

*CONTESSA  
CONDOMINIUM  
ASSOCIATION,  
INC.*

AMENDED  
AND  
RESTATED  
DECLARATION  
OF  
CONDOMINIUM

APRIL 5, 2001

Retn:  
BECKER & POLIAKOFF  
13515 BELL TOWER DR #101  
FT MYERS FL 33907

**CERTIFICATE OF RECORDATION**  
**DECLARATION OF CONDOMINIUM**  
**CONTESSA, A CONDOMINIUM**  
**ARTICLES OF INCORPORATION**  
**BY-LAWS**  
**CONTESSA CONDOMINIUM ASSOCIATION, INC.**

I HEREBY CERTIFY that the attached Amended and Restated Condominium Documents were duly adopted by the Association membership at the duly noticed annual members' meeting of the Association on the 23rd day of March, 2001. The original Declaration of Condominium for Contessa, a Condominium is recorded at O.R. Book 1584, at Pages 2189 et. seq. of the Collier County Public Records.

The Amended and Restated Declaration of Condominium of Contessa, a Condominium is attached hereto. All previous site plans of record are incorporated by reference, with photocopies recorded for reference as Exhibit "A". The Amended and Restated Articles of Incorporation of Contessa Condominium Association, Inc. are attached as Exhibit "B" hereto. The Amended and Restated By-Laws of Contessa Condominium Association, Inc. are attached as Exhibit "C". The Rules and Regulations of the Association are not herewith recorded. The Rules and Regulations may also be further amended without recordation of said changes in the public records. The current version of the Rules and Regulations are available from the Association for interested parties.

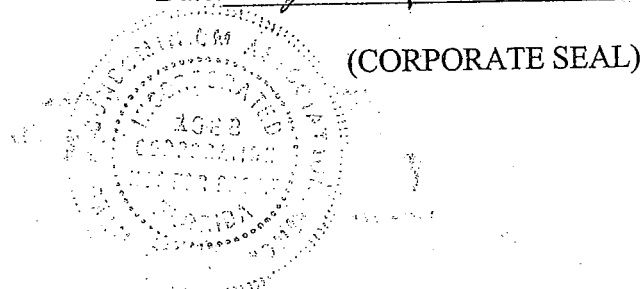
WITNESSES:  
(TWO)

CONTESSA CONDOMINIUM  
ASSOCIATION, INC.

Margaret P. Synonds  
Signature  
MARGARET P. SYNONDS  
Printed Name

BY: John Read  
John Read, President  
Date: April 2, 2001

Mary Lu Wahl  
Signature  
MARY LU WAHL  
Printed Name



STATE OF FLORIDA )  
 ) SS:  
COUNTY OF COLLIER )

The foregoing instrument was acknowledged before me this 2<sup>ND</sup> day of APRIL, 2001 by John Read as President of Contessa Condominium Association, Inc., a Florida Corporation, on behalf of the corporation. He is personally known to me or has produced (type of identification) \_\_\_\_\_ as identification and did take an oath.



Mary Lu Wahl  
MY COMMISSION # CC782883 EXPIRES  
October 27, 2002  
BONDED THRU TROY FAIN INSURANCE, INC.

Mary Lu Wahl  
Notary Public

MARY LU WAHL  
Printed Name

My commission expires: 10/27/02

AMENDED AND RESTATED

DECLARATION OF CONDOMINIUM

OF

CONTESSA, A CONDOMINIUM

**SUBSTANTIAL REWORDING OF DECLARATION OF CONDOMINIUM-  
SEE CURRENT DECLARATION OF CONDOMINIUM FOR CURRENT TEXT**

**RECITALS:**

In a Declaration of Condominium recorded at O.R. Book 1584, Pages 2189 et seq. of the Collier County Public Records on January 10, 1991, the Condominium Developer did submit to condominium ownership pursuant to Chapter 718, Florida Statutes, known as the Condominium Act, that property situated in Collier County, Florida, more particularly described as follows:

All that part of Tract A, all that part of Tract B, all that part of Parcel 1 and all that part of Parcel 2, Pelican Bay Unit Eight, according to the plat thereof as recorded in Plat Book 15, pages 27-29, Public Records of Collier County, Florida being more particularly described as follows:

Beginning at the northerly most corner of said Parcel 1 (said POINT OF BEGINNING also being the southeast corner of said Tract B);  
thence along the easterly line of said Parcel 1 South 44°-20'-30" West 234.63 feet to a point hereinafter referred to as Point "A";  
thence return to said Point of Beginning along said easterly line North 44°-20' 30" East 234.63 feet;  
thence along the easterly line of said Tract B North 03°-52'-54" West 282.85 feet;  
thence South 87°-30'-00" West 469.25 feet;  
thence South 41°-28'-00" West 186.98 feet to the State of Florida Department of Natural Resources and Collier County Coastal Construction Control Line (per C.C.L.B. 1, pages 13-25, recorded July 29, 1980);  
thence South 87°-30'-00" West 228 feet more or less to the Mean High Water Line of the Gulf of Mexico;  
thence southeasterly 312 feet more or less along said Mean High Water Line to a line which bears South 87°-30'-00" West from aforementioned Point "A";  
thence along said line North 87°-30'-00" East 233 feet more or less to said Coastal Construction Control Line;  
thence continue North 87°-30'-00" East 386.39 feet to said Point "A";

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thence along the easterly line of said Parcel 1 North 44°-90'-30" East 234.63 feet to the Point of Beginning of the parcel herein described;

subject to a Pelican Bay Improvement District drainage easement as recorded in O.R. Book 1236, page 1743 and an access easement as recorded in O.R. 1381, page 373, Public Records of Collier County, Florida; subject to other easements and restrictions of record.

The Condominium Property is further described at Condominium Plat Book 35, Page 101, Collier County Public Records.

Said Declaration was subsequently amended as follows:

Amendment recorded at O.R. Book 1590, Pages 1242 et seq., Collier County Public Records.

Amendment recorded at O.R. Book 1673, Pages 0892 et seq., Collier County Public Records.

Amendment recorded at O.R. Book 1688, Pages 2062 et seq., Collier County Public Records.

Amendment recorded at O.R. Book 1807, Pages 1912 et seq., Collier County Public Records.

Amendment recorded at O.R. Book 1807, Pages 1909 et seq., Collier County Public Records.

Amendment recorded at O.R. Book 1821, Pages 0323 et seq., Collier County Public Records.

Amendment recorded at O.R. Book 1926, Pages 0950 et seq., Collier County Public Records.

Amendment recorded at O.R. Book 2041, Pages 1169 et seq., Collier County Public Records.

Amendment recorded at O.R. Book 2305, Pages 1327 et seq., Collier County Public Records.

The submission of the land to the condominium form of ownership by that document is and will remain effective. It is the desire of the Unit Owners, however, to operate with modernized documents free of internal conflicts and obsolete references to the Developer. By adoption of this Amended and Restated Declaration of Condominium, the Association members hereby

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adopt certain amendments to the Declaration of Condominium and hereby restates the Declaration of Condominium and its Exhibits in its entirety. By adoption of this Amended and Restated Declaration of Condominium, the members of the Association ratify governance of the property described above and in Exhibit "A" hereto under the condominium form of ownership and the provisions of Chapter 718, Florida Statutes (2000), as amended from time to time.

1. **DEFINITIONS.** As used herein or elsewhere in the Condominium Documents, unless otherwise provided, the terms used shall be as defined in the Act and as herein provided:

1.1 **"Act" or "Condominium Act"** means the Condominium Act, (Chapter 718 of the Florida Statutes) as it now exists or as may be amended from time to time including the definitions therein contained.

1.2 **"Apartment"** has the same meaning as the term "Unit" as defined in the Condominium Act.

1.3 **"Apartment Owner" or "Owner"** has the same meaning as the term "Unit Owner" as defined in the Condominium Act, except that for the purpose of interpreting use and occupancy restrictions related to units, in cases where a primary occupant has been designated for a Unit because of its ownership, the word "Owner" refers to the Primary Occupant and not the record owner.

1.4 **"Articles"** means Articles of Incorporation as attached hereto as Exhibit "B".

1.5 **"Assessment"** means a share of the funds required for the payment of common expenses, which from time to time is assessed against the Unit Owner, and such additional sums which may be assessed directly against the Unit.

1.6 **"Association"** means CONTESSA CONDOMINIUM ASSOCIATION, INC., a Florida Corporation Not For Profit, the entity responsible for the operation of the Condominium.

1.7 **"Association Property"** means all real property, owned or leased by the Association for the use and benefit of the Unit Owners.

