tenant who fails to pay the Association for the cost of repairs to Common Elements damaged by the Tenant or the Tenant's invitee; and/or (zz) collect the Rents from a Tenant who is at least thirty (30) days delinquent in the payment of any amount due the Association.

**5.7 Alterations by Owner.** No Owner shall be entitled to alter, add to or improve his Unit or the Limited Common Elements appurtenant thereto, in a manner which will or might reasonably be expected to affect the structural soundness, integrity, or the exterior appearance of any Building, any System that services more than one (1) Unit, or any warranty in favor of the Association. In addition, no Owner shall be entitled to make any alteration, addition or improvement to a Limited Common Element unless the prior written approvals of all Owners having an interest therein are obtained. Any alterations, additions, and improvements which are made pursuant to this Section 5.7 shall be made at the individual cost and expense of the Owner having an interest in the Unit or Limited Common Elements so altered, added to or improve

**5.8 Additional Restrictions.** The Association may provide additional rules and regulations for the use of Common Elements (including Limited Common Elements) as are necessary or desirable in the judgment of the Association for the operation of the Condominium, provided that such rules and regulations are not in conflict with this Declaration.

**6.1 Decoration.** Subject to the provisions of Article 3 and Section 5.7, any Owner shall have the right to decorate and redecorate his Unit and make non-structural improvements or non-structural alterations within the Unit (but not to Common Elements) and shall have the right to paint, repaint, tile, wax, paper, or otherwise furnish or decorate the interior surfaces of walls, partitions, ceilings and floors within a Unit. Decorative wall items such as lights, shelves and artwork may be affixed to or installed on the walls of any Unit that are not Common Elements, provided that such affixation or installation is done in a good and workman like manner. No Owner shall make any alterations to any of the Common Elements (including walls, windows, and doors that are Common Elements). Nor install, attach, paste or nail any article thereto. No Owner shall place, affix, install or permit to remain any items, including without limitation, decorative items such as lights shelves, artwork, plants, furniture, accessories, rugs, carpets, or any other item of whatsoever nature in any Common Element. No Owner shall install a window treatment which, when viewed from the outside of the Building, is not of a type, color or pattern

approved by the Declarant or the Board of Directors as provided below. The Declarant, during the Declarant Control Period and thereafter, the Board of Directors, shall establish the type, color and pattern of approved window treatments that may be installed in a Unit.

**6.2 Sound-Proofing.** The installation or use by an Owner of any hard and/or heavy surface floor covering, including, without limitation, tile, marble, wood, stone, slate, concrete and the like, must meet the following specifications. The aggregate "sound and acoustical treatment" (collectively "SAT") shall carry a minimum Sound Transmission Classification ("STC") of 50. The SAT installation shall be performed in a manner that provided mechanical isolation of flooring materials from any rigid part of the Building structure, whether the concrete sub-floor (vertical transmission) or adjacent walls and fittings (horizontal transmission) and must be installed prior to the Unit being occupied. The Association shall have the right (even after completion of installation) to test the SAT and STC to assure an Owner's compliance with the requirements of this Section. In the event such testing indicates non-compliance, the Owner shall pay the cost of testing and correction the non-compliance; in the event the testing indicates compliance, the cost of testing and repairing the tested area shall be a Common Expense. The STC requirement may be modified by the Board of Directors of the Association.

**6.3 Maintenance and Repair of Units.** Each Owner, at the Owner's sole cost and expense, shall maintain the Owner's Unit (including, without limitation, all Systems that serve only or are part of the Owner's Unit) in good condition and repair and shall repair and, where appropriate, replace the fixtures and appliances therein contained and all interior doors and interior windows within the Unit, and doors and windows servicing only such Owner's Unit. No Owner shall be required to directly pay the cost and expense of repairs to the Common Elements, unless caused by the willful or negligent misuse thereof by such owner, Owner's invitee, Tenant or Tenant's invitee, in which event such cost and expenses shall constitute the joint and several obligation of such Owner and Tenant. Any maintenance and repair work done by or at the instance of an Owner shall be done in a good and workmanlike manner using materials equal or better quality than the materials removed and/or replaced, and shall be done in such a manner as not to impair the structural soundness or integrity or to alter the exterior appearance of any Common Element or any Unit. In the event an Owner fails to discharge to Owner's maintenance and repair obligations hereunder, the Association shall be entitled (but not obligated) to cause such work to be done, and the cost and expenses thereof (together with interest thereon at the Past Due Rate from the date paid by the Association until the date such sum is repaid to the Association) shall be secured by a lien upon such Owner's Unit. Such lien may be enforced in the same method as is provided for the enforcement of assessment liens pursuant to the provisions of Section 8.5 this Declaration.

**6.4 Maintenance and Repair of Common Elements.** All Common Elements shall be maintained by the Association, the cost and expense of which shall constitute a Common Expense and be payable by the Association. The Association shall maintain the Common Elements in good condition and repair. The Association shall repair and, where appropriate, replace the Common Elements (excepting only those portions of the System that serve only or are part of an individual Unit), and shall establish and maintain an adequate reserve fund for such purposes, to be funded by Monthly Assessments. Nothing herein shall be deemed or construed as relieving any Owner from liability or responsibility for damage to the Common Elements.

caused by the negligence or misconduct of such Owner, Owner's invitee, Tenant or Tenant's invitee

**6.5 Damage Liability.** Each Owner shall be liable to the Association for all damages to the Common Elements or to other Association property that is sustained by reason of the negligence or willful misconduct of that Owner, Owner's invitee, Tenant or Tenant invitee. Additionally, by acceptance of the deed to a Unit, each Owner thereby agrees to indemnify and hold the Declarant and the Association harmless from any damage actually or allegedly caused, in whole or in part, directly or indirectly, from items placed on such Owner's balcony.

**6.6 Determination of Responsibility.** In the event a dispute shall arise among Owners or between an Owner and the Association as to the proper party to bear a maintenance, repair or replacement cost or expense, the Board of Directors shall be entitled to resolve such dispute; provided however, that nothing herein shall be deemed or construed as limiting an Owner's right to have the provisions of Article 6 interpreted by binding arbitration as set forth in Article 15 hereof; provided further however, that any such cost or expense so disputed shall be paid in accordance with the determination of the Board of Directors pending a final determination in any such arbitration proceeding.

**6.7 Exemption.** Declarant shall be exempt from the restrictions of this Article 6 to the extent reasonably necessary for completion of construction, sales or additions to the Condominium. Such exemption included, but is not limited to, maintaining Units as models, placing advertising signs on the Condominium, generally making use of the Condominium as is reasonably necessary to carry on construction, sales or leasing activities.

**6.8 Mitigation.** Each Owner shall have an ongoing duty to mitigate, to the fullest extent practicable, any damage or alleged damage to his Unit attributable, directly or indirectly, in whole or in part, to the acts or omissions of Declarant or the Association. Additionally, each Owner shall have an ongoing duty to mitigate, to the fullest extent practicable, any damage such Owner, such Owner's Unit (including fixtures and appliances located therein), such Owner's invitee, such Owner's Tenant, or such Tenant's invitee, is directly or indirectly causing to another Unit or any Common Element (including Limited Common Elements).

**6.9 Dampness and Humidity.** No Owner shall install within his Unit or the Limited Common Elements appurtenant thereto, any non-breathable wall coverings or low-permeance paints. Any and all built-in casework, furniture and/or shelving in a Unit must be installed with backboards flush against any gypsum or other wall board. Additionally, all Owners whether or not occupying the Unit, shall periodically run the air conditioning system to maintain the Unit's temperature, whether or not occupied, at no warmer than 78 degrees Fahrenheit to minimize humidity in the Unit. While the foregoing are intended to minimize the potential development of molds, fungi, mildew and other mycotoxins (collectively "molds or mycotoxins"), each Owner understands and agrees that there is no method for completely eliminating the development of mold or mycotoxins. Declarant makes no representations or warranties regarding the existence or development of mold or mycotoxins and each Owner shall be deemed to waive and expressly release any such warranty, claims, loss or damage resulting from the existence and/or development of the same.

**ARTICLE 7  
THE ASSOCIATION**

**7.1 General.** The Association has been incorporated as a nonprofit corporation under the Texas Nonprofit Corporation Act. In addition to the powers conferred on the Association under the Bylaws and this Declaration, the Association may take all actions authorized by Section 82.102 of the Act. Any and all actions taken by the Association pursuant to this Declaration, the Act, the Bylaws and/or the Regulations are binding on all Owners. This Declaration does not provide for any limitations or restrictions on the power of the Association or the Board of Directors.

**7.2 Initial Directors.** The Board of Directors shall be initially established by the Declarant as set forth in the Bylaws.

**7.3 Declarant Control Period.** Except as provided in the Act, the Declarant shall have the right to appoint and remove officers and members of the Board of Directors during the Declarant Control Period. If the Declarant voluntarily surrenders Control prior to the end of the Declarant Control Period, the Declarant may require that specified actions of the Board of Directors be subject to the Declarant's approval until the end of the Declarant Control Period.

**7.4 Allocation of Votes.** Each Owner shall automatically be a member of the Association, and shall possess a vote with respect to each Unit owned by such Owner equal to such Owner's Allocated Interest as set forth opposite the Unit's identifying number on Exhibit D attached to this Declaration, as amended. All voting rights of an Owner may be suspended during any period that such Owner is delinquent in the payment of any Monthly Assessment or Special Assessment duly established pursuant to Article 8, or otherwise in default under the terms of this Declaration, the Bylaws or the Regulations. Any matter described herein as requiring approval by a stated percentage or a majority of the Owners shall mean a stated percentage or a majority of the allocated votes held by those Owners who are then eligible to vote.

**ARTICLE 8  
MONTHLY ASSESSMENTS AND WORKING CAPITAL CONTRIBUTION**

**8.1 Monthly Assessments.** The Association shall have the right, authority and obligation to establish a regular Monthly Assessment, sufficient in the judgment of Assessments shall be payable by the Owners in advance, monthly (on the first day of each calendar month), quarterly (on the first day of each calendar quarter), or semiannually (on each January 1<sup>st</sup> or July 1<sup>st</sup>), at the discretion of the Declarant during the Declarant control period and thereafter, the Board of Directors. Such monthly Assessments shall be applied to the payment of charges for which the Association is responsible, including without limitation: charges relating to maintenance and repair of the Condominium not be responsibility of individual Owners; care of the Common Elements; casualty, public liability and other insurance coverage require or permitted to be maintained by the Association; governmental impositions not separately levied and assessed; utilities relating to the Common Elements or not separately metered; professional services such

as management, and accounting, legal and such other costs and expenses as may reasonably relate to the proper maintenance, care, operation and management of the Condominium, the administration of the Association and the Condominium, including an adequate reserve fund for the periodic maintenance, repair and replacement of the Common Elements. No consent or approval of the Owners shall be required for the establishment of the Monthly Assessments. Collection of Monthly Assessments, as to each Owner, shall commence upon the acquisition by such Owner of title to his Unit.

**8.2 Budget.** Prior to the commencement of each fiscal year of the Association, the Board of Directors shall prepare and deliver to each of the Owners a budget setting forth the anticipated Common Expenses for the upcoming fiscal year. Such budget shall be in sufficient detail so as to reasonably inform each Owner of the nature and extent of the Common Expenses anticipated to be incurred, and shall be accompanied by a statement setting forth each Owner's monthly share thereof and the date as of which such Monthly Assessment commences. No further communication shall be necessary to establish the amount of each Owner's obligation regarding the Monthly Assessment payable hereunder, and the failure of the Board of Directors to timely deliver the budget provided for herein shall in no event excuse or relieve an Owner from the payment of the Monthly Assessments contemplated hereby. Any budget prepared and delivered to the Owners as hereby contemplated may be amended as and to the extent reasonably necessary and the amount of an Owner's Monthly Assessment changed to correspond therewith.

**8.3 Special Assessments.** In addition to the Monthly Assessments contemplated by Section 8.1, the Association shall possess the right and authority to establish Special Assessments from time to time as may be necessary or appropriate, in the judgment of the Board of Directors, to pay over-budget and nonrecurring Common Expenses relating to the proper maintenance, repair, alteration, improvement, operation and management of the Condominium and the administration of the Association. No consent or approval of the Owners shall be required for the establishment of a Special Assessment.

**8.4 Obligation to Pay Assessments.** Each Owner shall be personally obligated to pay when his share (i.e., in accordance with his Unit's Allocated Interest as set forth opposite such Unit's identifying number in Exhibit D) of all Assessments duly established. Unpaid Assessments due as of the date of the conveyance or transfer of a Unit shall not constitute a personal obligation of the new Owner (other than such new Owner's pro rata share thereof which is allocated to any periods of time after such new Owner acquires title to the Unit), but the Unit acquired by the new Owner shall remain subject to and encumbered by the lien described in Section 8.5 until the unpaid Assessments are paid in full; however, the old Owner shall continue to be personally liable for such unpaid Assessment. No Owner shall be entitled to exempt himself from liability for his obligation to pay such Assessments by waiver of the use or enjoyment of the Common Elements, by an abandonment of his Unit, or by any action whatsoever. Any Assessment not paid within thirty (30) days after the date due shall bear interest at the Past Due Rate from the date due until paid, and shall be recoverable by the Association, together with interest as aforesaid and all cost and expenses of collection, including reasonable attorney's fees, by suit in a court of competent jurisdiction sitting in the county where the Condominium is located.

**8.5 Lien to Secure Payment of Assessments.** Pursuant to Section 82.113 of the Act, the Declarant hereby reserves and assigns to the Association a lien against: (i) each Unit; (ii) the Rents, if any, payable to the Owner of any Unit; and (iii) the Insurance Proceeds received by the Owner of any Unit, to secure payment of all Assessments and other amounts payable by an Owner to the Association hereunder. The lien created in this Section 8.5 shall be and constitute a lien and encumbrance in favor of the Association upon: (i) each Unit, (ii) the rents, if any, payable to the Owner of any Unit, and (iii) the Insurance Proceeds received by the Owner of any Unit. The lien established herein shall be prior and superior to all other liens and encumbrances subsequently created upon such Unit, Rents and Insurance Proceeds, regardless of how created, evidenced or perfected, other than the lien securing the payment of First Lien Indebtedness was recorded prior to the date on which the Assessment became delinquent) and the liens for unpaid taxes, assessments and other governmental impositions. Without in any way limiting the foregoing, the lien established herein shall be prior and superior to any liens for construction of improvements to a Unit which is not a Declarant-Owned Unit or an assignment of the right to Insurance Proceeds on such Unit, even if the liens or assignment are recorded or duly perfected before the date on which the assessment sought to be enforced becomes delinquent under this Declaration, the Bylaws or the Regulations. The liens and encumbrances created herein may be enforced by any means available at law or in equity, including, without limitation, a non-judicial foreclosure sale of the Unit of a defaulting Owner conducted pursuant to Tex. Prop. CODE ANN. §51.002 (as now written or as hereafter amended). The Owner of each Unit, by acquisition of such Unit, grants to the Association a power of sale in connection with the Association's liens. By written resolution, the Board of Directors may from time to time appoint an officer, agent, trustee or attorney of the Association to exercise the power of sale on behalf of the Association. The Association may bid for and purchase the Unit, as a Common Expense, at any such foreclosure sale. The foreclosure by a First Mortgagee of a Unit in order to satisfy First Lien indebtedness will extinguish the subordinate lien for any Assessments which became payable prior to the date of such foreclosure sale.

**8.6 Commencement of Obligation to Pay Assessments.** The obligation to pay Assessments shall begin on the first day of the calendar month following the date that the first Unit is conveyed by the Declarant to a third party Purchaser. Each Owner, including the Declarant, shall be obligated to commence payment of all Assessments against his Unit on such date. Prior to the date the obligation to pay Assessments commences, the Declarant shall pay all Common Expenses. From the date of the initial Assessment until the expiration of the Declarant Control Period, or three (3) years from a Declarant's first conveyance of a Unit to a Purchaser, whichever is earlier, the Declarant shall periodically pay to the Association (i) an amount equal to all operational expenses of the Association, less the operational expense portion of the Assessments paid by Unit Owners other than the Declarant or (ii) the common Expense Liability allocated to each Declarant-Owned Unit.

**8.7 Notice of Default.** If an Owner or an Owner's Tenant defaults in any obligation to the Association, the Association shall provide the Owner written notice of each default and an opportunity to cure as follows. As to monetary defaults, the Owner shall have five (5) business days from the date of the notice to cure the default. As to non-monetary defaults (other than defaults determined to be of an Emergency nature), the Owner shall have thirty (30) days from the date of the notice to cure the default. If the Owner of a Unit defaults in the Owner's



monetary obligation to the Association, the Association may, but shall not be required, to notify other lien holders of the defaulting Owner of the Association's intent to foreclose its lien. However, the Association shall notify any First Mortgagee who has given the Association a written request for notification of its mortgagor's monetary default or the Association's intent to foreclose its lien as a result of such default. The failure of an Owner to cure a default within the time prescribed above shall entitle the Association to pursue all of its legal and/or equitable remedies arising under the laws of the State of Texas, this Declaration, the Bylaws and the Regulations.

**8.8 Alternative Actions.** Nothing contained in this Declaration shall prohibit the Association from taking any other legal actions, including without limitation, accepting a deed in lieu of foreclosure, filing a suit seeking injunctive relief or judicial foreclosure (which shall not be construed or deemed to conflict with the arbitration provisions set forth in Article 15 of this Declaration), or initiating an arbitration proceeding to recover a money judgment for sums that may be secured by the lien.

**8.9 Working Capital Contributions.** Each Owner purchasing a Unit from the Declarant shall at the time of such purchase contribute an amount to the Association equal to the Working Capital Contributions. Such amount be a contribution of working capital to the Association and shall not be considered as an advance payment of Monthly Assessments. The working Capital Contributions shall be made only with respect to each Unit.

#### **ARTICLE 9 INSURANCE, TAXES AND UTILITIES**

**9.1 Insurance.** The Association shall obtain maintain insurance coverage: (i) required pursuant to Section 82.111 of the Act; (ii) fidelity coverage for its officer and directors; and (iii) such additional coverage as the Association deems necessary or appropriate. The premiums for all insurance maintained by the Association shall constitute a Common Expense and be payable by the Association. An Owner shall be responsible for obtaining and maintaining, at his sole cost and expense, property insurance covering all alterations, additions, betterments and improvements made by an Owner to his Unit and all personal property located therein. Nothing herein shall be deemed or construed as prohibiting an Owner, at his sole cost and expense, from obtaining and maintaining such further and supplementary insurance coverage as he may deem necessary or appropriate.

**9.2 Appointment of Representative by Association.** The Board of Directors shall have the express authority, on behalf of the Association, to designate an authorized representative, including any trustee (or successor thereto) with whom the Association has entered into any insurance trust agreement, for the purpose of purchasing and maintaining the insurance required or permitted hereunder, as well as for submission of and adjustment of any claim for loss, the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of releases of liability, the execution of all documents and the performance of all other acts necessary to accomplish such purposes.

**9.3 Appointments by Owners.** By acceptance of a deed to a Unit, each Owner shall be deemed to have irrevocably appointed the Association (which Appointment shall be deemed a power coupled with an interest), together with any insurance trustee, successor trustee or authorized representative designated by the Association, as such Owner's attorney-in-fact for the purpose of purchasing and maintaining the insurance required or permitted hereunder, as well as for submission of and adjustment of any claim for loss, the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of releases of liability of liability, the execution of all documents and the performance of all other acts necessary to accomplish such purposes.

**9.4 Insurance Proceeds.** The Association or such insurance trustee, successor trustee or authorized representative must receive and hold any proceeds of insurance in trust for the Owners and the First Mortgagees as their interest may appear. Any Insurance Proceeds paid under such policy shall be disbursed in strict accordance with Section 82 III(e), (f) and (i) of the Act.

**9.5 Waiver.** The Association, each Owner by his possession or acceptance of title to a Unit, and each Tenant by his occupancy of a Unit, hereby waives any and every claim which arises or may arise in its or his favor against any other Owner, the Association, or the Declarant for any and all loss of, or damage to its or his property located within or upon, or constituting a part of the Condominium, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies, to the extent such loss or damage is recoverable thereunder. Inasmuch as the foregoing mutual waivers will preclude the assignment of any such claim by way of subrogation (or otherwise) to an insurance company (or any other party), the Association and each Owner immediately shall give, to each insurance company which has issued policies of insurance to such Owner written notice of the terms of this mutual waiver, and cause such policies to be endorsed, if necessary, to prevent the invalidation of such coverage by reason hereof.

**9.6 Taxes.** Each Owner shall be responsible for and shall pay when due all taxes, assessments and other governmental impositions lawfully levied or assessed with respect to such Owner's Unit. Any taxes, assessments or other governmental impositions lawfully levied or assessed with respect to the Condominium not separately billed to the Owners shall constitute a Common Expense and be payable by the Association.

**9.7 Utilities.** To the extent that any utility servicing an individual Unit is separately metered, the Owner of such Unit shall be responsible for and shall pay such utility charges. In all other instances, utility charges regardless of whether the related utilities service an individual Unit or the Common Elements, shall constitute a Common Expense and be payable by the Association.

#### ARTICLE 10 CONDEMNATION AND CASUALTY LOSS

**10.1 Condemnation.** If all or part of the Condominium is taken or threatened to be taken by eminent domain or by action in the nature of eminent domain (whether permanent or

temporary) the Association and each Owner shall be entitled to participate in proceedings incident thereto at their respective expense. The Association shall give such notice as it receives of the existence of such proceedings to all Owners and to all First Mortgages who have registered for notice with the Association. The expense of participation in such proceedings by the Association shall be a Common Expense. The Association is specifically authorized to obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and other Persons as the Association in its discretion deems necessary or advisable to aid or advise it in matters relating to such proceedings. All reallocations of Allocated Interests, damages or awards for any such taking shall be made, collected, maintained and disbursed in accordance with Section 82.067 of the Act. Any restoration or repair of the Condominium following a partial condemnation shall be performed in accordance with the provisions of the Act.

**10.2 Casualty Loss or Damages.** In the event the Condominium, or any part thereof, is damaged or destroyed by fire or other casualty, the Association shall rebuild or repair the Condominium and collect and dispose of any Insurance Proceeds of any casualty insurance policy in strict accordance with Section 82.11(e), (f) and (i) of the Act.

#### **ARTICLE 11 DECLARANT'S RIGHTS AND RESERVATIONS**

**11.1 Development Rights.** In addition to any other reservations provided herein, the Declarant hereby reserves all Development Rights, the Declarant reserves the exclusive right to assign portions of the General Common Elements as Limited Common Elements for the exclusive use of an Owner of a Unit to which the portions so assigned shall become appurtenant. The Declarant may exercise a Development Right at any time during the Declarant Extended Rights Period in the manner provided in Section 82.060 of the Act. The Development Rights may not be exercised, or may be exercised with respect to different parcel of real property at different times. Declarant makes no assurance as to: (i) the boundaries of any parcels of real property which comprise in whole or part the Land, with regard to which any Development Right may be exercised; or (ii) the order in which any of the parcels referred to in (i) above shall be subject to the exercise of any Development Rights. Additionally, the exercise of any Development Right with regard to any parcel or parcels of real property referred to in (i) above shall not require the exercise of such Development Right or any other Development Right as to any remaining portion of the Land.

**11.2 Special Declarant Rights.** In addition to any other reservations provided for herein, the Declarant reserves the Special Declarant Rights. The Declarant may exercise any of the Special Declarant Rights at any time during the Declarant Extended Rights Period

**11.3 Additional Declarant Rights.** In addition to any of the rights and reservations arising under Sections 11.1 and 11.2 above, and regardless of whether the following rights or reservations are considered Development Rights or Special Declarant Rights, the Declarant shall have the additional rights and/or reservations set forth below:

(a) the right to create the maximum number of Units as provided in Section 3.2 hereof;

- (b) the right to amend this Declaration (including the Plat and/or the Plans) to correct discrepancies in Unit size as provided in Section 3.2(e) hereof;
- (c) the right to assign parking spaces and balconies as Limited Common Elements appurtenant to specific Units as provided in Section 2.1 and 3.5 hereof;
- (d) the right to grant easements to third parties as provided in Section 4.3 hereof;
- (e) the right to establish the location of Roof-Top Sites as provided in Section 4.4 hereof;
- (f) the right to rent Roof-Top Easements as provided in Section 4.4 hereof;
- (g) the right to use Declarant-Owned Units in the manner provided in Section 5.4 hereof;
- (h) the right to exempt itself from the provisions of Article 6 as provided by Section 6.7 hereof;
- (i) the right to amend this Declaration as provided in Article 13 hereof;
- (j) the right to join third parties in any arbitration proceeding arising under Article 15 hereof;
- (k) the right to enter any Unit or Common Elements, including any Limited Common Element, as provided in Section 15.10 hereof;
- (l) the right to declare Emergencies and conveniences as provided in Section 2.1 and 3.4 hereof; and
- (m) the right to be reimbursed from time-to-time, from the funds of the Association (including the Monthly Assessments, reserves (if any) and/or Working Capital Contributions), for Common Expense payments made by Declarant for the benefit of the Condominium that exceed the aggregate Common Expense Liability allocated to each Declarant Owned Unit. Such Common Expenses may include, by way of example and without limitation, utility deposits, insurance premiums and other items.

The foregoing list for illustrative purposes only and shall not be deemed or construed to negate or limit any right or reservation in favor of Declarant otherwise created herein.

**11.4 Name Change.** During the Declarant Control Period, the Declarant reserves the right to modify or change the name of the Condominium and/or the Association.

**ARTICLE 12  
AMENDMENT**

THE EXCELSIOR A CONDOMINIUM  
Declaration of Condominium  
Page 25 of 32

**12.1 General.** This Declaration may be amended in the manner provided by Section 82.067 of the Act. Except as provided by Section 82.067(b) of the Act and in Section 12.2 this Declaration, including the Plat and Plans, may be amended only by vote or agreement of Unit Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated. An amendment to this Declaration may be adopted (i) by written ballot that states the exact wording or substance of the amendment and that specifies the date by which a ballot must be received to be counted; or (ii) at a meeting of the members of the Association after written notice of the meeting has been delivered to an Owner of each Unit stating that a purpose of the meeting is to consider an amendment to this Declaration; or (iii) prior to the conveyance of the first Unit sold to an Owner an amendment may be adopted solely at the discretion of the Declarant, to the extent not otherwise prohibited by the Act or this Declaration. To be effective, an amendment to this Declaration must be record in the Condominium Records of Galveston County, Texas. Except as permitted or required by Section 82.067 of the Act, an amendment may not create or increase Special Declarant Rights, increase the number of Units, change the boundaries of a Unit, alter or destroy a Unit or Limited Common Element, change a Unit's Allocated Interest, or change the use restrictions on a Unit, unless the amendment is approved by one hundred percent (100%) of the votes in the Association. Except as agreed to by the Declarant, an amendment may not increase or otherwise modify the obligations imposed by this Declaration on the Declarant, or reduce or otherwise modify the rights granted by this Declaration to the Declarant, including Special Declarant Rights. If the Declarant owns a Unit that has never been occupied, the Board of Directors of the Declarant may, without a vote of the Unit Owners or approval of the Association, amend this Declaration in any manner necessary to meet the requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the Veterans Administration Amendments to this Declaration recorded by the Association must be prepared, executed, recorded and certified by an officer of the Association designated for that purpose or, in the absence of designation, by the President of the Association.

**12.2 Other Amendments.** In addition to Section 12.1 and in accordance with Section 82.067(b) of the act.

(a) Any amendment affecting Unit boundaries arising under Section 3.2(d) hereof or Section 82.067(b)(2) or (3) of the Act, shall be executed by the Owners of the affected Units and such amendment shall (i) contain such plats and plans as are necessary to show the relocation of the boundaries between the Units involved, which shall be certified as to their accuracy by a registered architect or engineer, (ii) recite the occurrence of any conveyancing between the Owners of the Units affected; (iii) specify a reasonable reallocation of the aggregate Allocated Interest pertaining to the Units affected, and (iv) specify any reallocation of parking spaces and/or storage units appurtenant to the Units affected.

(b) Any amendment to correct any discrepancies in the size of a Unit arising under Section 3.2(e) hereof shall be at the discretion of the Declarant and no consent of the Association or any Owners, First Mortgagee, or any other Person shall be required for the filing of such amendment, notwithstanding the foregoing, the Association shall execute the amendment as required by Section 3.2(e) hereof.

(c) Except in cases of the Declarant exercising Development Rights, any amendment to reallocate the Allocated Interests arising under Section 3.3 hereof or Section 82.067(e) of the Act, shall be executed by the Owners of the affected Units;

(d) Any amendment concerning the conveyance of the right to use a Limited Common Element parking space from the Owner of one Unit to another arising under Section 3.5 hereof or Section 82.067(b)(2) or (3) of the Act, shall be executed by the Owners of the affected Limited Common Element and such amendment shall: (i) recite the occurrence of any conveyancing between the Owners of the Units affected; and (ii) specify the reallocation of parking spaces and/or storage units appurtenant to the Units affected.

#### ARTICLE 13 TERMINATION

**13.1 Revocation or Termination of Declaration.** This Declaration may be revoked or the Condominium may be terminated, only by an instrument in writing, duly approved, executed and acknowledged by those Owners holding not less than eighty percent (80%) of the Allocated interests. Without in any way limiting the foregoing, until the first Unit is conveyed to a third party Purchaser by the Declarant, the Declarant acting alone and in the sole discretion, may revoke this Declaration or terminate the Condominium by an instrument in writing duly executed and acknowledged by the Declarant. Any instrument of revocation or termination shall be duly filed of record in the Condominium Records of Galveston County, Texas. No joinder or consent of any lien holder shall be required in order to revoke or terminate this Declaration in accordance with the foregoing provisions. If the Condominium is to be sold upon termination, the agreement effecting such termination shall also set forth the terms of such sale and comply with the provisions of Section 82.068(c) of the Act.

#### ARTICLE 14 ARBITRATION

**14.1 Arbitration.** DECLARANT, THE ASSOCIATION, AND EACH OWNER ACKNOWLEDGE THAT BY RECORDATION OF THIS DECLARATION AND BY SUCH OWNERS ACCEPTANCE OF THE DEED TO HIS UNIT, TO ABIDE BY THE FOLLOWING ARBITRATION PROVISIONS FOR CLARITY, AS USED IN ARTICLE 15. THE PARTICIPANTS IN AN ARBITRATION PROCEEDING ARISING HEREUNDER SHALL BE REFERRED TO INDIVIDUALLY AS A "PARTY" AND COLLECTIVELY AS THE "PARTIES."

(a) BROAD FORM AGREEMENT TO ARBITRATE. ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG AN THE DECLARANT, AN OWNER, AND/OR THE ASSOCIATION, ARISING OUT OF OR RELATING TO THIS DECLARATION, THE BYLAWS, THE REGULATIONS, OR ANY WARRANTY GIVEN BY DECLARANT IN FAVOR OF AN OWNER OR THE ASSOCIATION, THE BREACH OR VIOLATION THEREOF, OR RELATING DIRECTLY OR INDIRECTLY TO THE CONDOMINIUM, A UNIT, OR ANY COMMON AREA, OR THE PURCHASE, CONSTRUCTION OR REPAIR THEREOF, INCLUDING ANY AND ALL CLAIMS AGAINST THE DECLARANT AND/OR THE ASSOCIATION AND/OR THEIR RESPECTIVE AGENTS, PARTNERS, SHAREHOLDERS, MEMBERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, MATERIALMEN, OR

SUPPLIERS SHALL BE SETTLED BY BINDING ARBITRATION UNDER THE FEDERAL ARBITRATION ACT, 9 U.S.C. § 1, ET SEQ. THE PARTIES ACKNOWLEDGE AND AGREE THAT EACH OF THE CONSTRUCTION, SALE AND OPERATION OF THE CONDOMINIUM MATERIALLY INVOLVES AND AFFECTS INTERSTATE COMMERCE

(b) WAIVER OF JURY TRIAL. DECLARANT, THE ASSOCIATION, AND EACH OWNER HEREBY EXPRESSLY ACKNOWLEDGE THAT BY THEIR ACCEPTANCE OF THESE ARBITRATION PROVISIONS, EACH WAIVES VALUABLE LEGAL RIGHTS, INCLUDING THE RIGHT TO TRIAL IN A COURT OF LAW AND THE RIGHT TO TRIAL BY JURY

(c) GENERAL. THE ARBITRATION SHALL BE ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION ("AAA") IN ACCORDANCE WITH ITS CONSTRUCTION INDUSTRY ARBITRATION RULES OR COMMERCIAL DISPUTE RESOLUTION PROCEDURES, AS APPLICABLE (SUPPLEMENTED BY AAA SUPPLEMENTARY PROCEDURES FOR CONSUMER-RELATED DISPUTES, WHERE APPLICABLE) ("ARBITRATION RULES") IN EFFECT AT THE TIME THE DEMAND FOR ARBITRATION IS FILED. AAA FAST TRACK PROCEDURES SHALL APPLY ONLY UPON THE FURTHER WRITTEN CONSENT OF ALL PARTIES TO THE ARBITRATION PROCEEDING WITHIN A REASONABLE TIME AFTER THE CONTROVERSY HAS ARISEN, THE PARTY REQUESTING RELIEF SHALL FILE A WRITTEN DEMAND FOR ARBITRATION AND PAY APPLICABLE FILING FEES. THE ARBITRATION PROCEEDING SHALL BE CONDUCTED IN GALVESTON COUNTY, TEXAS, UNLESS OTHERWISE AGREED BY THE PARTIES. IN ALL INSTANCES, THE PARTIES MAY AGREE UPON ONE (1) ARBITRATOR, BUT IN THE EVENT THE PARTIES CANNOT AGREE, THERE SHALL BE THREE (3) NEUTRAL ARBITRATORS APPOINTED IN ACCORDANCE WITH THE APPLICABLE ARBITRATION RULES. IN THE EVENT THE APPLICABLE ARBITRATION RULES MANDATE THAT THE DISPUTE SHALL BE SUBMITTED TO A SINGLE ARBITRATOR AND THE PARTIES CANNOT AGREE AS TO THE SELECTION OF SUCH ARBITRATOR, THEN THERE SHALL BE THREE (3) NEUTRAL ARBITRATORS APPOINTED IN ACCORDANCE WITH THE APPLICABLE ARBITRATION RULES. UNLESS THE APPLICABLE ARBITRATION RULES MANDATE OTHERWISE, ALL ARBITRATORS SHALL BE ATTORNEYS AT LAW, LICENSED TO PRACTICE IN THE STATE OF TEXAS, WITH SUBSTANTIAL EXPERIENCE IN THE CONDOMINIUM INDUSTRY. IF THERE IS ONLY ONE (1) ARBITRATOR HIS CONCLUSIONS SHALL BE BINDING AND CONCLUSIVE ON THE PARTIES. IF THERE ARE THREE (3) ARBITRATORS, THE DECISION OF ANY TWO (2) SHALL BE BINDING AND CONCLUSIVE, COSTS OF ARBITRATION SHALL BE ALLOCATED BETWEEN OR AMONG THE PARTIES AS PROVIDED BY THE APPLICABLE ARBITRATION RULES, OR IN THE ABSENCE OR INAPPLICABILITY OF SUCH RULES, AS DETERMINED BY THE ARBITRATOR(S). IF ANY PARTY COMMENCES LITIGATION IN VIOLATION OF THIS AGREEMENT, OR FAILS OR REFUSES TO TIMELY SUBMIT TO ARBITRATION IN ACCORDANCE WITH THIS AGREEMENT, SUCH PARTY SHALL REIMBURSE THE OTHER PARTY(S) FOR THE COSTS AND EXPENSES, INCLUDING ATTORNEY'S FEES: (A) INCURRED IN SEEKING A STAY, ABATEMENT OR DISMISSAL OF SUCH LITIGATION, OR (B) INCURRED IN JUDICIALLY COMPELLING ARBITRATION. THE FOREGOING DOES NOT PRECLUDE A PARTY FROM SEEKING EMERGENCY RELIEF FROM A COURT OF COMPETENT JURISDICTION AND THE PROSECUTION OF A REQUEST FOR EMERGENCY RELIEF WILL NOT BE DEEMED A WAIVER OF THE ARBITRATION PROVISIONS CONTAINED HEREIN. THE ARBITRATION AWARD, INCLUDING WITHOUT LIMITATION AN AWARD OF SPECIFIC PERFORMANCE, SHALL BE ENFORCEABLE IN ANY COURT OF COMPETENT JURISDICTION

(d) JOINDER. THE PARTIES AGREE THAT THEY MAY JOIN IN ANY ARBITRATION PROCEEDING CONDUCTED HEREUNDER, ONE (1) OR MORE OF THEIR RESPECTIVE INVITERS, CONTRACTORS, SUBCONTRACTORS, SPECIALTY CONTRACTORS, MATERIAL SUPPLIERS, ENGINEERS, DESIGNERS AND/OR SUCH OTHER PERSONS OR ENTITIES (COLLECTIVELY WHETHER ONE OR MORE "THIRD-PARTY") WHERE (I) THE SERVICES PROVIDED, WORK PERFORMED OR MATERIAL SUPPLIED BY SUCH THIRD-PARTY FORMS THE BASIS DIRECTLY OR INDIRECTLY, IN WHOLE OR PART, OF THE CLAIMS MADE THE SUBJECT OF THE ARBITRATION PROCEEDING (II) SUCH THIRD-PARTY IS SUBSTANTIALLY INVOLVED IN A COMMON QUESTION OF FACT OR LAW, OR (III) THE PRESENCE OF SUCH THIRD-PARTY IS REQUIRED TO ACCORD THE PARTIES COMPLETE RELIEF IN THE ARBITRATION

(e) FINANCIAL CAPACITY. THE DECLARANT, THE ASSOCIATION AND EACH OWNER REPRESENT THAT THEY HAVE ADEQUATE FINANCIAL CAPACITY TO AVAIL THEMSELVES OF THE ARBITRATION REMEDIES PROVIDED HEREIN AND THAT PARTICIPATION IN ARBITRATION WILL NOT CONSTITUTE A FINANCIAL HARDSHIP

(e) RELIANCE. EACH OWNER UNDERSTANDS AND AGREES THAT DECLARANT'S SALE OF A UNIT TO SUCH OWNER IS CONDITIONED IN PART AND IS DONE IN RELIANCE UPON SUCH OWNER'S ACKNOWLEDGMENT OF AND AGREEMENT WITH THE PROVISIONS OF ARTICLE 15

#### ARTICLE 15 MISCELLANEOUS

**15.1 Enforcement.** The Board of Directors or any Owner shall have the right to enforce, by appropriate proceedings at law or in equity, all terms and provisions of this Declaration. Failure by the Board of Directors or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed to be a waiver of the right to enforce such covenant or restriction thereafter.