1.8 **"Board of Directors" or "Board" or "Directors"** means the representative body which is responsible for the administration of the Association's affairs, and is the same body that is sometimes referred to in the Condominium Act as the "Board of Administration". Each Director must be a member, or Primary Occupant (in case of units that are required to designate a Primary Occupant), the spouse of a member or Primary Occupant, the grantor of a trust described in Section 733.707(3), Florida Statutes (2000), or a beneficiary as

defined in Section 737.303(4)(b), Florida Statutes (2000) of a trust which owns a Unit, or the spouse of such party.

1.9 "Bylaws" mean the Bylaws of the Association as attached hereto as Exhibit "C".

1.10 "Charge" means any legal or equitable indebtedness to the Association incurred by, or on behalf of, a Unit Owner, other than assessments for Common Expenses. Said obligations may arise by oral or written contract, by law or in equity, or may be created by these Condominium Documents.

1.11 "Common Elements" mean and include:

- 1.11.1 The portions of the condominium property not included within the Units.
- 1.11.2 Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to Units and the common elements.
- 1.11.3 An easement of support in every portion of a Unit which contributes to the support of the building, including but not limited to all load bearing interior walls within the units.
- 1.11.4 The property and installations required for the furnishing of utilities and other services to more than one Unit or to the common elements.
- 1.11.5 Any other parts of the condominium property designated as common elements in this Declaration.

1.12 "Common Expenses" means those expenses for which Unit Owners are liable to the Association, including but not limited to expenses of administration, maintenance and operation, repair and replacement of common elements and such other expenses as may be declared expenses either by this Declaration, the Articles of Incorporation, the By-Laws or by the Association. Common Expenses include, but are not limited to, such items as cost of premiums for hazard and public liability insurance, repairs, replacements and expenses of upkeep, lawn service, utility bills, pool service, janitor service, accounting and legal fees, wages and fees for managerial and other services, and reasonable and adequate reserves, all as may be required in the maintenance and management of this Condominium. The expenses of bulk interior pest control are specifically considered a common expense. Common expenses also include reasonable insurance for directors and officers, road maintenance and operation expenses, and security services, which are reasonably related to the general benefit of the Unit Owners even if such expenses do not attach to the common elements or property of the condominium. The Association, at the discretion of the Board of

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Directors, may provide "unit opening" services to individual owners. Such services shall generally encompass preparing a unit for the Unit Owner's arrival, including but not limited to turning on water, adjusting temperature control, and otherwise preparing the unit for occupancy. The Association may also perform other personal services for Unit Owners, such as unit monitoring in the owner's absence. The scope and extent of such services shall be determined and published by the Board of Directors from time to time. Any Unit Owner desiring to avail themselves to such service must execute a consent form, which will be kept on file with the Association. The Unit Owner's consent to the Association's performance of these services is deemed to include an exoneration, wavier, and release by the Unit Owner of any claims against the Association (its employees, agents, officers and directors) arising out of the performance of services, except as may be occasioned by willful misconduct. The costs of such services are declared a common expense.

1.13 **"Common Surplus"** means the excess of all receipts of the Association, including, but not limited to, assessments, rents, profits and revenues on account of the common elements, above the amount of the common expenses.

1.14 **"Condominium Documents"** means this Declaration; the Surveyor's Plat copies of which are attached hereto as Exhibit "A"; Articles of Incorporation of Contessa Condominium Association, Inc. attached as Exhibit "B"; By-Laws attached hereto as Exhibit "C", Rules and Regulations, which are not recorded.

1.15 **"Condominium Parcel"** means a Unit together with the undivided share in the Common Elements which is appurtenant to said Unit and when the context permits, the term includes all of the appurtenances to the Unit.

1.16 **"Condominium Property"**: means the land and personal property that are subjected to condominium ownership under this Declaration, all improvements on the land, and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

1.17 **"County"** means the County of Collier, State of Florida.

1.18 **"Declaration" or "Declaration of Condominium"** means this instrument, and as it may be amended from time to time.

1.19 **"Family" or "Single Family"** shall refer to any one of the following:

1.19.1 One natural person, his spouse, if any, and their custodial children, if any.

1.19.2 Not more than two natural persons not meeting the requirement of 1.19.1 above, but who customarily reside together as a single housekeeping unit, and the custodial children of said parties, if any.

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The reference to "natural" herein is intended to distinguish between an individual and a corporation or other artificial entity.

**1.20 "Fixtures"** means those items of tangible personal property which by being physically annexed or constructively affixed to the unit have become accessory to it and part and parcel of it, including but not limited to, interior partitions, walls, appliances which have been built in or permanently affixed, and plumbing fixtures in kitchens and bathrooms. Fixtures do not include floor, wall or ceiling coverings.

**1.21 "Guest"** means any person who is not the Unit Owner or Primary Occupant or a lessee or a member of the owner's or lessee's family, who is physically present in, or occupies the unit on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of consideration.

**1.22 "Lease"** means the grant by a Unit Owner of a right of use of the owner's unit for consideration.

**1.23 " Limited Common Elements"** shall include property which is reserved for the use of a certain unit to the exclusion of other units as reflected on the condominium plat or in this Declaration. Whenever a portion of the Condominium Property naturally and exclusively services a particular unit, and where the area in question lies outside of the boundaries of the unit, the delegation of maintenance responsibility for the area (e.g. air conditioning compressors) shall serve to define the area as a limited common element. The Condominium Property shall contain parking spaces and balconies to the respective units, for the exclusive use of the appurtenant unit, the owners and their guests and invitees. Parking spaces in the garage parking area and storage closets located within the Condominium Property have been assigned to each unit. Such facilities constitute Limited Common Elements and, as such, are reserved for the use of the unit appurtenant thereto, to the exclusion of other units, and there shall pass with each unit as appurtenant thereto the exclusive right to use the Limited Common Elements so appurtenant. Notwithstanding the designation of the parking spaces as Limited Common Elements, expenses of maintenance and repair of the parking area shall be assessed in the same proportion as for the maintenance and repair of Common Elements as provided hereinafter.

Parking spaces which are not specifically assigned to Units shall be used in accordance with the directives of the Board of Directors from time to time.

The twenty-four (24) cabanas located around the east and/or south and/or north east side of the swimming pool shall be Limited Common Elements. Although each must be appurtenant to a unit at Contessa, a Condominium, there shall be no restriction upon the number of cabanas that can be appurtenant to any single unit. There shall be no restrictions upon the conveyance of these cabanas between condominium units. Expenses of maintenance and repair

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of the Cabanas shall be the responsibility of the Unit to which it is an appurtenance. Cabanas have been assigned Units and can be freely sold or conveyed between Units.

1.24 "Member" means the record owner of a Unit.

1.25 "Primary Occupant" means a natural person approved for occupancy of a unit when title to the unit is held in the name of two or more persons who are not husband and wife, or by a trustee or a corporation or other entity which is not a natural person.

1.26 "Rules and Regulations" means those rules and regulations promulgated by the Board of Directors, governing the use, occupancy, alteration, maintenance, transfer and appearance of units, common elements and limited common elements, subject to any limits set forth in the Declaration of Condominium.

1.27 "Unit" means a part of the condominium property subject to exclusive ownership.

1.28 "Unit Owner" or "Owner of a Unit" means the Owner of a condominium parcel.

1.29 "Voting Interest" means and refers to the arrangement established in the Condominium Documents by which the Owners of each Unit collectively are entitled to one vote in the Association matters. There are 76 units, so the total number of voting interests is 76.

2. STATEMENT OF CONDOMINIUM DECLARATION. Contessa Development, Ltd., submitted the property described in Exhibit "A" hereto and as described above to condominium ownership in accordance with Florida Statutes.

3. CONDOMINIUM NAME. The name by which this condominium is identified is "Contessa, a Condominium".

4. UNIT IDENTIFICATION. The identification of each unit shall be by number and shall be as follows:

4.1 There will seventy-six (76) Units. There shall be one building with twenty living floors. These Units are described generally below:

101	102	103	104
201	202	203	204
301	302	303	304
401	402	403	404
501	502	503	504
601	602	603	604
701	702	703	704

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801	802	803	804
901	902	903	904
1001	1002	1003	1004
1101	1102	1103	1104
1201	1202	1203	1204
1401	1402	1403	1404
1501	1502	1503	1504
1601	1602	1603	1604
1701	1702	1703	1704
1801	1802	1803	1804
1901	1902	1903	1904

Penthouse Level One: PH-11 PH-12

Penthouse Level Two: PH-21 PH-22

**4.2 Identification of Building and Units.**

All Units with numbers ending in "01" shall be designated as an "A" unit plan and shall contain: three bedrooms, three and 1/2 bathrooms, two walk-in closets, five additional closets, linen closet, den, storage/utility room, mechanical room, gallery/foyer, great room, kitchen, breakfast room, wet bar, terrace and two balcony decks.