**15.2 Partial Invalidity.** In the event any provision of this Declaration, the Bylaws or the Regulations shall be determined by a court of competent jurisdiction to be or enforceability of the remainder of such instruments.

**15.3 Conflicts.** In the event any of the provisions of this Declaration, the Bylaws or the Regulations shall be in conflict with the provisions of the Act of the Texas Non-Profit Corporation Act, the provisions of each statutes shall control. In the event that a conflict exists between the provisions of this Declaration, the Bylaws or the Regulations, this Declaration shall control over the Bylaws and the Regulations and the Bylaws shall control over the Regulations.

**15.4 Captions and Exhibits** Captions used in the various articles and sections of this Declaration are for convenience only, and they are not intended to modify or affect the meaning of any of the substantive provisions hereof. All exhibits referenced herein are incorporated in and made a part of this Declaration.



**15.5 Usury.** It is expressly stipulated that the terms of the Declaration, the Bylaws and the Regulations (collectively the "Governance Documents") shall at all times comply with the usury laws of the State of Texas. If such laws are ever revised, repealed, or judicially interpreted so as to render usurious any amount called for, contracted for, charged or received in connection with any amounts due under the Governance Documents, or if the Declarant's or the Association's exercise of any provisions of the Governance Documents results in any party having paid any interest in excess of that permitted by applicable law, then it is the Association's and/or the Declarant's express intent that all excess amounts therefor collected by the Association be credited on the principal balance of any indebtedness (or if the indebtedness has been paid in full, refunded to the payor), and the applicable provisions of the Governance Documents immediately be deemed reformed and the amounts thereafter collected be reduced, without the necessity of execution of any new document, so as to comply with then applicable law, but so as to permit the recovery of the fullest amount otherwise called for thereunder.

**15.6 Estoppel Certificate** Any mortgagee and any prospective Purchaser of a Unit shall be entitled, upon written request therefor, to a statement from the Board of Directors (or any party appointed by the Board) setting forth the amount of any unpaid Common Expense Liability, Monthly Assessment, Special Assessment, or other sums due and owing to the Association against the Unit or the Owner thereof. Any prospective Purchaser shall not be liable for, nor shall the Unit conveyed, be subject to the lien provided in this Declaration for any unpaid Common Expense Liability, Monthly Assessment or Special Assessment made by the Board of Directors against the particular Unit involved or other sums due and owing hereunder against the Unit or the Owner thereof in excess of the amount set forth in such statement. Any such Purchaser shall, however, be liable for any Monthly Assessments, Special Assessments, Common Expenses and any other sums owing hereunder against such Unit or the Owner thereof which become due after the date of any such statement and shall be subject to the lien securing same as provided in this Declaration.

**15.7 Covenant of Further Assurances.** Any Person subject to the terms of this Declaration (whether such Person is an Owner, Owner's Invitee, Tenant, Tenant's Invitee, or otherwise), shall at the expenses of any such party requesting the same, execute, acknowledge and deliver to the Association such instruments, in addition to those specifically provided for herein, and take such other action as such other party may reasonably request to effectuate the provisions of this Declaration or any transaction contemplated herein, or to confirm or perfect any right to be created or transferred hereunder pursuant to any such transaction. If any Person subject to the terms of this Declaration fails or refuses, within ten (10) days after request therefor, to execute, acknowledge or deliver any instrument, or to take any action that such Person is required to execute, acknowledge and deliver or to take pursuant to this Declaration, then the Association is hereby authorized as attorney-in-fact for such Person, coupled with an interest, to execute, acknowledge and deliver such instrument or to take such action in such Person's name, and such document or action shall be binding on that Person.

**15.8 Governing Law.** THIS DECLARATION AND THE ARTICLES, BYLAWS AND REGULATIONS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS WITHOUT REGARD TO ITS CONFLICTS OF LAW PRINCIPLES (except as to the construction and enforcement of the arbitration provisions contained herein which shall be governed by the laws

of the United States). Venue for an action to enforce a right or obligation arising under the Declaration, Bylaws, or Regulations of the Association is in Galveston County, Texas

**15.9 Notices.** Notices arising under this Declaration shall be in writing and shall be deemed sufficiently given: (i) if given by personal or local messenger delivery, when delivered at the appropriate address set forth below, (ii) if given by United States mail, five (5) business days after deposit in any United States post office box, postage prepaid (certified with return receipt requested), addressed as set forth below, and (iii) if given by air courier, when received by the addressee. Alternatively, notice shall be deemed to be delivered on the first business day after written notice is deposited with a nationally recognized overnight delivery service provider (e.g., FedEx) for next day delivery. Personal delivery to an Owner includes posting the notice on the front door of the Owner's Unit. Refusal to accept delivery of any notice arising hereunder shall be deemed receipt, actual notice and actual knowledge of the material refused. Unless personally delivered, notice to an Owner shall be addressed to the Owner at the last address for the Owner appearing in the records of the Declarant of the Association, as applicable, or if there is none, at the address of the Unit. Notice to the Declarant and the Association shall be addressed as follows:

IF to the Declarant:	Yishlam, Inc. 4141 Southwest Freeway, State 550 Houston, Texas 77027 Attn: Omar Shafran
With copies to:	The Excelsior, A Condominium 402 Post Office Street Galveston, Texas 77550 Attn: Manager
	and
	Danny M. Sheena 1001 Texas Avenue, Suite 240 Houston, Texas 77002
IF to the Association:	The Excelsior Condominium Owners Association, Inc. 402 Post Office Street Galveston, Texas 77550 Attn: President

**15.10 Right of Entry.** For as long as Declarant may remain liable under any warranty, whether statutory, express or implied, for any act or omission of Declarant in the development, construction, sale or marketing of the Condominium, if any, then Declarant and its contractors, agents and designees shall have the right, in Declarant's sole discretion and from time to time without requiring prior approval from the Association and/or any Owner (provided, however, that absent an Emergency situation, Declarant shall provide reasonable advance notice), to enter the Condominium, including any Unit or Common Element (including Limited Common Elements),

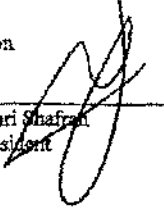
for the purpose of inspecting, testing and surveying same to determine the need for repairs, improvements and/or placements and affecting same, so that Declarant can fulfill any of its warranty obligations. Nothing herein shall be deemed or construed as Declarant's making or offering any warranty, all of which are disclaimed except as expressly set forth in Declarant's limited warranty as provided to each Owner at the time his Unit was purchased.

15.11 Fair Housing. Notice of the Declarant, the Association or any Owner shall, either directly or indirectly, forbid the conveyance, encumbrance, renting, leasing or occupancy of an Owner's Unit to any person on the basis of race, color, sex, religion, ancestry or national origin

IN WITNESS WHEREOF, the Declarant has duly executed this Declaration on the day and year first above written.

**DECLARANT:**

YISHLAM, INC.  
a Texas corporation

By   
Name: Omri Shafran  
Title: President

THE STATE OF TEXAS  
COUNTY OF HARRIS

This instrument was acknowledged before me on this 22 day of March, 2007 by Omri Shafran, President of Yishlam, Inc. a Texas corporation, on behalf of said entity.

  
NOTARY PUBLIC, State of Texas



**PAID**

**THE SHEENA LAW FIRM**  
Fighting Aggressively for Your Rights  
Danny M. Sheena, PE  
Attorney at Law  
1001 Texas Avenue  
Suite 240  
Houston, Texas 77002

THE EXCELSIOR, A CONDOMINIUM  
Declaration of Condominium  
Page 32 of 32

EXHIBIT A

**THE EXCELSIOR,  
A CONDOMINIUM**

---

**LEGAL DESCRIPTION OF THE LAND**

---

A tract or parcel of land containing 0.5960 acre being all of lots 8, 9, 10, 11, and 12, Block 484 in the City of Galveston out of Galveston County, Texas said 0.5960 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a 1 inch iron pipe found at the Southeast corner of Block 484 of the City of Galveston at the intersection of the West right-of-way line of Holiday Drive (80 ft in width) and North right-of-way line of Post Office Street (70 ft in width - also known as Avenue E);

THENCE South 70 degrees 00 minutes 00 seconds West with the North right-of-way line of Post Office Street (70 ft in width) a distance of 216.36 ft. to a 1 inch iron pipe found at the Southwest corner of the herein described tract also marking the Southwest corner of Lot 12 and the Southeast corner of Lot 13 of said Block 484;

THENCE North 20 degrees 00 minutes 00 seconds West with the division line between Lots 12 and 13 and with an old fence line a distance of 120.00 ft. to a 5/8 inch iron rod found at the Northwest corner of the herein described tract marking the Northwest corner of said Lot 12 and the Northeast corner of Lot 13 being in the South line of a 20 foot alley (used for ingress and egress);

THENCE North 70 degrees 00 minutes 00 seconds East with the South right-of-way line of said alley and the North line of Lots 12 thru 8 a distance of 216.36 ft. to a 5/8 inch iron rod set at the Northeast corner of Lot 8 and being located Easterly a distance of 2.00 ft. from a found 1/2 inch iron rod,

THENCE South 20 degrees 00 minutes 00 seconds East with the West right-of-way line of Holiday Drive and the East line of Lot 8 and Block 484 a distance of 120.00 ft. to the PLACE OF BEGINNING and containing 0.5960 acre of land and being known as 402 Post Office Street (Avenue E), Galveston, Texas 77550.

THE EXCELSIOR, A CONDOMINIUM  
Declaration of Condominium  
Exhibit A

EXHIBIT A-1

THE EXCELSIOR,  
A CONDOMINIUM

---

DESCRIPTION OF EASEMENT RIGHTS

---

**Broadband Easement**

Terms, conditions and provision contained in that certain Broadband Easement and Right of Entry Agreement dated October 22, 2008 between TCI Cablevision of Texas, Inc. And Galveston Colonial Ltd. as set forth in instrument filed for record under Galveston County Clerk's File No. 9908445.

**Lease of Laundry Facility**

Lease of Laundry Facilities granted to Coinmach as set forth in that certain Memorandum of Lease dated April 30, 2003, recorded in/under 2003039907 of the Real Property Records of Harris County, Texas.

THE EXCELSIOR, A CONDOMINIUM  
Declaration of Condominium  
Exhibit A-1

EXHIBIT B  
THE EXCELSIOR,  
A CONDOMINIUM

---

FLAT

---

THE EXCELSIOR, A CONDOMINIUM  
Declaration of Condominium  
Exhibit B



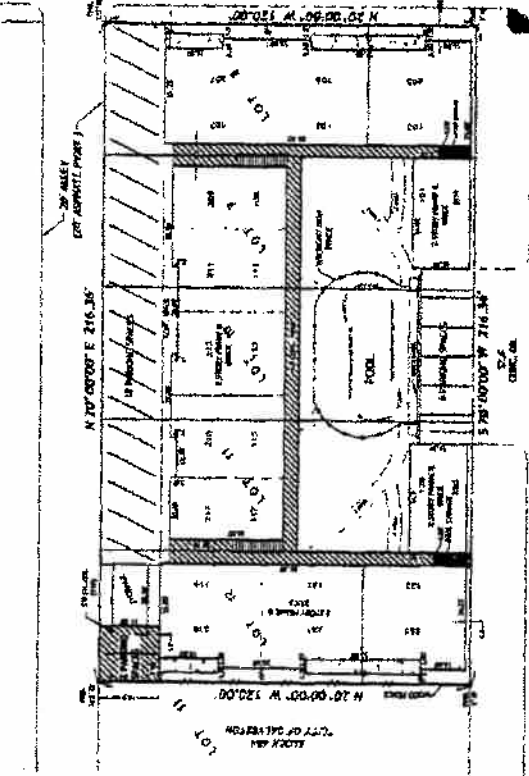
0.3764 ACRES

BEING ALL OF  
LOT 3 & 4, LOT 1 & 2,  
BLOCK 404 FOR  
CITY OF GALVESTON  
TERMINAL & FREIGHT DEPOT  
GALVESTON, TEXAS.



TITLE DATA, INC.  
2500 WESTERN AVENUE  
HOUSTON, TEXAS 77045  
713-782-4400

HUGHES DRIVE AND 4TH STREET (OFF ASPHALT PAVEMENT)



POST OFFICE ST. (70' R.O.W.)  
(OFF ASPHALT PAVEMENT)

SHOWN ON THE PROPERTY  
LOCATED AT THE POST OFFICE STREET GALVESTON, TEXAS  
DATED BY A UNIFORM RECAP ALICAT 8/1/87 ALSO INC. IN CITY OF GALVESTON AND IN TERMINAL AND FREIGHT DEPOT,  
GALVESTON COUNTY, TEXAS.  
THE UNDERSIGNED RECAP CERTIFY THAT THE EVIDENCE HAS BEEN FULLY RECAPTURED AND THE RECAPTURED DOCUMENTS HAVE BEEN  
FILED IN THE PUBLIC RECORDS OF GALVESTON COUNTY, TEXAS, AND THAT THE RECAPTURED DOCUMENTS ARE TRUE AND CORRECT  
RECAPTURED DOCUMENTS OF GALVESTON COUNTY, TEXAS, AND THAT THE RECAPTURED DOCUMENTS ARE TRUE AND CORRECT  
RECAPTURED DOCUMENTS OF GALVESTON COUNTY, TEXAS, AND THAT THE RECAPTURED DOCUMENTS ARE TRUE AND CORRECT  
RECAPTURED DOCUMENTS OF GALVESTON COUNTY, TEXAS, AND THAT THE RECAPTURED DOCUMENTS ARE TRUE AND CORRECT  
RECAPTURED DOCUMENTS OF GALVESTON COUNTY, TEXAS, AND THAT THE RECAPTURED DOCUMENTS ARE TRUE AND CORRECT



*[Handwritten Signature]*  
COUNTY CLERK  
GALVESTON COUNTY, TEXAS

NOTICE  
I, THE CLERK OF GALVESTON COUNTY, TEXAS, HEREBY CERTIFY THAT THE ABOVE RECAPTURED DOCUMENTS ARE TRUE AND CORRECT  
RECAPTURED DOCUMENTS OF GALVESTON COUNTY, TEXAS, AND THAT THE RECAPTURED DOCUMENTS ARE TRUE AND CORRECT  
RECAPTURED DOCUMENTS OF GALVESTON COUNTY, TEXAS, AND THAT THE RECAPTURED DOCUMENTS ARE TRUE AND CORRECT  
RECAPTURED DOCUMENTS OF GALVESTON COUNTY, TEXAS, AND THAT THE RECAPTURED DOCUMENTS ARE TRUE AND CORRECT

EXHIBIT C  
THE EXCELSIOR,  
A CONDOMINIUM

---

PLANS

---

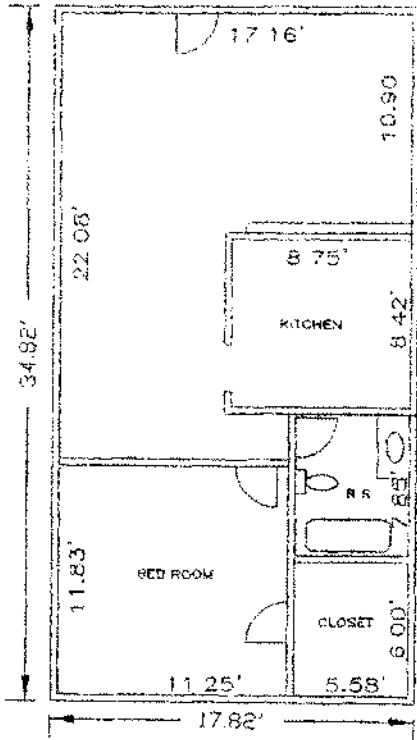
THE EXCELSIOR, A CONDOMINIUM  
Declaration of Condominium  
Exhibit C





SCALE 1" = 5'

UNIT 101  
EXCELSIOR APT.  
GALVESTON, TEXAS

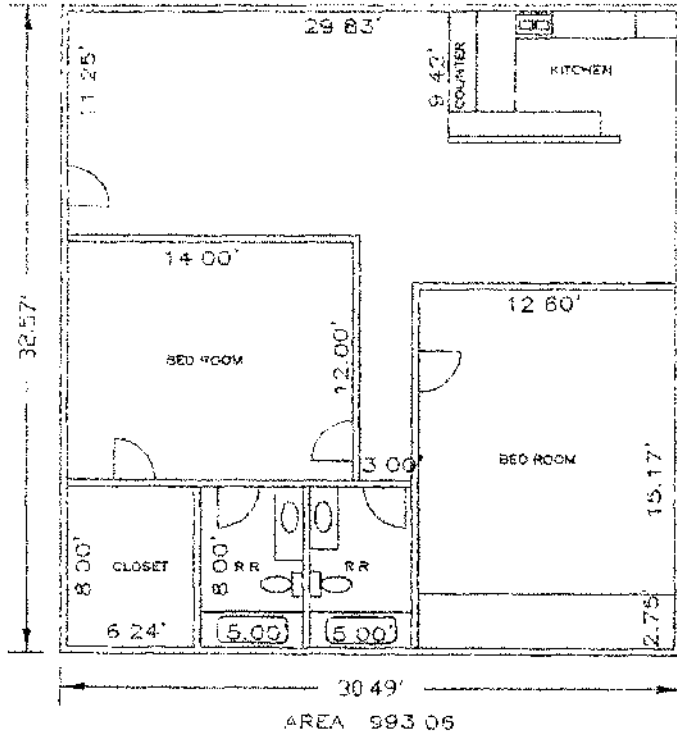


AREA 620.49

MARSHALL & ASSOCIATES  
ARCHITECTS AND ENGINEERS  
1100 GALVESTON AVENUE, SUITE 100  
GALVESTON, TEXAS 77550  
TEL: 409-762-1100



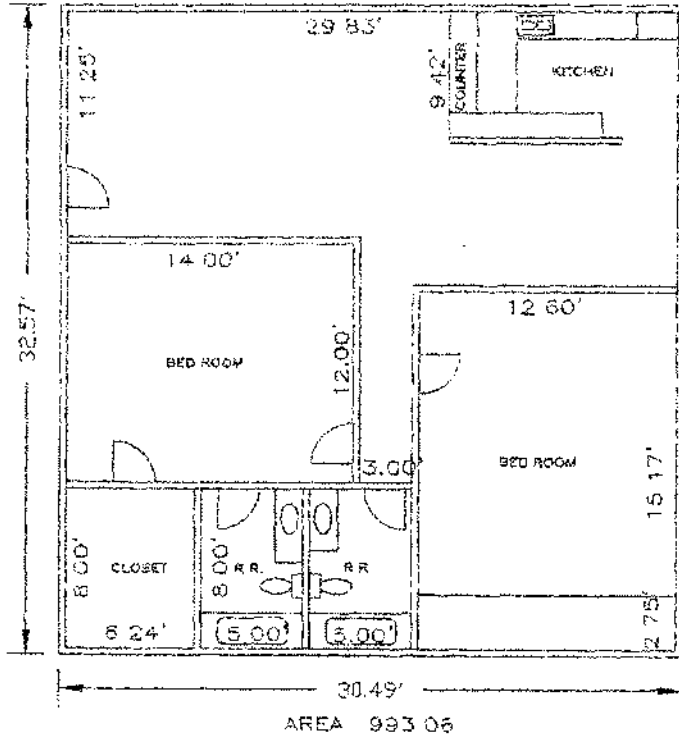
SCALE 1"=5'  
UNIT 103  
EXCELSIOR APT.  
GALVESTON, TEXAS



MARSH / MALCOLM & ASSOCIATES  
SPACED OUT PLAN, DRAWING & SURVEYORS  
401 BELL ROAD, HOUSTON, TEXAS 77002



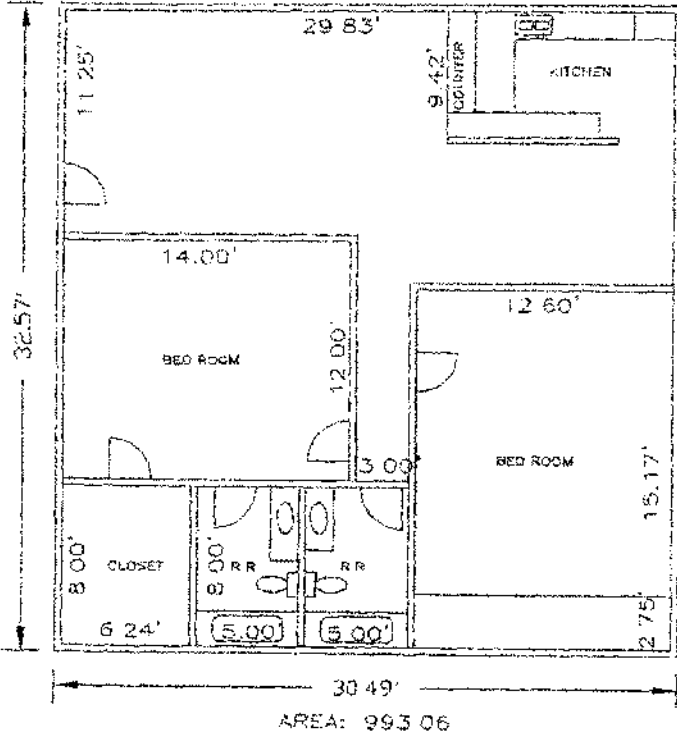
SCALE 1" = 3'  
UNIT 105  
EXCELSIOR APT.  
GALVESTON, TEXAS.



MARSH/JALAYER & ASSOCIATES  
ENGINEERS, ARCHITECTS & SURVEYORS  
10001 F. ROAD, JACKSON, MISSISSIPPI 39202



SCALE 1" = 5'  
UNIT 107  
EXCELSIOR APT  
GALVESTON, TEXAS.

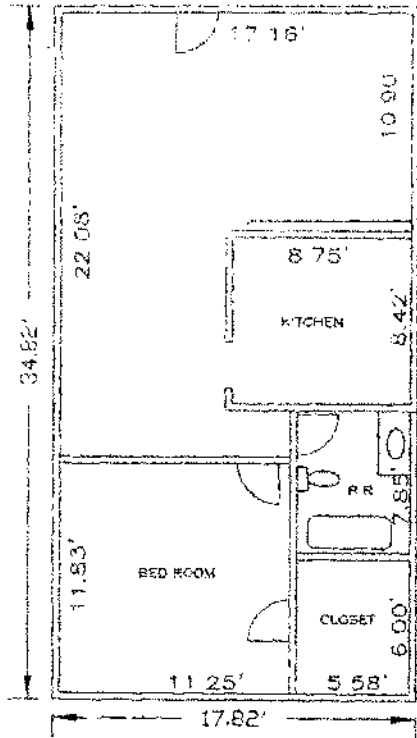


MARSH / JALAYAN ASSOCIATES  
ARCHITECTS AND ENGINEERS  
1000 WEST 19TH STREET, SUITE 100  
DALLAS, TEXAS 75201  
PHONE 754-1234



SCALE 1" = 8'

UNIT 109  
EXCELSIOR APT  
GALVESTON, TEXAS.



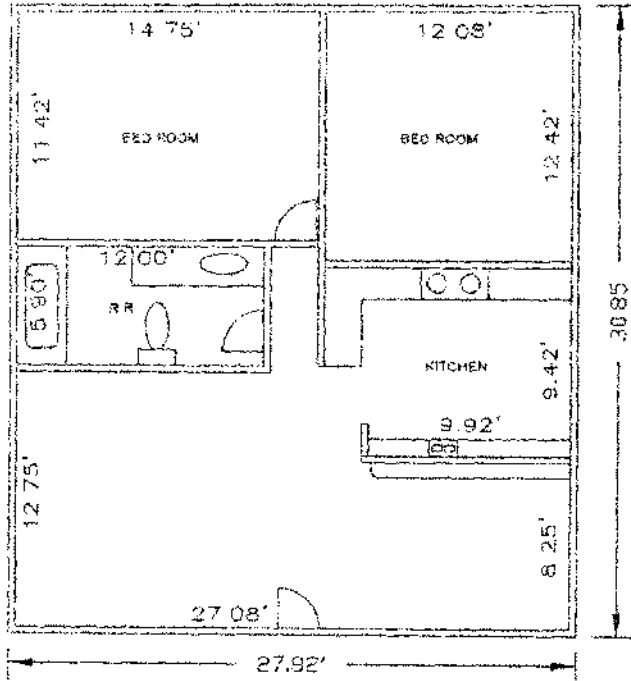
AREA 620.49

MARSH / PLATER & ASSOCIATES  
ENGINEERING, ARCHITECTURE & SURVEYING  
5112 BELMONT DRIVE, HOUSTON, TEXAS 77054-1704  
(713) 865-1111



SCALE 1" = 5'

UNIT 111  
EXCELSIOR APT.  
GALVESTON, TEXAS.

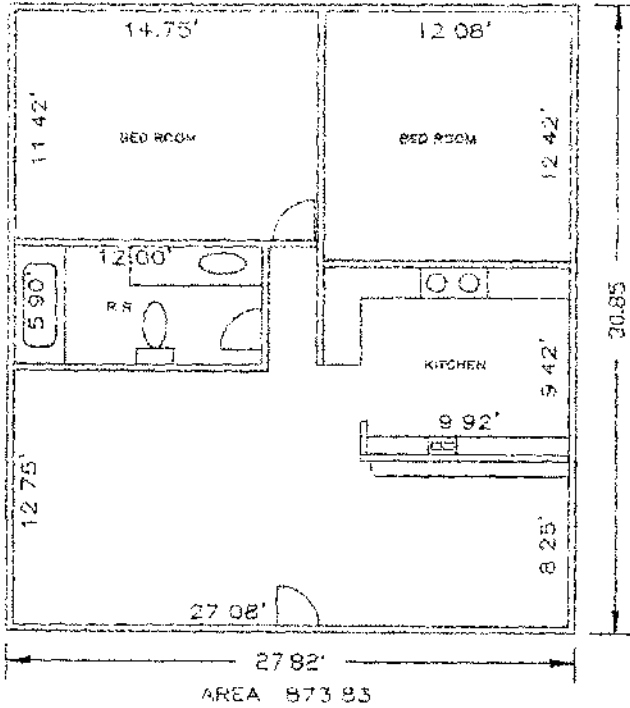


AREA: 873.83

MARSH, JALAN & ASSOCIATES  
ENGINEERING, ARCHITECTURE & SURVEYING  
212 WALL STREET, SUITE 1100, NEW YORK, NY 10038  
212 691-1100



SCALE 1" = 5'  
UNIT 113  
EXCELSIOR APT  
GALVESTON, TEXAS.



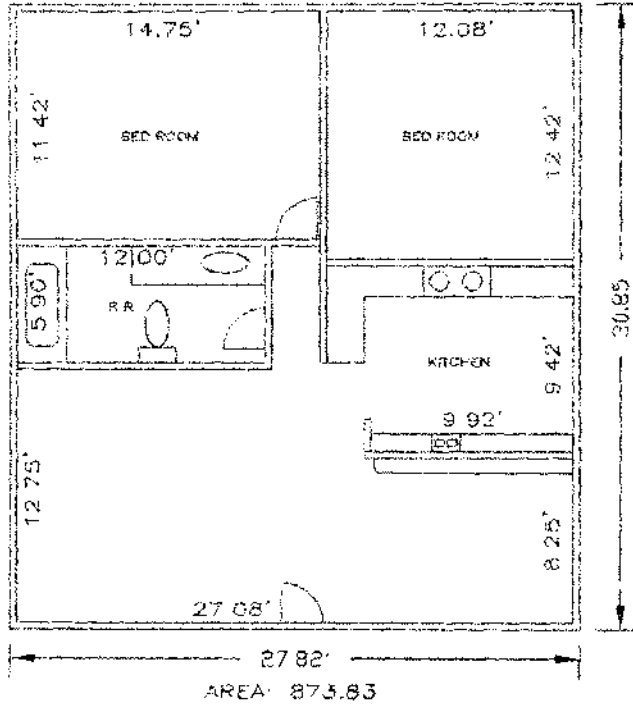
MARSH, JALAYR & ASSOCIATES  
REGISTERED ARCHITECTS & SURVEYORS  
10001 FRENCH LANE, SUITE 100  
DALLAS, TEXAS 75243

UNITS 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200



SCALE 1" = 5'

UNIT 115  
EXCELSIOR APT.  
GALVESTON, TEXAS



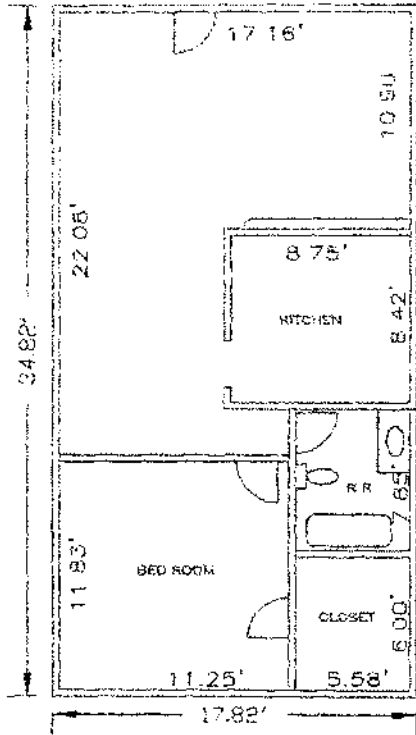
MARSH MALLEN & ASSOCIATES  
ENGINEERING, ARCHITECTURE & SURVEYING  
2110 BELLEVILLE AVENUE, SUITE 100, GALVESTON, TEXAS 77550  
(409) 762-1100





SCALE 1" = 5'

UNIT 117  
EXCELSIOR APT  
GALVESTON, TEXAS.

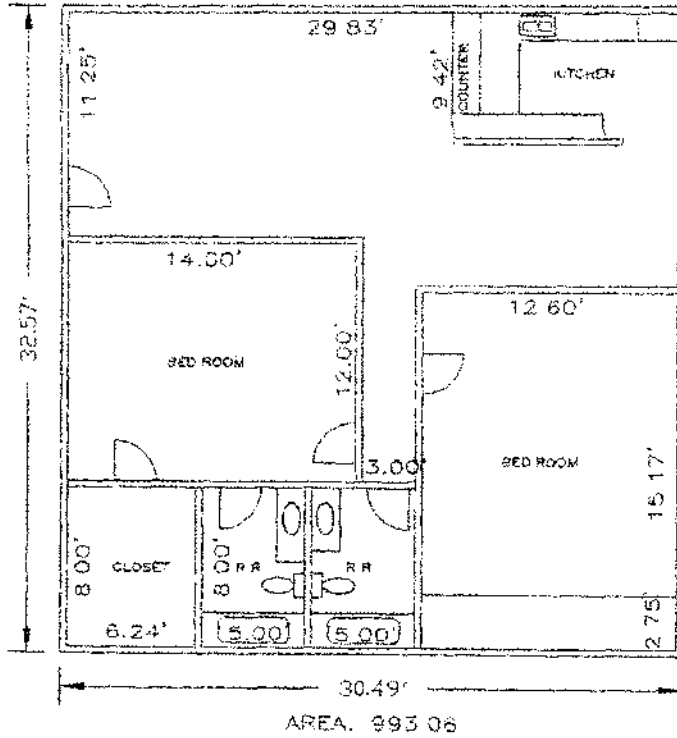


AREA 620.49

MARSH / JAL / JOR ASSOCIATES  
ARCHITECTS / ENGINEERS / INTERIORS  
1111 BELL FORNEY BUILDING, GALVESTON, TEXAS 77550  
361.652.1234



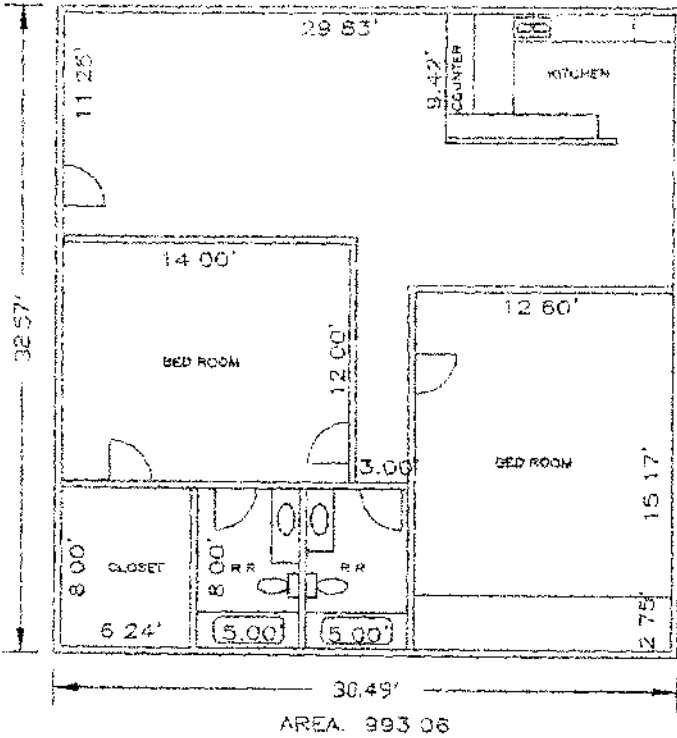
SCALE 1" = 5'  
UNIT 119  
EXCELSIOR APT.  
GALVESTON, TEXAS.



MARSH/DALY & ASSOCIATES  
ENGINEERING ARCHITECTS & SURVEYORS  
10000 GALVESTON BLVD., SUITE 100  
GALVESTON, TEXAS 77551



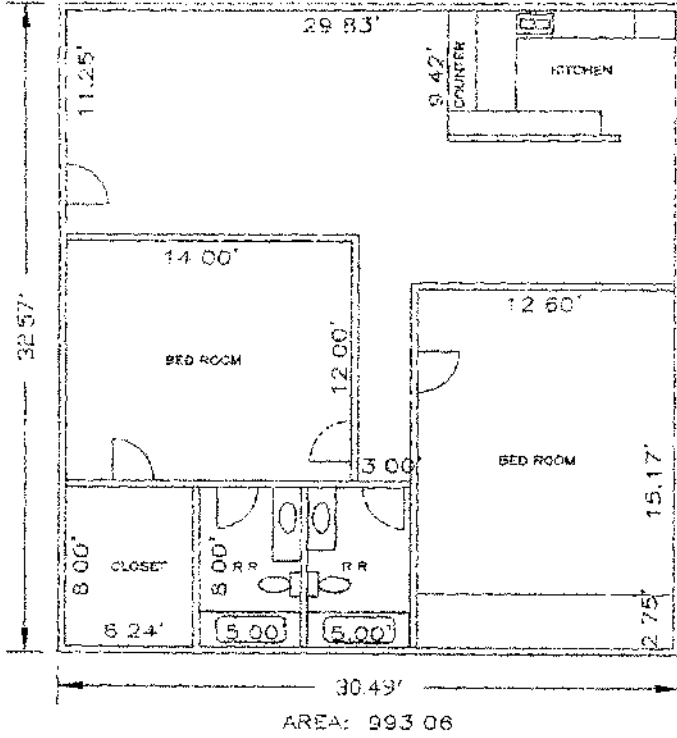
SCALE 1" = 5'  
UNIT 121  
EXCELSIOR APT.  
GALVESTON, TEXAS



MARSHALL & ASSOCIATES  
SPACED-BUILDING DESIGNERS & ARCHITECTS  
400 N. BELL ST. SUITE 1000 GALVESTON, TEXAS 77550  
PHONE 774-2200



SCALE 1" = 5'  
UNIT 123  
EXCELSIOR APT.  
GALVESTON, TEXAS.

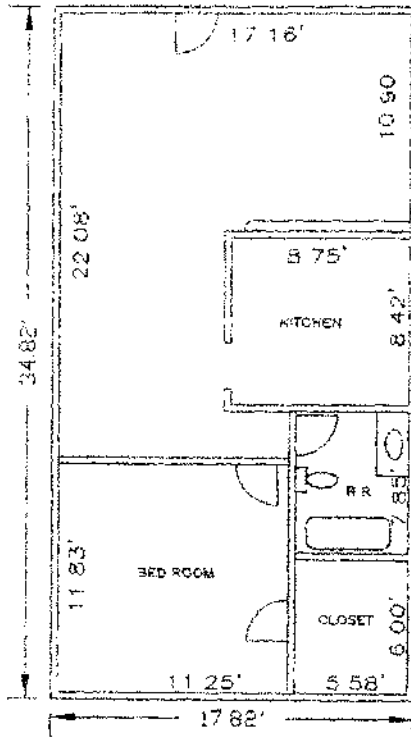


MARSH, MALCOLM & ASSOCIATES  
ENGINEERING CONSULTANTS & SURVEYORS  
11001 ALBUQUERQUE BLVD., SUITE 100  
HOUSTON, TEXAS 77036



SCALE 1" = 5'

UNIT 12B  
EXCELSIOR APT.  
GALVESTON, TEXAS.



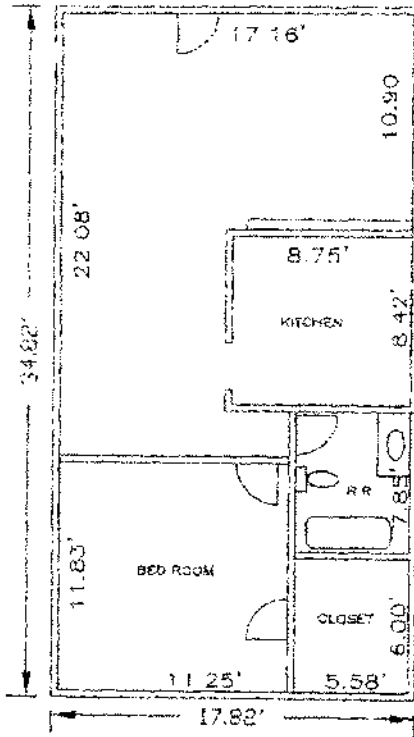
AREA 620.49

MARSH / J. LA TORRA ASSOCIATES  
ENGINEERING ARCHITECTURE & INTERIORS  
1112 AVILA BLVD., GALVESTON, TEXAS 77550  
409.761.1111



SCALE: 1" = 5'

UNIT 201  
EXCELSIOR APT  
GALVESTON, TEXAS.