All Units with numbers ending in "02" shall be designated as a "B" unit plan and shall contain: two bedrooms, two and 1/2 bathrooms, two walk-in closets, utility room, mechanical room, storage room, three additional closets, great room, wet bar, kitchen, breakfast room, terrace, and a balcony deck.

All Units with numbers ending in "03" shall be designated as a "C" unit plan and shall contain: two bedrooms, three bathrooms, three walk-in closets, four additional closets, foyer, kitchen, breakfast corner, utility room, mechanical room, storage room, great room, wet bar, den, terrace, and a balcony deck.

All Units with numbers ending in "04" shall be designated as a "D" unit plan and shall contain: three bedrooms, three and 1/2 bathrooms, two walk-in closets, six additional closets, gallery/foyer, kitchen, breakfast room, utility/storage room, great room, den, wet bar, mechanical room, terrace and two balcony decks.

Penthouses shall be designated "PH-11, PH-12, PH-21, PH-22, and shall contain: four bedrooms, four and 1/2 bathrooms, three walk-in closets, linen closet, four additional closets, storage room, laundry room, kitchen, breakfast corner, family room, dining room, wet bar, great room, mechanical room, vestibule, two foyers, two terraces and three balcony decks.

**5. SURVEY AND GRAPHIC DESCRIPTION.** A survey of the land submitted herewith to condominium ownership and a plat thereof describing each unit, common elements and

their relative location and the approximate dimensions of each unit are as shown on the surveyor's plat which is attached as Exhibit "A".

6. **VOTING RIGHTS; OWNERSHIP OF COMMON ELEMENTS.** The voting rights of the owner of each unit shall be 1/76th (one voting interest per unit). The sharing of Common Expenses and ownership of Common Elements and Common Surplus shall be:

<u>Unit Type</u>	<u>Ownership in Common Area</u>
"01" Unit "A" Style	.014089
"02" Unit "B" Style	.011856
"03" Unit "C" Style	.012277
"04" Unit "D" Style	.013094
Penthouse Unit "PH" Style	.019078

7. **COMMON ELEMENTS; EASEMENTS.**

7.1 **Definition.** The term "common elements" means all of the property submitted to condominium ownership that is not within the unit boundaries set forth in Section 8 below. The common elements include without limitation the following.

7.1.1 The Land.

7.1.2 All portions of the building and other improvements outside the units, including all limited common elements.

7.1.3 Easements over, through, above and beneath each unit for conduits, ducts, plumbing, wiring and other facilities for furnishing utility services to other units or common elements.

7.1.4 An easement of support in every portion of the Condominium which contributes to the support of the building.

7.1.5 The fixtures and installation required for access and utility services to more than one unit or to the common elements.

7.2 **Easements.** Each of the following easements and easement rights is reserved through the condominium property and is a covenant running with the land of the Condominium and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Condominium. None of these easements may be encumbered by any leasehold or lien other than those on the condominium parcels. Any lien encumbering these easements shall automatically be subordinate to the rights of the Unit Owners with respect to such easements.

7.2.1 **Utility and other Easements.** The Association, through the Board of Directors, has the power, without joinder of any Unit Owner, to grant, modify or move easements such as electric, gas, cable television, or other access, utility or service easements, or relocate any existing easements, in any portion of the common elements or association property, as the Board shall deem necessary or desirable for the proper operation and maintenance of the Condominium. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the units. The Association, through the Board of Directors, may also transfer title to utility-related equipment, facilities or material, and may take any other action to satisfy the requirements of any utility company or governmental agency.

7.2.2 **Encroachments.** If any unit encroaches upon any of the common elements or upon any other unit for any reason other than the intentional act of the Unit Owner, or if any common element encroaches upon any unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.

7.2.3 **Ingress and Egress.** A non-exclusive easement shall exist in favor of each Unit Owner and Primary Occupant, their respective guests, tenants, licensees and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portion of the common elements as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portion of the common elements as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.

7.3 **Restraint Upon Separation and Partition.** The undivided share of ownership on the common elements and common surplus appurtenant to a unit cannot be conveyed or separately described. As long as the Condominium exists, the common elements cannot be partitioned. The shares in the funds and assets of the Association cannot be assigned, pledged or transferred except as an appurtenance to the units.

8. **CONDOMINIUM UNITS AND APPURTENANCES.** Condominium units are those cubicles of space, and all improvements constructed therein identified and described in the Surveyor's Plat, Exhibit "A". The horizontal and vertical boundaries of the condominium units shall be as follows:

8.1 **Boundaries of Individual Units.** The respective units shall not be deemed to include the undecorated and/or unfinished surfaces of the perimeter walls, floors and ceiling surrounding each unit or any pipes, wires, conduits or other utility lines running through each unit

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which are utilized for or serve more than one (1) unit, the same being the Common Elements as hereinafter provided. Each unit shall be bounded as to both horizontal and perimetrical boundaries as below defined, whether the same exist now or are created by construction, settlement or movement of the building, or permissible repairs, reconstruction or alteration. The boundaries shall be determined in the following manner: (1) Horizontal boundaries: a) Upper Boundary – The underside of the finished undecorated roof of the unit, extended to meet the perimetrical boundaries; b) Lower Boundary – The upperside of the concrete slab upon which the unit is affixed, extended to meet the perimetrical boundaries. (2) Perimetrical Boundaries – The perimetrical boundaries shall be the interior surfaces of the perimeter walls of the unit and the interior surfaces of the unit's windows and doors that abut the exterior of the building or Common Elements. Unit shall be deemed to include any utility room servicing just one unit although access to the room is off an exterior hallway.

**8.2 Exclusive Use.** Each Unit Owner shall have the exclusive use of his unit.

**8.3 Appurtenances.** The ownership of each unit shall include, and there shall pass with each unit as appurtenances thereto whether or not separately described, all of the rights, title and interest including but not limited to:

**8.3.1 Common Elements.** An undivided share of the common elements, such undivided share to be that portion set forth in Article 6 hereof.

**8.3.2 Easements.** For the benefit of the unit.

**8.3.3 Association Membership** and interest in funds and assets held by the Association.

**8.3.4 Automobile Parking Space (for Private Passenger Automobile Only)** – The privilege of using two assigned parking spaces within the area designated on the plat for parking.

**8.4 Easement to Air Space.** The appurtenances shall include an exclusive easement for the use of the air occupied by the unit as it exists at any particular time and as the unit may be altered or reconstructed from time to time.

**8.5 Cross Easements.** The appurtenances shall include the following easements from each Unit Owner to each other Unit Owner:

**8.5.1 Ingress and Egress.** Easements through the common elements for ingress and egress.

**8.5.2 Maintenance, Repair and Replacement.** Easements through, over and beneath the units and common elements for maintenance, repair and replacement of the units

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and common elements. Such access to the units shall be only during reasonable hours except that access may be had at any time in case of emergency.

**8.5.3 Support.** Every portion of a unit contributing to the support of the unit building shall be burdened with an easement of support for the benefit of all other units and common elements in the building.

**8.5.4 Utilities.** Easements over, through, above and beneath the units and other portions of the condominium property for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services to the units and the common elements; provided, however, that such easements through a unit shall be only according to the plans and specifications for the unit building or as the building is constructed unless approved in writing by the Unit Owner.

**9. MAINTENANCE, ALTERATION AND IMPROVEMENTS.** Responsibility for the maintenance of the condominium property, and restrictions upon the alteration and improvement thereof, shall be as follows:

**9.1. Association Maintenance.** The maintenance, repair and replacement of all common elements and Association property shall be performed by the Association, and the cost is a common expense. Same shall include, but not be limited to, exterior painting, roofing, and maintaining portions of the condominium property exposed to the elements, including maintenance of screen frames and screening (except as provided in Article 9.4), windows, and sliding glass doors leading to balconies and terraces. Unit entry doors are the responsibility of the Association. The Association's maintenance responsibility includes, without limitation; all electrical conduit located outside the unit; plumbing fixtures and installations located outside the unit, other installations located within a unit but serving a different unit, or located outside the unit for the furnishing of utilities to more than one unit or the common elements. The Association shall be responsible for the maintenance and repair of the drywall constituting the common elements of the Condominium, including the interior surface of the exterior boundary walls, as well as the drywall ceiling of the unit. Decorations of such surfaces, (including but not limited to paint, wallpapering, "popcorn", paneling, etc.) are the responsibility of the Unit Owner. The Association's responsibility does not include interior electrical fixtures, switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within the unit and serving only that unit. If, in connection with the discharge of its maintenance responsibilities, the Association must remove, disassemble, or destroy portions of the Condominium Property which the Unit Owner is required to maintain, repair, and replace, the Association shall be responsible for reinstallation or replacement of that item, to its unfinished state (i.e. excluding floor coverings, wall coverings, ceiling coverings, paint, wallpaper, paneling, etc.), provided that such items are part of the Condominium Property as originally installed by the Developer, or replacements thereof of like kind and quality. Replacement of all upgrades or additions, even if made by a predecessor in title, shall be the responsibility of the Unit Owner.