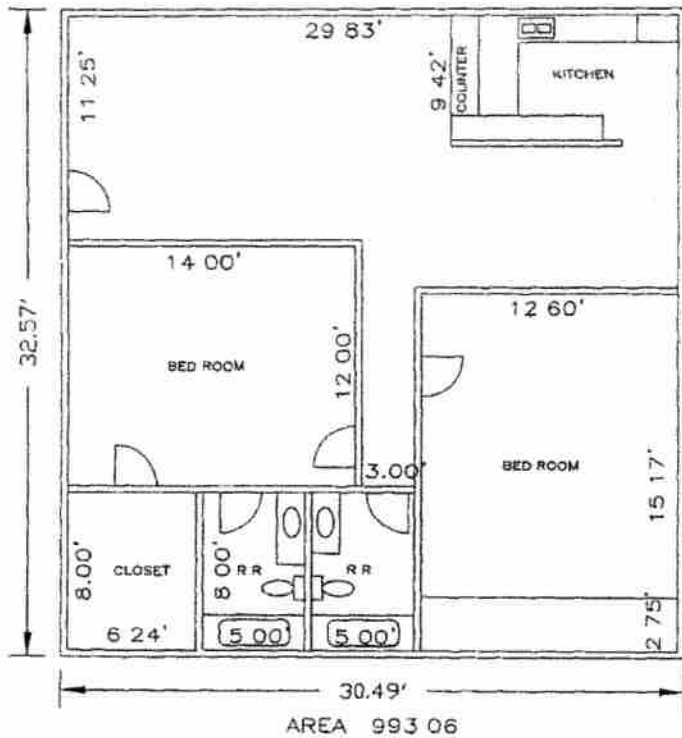


MARSH, LAVER & ASSOCIATES  
ENGINEERING ARCHITECTURE SURVEYORS  
601 HILL STREET, GALVESTON, TEXAS 77550  
PLANNED UNIT



SCALE 1" = 5'

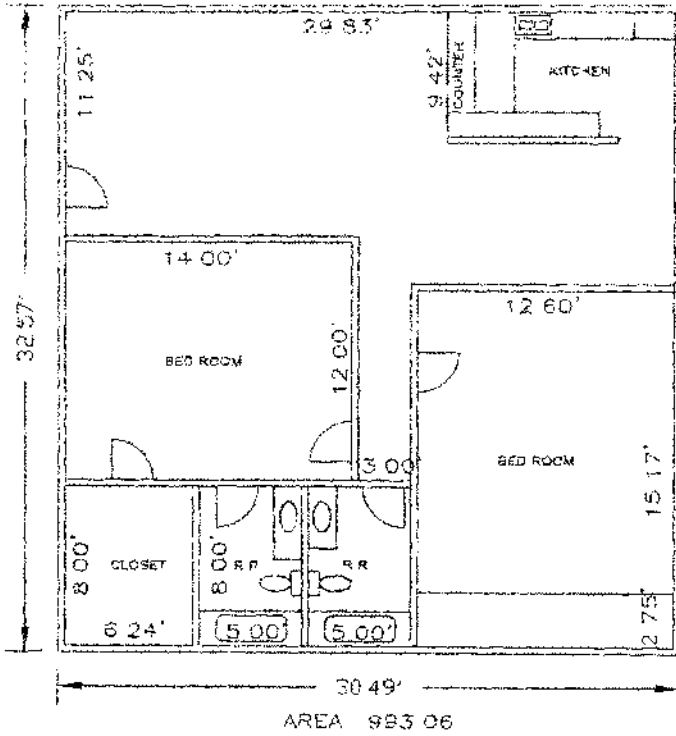
UNIT 203  
EXCELSIOR APT.  
GALVESTON, TEXAS



MARSH / JALAN & ASSOCIATES  
ENGINEERING ARCHITECTS & SURVEYORS  
610 BELL BLVD. SUITE 1700  
DALLAS, TEXAS 75202



SCALE 1" = 3'  
UNIT 205  
EXCELSIOR APT.  
GALVESTON, TEXAS.



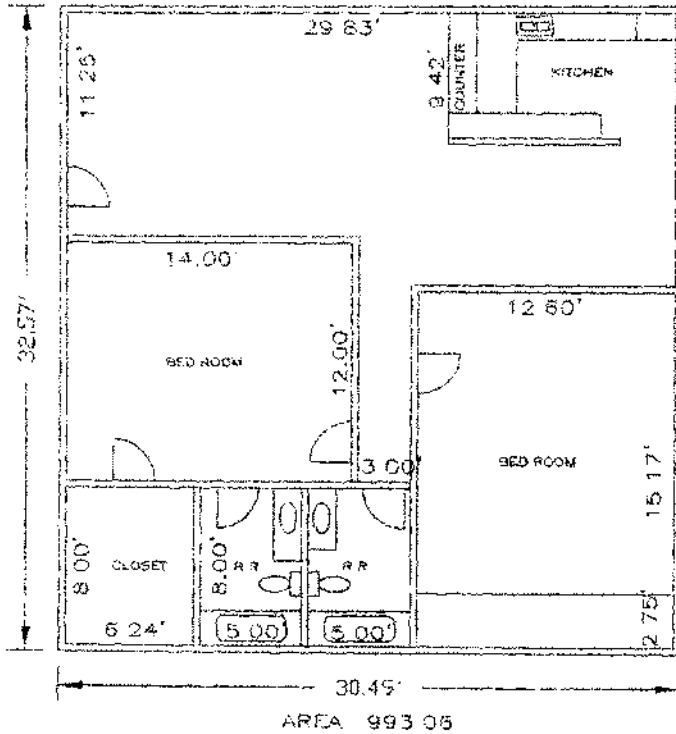
EXCELSIOR APT. UNIT 205 FLOOR PLAN

MARSHALL & ASSOCIATES  
ENGINEERING PLANNING & SURVEYING  
100 BELLEVILLE STREET, SUITE 100  
HOUSTON, TEXAS 77002





SCALE 1/8" = 1'-0"  
UNIT 207  
EXCELSIOR APT.  
GALVESTON, TEXAS.

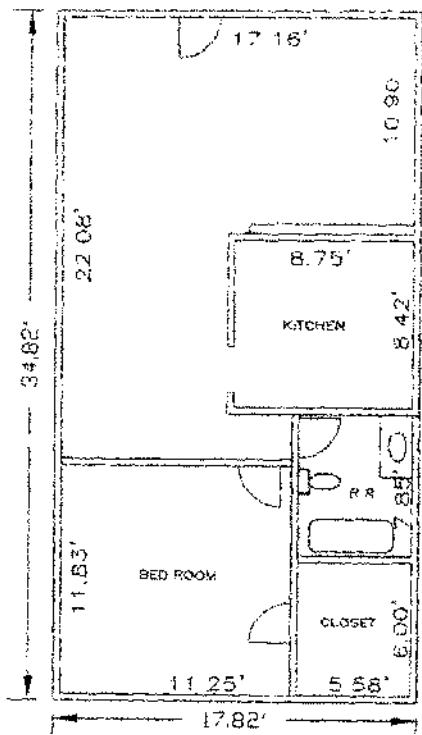


MARSH/MAYES ASSOCIATES  
REGISTERED PROFESSIONAL ARCHITECTS  
DALLAS, TEXAS  
1984



SCALE 1" = 5'

UNIT 209  
EXCELSIOR APT.  
GALVESTON, TEXAS.



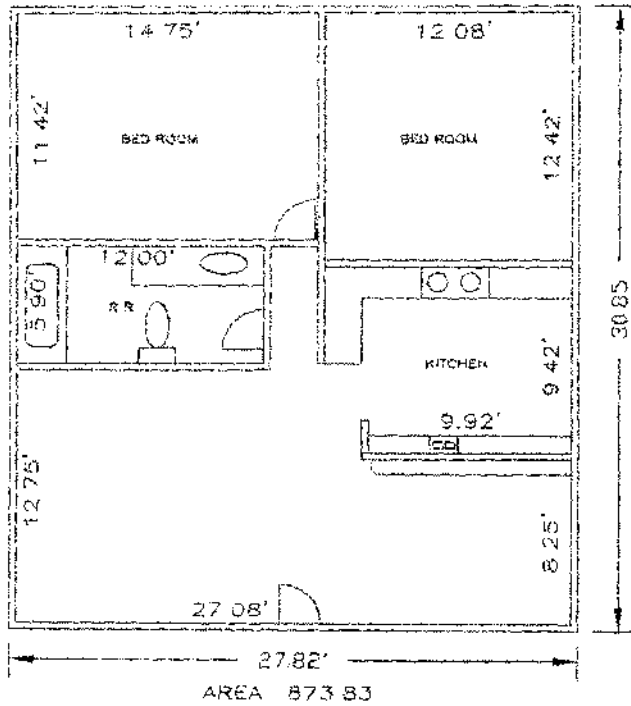
AREA 620.49

MARSH, TALAVERA & ASSOCIATES  
ENGINEERING ARCHITECTURE & SURVEYORS  
P.O. BOX 144000, HOUSTON, TEXAS 77254  
713/865-1200



SCALE 1"=3'

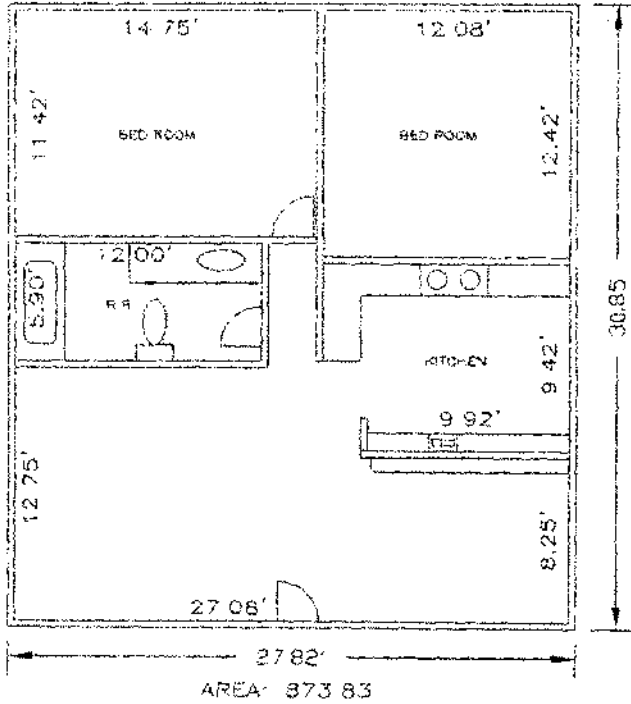
UNIT 211  
EXCELSIOR APT  
GALVESTON, TEXAS.



MARSH, JALAY & ASSOCIATES  
ENGINEERING ARCHITECTS & SURVEYORS  
114 HILL FLD BLDG. SUITE 1000  
DALLAS, TEXAS 75202



SCALE 1" = 3'  
 UNIT 213  
 EXCELSIOR APT.  
 GALVESTON, TEXAS

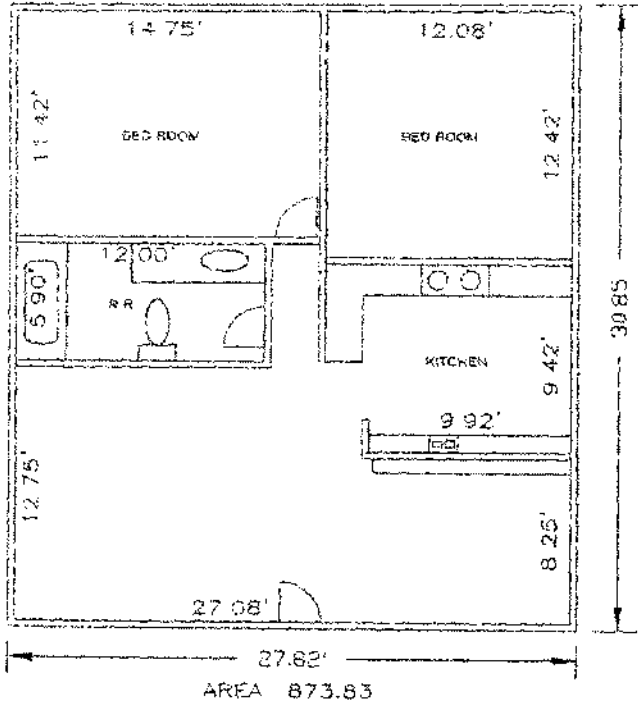


MARSH, JAY & ASSOCIATES  
 ENGINEERS, ARCHITECTS & SURVEYORS  
 801 HILL STREET, GALVESTON, TEXAS 77550

ALL DIMENSIONS SHOWN ARE AS SHOWN ON THESE PLANS. DIMENSIONS SHOWN ON THESE PLANS ARE APPROXIMATE.



SCALE 1" = 5'  
UNIT 215  
EXCELSIOR APT.  
GALVESTON, TEXAS.

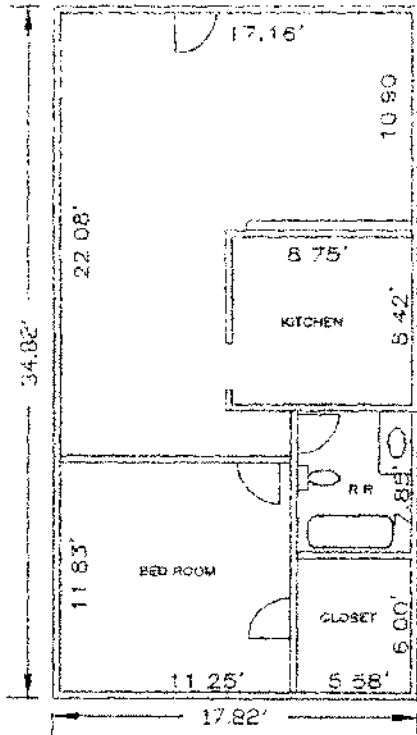


MARSH / FALLER & ASSOCIATES  
LAND SURVEYING ENGINEERS & ARCHITECTS  
401 WEST PALMER BOULEVARD, SUITE 100  
GALVESTON, TEXAS 77550



SCALE 1" = 5'

UNIT 217  
EXCELSIOR APT.  
GALVESTON, TEXAS.

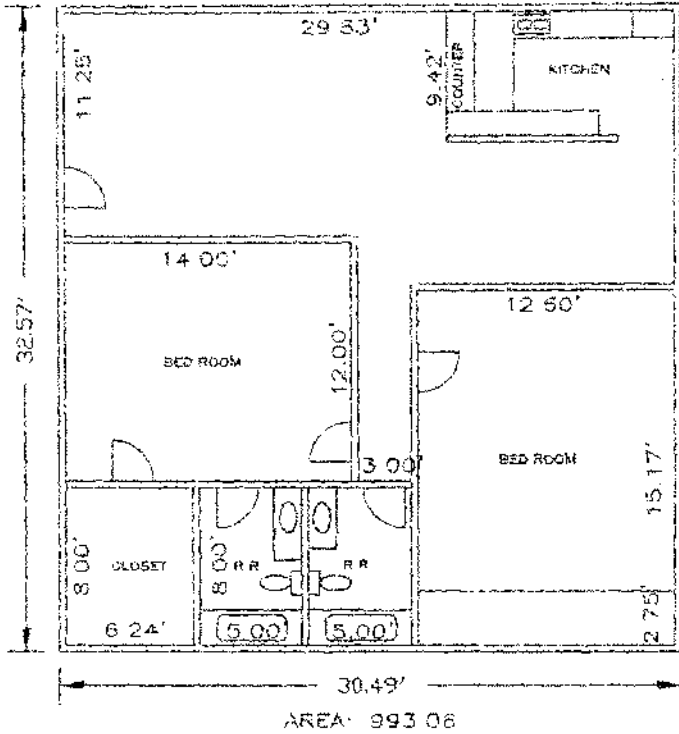


AREA 620.49

MARSH / DALY & ASSOCIATES  
ENGINEERING ARCHITECTURE & SURVEYORS  
1000 BELL BLVD. SUITE 1000  
HOUSTON, TEXAS 77002



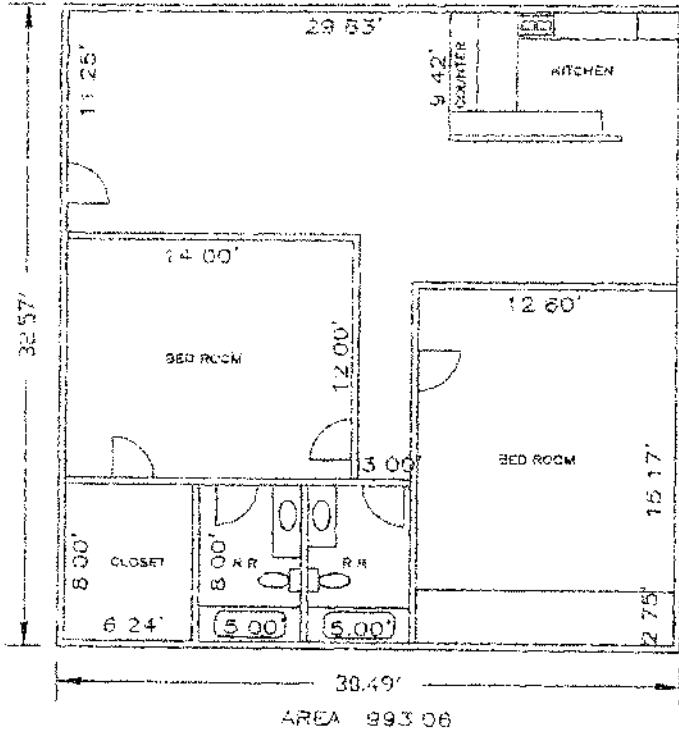
SCALE: 1" = 9'  
UNIT 219  
EXCELSIOR APT.  
GALVESTON, TEXAS.



MARSHALL & ASSOCIATES  
ENGINEERING ARCHITECTURE & SURVEYING  
DALLAS, TEXAS



SCALE 1" = 9'  
UNIT 221  
EXCELSIOR APT.  
GALVESTON, TEXAS

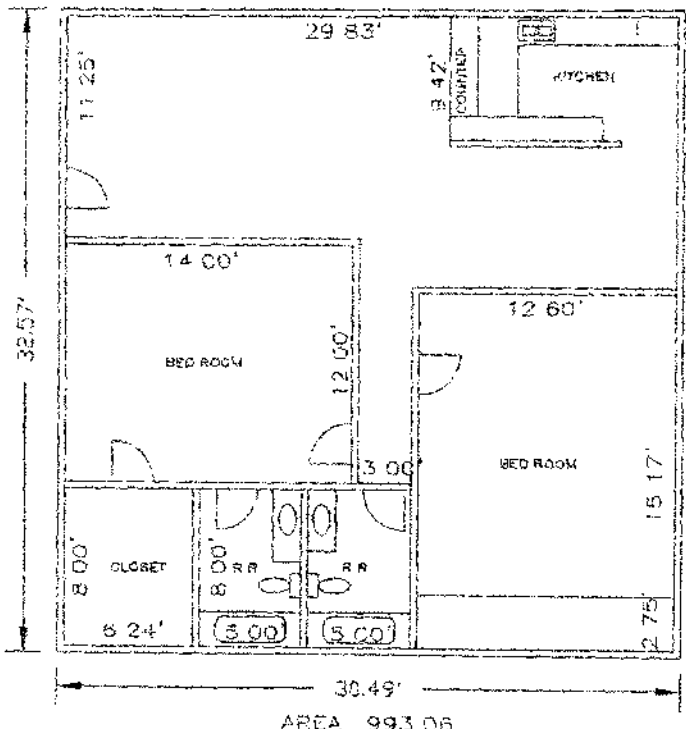


MARSH, JALAYAN & ASSOCIATES  
ENGINEERING ARCHITECTS AND SURVEYORS  
610 RICE AVENUE, SUITE 100, HOUSTON, TEXAS 77007  
713.865.1000





SCALE 1" = 5'  
UNIT 223  
EXCELSIOR APT  
GALVESTON, TEXAS.



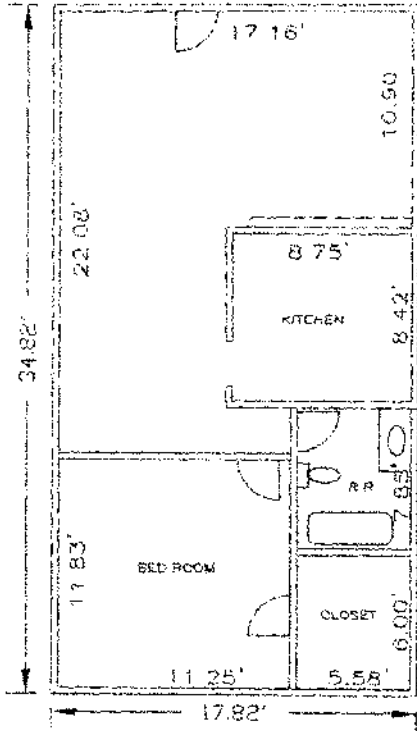
AREA 993.06

MARSH / PALAIA & ASSOCIATES  
ENGINEERS ARCHITECTS & SURVEYORS  
114 KYLE ROAD, SUITE 100, GALVESTON, TEXAS 77550  
(409) 762-1100



SCALE 1" = 8'

UNIT 225  
EXCELSIOR APT.  
GALVESTON, TEXAS



AREA 620.49

MARSH / JAMES & ASSOCIATES  
ENGINEERING ARCHITECTURE & INTERIORS  
400 BELL CENTER, DALLAS, TEXAS 75201  
214.761.1000

EXHIBIT D  
THE EXCELSIOR,  
A CONDOMINIUM

---

LIST OF UNITS, SQUARE FOOT,  
ALLOCATED INTEREST, MONTHLY ASSESSMENTS

---

THE EXCELSIOR, A CONDOMINIUM  
Declaration of Condominium  
Exhibit D

---

**EXHIBIT D**  
Declaration of Condominium

**THE EXCELSIOR, A CONDOMINIUM**

LIST OF UNITS, APPROX SQUARE FOOTAGES, ALLOCATED INTERESTS, MONTHLY ASSESSMENT

Unit Number	Unit Type	Approximate Square Footage	Allocated Interest	Estimated Monthly Assessment
101	1BR/1BA	620 49	0 0280464	\$196 89
103	2BR/2BA	993 06	0 0448868	\$315 11
105	2BR/2BA	993 06	0 0448868	\$315 11
107	2BR/2BA	993 06	0 0448868	\$315 11
109	1BR/1BA	620 49	0 0280464	\$196 89
111	2BR/1BA	873 83	0 0394976	\$277 27
113	2BR/1BA	873 83	0 0394976	\$277 27
115	2BR/1BA	873 83	0 0394976	\$277 27
117	1BR/1BA	620 49	0 0280464	\$196 89
119	2BR/2BA	993 06	0 0448868	\$315 11
121	2BR/2BA	993 06	0 0448868	\$315 11
123	2BR/2BA	993 06	0 0448868	\$315 11
125	1BR/1BA	620 49	0 0280464	\$196 89
201	1BR/1BA	620 49	0 0280464	\$196 89
203	2BR/2BA	993 06	0 0448868	\$315 11
205	2BR/2BA	993 06	0 0448868	\$315 11
207	2BR/2BA	993 06	0 0448868	\$315 11
209	1BR/1BA	620 49	0 0280464	\$196 89
211	2BR/1BA	873 83	0 0394976	\$277 27
213	2BR/1BA	873 83	0 0394976	\$277 27
215	2BR/1BA	873 83	0 0394976	\$277 27
217	1BR/1BA	620 49	0 0280464	\$196 89
219	2BR/2BA	993 06	0 0448868	\$315 11
221	2BR/2BA	993 06	0 0448868	\$315 11
223	2BR/2BA	993 06	0 0448868	\$315 11
225	1BR/1BA	620 49	0 0280464	\$196 89
Total 26		Total 22,123 62	Total 100%	\$7,020 06

EXHIBIT E

THE EXCELSIOR,  
A CONDOMINIUM

---

LIENS, ENCUMBRANCES AND  
OTHER MATTERS OF RECORD

---

1. **Broadband Easement**  
Terms, conditions and provision contained in that certain Broadband Easement and Right of Entry Agreement dated October 22, 2008 between TCI Cablevision of Texas, Inc. And Galveston Colonial Ltd as set forth in instrument filed for record under Galveston County Clerk's File No. 9908445.
2. **Lease of Laundry Facility**  
Lease of Laundry Facilities granted to Coinmach as set forth in that certain Memorandum of Lease dated April 30, 2003, recorded in/under 2003039907 of the Real Property Records of Harris County, Texas
3. **Declaration of Condominium**  
The Declaration of Condominium for The Excelsior, A condominium, of the Condominium Records and/or Property Records of Galveston County, Texas, as may be amended, supplemented or otherwise modified from time to time
4. Vendor's Lien retained in Deed, executed by GALVESTON COLONIAL, LTD., a Texas limited partnership to YISHLAM, INC., a Texas corporation, dated January 4, 2007, filed January 9, 2007, recorded in/under 2007002265 of the Real Property Records of GALVESTON County, Texas, securing BRT FUNDING, LLC in payment of one note in the principal sum of One Million five Hundred Thousand and 00/100 (\$1,500,000 00), due and payable and bearing interest as therein provided, said Note being additionally secured by Deed of Trust to MARK LUNDY, Trustee, recorded in/under 2007002266 of the Real Property Records of GALVESTON County, Texas, and all the terms, conditions and stipulations contained therein, including, but not limited to , any additional indebtedness, if any, secured by said instrument. Additionally secured by Assignment of Leases and Rents dated January 8, 2007, filed January 9, 2007, recorded in/under 2007002267 of the Real Property Records of GALVESTON County, Texas. Filing of UCC-1 Financing Statement executed by Yishlam, Inc., Debtor, to BRT Funding LLC, Secured Party, filed January 9,

THE EXCELSIOR, A CONDOMINIUM  
Declaration of Condominium  
Exhibit E  
Page 1 of 2

2007, recorded in/under 2007002268 of the Real Property Records of GALVESTON County, Texas. Filing of UCC-1 Financing Statement executed by Yishlam, Inc, Debtor, to BRT Funding LLC, Secured Party, filed January 12, 2007, recorded in/under 2007-0001455890 filed with the Secretary of State for Texas.

**FILED AND RECORDED**



OFFICIAL PUBLIC RECORDS

*Mary Ann Daigle*

2007018862

March 23, 2007 12 55 09

FEE \$260 00

Mary Ann Daigle, County Clerk

Galveston County, TEXAS

THE EXCELSIOR, A CONDOMINIUM  
Declaration of Condominium  
Exhibit E  
Page 2 of 2

**EXHIBIT D**

**THE EXCELSIOR,  
A CONDOMINIUM**

---

**BYLAWS  
OF  
THE EXCELSIOR CONDOMINIUM  
OWNERS ASSOCIATION, INC.**

---

**BYLAWS  
OF  
THE EXCELSIOR  
CONDOMINIUM OWNERS ASSOCIATION, INC.**

**ARTICLE 1  
NAME AND ADDRESS**

- 1.1 Name.** The name of this Association shall be THE EXCELSIOR CONDOMINIUM OWNERS ASSOCIATION, INC. ("Association").
- 1.2 Address.** The office of the Association shall be at the place to be designated by the Board of Directors, subject to transfer upon notice to the Members of the Association
- 1.3 Registered Agent.** The Association shall have and continuously maintain in the State of Texas a registered agent whose office address is identical with the registered office, as required by the Texas Non-Profit Corporation Act. The registered office may be, but need not be identical to the principal office in the State of Texas, and the registered office may be changed from time to time by the Board of Directors.

**ARTICLE 2  
APPLICABILITY**

- 2.1 Applicability.** These Bylaws shall be applicable to the Association. In accordance with the terms of the Declaration, Declarant (for such time as Declarant is the owner of any portion of the property) and all present and future Owners shall be Members of the Association and all Owners and any other person who shall be permitted to use a Unit or the Common Elements shall be subject to these Bylaws and to any rules and regulations adopted from time to time by the Board of Directors. Ownership, rental or occupancy of any Unit in the Property shall be conclusively deemed to mean that the Owner, tenant or occupant has accepted, ratified and will comply with these Bylaws and any rules and regulations of the Association.

**ARTICLE 3  
PURPOSE**

- 3.1 Association Purpose.** The purpose for which the Association is organized are (i) to act as the association of owners of condominium units in The Excelsior, A condominium (the "Condominium"), in Galveston, Galveston County, Texas, including those purposes set forth in Section 82.102 of the Uniform Condominium Act of the State of Texas, and (ii) any other lawful purpose which is not inconsistent with the foregoing.

THE EXCELSIOR  
CONDOMINIUM HOMEOWNERS ASSOCIATION, INC.

Bylaws  
Page 1 of 18



**ARTICLE 4**  
**DEFINITIONS AND CONSTRUCTION**

**4.1 Definitions.** The following terms shall have the meaning set forth below:

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Declaration**” means the Declaration of Condominium for The Excelsior, A Condominium as recorded in Documents No. \_\_\_\_\_ of the Condominium Records of Galveston County, Texas and any amendments thereto.

“**Directors**” means a member of the Board of Directors.

“**Member**” means (i) each Owner of a Unit pursuant to the Declaration and (ii) Declarant.

“**Minute Book**” means the minute book of the Association which shall contain the minutes of all annual and special meetings of the Association and the Board of Directors and all resolutions of the Board of Directors.

“**Natural Person**” means an individual.

“**Person**” means any individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association and any fiduciary acting in such capacity on behalf of any of the foregoing.

Any capitalized term used in these Bylaws that is not otherwise defined in these Bylaws, including in Section 4., shall have the meaning set forth in the Declaration.

**4.2 Construction.** In the event of a conflict of interpretation between the provisions set forth in these Bylaws and the Declaration, the Declaration shall govern. In the event that the Code is hereafter amended or changed, both the Declaration and these Bylaws shall be interpreted in a manner which conforms to the provisions of the Code with respect to non-profit entities, it being the intention to preserve the status of the Association as a bona-fide non-profit entity.

**ARTICLE 5**  
**MEMBERS**

**5.1 Membership.**

(a) Each Owner shall automatically be a Member of the Association, and shall

THE EXCELSIOR  
CONDOMINIUM HOMEOWNERS ASSOCIATION, INC.

Bylaws

Page 2 of 18

possess a vote with respect to each Unit Owned by such Owner equal to such Owner's Allocated Interest as set forth in the Declaration. All voting rights of all Members may be suspended during any period that such Member is delinquent in the payment of any Assessment duly established pursuant to the Declaration, or otherwise in default under the Terms of the Declaration, these Bylaws or the Regulations. Any matter described herein as requiring approval by a stated percentage or a majority of the Members shall mean a stated percentage or a majority of the allocated vote held by those Members who are then eligible to vote.

(b) In cases where more than one (1) party owns an interest in an Unit, all such parties shall arrange for one (1) of their number to exercise the voting rights herein established. In no event shall there be more than one (1) vote for any Unit. If only one (1) of the parties who are one (1) of the multiple Owners of a Unit is present at a meeting of the Association, that person may cast that Unit's vote. If there is more than one (1) Owner of a Unit is present at a meeting of the Association, after one (1) party cast the vote another party present may make prompt protest to the person presiding over the meeting. If such protest is made, such vote shall not be counted unless the Owners can unanimously agree on such vote by the end of the meeting of the Association. Each multiple Owner of an interest in a Unit may vote or register protest to the casting of votes by the other Owners through a proxy duly executed by such Owner. An Owner may not revoke a proxy except by giving actual notice of revocation in writing to the person presiding over the meeting.

**5.2 Affirmative Vote.** Except as otherwise provided herein or in the Declaration, the Members shall be entitled to vote upon any issue, election or resolution being voted on by the Members at the annual or special meetings and the majority of votes cast shall determine the passage of any issue, election or resolution being voted on by the Members at the annual or special meeting. A vote may be cast either in person or by proxy, by Members of record who are eligible to vote. Notice and quorum requirements shall be as set forth herein. Cumulative voting shall not be permitted. Any Member whose voting rights have been suspended under any provision of the Declaration shall not be entitled to vote. Mortgagees shall be entitled to vote on matters before the Association only if the Mortgagee is the record owner of a Unit.

**5.3 Membership List.** The Secretary shall be responsible for maintaining, at the principal office of the Association, an updated list of Members and their last known post office addresses as provided by each Member. The list shall also show opposite each Member's name the address of the Unit(s) he owns. The list shall be revised by the Secretary to reflect changes in the ownership of Units occurring prior to the date of the annual or special meeting. The list shall be open to inspection by all Members and other persons lawfully entitled to inspect the list during regular business hours up to the date of the annual or special meeting. The Secretary shall also keep current and certain custody of the Minute Book.

**5.4 Proxies.** Votes may be cast by written vote or by ballot. Written proxies may be submitted

by United States mail, delivered to the office of the Association, delivered directly to the Secretary of the Association or delivered in such manner as directed by the Association. A proxy vote shall be defined as a written vote submitted by a Member which either states the specific vote of the Member with respect to the issue, resolutions, or elections being voted on by the Members at the annual or special meeting or which provided written permission for the Board of Directors or a specific Director to exercise the Member's vote(s) as the Board of Directors or the specific Director shall determine at their discretion. It is the Member's obligation to cause his or her proxy to be received by the Association at least one (1) business day before the vote to which such proxy pertains. If a proxy is not received at least one(1) business day prior to the vote to which it pertains, such proxy shall not be counted in voting or quorum determination.

## ARTICLE 6 MEETING OF THE ASSOCIATION

- 6.1 Place of Annual and Special Meetings.** All annual and special meetings of the Association shall be held at the principle office of the Association or at another suitable and convenient place permitted by law and fixed by the Board of Directors from time to time and designated in the notices of the meetings.
- 6.2 Date of Annual Meetings.** Annual meetings of the Association shall be held at least once each year on a date as shall be fixed by the Board of Directors by written notice to the Members. The Members may transact any business which may properly come before the meeting.
- 6.3 Notice of Annual Meetings.** The Secretary shall mail notices of annual meetings to each Member directed tot he most recent address provided tot he Association by such Member, as shown on the records of the Association, by regular mail, postage prepaid. This notice shall be mailed not less than eleven (11) nor more than nineteen (19) days before the date of the meeting and shall state the date, time and place of the meeting, the purpose or purposes thereof and the items on the agenda, including the specific nature of any proposed amendment or changed to the Declaration, the Articles or these Bylaws. In lieu of mailing notice as herein provided, notice may be delivered by hand to the Members or left at their Units unless prior thereto, such Member has advise the Association in writing that he or she will not accept notice by hand delivery or delivered tot he Member's Unit.
- 6.4 Special Meeting.** A special meeting of the Association may be called by the President, a majority of the Directors, or upon presentation to the Secretary of a petition stating the specific purpose of the special meeting, which petition has been signed by the Members

THE EXCELSIOR  
CONDOMINIUM HOMEOWNERS ASSOCIATION, INC.

having not less than twenty percent (20%) of the votes entitled to be cast at such meeting.

- 6.5 Notice of Special Meetings.** The Secretary shall mail or deliver notice of any special meeting of the Association to each Member in the manner provided in Section 6.3 of these Bylaws. The notice shall state the same items required by Section 6.3 of these Bylaws for notice of annual meetings. No business shall be transacted at any special meeting except as stated in the notice thereof unless by consent of two-thirds (2/3) of the Members present at the special meeting, either in person or by proxy vote to conduct such further new business.
- 6.6 Order of Business.** The order of business at all meetings of the Association shall be as follow: (a) roll call; (b) proof of notice of meeting or waiver of notice; (c) approval of the minutes of the preceding meeting; (d) reports of officers and committees; (e) election of Directors, if applicable; (f) unfinished business; (g) new business; and (h) adjournment.
- 6.7 Action Without Meeting by Written Ballot.** Any action which may be taken by the vote of the Members at a regular or special meeting, other than the election of Directors, may be taken without a meeting if done in compliance with relevant provisions of the Texas Business Corporation Act, the Texas Non-Profit Corporation Act and the Miscellaneous Corporate Statutes.
- 6.8 Administration of Affairs.** Subject to the provisions of the Act, the Texas Non-Profit Corporation Act, the Declaration and these Bylaws, the Association shall be governed by the Board of Directors. The Association shall provide to any First Mortgagee so requesting prior written notice of any meeting of the Members, which request for such notice, once made, shall relate to all subsequent meetings, and shall permit such First Mortgagee, its agents and representatives, to attend same.
- 6.9 Quorum.** A quorum of Members is present throughout any meeting of the Association if Members eligible to cast at least fifteen percent (15%) of the votes that may be cast for election of the Board are present in person or by proxy at the beginning of the meeting.

## ARTICLE 7 BOARD OF DIRECTORS

### 7.1 Authority; Number of Directors.

(a) The affairs of the Association shall be governed by a Board of Directors. The number of Directors shall be fixed by the Board of Directors from time to time. The initial Directors shall be three (3) in number and shall be those Directors named in the Articles of incorporation. The initial Directors shall serve until their successors are elected and qualified. Except as is provided in Section

THE EXCELSIOR  
CONDOMINIUM HOMEOWNERS ASSOCIATION, INC.

Bylaws  
Page 5 of 18

7.1(b) below, Declarant shall have the right to appoint and remove members of the Board of Directors until the expiration of the Declarant Control Period. If Declarant voluntarily surrenders control prior to the termination of the Declarant Control Period, Declarant may require that specified actions of the Board of Directors be subject to Declarant approval until the expiration of the Declarant Control Period.

(b) Not later than one hundred twenty(120) days after Declarant has conveyed title to seventy-five percent (75%) of the Units in the Property, an election shall be held by the Association, pursuant to these Bylaws, for the election of not less than one-third (1/3) of the members of the Board of Directors.

(c) Not later than the end of the Declarant control Period, the Association shall elect at least three (3) Directors pursuant to these Bylaws. Each Director, other than Directors appointed by Declarant, shall be a Member, or in the case of corporate or partnership ownership of a Unit, a duly authorized agent or Director if selected pursuant to these Bylaws. The corporate or partnership Owner shall be designated as the Director in all correspondence or other documentation setting forth the names of the Directors. In any election of Directors, the nominees receiving the highest number of votes, either in person or by proxy, shall be the Member elected to the Board of Directors.

**7.2 Term of Directors and Compensation.** Except as otherwise set forth herein, each Director elected by the Members shall serve for a term of one (1) year. Each Director shall continue to hold office until his successor is elected and qualified. The Directors shall serve without compensation for such service.

**7.3 Nominations to Board of Directors.** Members may be nominated for election to the Board of Directors in either of the following ways:

(a) A Member who is not a Director and who desires to run for election to that position shall be deemed to have been nominated for election upon his filing with the Board of Directors a written petition of nomination bearing the genuine signatures of at least five (5) other Members; or

(b) A director shall be deemed to have been nominated for re-election to the position he holds by signifying his intention to seek re-election in a writing addressed to the Board of Directors.

**7.4 Vacancies on Board of Directors.** After the Declarant Control Period, if the office of any elected Director shall become vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, the remaining Directors, at a special meeting duly called for this purpose, shall choose a successor who shall fill the unexpired term of the directorship being vacated. If there is a deadlock in the voting for a successor by the remaining Directors, the one (1) Director with the longest continuous term on the Board of Directors shall select the successor. At the expiration of the term of the successor Director's

position on the Board of Directors, the successor Director shall be re-elected or the successor thereto shall be elected in accordance with these Bylaws.