**9.2. Unit Owner Maintenance.** Each Unit Owner is responsible, at his own expense, for all maintenance, repairs, and replacements of his own unit and limited common

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elements serving his unit, except as provided elsewhere herein, whether ordinary or extraordinary including, without limitation: interior partitions, the finishes thereof, the structural framing related thereto (assuming non-load bearing), and all electrical or plumbing facilities located therein, which service only the individual unit; all interior unit doors and the framing and structural components thereof (including trim and hardware); the electrical, mechanical and plumbing fixtures and outlets (including connections) within a unit or serving only that unit including sinks, toilets, tubs, showers, shower pans, and all related fixtures and installations; appliances; all portions of the heating and air conditioning equipment and utility installations and connections serving an individual unit (no matter where located); carpeting and other floor covering, (including balcony areas); all other facilities or fixtures located or contained entirely within a unit which serves only that unit. Any insurance proceeds paid to the Association with respect to any loss or damage within the unit or limited common elements which is covered by the Association's casualty insurance, and which loss would otherwise be borne by the Unit Owner, shall be paid to the Unit Owner, after the work has been completed and invoices have been submitted verifying the costs of repair.

**9.3 Additional Unit Owner Obligations.** In connection with his maintenance, repair and replacement obligations, the Unit Owner shall also have the responsibility to obtain the prior written approval of the Association, through the Board of Directors, before performing any maintenance, repair or replacement which requires: changes or alterations to the physical appearance of the condominium property; excavation; access to building roofs; removal or modification of any interior partitions walls, or cabinets, whether load-bearing or not; relocation of plumbing or electrical lines or fixtures; the use of heavy or noisy equipment; such other actions as may cause concern for the peace and safety of the condominium and its residents or the aesthetics of the condominium property. The Association may condition such approval on criteria as the Board deems reasonable, including but not limited to:

- Use of licensed and insured contractors;
- Oversight by the Association or its agent;
- The Unit Owner submitting plans as to the scope of the contemplated repair;
- Restrictions as to hours of work;
- Imposition of time limits in which jobs must be completed, prohibitions against major renovations during certain times of year, and regulation of noise levels.
- Restrictions regarding equipment that may be parked or stored on or near the condominium property during construction.
- Restrictions regarding the transport and storage of materials and supplies necessary for the construction to be performed.

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Nothing shall preclude the Association from acting as the owner's agent and obtaining the services of Contractors to perform Unit Owner maintenance responsibilities, provided that the Association and the owner so agree and provided that the owner is deemed to consent to reimbursement of expenses incurred, secured by such rights as exist for collecting common expenses under these Condominium Documents, and further provided that the Association's liability shall be limited as in the case of its providing services pursuant to Article 1.12.

**9.4 Balconies.** Balconies are designated as common elements. The Unit Owner who has the right to the exclusive use of said balcony shall be responsible for the maintenance, care and preservation of: balcony floor coverings (the board may prohibit certain types of floor coverings or require the removal of existing coverings when necessary for the structural integrity and preservation of the building); the screens and frames (only those installed in 02 and 03 units after original construction of the Building); storm shutters and other enclosures; the wiring, electrical outlet(s) and fixture(s) on or servicing the balcony; ceiling fans; and the replacement of light bulbs. The Association shall be responsible for structural maintenance, repair and replacement of balcony floors, ceilings and exterior portions, and also the building walls enclosed by the balconies, provided that painting and regular maintenance (nonstructural) of building walls enclosed by balconies shall be done by the Unit Owners, subject to the uniformity of appearance (e.g. color) and other criteria set forth in these Condominium Documents, or as determined by the Board. However, the Association may, if it elects, paint balcony walls and ceilings in connection with the painting of the building as either a common expense, or on a voluntary participation basis, as determined by the Board of Directors. Unit Owners may not puncture (by nails, hooks, screws or otherwise) balcony floors, walls, or ceilings, without obtaining the prior written approval of the Board of Directors.

**9.5 Unit Floor Coverings.** All units above the ground floor shall always have the floors covered with wall-to-wall carpeting, except in kitchens, bathrooms, balconies, foyers, and utility or laundry rooms, except as provided below. Hard floor surfaces (tile, marble, wood, etc) may only be installed upon prior written approval of the Board of Directors, which shall condition its approval on the Unit Owner's proof of the installation of appropriate sound-deadening material. Specifications for sound proofing of hard flooring must be approved in writing by the Board or its representative prior to installation, and then the installed sound proofing must be inspected and approved prior to installation of the hard flooring.

**9.6. Alterations by Unit Owners.** No owner may make or permit the making of any modifications or alterations to his unit, the common elements, or the limited common elements, or in any manner change the appearance of any portion of the condominium, or make any structural change within the unit interior without first obtaining the written consent of the Board of Directors, which consent shall be denied if the Board determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the condominium in part or whole. The Board may, in appropriate circumstances, require sealed plans from an Architect or Professional Engineer licensed to practice in Florida as a condition of reviewing any requested modification, alteration or addition to the condominium property. The Board, in reaching its decision, may take

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into account uniformity of appearance, compatibility with architecture in Contessa, Bay Colony, and Pelican Bay, the quality of the proposed alteration, objections of neighboring residents, and such other criteria as the Board may reasonably adopt in reaching its decision. If the Board determines to permit any alteration or addition which is visible from the exterior of the premises, from any vantage, said addition or improvement must also be approved by the Unit Owners in the manner provided in Article 9.8 of the Declaration of Condominium (and Articles 22.1 and 22.2, to the extent applicable), regardless of the cost or expense of such addition or alteration. If any Unit Owner requests approval of an alteration or modification involving the removal or modification of any interior partition or wall, the Association may permit such removal if the removal would not materially affect or interfere with the utility services constituting common elements, if any, located therein or the structural integrity of the building.

#### **9.7 Additional Unit Owner Responsibility for Alterations and Additions**

If a Unit Owner makes any modifications, installations, or additions to the interior or exterior of the unit, common elements, or limited common elements in accordance with Article 9.6 above, the Unit Owner (and his heirs, successors in title and assigns) shall be financially responsible for the insurance, maintenance, care, and preservation of the modifications, installations or additions and shall execute such documents as the Association may promulgate accepting said financial responsibility. Any modification, alteration, or addition to the condominium property made by a Unit Owner, and duly approved by the Board of Directors, may be required to be removed in connection with the Association's maintenance of the condominium property. In such cases, the Unit Owner who installs the alteration, addition, or improvement (and their successors in title) shall be obligated to reimburse the Association for any costs affiliated with removal and/or re-installation of the item, with said obligation being secured by a right of lien for charges of equal dignity to the common expense lien created by this Declaration, or alternatively, said owner may be required to remove and reinstall said additions, if so determined by the Board of Directors. Further, the Association, its contractors and agents, shall not be liable for any damage to the item arising out of its removal and/or reinstallation, unless occasioned by the gross negligence or willful misconduct of the Association or its contractor or agent. Without limiting the general intent of this provision, it is hereby recited that this Article 9.7 applies to hurricane shutters installed by the Unit Owners.

**9.8. Alterations by Association.** There shall be no material alterations or substantial additions to the common elements or association property by the Association costing more than \$30,000 in the aggregate in any calendar year without prior approval of at least a majority of the entire voting interests at an Association meeting, or by written agreement. Articles 22.1 and 22.3 must be observed, to the extent applicable. Necessary maintenance of the common elements, or association property regardless of the level of expenditure, is the responsibility of the Board of Directors.

**9.9. Enforcement of Maintenance.** If, after reasonable notice, the owner of a unit fails to maintain the unit or other portions of the condominium property as required above, the Association shall have, without waiver of other remedies, the right to enter the owner's unit and perform or cause performance of the necessary work, and/or institute legal proceedings at law or in

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equity to enforce compliance, and/or to take any and all other lawful actions to remedy such violation, in which event the Unit Owner shall be charged for the costs of such activities (including attorney's fees incurred by the Association) by the Association which shall be secured by a lien for charges.

**9.10. Negligence. Damage Caused by Condition of Unit.** Each Unit Owner shall be liable to the Association and/or other Unit Owners for the expenses of any maintenance, repair or replacement of the condominium property, made necessary by his act or negligence, or by that of any member of his family or his or their guests, employees, agents, or lessees. If any condition, defect or malfunction within a unit, if caused by the owner's negligence, shall cause damage to the common elements or to other units, the owner of the offending unit shall be liable to the person or entity responsible for repairing the damaged areas for all costs of repair or replacement not paid by insurance (including the deductible). If one or more of the units involved is not occupied at the time the damage is discovered, the Association may enter the unit(s) without prior notice to the owner(s) and take reasonable action to mitigate damage or prevent its spread, at the Unit Owner's expense. The Association may, but is not obligated to, repair the damage without the prior consent of the owner, in the event of an emergency, and the owner shall be responsible for reimbursement of the Association, with the cost being secured by a lien for charges.

**10. ASSESSMENTS AND CHARGES.** Assessments against owners shall be made by the Board of Directors of the Association, in the manner provided in the By-Laws and as follows, and shall be borne by the Unit Owners on the same basis as their percentage of ownership of the entire condominium as set forth in Article 6.

**10.1 Liability for Assessments.** A Unit Owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all assessments coming due while he/she is the Unit Owner. The grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for his/her share of the common expenses including attorney's fees and other costs of collection incurred by the Association up to the time of the conveyance, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. The liability for assessments may not be avoided by waiver of the use or enjoyment of any common elements or by the abandonment of the Unit for which the assessments are made.

**10.2 Default in Payment of Assessments for Common Expenses.** Assessments and installments thereof not paid within ten (10) days from the date when they are due shall incur a late fee and bear interest in an amount equal to the maximum allowed by law. The Association has a lien on each condominium parcel for any unpaid assessments on such parcel, with interest, late charges and for reasonable attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien. The lien is in effect until all sums secured by it have been fully paid or until barred by law. A claim of lien shall be signed and acknowledged by an officer or agent of the Association. Upon recording, the Association's claim of lien shall relate back to the date of the filing of the original Declaration of Condominium. Upon payment the condominium parcel is entitled to a satisfaction of the lien. The Association

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may bring an action in its name to foreclose a lien for assessments in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien.

**10.3 Notice of Intention to Foreclose Lien.** No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid assessments. If this notice is not given at least thirty days before the foreclosure action is filed, and if the unpaid assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment or foreclosure, the Association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the Unit Owner or by certified mail, return receipt requested, addressed to the Unit Owner. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this sub-section are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.

**10.4 Appointment of Receiver to Collect Rental.** If the Unit Owner remains in possession of the Unit and the claim of lien is foreclosed, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit and the Association is entitled to the appointment of a receiver to collect the rent.

**10.5 First Mortgagee.** The priority of the Association's lien and the obligation for payment of past due assessments in relation to first mortgagees who obtain title as a result of foreclosure or deed in lieu of foreclosure, shall be determined by the Florida Condominium Act, Chapter 718, Florida Statutes (2000), as amended from time to time.

**10.6 Possession of Unit.** Any person who acquires an interest in a Unit, except First Mortgagees through foreclosure of a first mortgage of record (or deed in lieu thereof), including without limitation persons acquiring title by operation of law shall not be entitled to occupancy of the Unit or enjoyment of the common elements until such time as all unpaid assessments and other charges due and owing by the former Owner, if any, have been paid. Possession shall be subject to all other Association requirements pertaining thereto.

**10.7 Certificate of Unpaid Assessments.** Any Unit Owner has the right to require from the Association a certificate showing the amount of unpaid assessments against him/her with respect to his/her Unit.

**10.8 Lien For Charges.** There is hereby created a common law and contractual lien to secure any service which the Association provides for an individual member and which is not otherwise secured by the statutory lien for common expenses created herein. By way of example, but not limitation, a lien for charges exists to secure repayment to the Association when it must remove or reinstall Unit Owner alterations or items of Unit Owner maintenance responsibility in connection with the Association's discharge of its common element maintenance responsibilities.

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The lien for charges shall be of equal priority to, shall be secured as to interest, late fees and attorney's fees and the like, and shall be foreclosed in the same manner as the common expense lien.

**11. ADMINISTRATION AND MANAGEMENT OF CONDOMINIUM.** The administration and management of the condominium shall be by the Condominium Association, who shall have by and through its officers and directors, such powers, authority and responsibilities as are vested in the officers and directors of a corporation not-for-profit under the laws of the State of Florida, including but not limited to those set forth more specifically elsewhere in the Condominium Documents. The Association shall have authority to enter into management and other agreements concerning the matters of common interest through its officers. The management of the Association and election of the members to the Board of Directors shall be as set forth in the By-Laws. Without limiting the foregoing, the Association shall have the following powers and duties:

**11.1. Access.** The irrevocable right of access to each Unit during reasonable hours as may be necessary for the maintenance, repair or replacement of any common elements therein, or at any time for making emergency repairs therein necessary to prevent damage to the common elements or to any other Unit or Units, or to determine compliance with the terms and provisions of this Declaration, the exhibits annexed hereto, and the Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time. The Association may require that a pass key be posted for each unit and may, if determined advisable by the Board, implement a master key system.

**11.2 Assessments.** The power to make and collect regular and special assessments and other charges against Unit Owners and to lease, maintain, repair and replace the common elements.

**11.3 Recordkeeping.** The duty to maintain accounting records according to good accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times.

**11.4 Delegation.** The power to enter into contracts with others, for valuable consideration, for maintenance and management of the condominium property and in connection therewith, or to its officers and agents, to delegate the powers and rights herein contained, including, without limitation, the making and collecting of assessments and other charges against Unit Owners, and perfecting liens for non-payment thereof.

**11.5 Regulations.** The power to adopt and amend Rules and Regulations covering the details of the operation of the Association and use of the condominium property.

**11.6 Acquisition or Transfer of Real Property; Leasing Common Elements and Association Property.** The power to acquire or transfer real property or otherwise convey and mortgage real property for the use and benefit of its members with the same approval of Unit

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Owners as needed to amend the Declaration. No Unit Owner shall be required to purchase (or mortgage) a unit through foreclosure, deed in lieu of foreclosure, or in connection with the Association's right of first refusal set forth in Article 17 hereof. Leasing of units, common elements or Association property may be approved by the Board of Directors, as well as the lease fees, use fees, and other fees permitted by the Act or the Condominium Documents.

**11.7 Membership Agreements.** The power to enter into agreements to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities with the same approval of Unit Owners as needed to amend the Declaration.

**11.8 Limitation upon Liability of Association.** Notwithstanding the duty to maintain and repair parts of the Condominium Property, the Association is not liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any alterations or improvements done by or on behalf of any Unit Owners, regardless of whether or not same shall have been approved by the Association pursuant to the provisions hereof.

**NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE CONDOMINIUM DOCUMENTS OR ANY OTHER DOCUMENT GOVERNING OR BINDING THE ASSOCIATION, THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER BE A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY UNIT OWNER, OCCUPANT OR USER OF ANY PORTION OF THE CONDOMINIUM PROPERTY, INCLUDING, WITHOUT LIMITATION, UNIT OWNERS AND THEIR FAMILIES, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OF ANY SUCH PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:**

**(a) IT IS THE EXPRESS INTENT OF THE CONDOMINIUM DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION, AND WHICH GOVERN OR REGULATE THE USE OF THE CONDOMINIUM PROPERTY, HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE CONDOMINIUM PROPERTY AND THE VALUE THEREOF; AND**

**(b) THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, COLLIER COUNTY, AND/OR ANY OTHER**

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**JURISDICTION OR THE PREVENTION OF TORTIOUS ACTIVITIES;  
AND**

(c) ANY PROVISIONS OF THE CONDOMINIUM DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO HEALTH, SAFETY AND OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.

EACH UNIT OWNER (BY VIRTUE OF HIS ACCEPTANCE OF TITLE TO HIS UNIT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE CONDOMINIUM PROPERTY (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USES) SHALL BE BOUND BY THIS PROVISION AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED IN THIS PROVISION.

AS USED IN THIS SECTION, "ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.

11.9 Restraint upon Assignment of Shares in Assets. The share of a Unit Owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his/her Unit.

**12. INSURANCE.**

12.1 The Association shall obtain fire and extended coverage insurance, vandalism and malicious mischief insurance insuring all of the insurable improvements within the Common Elements together with such other insurance as the Association deems necessary in a company with an "A" rating or better, in any amount which shall be adequate as determined annually by the Board of Directors. The premiums for such coverage and other expenses in connection with said insurance shall be assessed against the Unit Owners as part of the Common Expenses. The named insured in all insurance policies upon the Condominium Property shall be the Association individually and as agent for the Unit Owners, without naming them, and first mortgagees, and to other mortgagees upon request.