- 7.5 Removal Of Directors.** Subject to the right of Declarant to appoint and remove Directors as set forth in Section 7.1 of these Bylaws, elected Directors may be removed, with or without cause, by a majority vote of the Members at any special meeting of the Members of which notice has been properly given as provided in these Bylaws; provided notice of such special meetings has also been given to the entire Board of Directors, including any individual Director whose removal is to be considered at this special meeting.
- 7.6 Organizational Meeting of the Board of Directors.** No later than twenty (20) days following each of (i) the establishment of the Association, (ii) the end of the Declarant Control Period and (iii) each annual meeting of the Members of the Association, the Board of Directors shall hold a regular meeting for the purposes of organization, election of officers and transaction of other business. Notice of this meeting shall be given to all Directors in accordance with Section 7.9 of these Bylaws, except for the initial meeting, which shall be called by Declarant.
- 7.7 Place and Method of Meetings.** All meetings of the Board of Directors shall be held at the principal office of the Association or at any other place or places designated at any time by resolution of the Board of Directors or by written consent of all of the Directors. A meeting of the Board of Directors may be held by any method of communication, including electronic and telephonic, by which each Director may hear and be heard by every other Director, and any such meeting may involved consideration of any action other than those actions listed in Section 82.108( c)(1)( c) of the Act.
- 7.8 Regular Board of Directors Meetings.** Regular meetings of the Board of Directors may be held at any time and place permitted by law, from time to time, as may be determined by the Board of Directors. Notice of regular meetings of the Board of Directors shall be given to each Director personally, by telegram, telephone, facsimile or by United States mail, with postage prepaid, directed to him at his last known post office address, as the same appears on the records of the Association, at least five (5) but not more than thirty (30) days before the date of the meeting. This notice shall state the date, time, place and purpose of the meeting.
- 7.9 Special Board of Directors Meetings.** Special meetings of the Board of Directors may be called by the President of the Association or by the President or the Secretary of the Association upon the written request of any two (2) Directors, on three(3) days' prior written notice to each Director.
- 7.10 Waiver of Notice.** Before any meeting of the Board of Directors, whether regular or special, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed

equivalent to giving the required notice. All written waivers shall be filed in the Minute Book of the Association or made a part of the minutes of the meeting. Attendance by a Director at any meeting of the Board of Directors shall likewise constitute a waiver by him of the required notice. If all Directors are present at any meeting of the Board of Directors, no notice of the meeting shall be required and any business may be transacted at the meeting except as prohibited by law or these Bylaws.

- 7.11 Quorum.** At all duly convened meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, except as otherwise expressly provided in these Bylaws. The acts of a majority of the Directors present at the meeting at which a quorum is present shall be less than a quorum present, the Directors present may adjourn the meeting from time to time and, at the adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting as originally called may be transacted without further notice to any Director.
- 7.12 Consent in Writing.** Any action by the Board of Directors may be taken without a meeting if all of the Directors shall unanimously consent in writing to the action. Such action by unanimous consent may include any action except those listed in Section 82.108(c)(2)(A) of the Act. Such written consent shall be filed in the Minute Book. Any action taken by such written consent shall have the same force and effect as a unanimous vote of the Directors.
- 7.13 Records.** The Board of Directors shall cause a complete record of all of its acts and the corporate affairs of the Association to be kept.
- 7.14 Powers and Duties.** The Board of Directors shall have and exercise all powers and duties necessary for the proper administration of the affairs of the Association. In the performance of its duties as the governing body of the Association, the Association shall have all powers enumerated in Section 82.102 of the Act (as amended), and in addition to those powers and duties set forth in the Act and the Declaration, the Board of Directors shall have the powers and duties including, but not limited to the following:

(a) Duties:

- (1) each Director individually and the Board of Directors collectively shall perform the duties of the Board of Directors in good faith as a fiduciary of the Association, in a manner which the Director believes to be in the best interest of the Association and with the care of a person of ordinary prudence under similar circumstances, including, but not limited to, reasonable inquiry, skill and diligence;

- (2) provide for the operation, maintenance, management, insurance, cleaning, sanitation, renewal, replacement, care and upkeep of the Common Elements and all property, real or personal, of the Association;
- (3) determine the Common Expenses and any other charges comprising the operating expenses of the Association, establish the amount of Monthly Assessments, as the same may increase or decrease, and assess the same against the Owners in accordance with the provisions of the Declaration and these Bylaws;
- (4) levy and collect, in addition to Monthly Assessments, Special Assessments and Working, Capital Contributions in amounts which the Board of Directors deems proper, whenever the Board of Directors is of the opinion it is necessary to do so in order to meet increased operating or maintenance costs or additional capital expenses or because of emergencies;
- (5) use and expend any sums collected from Monthly Assessments and Special Assessments for the operation, maintenance, renewal, care and upkeep of the Common Elements;
- (6) maintain the Common Elements;
- (7) following expiration of the Declarant Control Period, maintain a reserve fund in such amount as deemed necessary or advisable by the Association from the Working Capital Contributions and/or Monthly Assessments adequate for the periodic maintenance, repair and replacement of the Common Elements;
- (8) pay all taxes and assessments levied or assessed against any property that may be owned by the Association, exclusive of any taxes or assessments levied against any Owner or otherwise properly chargeable to the Owner;
- (9) collect delinquent Assessments against any Unit and the Owner thereof, whether by suit or otherwise and to abate any nuisance and enforce the terms of the Declaration and the observance of the Regulations by injunction or other legal action or means which the Board of Directors may deem necessary or appropriate;

THE EXCELSIOR  
CONDOMINIUM HOMEOWNERS ASSOCIATION, INC.



- (10) establish operating, escrow and other accounts in the name of the Association as the Board of Directors may deem appropriate from time to time and as may be consistent with generally accepted account practices;
- (11) adopt a budget for each fiscal year which shall contain estimates of the costs and expenses of the Association and the proposed Monthly Assessments;
- (12) cause a complete and independent review of the books and accounts of the Association to be made at the end of each fiscal year and at any other time or times deemed necessary;
- (13) maintain accounting records in accordance with generally accepted accounting principles;
- (14) make and enforce compliance with the Regulations relative to the operation, use and occupancy of the Property, including, but not limited to, penalties to be levied for violations of these Bylaws, the Declaration and the Regulations which the Board of Directors shall adopt, and to amend the same from time to time as and when approved by appropriate resolutions which shall be binding on the Members, tenants and occupants of Units, their successors in title and assigns. A copy of these rules and regulations and copies of any amendments thereto shall be delivered or mailed to each Owner promptly upon the adoption thereof; and
- (15) comply with the Act.

(b) Powers:

- (1) employ and dismiss personnel of the Association and purchase or arrange for those services, machinery, equipment, tools, material and supplies as, in the opinion of the Board of Directors, may from time to time be necessary for the proper operation and maintenance of the Common elements;
- (2) enter into contracts for professional management of the Property and the Association, at such prices and upon such terms as maybe determined by the Board of Directors, to perform those duties and

services which the Board of Directors may lawfully delegate.

- (3) employ or retain and receive advice from professional counsel and consultants, including, but not limited to, landscape architects, architects, engineers, planners, biologists, lawyers and accountants, which the Board of Directors may deem necessary for any proper purposes of the Association, and to fix the compensation for professional advice or services, including, but not limited to, those hereinbefore or hereinafter referred to in these Bylaws. The Board of Directors shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following: (i) one or more officers or employees of the Association whom the Board of Directors reasonably believes to be reliable and competent in the matter presented; (ii) counsel, public accountants or other persons as to the matters which the Board of Directors reasonably believes to be within the professional or expert competence of this person; and (iii) a committee of the Board of Directors duly designated in accordance with law, as to matters within the committee's designated authority, which committee the Board of Directors reasonably believes to merit confidence. The Board of Directors shall not be considered to be acting in good faith if it has knowledge concerning the matter in question that would cause this reliance to be unwarranted;
- (4) name as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any insurance trust agreement or any successor to this trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall be given exclusive authority to negotiate losses under any policy providing property or liability insurance coverage. The association or any Insurance Trustee or substitute attorney-in-fact for the purpose of purchasing and maintaining such insurance, including the collection and appropriate disposition of the proceeds thereof, the negotiation of losses, execution of releases of liability and the execution of all documents and the performance of all other acts necessary to accomplish these purposes;
- (5) establish depositories for the funds of the Association with the bank or banks as shall be designated from time to time by the Board of Directors and in which monies of the Association shall be deposited.

Withdrawal of monies shall be only by check signed by those persons who are authorized by the Board of Directors to sign check on behalf of the Association;

- (6) invest monies of the Association only in investment vehicles which are federally insured and which may be withdrawn on demand without penalty.
- (7) borrow and repay monies and give notes, mortgages or other security upon the terms which are deemed reasonable by the Board of Directors;
- (8) acquire by purchase, gift, annexation or lease, real or personal property, if, at any time in the future, the Board of Directors deems it to be proper and not inconsistent with the terms hereof to do so;
- (9) grant and reserve easements, leases, licenses or concessions where necessary or desirable for utilities, routes of ingress and egress, or any other purpose, over the Common elements and to amend the plat or plans to show such interest; and
- (10) do all things incidental and necessary to the accomplishment of the powers and duties of the Board of Directors.

The powers and duties imposed on the Board of Directors by Section 7.14 shall not be amended so as to reduce or eliminate any duties or powers of the Board of Directors without the affirmative vote of at least sixty-seven percent (67%) of the votes of Members voting at the meeting called to consider such amendment.

**7.15 Annual Budget and Assessments.** Copies of the proposed budget setting forth the proposed annual Common Expenses, proposed reserves and proposed Assessments for the next fiscal year of the Association shall be prepared by the Board of Directors and distributed to all Members at least thirty (30) days prior to the beginning of each fiscal year of the Association and shall be available to all Members for inspection during regular business hours at the Association's office. If the proposed budget is subsequently amended before the Assessments are made, a copy of the amended budget shall also be distributed and made available for inspection. Annual Common Expenses shall include, without limiting the generality of the foregoing, the estimated amounts necessary for maintenance and operation of the Common Elements and any and all other expenses related to the operation thereof and the cost of all social activities, events and other programs of the Association, including, but not limited to, the cost of common utility services, casualty and liability insurance, professional management

expenses, administrative and office expenses, reserves and the costs associated with the administration of the Association. Reserves shall include reasonable amounts to be credited, allocated or accumulated for replacement of those Common Element improvements or facilities that require replacement, renovation or rehabilitation periodically. Subject to the provisions of Section 7.14(a)(4) above, nothing herein contained shall be construed as restricting the right of the Board of Directors, at any time and in its sole discretion, to levy a Special Assessment in the event that the budget as originally adopted shall appear to be insufficient to pay the cost of the operation or management of the Property or in the event of emergencies.

- 7.16 Open Meeting.** Meetings of the Board of Directors shall be open to all Members. The Board of Directors shall have the right to adjourn a meeting and reconvene in private, closed executive session to consider any actions involving personnel, pending litigation, contract negotiations, enforcement actions, or the invasion of privacy of individual Members, or upon the written request of an affected party, or to consider matters that are confidential as determined to be confidential at the sole discretion of the Board of Directors; provided, however, the Board of Directors shall announce the general nature of the business to be considered in such executive session prior to adjourning the meeting.

## **ARTICLE 8 OFFICERS**

- 8.1 Officers.** The officers of the Association shall be a President, Secretary and Treasurer. The President may not also hold the offices of either Treasurer or Secretary. The Secretary may be eligible to hold the office of Treasurer. The President must also be a Director. The Treasurer and Secretary need not be Director. The Board of Directors may create such additional offices and set the terms and duties thereof as it deems necessary or advisable and to the extent not inconsistent with the foregoing.
- 8.2 Election.** Except as set forth herein, the officers of the Association shall be elected annually by the Board of Directors at the organizational meeting held pursuant to Section 7.6 of these Bylaws and shall hold office until their successors are elected or appointed by the Board of Directors; provided, that each officer may be removed, either with or without cause, and his successor elected by the affirmative vote of a majority of the Directors at any annual or special meeting of the Board of Directors. The President shall serve for a term of one (1) year, the Secretary shall serve for a term of one (1) year and the remaining officers shall serve for a term of one (1) year. The Board of Directors may, from time to time, appoint other officers which, in its sole discretion, are necessary. Any officer may resign at any time by giving written notice to the Board of Directors or to the President or Secretary of the Association. Any resignation shall take effect as of the date of the receipt of such notice or any later time

specified therein; unless specified therein, the acceptance of such written resignation shall not be necessary to make it effective.

**8.3 Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointments to that office.

**8.4 President.** The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and the Board of Directors. The President shall have the general powers and duties usually vested in the office of the president of a community association, including, but not limited to, the power to appoint committees from the Members, from time to time, as the President may deem appropriate to assist in the conduct of the affairs of the Association; provided, however, no such committee shall have the right to exercise the full authority of the Board of Directors. The President shall be an ex-officio member of all standing committees, if any. The President shall execute deeds, contracts and other instruments, in the name and on behalf of the Association and under its corporate seal when a seal is required, except when these documents are required or permitted by law to be otherwise executed, and except when the signing and execution thereof shall be delegated by the Board of Directors to another officer or agent of the Association.

**8.5 Secretary.** The Secretary shall attend all meetings of the Board of Directors and all meetings of the Members and record all votes and the minutes of all meetings and proceedings, including resolutions, in the Minute Book. The Secretary shall perform the same duties for any committees when required. The Secretary shall have charge of the Minute Book, the records of the Association and any papers which the Board of Directors shall direct the Secretary to keep; shall perform all duties incident to the office of Secretary, including, but not limited to, the sending of notice of meetings to the Members, the Directors and members of any committees, and shall perform any other duties which may be prescribed by these Bylaws, the Board of Directors or the President. The Secretary shall also have custody of the corporate seal and shall affix the same to any instrument requiring it when authorized by the Board of Directors and shall attest or certify the same when appropriate. The Secretary shall keep, or cause to be kept, at the principal office of the Association, a membership register showing the following: (i) the names and addresses of all Directors; (ii) the names and addresses of all Members as provided by the Members; (iii) the address of the Unit that is owned by each Member; and (iv) the voting rights of each Member. The Secretary shall prepare, execute and cause the recordation of amendments to the Declaration on behalf of the Association except when the preparation, execution and recordation thereof shall be delegated by the Board of Directors to another officer or agent of the Association.

**8.6 Treasurer.** The Treasurer shall have the responsibility for the Association's funds and

securities, shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association, and shall deposit all monies, checks and other valuable effects in the name of and to the credit of the Association in those depositories which may be designated from time to time by the Board of Directors. The Treasurer shall disburse the funds of the Association, as the Treasurer may be ordered to do from time to time by the Board of Directors or by the President, and shall render to the President and the Directors at the regular meetings of the Board of Directors, or whenever they or either of them shall require, an account of his transactions as Treasurer and of the financial condition of the Association. Nothing shall prohibit the functions of the Treasurer to be delegate to an agent of the Association provided this delegation is approved by resolution of the Board of Directors. The delegation of the duties of the Treasurer shall not relieve the Treasurer from any responsibility related to overseeing and reviewing any duties performed by the agent.

- 8.7 **Compensation.** The officers of the Association shall serve without compensation except that they shall be entitled to reimbursement for all expenses reasonably incurred in the discharge of their duties.

**ARTICLE 9  
INDEMNIFICATION OF DIRECTORS,  
OFFICERS AND OTHER AUTHORIZED REPRESENTATIVES**

- 9.1 **Limitation of Liability.** The Association shall indemnify every Director and Officer of the Association against, and reimburse and advance to every Director and Officer for, all liabilities, costs and expenses incurred in connection with such directorship or office and any actions taken or omitted in such capacity to the greatest extent permitted under the Texas Non-Profit Corporation Act and all other applicable laws at the time of such indemnification, reimbursement or advance payment; provided, however, no Director or Officer shall be indemnified for: (i) a breach of duty of fiduciary duty or loyalty to the Association or its Members; (ii) an act or omission not in good faith or that involves intentional misconduct or a knowing violation of the law; (iii) a transaction from which such Director or Officer received an improper benefit, whether or not the benefit resulted from an action taken within the scope of directorship or office; or (iv) an act or omission for which the liability of such Director or Officer is expressly provided for by statute.

**ARTICLE 10  
ASSOCIATION BOOKS AND RECORDS**

- 10.1 **Association Books and Records.** The Association shall keep or cause to be kept: (i) detailed financial records of the Association in sufficient detail to enable the Association to prepare a resale certificate in accordance with the provisions of Section 82.157 of the Act (as amended);

THE EXCELSIOR  
CONDOMINIUM HOMEOWNERS ASSOCIATION, INC.

Bylaws  
Page 15 of 18

(ii) the plans and specification used to construct the Condominium; (iii) the Condominium Information Statement and any amendments thereto; (iv) the name and mailing address of each Owners of a Unit; (v) voting records, proxies and correspondence relating to all amendments to the Declaration; and (vi) the minutes of all meetings of the Association and the Board of Directors. All books and records of the Association shall be available for inspection by the Members, the First Mortgagees, and their respective agents and representatives, during normal business hours. All books and records of the Association shall be kept in accordance with generally accepted accounting principles, consistently applied, and shall be audited at least once a year. The Association shall furnish each Owner, and to each First Mortgagee requesting same in writing, copies of the audited financial statements of the Association within ninety (90) days following the end of each fiscal year of the Association. The Board of Directors shall further make available, during normal business hours, for the inspection by Members, the First Mortgagees, and their respective agents and representatives, the current version of the Declaration, these Bylaws, the Articles, the Regulations and all other documents affecting the Association, the Members or the Property, as well as all amendments thereto and revisions thereof. Declarant shall furnish copies of the information set forth in Section 10.1(I) through (vi) to the Association within thirty (30) days after the First Unit is conveyed to an Owner. For purposes of this Section, "available" shall mean available for inspection, upon reasonable advance request of not less than twenty-four (24) hours, during normal business hours at the office of the Association or the office of the Manager of the Association.

## ARTICLE 11 DISSOLUTION AND TERMINATION

- 11.1 Distribution of Assets Upon Dissolution and Termination.** Upon dissolution of the Association, the real and personal property of the Association shall be distributed pursuant to the provision of the Articles of Incorporation of the Association or, if no such provision is made, distributed to one or more organizations which are exempt from taxation under Section 501(c)(3) of the Code.

## ARTICLE 12 INSURANCE

- 12.1 Insurance.** Commencing no later than the first conveyance of any Unit to an Owner other than Declarant, the Association shall obtain and maintain, as a Common Expense, Insurance coverages required by the Act. The Association may also obtain and maintain, as a Common Expense, such other insurance coverages as the Board of Directors deems necessary or appropriate.
- 12.2 Owner's Insurance.** An Owner shall be responsible for obtaining and maintaining, at his sole

cost and expense, insurance covering all alterations, additions, betterments and improvements to his Unit and all other personal property located thereat or consulting a part thereof. Nothing herein shall be deemed or construed as prohibiting an Owner, at his sole cost and expense, from obtaining and maintaining such further and supplementary insurance coverages as he may deem necessary or appropriate.