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**12.2** Provision shall be made for the issuance of mortgagee endorsements and memoranda of insurance to mortgagees. Such policies shall provide that payments for losses thereunder by the insurer shall be made to the Insurance Trustee hereinafter described, and all policies and endorsements thereon shall be deposited with the Insurance Trustee unless as otherwise specified in Section 12.6 below.

**12.3 Liability Insurance.** Public liability insurance covering all of the Common Elements and insuring the Association and the Unit Owners as it and their interests appear, in such amounts as the Board of Directors may determine from time to time. Premiums for such insurance shall be chargeable as Common Expenses to be assessed against and paid by each of the Unit Owners in the proportions set forth above in Article 6. The Association shall not be responsible for purchasing liability insurance to cover accidents occurring within the individual Units.

#### **12.4 Casualty Insurance**

**12.4.1** The Association shall obtain casualty insurance insuring against vandalism, malicious mischief, fire, windstorm, flood, and extended coverage insurance, insuring all of the insurable improvements upon the land and all personal property included in the Common Elements and the Limited Common Elements for its maximum insurable replacement value, said value to be determined annually by the Board of Directors.

**12.4.2** Premiums for such insurance shall be chargeable as a Common Expense to be assessed against and paid by each of the Unit Owners in the proportion set forth above in Article 6. The Association shall annually make an analysis to determine replacement costs for insurance purposes for all of the then existing improvements for the ensuing year. Said insurance shall not insure against damage to the interior of individual units or personal property therein contained unless failure to do so would be contrary to Florida Statute 718.

**12.5 Additional Insurance.** The Association shall obtain such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable. Premiums for such insurance shall be chargeable as a Common Expense to be assessed against and paid by each of the Unit Owners in the proportions set forth above in Article 6. Other insurance shall include if applicable: a) Worker's Compensation Insurance and b) Directors' and Officers' liability insurance if available.

**12.6 Association – Shares of Proceeds.** Proceedings covering property which shall be in the amount of \$25,000.00 or less, shall be paid to the Condominium Association. The duty of the Association shall be to receive such proceeds as are paid and to hold them in trust for the benefit of the Unit Owners and Mortgagees in a like manner as the duty of the Insurance Trustee as set forth in Section 12.7 and 12.9.

**12.7 Insurance Trustee – Shares of Proceeds.** All insurance policies by the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees, as their interests may appear, and shall provide that all proceeds covering property losses which exceed

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\$25,000.00 shall be paid to an Insurance Trustee which shall be designated by the Board and which shall be a bank or trust company in Florida with trust powers. The Insurance Trustee shall not be liable for payment of premiums, the renewal or the sufficiency of policies or the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein and for the benefit of the Unit Owners and their Mortgagees in the following shares, which shares need not be set forth on the records of the Insurance Trustee:

**12.7.1 Common Elements.** Proceeds on account of damage to Common Elements – an undivided share for each Unit Owner, such share being the same as the undivided share in the Common Elements appurtenant to his Unit.

**12.7.2 Units.** Proceeds on account of damage to a Unit or Units shall be held in the following undivided shares:

**12.7.2.1** When the Condominium Building is to be restored, for the owners of damaged Units in proportion to the cost of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Association.

**12.7.2.2** When the Condominium Building is not to be restored, an undivided share for each Unit Owner, such share being the same as the undivided share in the Common Elements appurtenant to his Unit.

**12.8 Mortgages.** In the event a mortgagee endorsement has been issued as to a Unit, the share of that Unit Owner shall be held in trust for the mortgagee and the Unit Owner, as their interests may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except those proceeds paid to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.

**12.9 Distribution of Proceeds.** In the event a loss occurs for which proceeds of insurance policies are received in excess of \$25,000.00, proceeds under the policies shall be disbursed by the Insurance Trustee in the following manner:

**12.9.1 Expenses of the Trustee.** All expenses of the Insurance Trustee shall be paid first or provision made therefor.

**12.9.2 Reconstruction or Repair.** If the damage for which the proceeds are paid is to be repaired or reconstructed, the Insurance Trustee shall pay the proceeds to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners, each Owner's share being equal to the undivided interest in the Common Elements and Limited Common Elements appurtenant to his Unit. Such proceeds shall be paid to Unit Owners and their mortgagees jointly.

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**12.9.3 Failure to Reconstruct or Repair.** If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial Owners by the Insurance Trustee, each Owner's share being equal to the undivided interest in the Common Elements and the Limited Common Elements appurtenant to his Unit. Remittances shall be paid to Unit Owners and their mortgagees jointly.

**12.9.4 Certificate.** In making distribution to Unit Owners and their mortgagees, the Insurance Trustee may rely upon a certificate of the Association, executed by its President or Vice President and Secretary or Assistant Secretary; as to the names of the Unit Owners and their respective shares of the distribution.

**12.10 Agent for Association.** The Board of Directors of the Association shall irrevocably appoint one person as agent for the Unit Owners and for the holders of mortgages or other liens upon the Unit and for the owners of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

**12.11 Owners Individual Insurance Policies.**

**12.11.1** Unit Owners may obtain insurance coverage at their own expense to protect against claims due to accidents within or on his Unit and casualty insurance on the contents within such Unit. Said policies shall provide that the coverage afforded is in excess over the amount recoverable under any other policy covering the same property without rights of subrogation against the Association.

**12.11.2** All Unit Owners are required to obtain a policy for flood insurance naming the Condominium Association as an additional insured, with a flood coverage amount of \$100,000.00 or more, as determined by the Board of Directors of the Association.

**12.12 Extent of Coverage**

**12.12.1** All casualty policies issued to protect condominium buildings shall provide that the word "building" wherever used in the policy shall include, but shall not necessarily be limited to fixtures, installations or additions comprising that part of the building within the unfinished interior surfaces of the perimeter walls, floors and ceilings of the individual units initially installed or replacements thereof, in accordance with the original plans and specifications. With respect to the coverage provided for by this paragraph, the Unit Owners shall be considered additional insureds under the policy.

**12.12.2** All other property contained within the unfinished interior surfaces of the perimeter walls, floors and ceilings of the individual units shall be insured by the individual Unit Owners.

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**13. RECONSTRUCTION AFTER CASUALTY.** If any part of the Condominium Property shall be damaged by casualty, a decision as to whether or not it shall be reconstructed or repaired shall be determined in the following manner:

**13.1 Damage to Common Elements.** If the damage improvement is a Common Element, the damaged property shall be reconstructed or repaired by the Association unless it is determined in the manner elsewhere provided that the Condominium shall be terminated.

**13.2 Condominium Buildings – Lesser Damage.** If the damaged improvement is a Condominium Building and if the units to which less than fifty percent (50%) of the Common Elements are appurtenant are found by the Board to be untenable, the damaged property shall be reconstructed or repaired unless, within 60 days after the casualty, it is determined by agreement in the manner elsewhere provided that the Condominium shall be terminated.

**13.3 Condominium Buildings – Major Damage.** If the damaged improvement is a Condominium Building or Buildings and if the units to which more than fifty percent (50%) of the Common Elements and the Limited Common Elements are appurtenant are found by the Board of Directors to be untenable after the casualty, a decision as to whether the damaged property will be reconstructed and repaired or the condominium terminated shall be determined in the following manner:

**13.3.1** Immediately after the casualty the Association shall obtain reliable and detailed estimates of the cost to rebuild and repair.

**13.3.2** Immediately after the determination of the amount of insurance proceeds the Association shall give notice to all Unit Owners of the casualty, the extent of the damage, the estimated cost to rebuild or repair, the amount of insurance proceeds and the estimated amount of assessments required to pay the excess of the cost of reconstruction or repair over the amount of insurance proceeds. Such notice shall announce a meeting of Unit Owners to be held within thirty (30) days from the mailing of such notice.

**13.3.3** If the reconstruction and repair is approved at such meeting by the Owners of seventy-five percent (75%) of the Common Elements and Limited Common Elements, the damaged property shall be reconstructed or repaired; or, if not so approved, the Condominium shall be terminated without agreement and any proceeds from insurance or sale of Condominium Property shall be distributed as provided in Article 19 of this Declaration. Such approval may be expressed by vote or in writing filed with the Association at or prior to the meeting. The expense of such determination shall be assessed against all Unit Owners in proportion to their shares of the Common Elements and the Limited Common Elements.

**13.4 Certificate.** The Insurance Trustee may rely upon a certificate of the Association executed by its President or Vice President and Secretary or Assistant Secretary in determining whether the damaged property is to be reconstructed or repaired.

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**13.5 Plans and Specifications.** Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original improvements, portions of which are attached hereto as exhibits; or, if not, then according to plans and specifications approved by the Board of Directors of the Association and by the owners of not less than seventy-five percent (75%) of the Common Elements, including Institutional First Mortgagees, the owners of damaged Units and owners of Units whose plans are intended to be altered, which approvals shall not be unreasonably withheld.

**13.6 Responsibility.** If the damage is only to those parts of an individual Unit or Units for which the responsibility of maintenance and repair is that of the Unit Owner, then the Unit Owner shall be responsible for reconstruction and repair after casualty.

**13.7 Assessments to Reconstruct.** If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient notwithstanding anything to the contrary contained herein, assessments shall be made against all Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such assessments shall be in proportion to the Owner's share in Common Elements and the Limited Common Elements. The funds created by the payment of these assessments shall be returned over to the Insurance Trustee.

**14. USE RESTRICTIONS.** Use of the property submitted for condominium ownership shall be in accordance with the following use restrictions and reservations:

**14.1. Occupancy of Units; Single Family Residence.** A condominium unit shall be used only as a single family residence. As used in the Condominium Documents, "single family" means one natural person, a group of two or more natural persons who customarily reside together as a single family housekeeping unit, each of whom is related to each of the others by blood, marriage or adoption, or not more than two persons not so related, who customarily reside together as a single housekeeping unit. No more than six (6) persons may permanently occupy an "02" Unit. No more than seven (7) persons may permanently occupy an "03" Unit. No more than eight (8) persons may permanently occupy an "01" or an "04" Unit. No more than nine (9) persons may permanently occupy a "PH" Unit. For purposes of these Condominium Documents, "permanently occupy" means to sleep in the unit for more than thirty (30) nights during a calendar year. No unit may be divided or subdivided into a smaller unit nor any portion sold or otherwise transferred. No person may occupy a unit as a Unit Owner, tenant, or family member thereof (i.e. occupy the unit on an overnight basis for more than thirty (30) days in a calendar year) unless said person's occupancy has been specifically approved by the Association, through the Board of Directors. In considering such requests, the Board may consider factors set forth in Articles 16 and 17 hereof, and may charge a reasonable fee for review of occupancy requests. Visitation by guests are governed by Article 15 of this Declaration of Condominium. Units may not be used for commercial or business purposes. Owners (and their family members and tenants) may use Units for "home office" or "telecommuting" purposes, provided that such uses do not involve customers or clients coming into

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the Condominium, the postage of any signage in the Condominium, the storage of equipment, products, or materials in the Condominium.

**14.2. Nuisance.** The condominium units shall not be used for any immoral, improper or unlawful purpose and no use or behavior shall be allowed which will create a public or private nuisance, nor which shall unreasonably interfere with the quiet possession or enjoyment of the condominium property, nor which becomes a source of annoyance to the condominium residents. All property shall be kept in a neat and orderly manner. The common elements shall be used for the purpose of furnishing services and facilities as herein provided for the welfare and enjoyment of such Unit Owners. The Condominium Property shall be used in accordance with all federal, state, and local laws and ordinances.

**14.3. Additional Restrictions.** Incorporated as part of the Condominium Documents are the Rules and Regulations, which may be amended from time to time by the Board of Directors. Amendments to the Rules and Regulations may, but need not be recorded in the Public Records. Additional use restrictions are also contained elsewhere in the Condominium Documents.

**15. GUEST OCCUPANCY.** A "guest" is defined as a person who enters upon the condominium property at the invitation of a Unit Owner or tenant, (or their respective families) for the purpose of visiting the Unit Owner or tenant (or their respective families), occupying the condominium unit for less than thirty days during any calendar year, or utilizing the Condominium Property. Use or visitation without consideration distinguishes a guest usage from a tenancy. There are various types of guest uses, which are regulated as follows:

**15.1 Non-Overnight Visitation by Guests When Unit Owner or Tenant is in Residence.** There is no restriction against this type of guest usage, provided that same does not create a nuisance or annoyance to other condominium residents, nor prevent their peaceful enjoyment of the premises. The Association may restrict or prohibit guest visitation by convicted felons, including but not limited to registered sex offenders and persons who have been convicted of narcotic offenses. Non-overnight guests need not be registered with the Association. Non-overnight guests shall be entitled to use the Condominium facilities only when accompanied by the Unit Owner or tenant (or an adult resident member of the Unit Owner's or tenant's family). The Board may establish additional restrictions on non-overnight guest usage of Condominium facilities, such as maximum numbers of guests who may use common facilities, maximum numbers of common facility usages per guest, and the like.

**15.2 Overnight Guests When Unit Owner or Tenant is in Residence.** Unit Owners and tenants (and their respective families) may have related or unrelated overnight guests, so long as the Unit Owner or tenant is in simultaneous residence. Overnight guests must be registered with Security or the Manager. The Association may restrict or prohibit guest visitation by convicted felons, including by not limited to registered sex offenders and persons who have been convicted of narcotic offenses. Under no circumstances may more than six (6) persons (including the Unit Owner or tenant, and their families) sleep overnight in an "02" Unit, no more than seven

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(7) people in an "03" Unit, no more than eight (8) persons in a an "01" or an "04" Unit, and no more than nine (9) persons in a "PH" Unit. Children under age 10 are excluded from the computation.

**15.3 Non-Overnight Guests in the Absence of the Unit Owner or Tenant.** Unit Owners and tenants are not permitted to have non-overnight guests when the Unit Owner or tenant is absent from the condominium. Unit Owners and tenants may have their units inspected by caretakers, family members, etc. However, such individuals shall not be permitted to use Condominium facilities, such as recreational facilities (pool, parking areas, beach access, etc.).

**15.4 Overnight Guests in the Absence of the Unit Owner or Tenant.** Tenants are not permitted to have overnight guests (related or non-related) in the absence of the tenants' simultaneous residence. Unit Owners are permitted to have overnight guests in the absence of the Unit Owner provided that reasonable advance notice is given to the Association and such guests register with Security or the Manager upon arrival. Maximum occupancy is as limited by Article 15.2.

**15.5 Additional Board Authority.** The Board may promulgate such rules, policies, and procedures as are reasonable and necessary to implement this Article and prevent circumventing rental restrictions.

**16. LEASING.** The lease of a unit is defined as occupancy of the unit by any person other than the Unit Owner, whether pursuant to verbal or written agreement, where said occupancy by the non-owner involves consideration. The term "leasing" and "renting" shall be used interchangeably for the purpose of this Declaration of Condominium. The term "tenant" and "lessee" shall likewise be used interchangeably. Should a Unit Owner wish to lease his unit, he shall furnish the Association with a copy of the proposed lease and the name of the proposed lessee, as well as all proposed occupants. The Association shall have forty-five (45) days from the receipt of notice within which to approve or disapprove of the proposed lease or proposed lessees or occupants. The Association shall give the Unit Owner written notice of its decision within said period. Failure to notify the Unit Owner shall be deemed an approval. No individual rooms may be rented and no transient tenants may be accommodated. "Rent-sharing" and subleasing is prohibited. All leases shall be for a minimum period of ninety (90) consecutive days (or three months) and for a maximum period of one (1) year. Units may not be leased more than three (3) times during any twelve (12) month period.

**16.1 Board Right of Approval.** The Board of Directors shall have the authority to approve all leases and renewals or extensions thereof, which authority may be delegated to a committee or agent. No person may occupy a unit as a tenant, family member of a tenant, or otherwise without prior approval of the Board of Directors. The Board shall have the authority to promulgate or use a uniform lease application and require such other information from the proposed tenant and all proposed occupants as the Board deems appropriate under the circumstances. The Board may require an interview of any proposed tenant and their spouse, if any, and all proposed occupants of a unit, as a condition for approval.

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**16.2 Tenant Conduct, Remedies.** All leases shall be on a uniform form of lease or lease addendum if so promulgated by the Association. Uniform leases, addenda and all other leases will provide or be deemed to provide that the tenants have read and agreed to be bound by the Declaration of Condominium, Articles of Incorporation, By-Laws and Rules and Regulations as the same may be amended from time to time, (the "Condominium Documents"). The uniform lease or addendum and other leases shall further provide or be deemed to provide that any violation of the Condominium Documents shall constitute a material breach of the lease and subject the tenant to eviction as well as any other remedy afforded by the Condominium Documents or Florida law. If a tenant fails to abide by the Condominium Documents, the Unit Owner(s) shall be responsible for the conduct of the tenant and shall be subject to all remedies set forth in the Condominium Documents and Florida law, without waiver of any remedy available to the Association as to the tenant. The Unit Owner shall have the duty to bring his tenant's conduct into compliance with the Condominium Documents by whatever action is necessary, including without limitation the institution of eviction proceedings without notice to cure, where legally permissible. If the Unit Owner fails to bring the conduct of the tenant into compliance with the Condominium Documents, the Association shall have the authority to act as agent of the Unit Owner to undertake whatever action is necessary to abate the tenants' noncompliance with the Condominium Documents, including without limitation the right to institute an action for eviction against the tenant in the name of the Association, or as agent of the Unit Owner. The Association shall have the right to recover any costs or fees, including attorney's fees, incurred in connection with such actions from the Unit Owner which shall be secured by a continuing lien in the same manner as assessment charges.