### ARTICLE 13 MISCELLANEOUS

- 13.1 Fiscal Year.** The fiscal years of the Association shall be the calendar year unless the Board of Directors shall determine otherwise.
- 13.2 Amendments to Bylaws.**
- (a) These Bylaws may be amended from time to time by the affirmative vote in person or by proxy, of more than fifty percent (50%) of the votes of the Members. An amendment to these Bylaws must be voted on by the Members if proposed by either majority of the Directors or the Members holding ten percent (10%) or more of votes of the Members. Any such amendment must comply with the requirements of Section 82.070 of the Act.
  - (b) Notwithstanding any other provision of these Bylaws, at no time shall any amendment be made to these Bylaws so as to affect or change any power granted to Declarant or to title held by Declarant without the prior written consent of Declarant.
- 13.3 Inspection of Bylaws.** The Association shall keep in its principal office the original or a copy of these Bylaws, as amended or otherwise altered to date, certified by the Secretary, which shall be open to inspection by the Members during normal business hours.
- 13.4 Membership Minutes.** The membership register and the Minute Book shall be open to inspection upon demand of any Member during the normal business hours of the Association, for purposes reasonably related to his interest as a Member.
- 13.5 Designation of Officers.** The President, Secretary and Treasurer are each authorized to prepare, execute, certify and record amendments to the Declaration on behalf of the Association.
- 13.6 Management Certificate.** The Association shall record in Harris County, Texas a certificate, signed and acknowledged by an officer of the Association stating:



- (a) the name of the Condominium;
- (b) the name of the Association;
- (c) the location of the Condominium;
- (d) the recording data for the Declaration;
- (e) the mailing address of the Association, or the name and mailing address of the person or entity managing the Association; and
- (f) any other information the Association considers appropriate.

**13.7 Manager.** To facilitate management of the Property and the administration of the Association, the Board of Directors or Declarant may delegate to a Manager responsibility for matters of a routine nature. In addition to the foregoing, no decision by the Association to establish self-management of the Property after a Manager has been appointed shall be effective unless and until approved by an affirmative vote of the Members holding not less than sixty-seven percent (67%) of the votes allocated by the Declaration.

**13.8 Construction.** Number and gender as used in these Bylaws shall extend to and include both singular and plural and all genders as the context and construction require. In case of any conflict between the Declaration, these Bylaws and the Regulations, (i) the Declaration shall control over these Bylaws and the Regulations and (ii) these Bylaws shall control over the Regulations.



**THE EXCELSIOR,  
A CONDOMINIUM**

**FIRST AMENDMENT TO  
DECLARATION OF CONDOMINIUM**

**PREAMBLE**

This First Amendment to Declaration of Condominium ("Amendment") is made by YISHLAM, INC., a Texas corporation ("Declarant") to be effective as set forth below

**RECITALS**

A On March 22, 2007, Declarant recorded the Declaration of Condominium of The Excelsior, A Condominium, under Film Code No. 2007018862 in the Property Records of Galveston County, Texas ("Declaration"). All defined terms appearing in this Amendment shall have the meanings given them in the Declaration, unless expressly modified herein.

B Declarant desires to amend the Declaration to modify Article V, Sections 5.2 and 5.6. Declarant further desires to amend the Declaration to include additional provisions under Article 16.

**AMENDMENT**

NOW THEREFORE, the Declarant amends the Declaration as follows.

1 Article 5, Sections 5.2 and 5.6 of the Declaration prohibits an Owner from leasing or renting the Owner's Unit to third parties for short-term or for any term of less than six (6) months. Declarant hereby amends Sections 5.2 and 5.6 of the Declaration as follows.

**5.2 Designation of Occupant(s).** In the event the record Owner of a Unit or a Tenant of a Unit is other than a natural person, then prior to any occupancy of such Unit, the Owner thereof shall give notice to the Association of natural person(s) who shall be entitled to occupy such Unit for residential purposes. Such occupancy shall be subject to the provisions of Section 5.5 below.

**5.6 Leasing by Owner.** Nothing in this Declaration shall prevent the Owner from leasing or renting the Owner's Unit to third parties. No Owner shall lease less than an entire Unit. Any such lease shall be in writing and shall expressly state, among other things: (x) that the lease is subject in all respects to the provisions of this Declaration, the Bylaws and regulations, (y) that any failure by such Tenant or such Tenant's invitee to comply with the terms and provisions of this Declaration, the Bylaws or the Regulations shall constitute a default under the lease; and (z) that the Association may, upon default and writing notice to the Unit's Owner as provided in Section 8.7 (with a copy to the Tenant at the Unit's address), collect Rents due such Owner directly from the Tenant and apply such Rents against any amounts owed to the Association. To facilitate the foregoing subsection (z), each Owner by acceptance of a deed to a Unit shall be deemed to have

THE EXCELSIOR, A CONDOMINIUM  
First Amendment to Declaration of Condominium

assigned all rents, issue and profits ("Assignment of Rents") arising from such Unit to the Association, which Assignment of Rents shall become absolute and enforceable by the Association upon default of the Owner's or Tenant's obligation arising under this Declaration. Each Owner shall be responsible for the compliance of his Tenant and such Tenant's Invitee with this Declaration, the Bylaws and the Regulations and shall indemnify and hold the Declarant and the Association harmless from any loss, cost, expense, damage or liability incurred by the Declarant or the Association as a result of such Tenant's or Tenant's Invitee's acts or omissions. In addition, the Association may (xx) bring an action to evict a Tenant for the Tenant's or the Tenant's Invitee's violation of this Declaration, the Bylaws or the Regulations; (yy) bring an action to evict a Tenant who fails to pay the Association for the cost of repairs to Common Elements damaged by the Tenant or the Tenant's Invitee, and/or (zz) collect the Rents from a Tenant who is at least thirty (30) days delinquent in the payment of any amount due the Association.

2 Declarant further amends the Declaration and includes additional provisions under Article 16 as follows:

#### ARTICLE 16 ADDITIONAL PROVISIONS

16.1 **Alternative Methods for Notice.** Notwithstanding the provisions of these Bylaws, notice to the Owners shall be in writing and shall be considered as properly given if (a) mailed by first class United States mail, postage prepaid, (b) by delivering same in person to the intended addressee; (c) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee, or (d) by prepaid telegram, telex, E-mail, or facsimile to the addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto, notice sent by such a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee, and notice given by other means shall be effective when received at the office or designated place or machine/equipment of the intended addressee. For purposes of notice the address of each Owner shall be the address of the Residential Unit or such other address as provided by the Owner to the Association, and the address of each Mortgagee shall be the address provided to the Association, provided, however, that any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of 30 days' notice to the Association.

#### 16.2 **Right of Redemption.**

(i) **Association as Purchaser.** The Owner of a Condominium Unit purchased by the Association at the foreclosure sale may redeem the Condominium Unit within ninety (90) days after the date of the foreclosure sale in accordance with Section 82.113(g) of the Act, or same may be amended or re-codified from time to time.

(ii) **Third party as Purchaser.** Further provided, and to the extent not expressly prohibited by applicable law, the Owner of a Condominium Unit may redeem the Condominium Unit within ninety (90) days of the foreclosure sale irrespective whether the purchaser was the Association or a third party. To redeem the Unit purchased at the foreclosure sale by a person other

THE EXCELSIOR, A CONDOMINIUM  
First Amendment to Declaration of Condominium

than the Association, the Unit Owner (a) must pay to the Association: all amounts due the Association at the time of the foreclosure sale, interest from the date of foreclosure to the date of redemption at the rate provided in this Declaration for delinquent assessments, reasonable attorneys fees and costs incurred by the Association in foreclosing the lien, and any unpaid assessments levied against the Unit by the Association after the foreclosure sale to the date of redemption, and (b) must pay to the person who purchased the Unit at the foreclosure sale: any assessments levied against the property by the Association after the date of foreclosure sale and paid by the purchaser; the purchase price paid by the purchaser at the foreclosure sale, and any reasonable costs incurred by the purchaser at the foreclosure sale as Owner of the Unit until the date of redemption, including the costs of maintenance and leasing. If a Unit Owner redeems the Unit under this paragraph, the purchaser of the Unit at foreclosure shall immediately execute and deliver to the Owner a deed transferring the property to the redeeming Unit Owner, free and clear of any encumbrances other than those which existed as of the date such purchaser purchased the Unit or those created by the Unit Owner. If a purchaser fails to comply with this paragraph, the Unit Owner may file a cause of action against the purchaser and may recover reasonable attorneys fees from the purchaser if the Unit Owner is the previously party in the action. A Unit that is redeemed remains subject to all liens and encumbrances on the Unit before foreclosure. Any lease entered into by the purchaser of a Unit at a sale foregoing an assessed lien is subject to the right of redemption provided by this Section and the Unit Owner's right to re-occupy the Unit immediately after the redemption. A purchaser of a Unit at such foreclosure sale may not transfer ownership of the Unit during the redemption period to a person other than the redeeming Owner.

**16.3 Waiver of Environmental Conditions** The term "Declarant" as used in this Paragraph shall have the meaning set forth in paragraph 2.1 of Article II of the Declaration and shall further include, without limitation, the Declarant, its general partner(s), partners, directors, managers, officers, employees, agents, contractors, sub-contractors, design consultants, architects, advisors, brokers, sales personnel and marketing agents. The term "Association" as used in this paragraph shall have the meaning set forth in Section xx hereof and shall further include, without limitation, the Association, its Directors, managers, employees, and agents. The Declarant and the Association shall not in any way be considered an insurer or grantor of environmental conditions or indoor air quality within the Condominium. Neither shall the Declarant or the Association be held liable for any loss or damage by reason of or failure to provide adequate indoor air quality or any adverse environmental conditions. The Declarant and the Association do not represent or warrant that any construction materials, air filters, mechanical, heating, ventilating or air conditioning systems and chemicals necessary for the cleaning or pest control of the condominium will prevent the existence or spread of biological organisms, cooking odors, animal dander, dust mites, fungi, pollen, tobacco smoke, dust or the transmission of interior or exterior noise levels. The Declarant and the Association are not an insurer and each Owner and occupant of any Unit and each tenant, guest and invitee of any Owner assumes all risks for indoor air quality and environmental conditions and acknowledges that the Declarant and the Association have made no representations or warranties nor has the Declarant and the Association, any Owner, occupant, tenant, guest or invitee relied upon any representations or warranties, expressed or implied, including any warranty or merchantability or fitness for any particular purpose, relative to the air quality within the Condominium.

**16.4 Security.** THE TERM "DECLARANT" AS USED IN THIS PARAGRAPH SHALL HAVE THE MEANING SET FORTH IN PARAGRAPH xx HEREOF AND SHALL FURTHER

THE EXCELSIOR, A CONDOMINIUM  
First Amendment to Declaration of Condominium

INCLUDE, WITHOUT LIMITATION, THE DECLARANT, ITS GENERAL PARTNER(S), PARTNERS, DIRECTORS, MANAGERS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, SUB-CONTRACTORS, DESIGN CONSULTANTS, ARCHITECTS, ADVISORS, BROKERS, SALES PERSONNEL, AND MARKETING AGENTS. THE TERM "ASSOCIATION" AS USED IN THIS PARAGRAPH SHALL HAVE THE MEANING SET FORTH IN PARAGRAPH xx HEREOF AND SHALL FURTHER INCLUDE, WITHOUT LIMITATION, THE ASSOCIATION, ITS DIRECTORS, OFFICERS, MANAGERS, EMPLOYEES, AND AGENTS. THE DECLARANT AND THE ASSOCIATION SHALL NOT IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE PROPERTY NEITHER SHALL THE DECLARANT OR THE ASSOCIATION BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. THE DECLARANT AND THE ASSOCIATION DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION, BURGLAR ALARM SYSTEMS, ACCESS CONTROL SYSTEMS, PATROL SERVICES, SURVEILLANCE EQUIPMENT, MONITORING DEVICES, OR OTHER SECURITY SYSTEMS (IF ANY ARE PRESENT) WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP OR OTHERWISE, NOR THAT FIRE PROTECTION, BURGLAR ALARM SYSTEMS, ACCESS CONTROL SYSTEMS, PATROL SERVICES, SURVEILLANCE EQUIPMENT, MONITORING DEVICES OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. THE DECLARANT AND THE ASSOCIATION ARE NOT AN INSURER AND EACH OWNER AND OCCUPANT OF ANY UNIT AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS AND TO THE CONTENTS OF UNITS AND ACKNOWLEDGES THAT THE DECLARANT AND THE ASSOCIATION HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS THE DECLARANT AND THE ASSOCIATION, ANY OWNER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE PROTECTION, BURGLAR ALARM SYSTEMS, ACCESS CONTROL SYSTEMS, PATROL SERVICES, SURVEILLANCE EQUIPMENT, MONITORING DEVICES OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

(A) Without limitation of any other provision of this Declaration, each Owner and their occupants, family, guests and invitees, covenant and agree with respect to any and all security services, systems and facilities provided directly or indirectly by the Declarant and/or Association as follows:

1. Security is the sole responsibility of local law enforcement agencies and individual Owners, their occupants, and their respective guests and invitees. It is acknowledged that the Declarant and Association have no obligation whatsoever to provide security. Security services, systems and facilities, if any, may be provided at the sole discretion of the Board of Directors. The providing of any security services, systems and facilities at any time shall in no way prevent the Board thereafter electing to discontinue or temporarily or permanently remove such security service, systems and facilities or any part thereof.

THE EXCELSIOR, A CONDOMINIUM  
First Amendment to Declaration of Condominium

2 Any third party providers of security services (including those providing maintenance and repair of security systems and facilities) shall be independent contractors, the acts or omissions of which shall not be imputed to the Declarant, Association or its officers, directors, committee members, Manager, agents or employees.

3 Providing of any security services, systems and facilities shall never be construed as an undertaking by the Declarant and Association to provide personal security or as a guarantee or warranty that the presence of any security service, systems or facilities will in any way increase personal safety or prevent personal injury or property damage due to negligence, criminal conduct or any other cause

(B) Each Owner, by his acceptance of a deed to a unit, shall be deemed to have waived, on behalf of such Owner and such Owner's Occupants, and their respective family members, guests, TENANTS and invitees, any and all claims, now or hereafter arising against the Declarant and the Association arising out of or relating to any injuries, loss or damages whatsoever, including, without limitation any injury or damages caused by theft, burglary, trespass, assault, vandalism or any other crime, to any person or property arising, directly or indirectly, from the providing or failure to provide any Security Services, systems and Facilities, or the discontinuation, disruption, defect, malfunction, operation, repair, replacement or use of any Security Services, systems and Facilities, WHETHER CAUSED OR ALLEGEDLY CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF THE DECLARANT OR THE ASSOCIATION

(C) To the extent the release in this Paragraph is not deemed effective as to any occupant, or any family member, guest or invitee of an Owner or occupant of a Unit, the Owner of each Unit hereby indemnifies and agrees to defend and hold harmless the Declarant and the Association, and their respective officers, directors, committee members, Manager, managing agents, and employees from and against any and all claims, actions, suits, judgments, damages, costs and expenses (including attorney fees and court costs) arising from bodily injury (including, without limitation, mental anguish, emotional distress and death) and/or loss or damage to property suffered or incurred by any such occupant of such Unit, or any family member, guest or invitee of the Owner or occupant of such Unit, as a result of criminal activity within or in the vicinity of the Property, WHETHER CAUSED OR ALLEGEDLY CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF THE DECLARANT, THE ASSOCIATION OR THEIR RESPECTIVE OFFICERS, DIRECTORS, COMMITTEE MEMBERS, AGENTS, CONTRACTORS OR EMPLOYEES

(D) Any obligation or liability of the Association which is borne by the Association because of an Owner not abiding by such waiver, release and indemnity obligations under this Article shall be assessed by the Association against the Unit of the Owner who failed to perform such obligation giving rise to such liability, as an Assessment against such Unit and its Owner. Nothing herein shall make any Owner of a Unit liable to the Association or any other Unit Owner for any bodily injury (defined above) and/or loss or damage to property of the occupant, family member, guest or invitee of any other Unit Owner

THE EXCELSIOR, A CONDOMINIUM  
First Amendment to Declaration of Condominium

16.5 The amendments set forth herein shall, upon recordation of this Amendment, relate back to and be effective as of the initial recordation date and time of the Declaration

16.6 Except as expressly modified and amended hereby, the terms and provisions of the Declaration shall remain in full force and effect as therein provided.

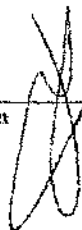
IN WITNESS WHEREOF, the Declarant has duly executed this First Amendment to the Declaration of Condominium of The Excelsior, A Condominium, to become effective as set forth above

THE EXCELSIOR, A CONDOMINIUM  
First Amendment to Declaration of Condominium

**DECLARANT:**

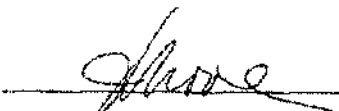
YISHLAM, INC  
a Texas corporation

By \_\_\_\_\_  
Name Omri Shafran  
Title President

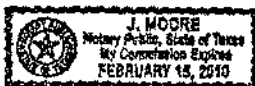


THE STATE OF TEXAS §  
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 25 day of October, 2007 by Omri Shafran, President of Yishlam, Inc a Texas corporation, on behalf of said entity



NOTARY PUBLIC, State of Texas



**FILED AND RECORDED**



OFFICIAL PUBLIC RECORDS

*Mary Ann Daigle*

2007070953

November 05, 2007 04:43:09 PM

FEE \$35.00

Mary Ann Daigle, County Clerk  
Galveston County, TEXAS

THE EXCELSIOR, A CONDOMINIUM  
First Amendment to Declaration of Condominium



**THE EXCELSIOR,  
A CONDOMINIUM**

**THIRD AMENDMENT TO  
DECLARATION OF CONDOMINIUM**

**PREAMBLE**

This Third Amendment to Declaration of Condominium ("Third Amendment") is made by YISHUAM, INC., a Texas corporation ("Declarant") to be effective as set forth below.

**RECAPITULATES**

A. On March 22, 2007, Declarant recorded the Declaration of Condominium of The Excelsior, A Condominium, under File Code No. 2007014862 in the Property Records of Galveston County, Texas ("Declaration"). All defined terms appearing in this Third Amendment shall have the meanings given them in the Declaration, unless expressly modified herein.

B. Declarant desires to amend the Declaration to include new Article 15, Section 15.12.

**ARTICLE 15  
ADDITIONAL PROVISIONS**

**15.12 First Mortgagee Rights.** Notwithstanding any provision of the Declaration to the contrary, and in addition to any rights afforded a First Mortgagee by the Texas Uniform Condominium Act, First Mortgagees shall have the following rights:

- a. Any amendment to this Declaration of a material adverse nature to First Mortgagees must have the consent of at least 51% of the First Mortgagees that represent 51% of the votes of unit estates that are subject to First Mortgages.
- b. Any action to terminate the legal status of the project for any reason, including after substantial destruction or condemnation occurs, must have the consent of 51% of the votes for the unit estates that are subject to mortgages.
- c. The Association shall give the First Mortgagee and guarantor of a mortgage on any unit the right to timely written notice of:
  - i. Any concentration or casualty loss that affects either a material portion of the project or the unit securing the mortgage;
  - ii. Any sixty-day delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds a mortgage;
  - iii. A lapse, cancellation, or material modification of any insurance policy maintained by the Association; and
  - iv. Any proposed action that requires the consent of a specified percentage of First Mortgagees.

IN WITNESS WHEREOF, the Declarant has duly executed this third Amendment to the Declaration of Condominium of The Excelsior, A Condominium, to become effective as set forth above.

DECLARANT:

YISHLAM, INC.  
a Texas corporation

By: \_\_\_\_\_  
Name: Omri Shafan  
Title: President



THE STATE OF TEXAS §  
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 5 day of May, 2011, by Omri Shafan, President of Yishlam, Inc. a Texas corporation, on behalf of said entity.

NOTARY PUBLIC  
Shelly Shwertz  
My Commission Expires  
12/26/12 State of Texas