**16.3 Security Deposit.** The Board of Directors shall have the authority, as a condition of granting approval to a lease or renewal or extension thereof, to require that a prospective lessee or Unit Owner place a security deposit in an amount not to exceed the equivalent of one month's rent into an escrow account maintained by the Association to protect against damage to the common elements or Association property. Payment of interest, claims against the deposit, refunds and disputes under this paragraph shall be handled in the same fashion as provided in Part II of Chapter 83 of the Florida Statutes (2000) as amended from time to time.

**16.4 Approval Process, Disapproval.** Any Unit Owner intending to lease his unit shall submit an application and any other requested information and fees at least sixty (60) days in advance of the commencement of the lease or renewal or extension term. Upon receipt of all information and fees required by Association, the Association shall have the duty to approve or disapprove all proposed leases within forty-five (45) days of receipt of such information for approval and the completion of the tenant interview (if required), by sending written notification to the Unit Owner within such time frame. All requests for approval not acted upon within forty-five (45) days shall be deemed approved. Applications for renewals or extensions of lease agreements shall be submitted at least forty-five (45) days in advance of the expiration of the lease agreement. If the Association disapproves a proposed lease or renewal or extension, the Unit Owner shall receive a short statement indicating the reason for the disapproval, and the lease shall not be made, renewed or extended. The Association shall neither have a duty to provide an alternate lessee nor shall it assume any responsibility for the denial of a lease application if any denial is based upon any of the following factors:

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16.4.1 The person seeking approval (which shall hereinafter include all proposed occupants) has been convicted of a crime involving violence to persons, a crime demonstrating dishonesty or moral turpitude or any felony;

16.4.2 The application for approval on its face, facts discovered in connection with the Association's investigation, or the conduct of the applicant, indicates that the person seeking approval intends to conduct himself in a manner inconsistent with the Condominium Documents. By way of example, but not limitation, a tenant taking possession of the premises prior to approval by the Association as provided for herein shall constitute a presumption that the applicant's conduct is inconsistent with the Condominium Documents;

16.4.3 The person seeking approval has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his conduct in other housing facilities or associations, or by his conduct in this Condominium as a tenant, Unit Owner or occupant of a unit;

16.4.4 The person seeking approval has failed to provide the information, fees or appearances required to process the application in a timely manner;

16.4.5 All assessments, fines and other charges against the unit and/or Unit Owner have not been paid in full.

16.5 **Liability.** The liability of the Unit Owner under the Condominium Documents shall continue notwithstanding the fact that he may have leased or rented his interest in the unit as provided herein.

16.6 **Association Fee.** The Unit Owner or lessee seeking approval of a lease of a unit parcel shall pay a transfer fee for each applicant in an amount determined by the Board but not exceeding the maximum permitted by law per transaction. No charge shall be made in connection with an extension or renewal of a lease.

17. **MAINTENANCE OF COMMUNITY INTERESTS.** In order to maintain a community of congenial Unit Owners who are financially responsible, and thus protect the value of the Units, the use and transfer of Units by any owner shall be subject to the following provisions as long as the Condominium exists upon the land, which provisions each Unit Owner covenants to observe:

17.1 **Forms of Ownership:**

17.1.1 **Ownership By Individuals.** A unit may be owned by one natural person who has qualified and been approved as elsewhere provided herein.

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**17.1.2 Co-Ownership.** Co-ownership of units may be permitted. If the co-owners are other than husband and wife, the Board shall condition its approval upon the designation of one approved natural person as "primary occupant." The use of the unit by other persons shall be as if the primary occupant was the only actual owner. Any changes in the primary occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of the Condominium Documents. No more than one such change will be approved in any calendar year. No time share estates may be created. "House Sharing" by multiple families is prohibited.

**17.1.3 Ownership by Corporations, Partnerships or Trusts.** A unit may be owned in trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided elsewhere herein. The intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the unit may be used as a short-term or transient accommodations for several individuals or families. The approval of a partnership, trustee, or corporation or other entity as a Unit Owner shall be conditioned upon designation by the owner of one natural person to be the "primary occupant." The use of the unit by other persons shall be as if the primary occupant were the only actual owner. Any change in this primary occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of the Condominium Documents. No more than one such change will be approved in any twelve (12) month period.

**17.1.4 Life Estate.** A unit may be subject to a life estate, either by operation of law or by a voluntary conveyance approved as provided below. In that event, the life tenant shall be the only member from such unit, and occupancy of the unit shall be as if the life tenant were the only owner. The life tenant shall be liable for all assessments and charges against the unit. Any vote, consent or approval required by the Condominium Documents or law may be given by the life tenant alone, and the vote, consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners as described in Article 17.1.2 for purposes of determining voting and occupancy rights.

## **17.2 Transfers Subject to Approval.**

**17.2.1 Sale or Other Transfer.** No Unit Owner may dispose of a Unit or any interest in same by sale or other title transfer, without prior written approval of the Board of Directors. No Unit Owner may dispose of a Unit or any interest therein by other means (including agreement for deed, installment sales contract, lease-option or other similar transactions) without prior written approval by the Board of Directors.

**17.2.2 Gift.** If any Unit Owner shall acquire his title by gift, the continuance of his ownership of his Unit shall be subject to the approval of the Board of Directors. Notice must be given at least forty-five (45) days prior to the intended closing or title transfer date.

**17.2.3 Devise or Inheritance.** If any Unit Owner shall acquire his title by devise or inheritance, the continuance of his ownership of his Unit shall be subject to the approval of the Board of Directors. If any Unit Owner acquires his title by devise or inheritance, his right to

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occupy or use the unit shall be subject to the approval of the Board of Directors. Approval to own or occupy may not be denied to any devisee or heir who was the prior owner's lawful spouse at the time of death, or was related to the deceased owner by blood or by adoption.

**17.2.4 Other Transfers.** If any Unit Owner shall acquire his title by any manner not considered in the foregoing subsections, the continuance of his ownership of such unit shall be subject to the approval of the Board of Directors. If any person acquires title in any manner not considered in the foregoing subsections, that person shall have no right to occupy or use the unit before being approved by the Board of Directors under the procedures outlined below.

**17.3 Approval by Association.** The approval of the Association that is required for the transfer of ownership of Units shall be obtained in the following manner:

**17.3.1 Notice to Board of Directors.**

**17.3.1.1 Sale.** A Unit Owner intending to make a bona fide sale of his Unit or any interest in it shall give to the Board of Directors notice of such intention, together with the name and address of the intended purchaser, an executed copy of the purchase contract and its exhibits and such other information concerning the intended purchaser and the transaction as the Board of Directors may reasonably require. The Board may require, without limitation, credit history, a criminal background investigation, past residency or employment verification, personal references, and a personal interview with the purchaser(s) and all proposed unit occupants. Such notice at the Unit Owner's option may include a demand by the Unit Owner that the Association furnish a purchaser of the Unit if the proposed purchaser is not approved.

**17.3.1.2 Gift, Devise or Inheritance; Other Transfers.** A Unit Owner who has obtained his title by gift, devise or inheritance, or by any other manner not previously considered, shall give to the Board of Directors notice of the acquiring of his title, together with such information concerning the Unit Owner as the Board of Directors may reasonably require (including that set forth in Article 17.3.1.1 hereof), and a certified copy of the instrument evidencing the owner's title.

**17.3.1.3 Failure To Give Notice.** If the above required notice to the Board of Directors is not given, then at any time after receiving knowledge of a transaction or event transferring ownership or possession of a Unit, the Board of Directors at its election and without notice may approve or disapprove the transaction or ownership. If the Board of Directors disapproves the transaction or ownership, the Board of Directors shall proceed as if it had received the required notice on the date of such disapproval.

**17.3.2 Certificate of Approval.**

**17.3.2.1 Sale.** If the proposed transaction is a sale, then within forty-five (45) days after receipt of such notice and all information required by the Association,

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including a personal interview if requested by Board of Directors, the Board of Directors must either approve or disapprove the proposed transaction.

**17.3.2.2 Gift, Devise or Inheritance; other Transfers.** If the Unit Owner giving notice has acquired his title by gift, devise or inheritance, or in any other manner, then within thirty (30) days after receipt of such notice and information the Board of Directors, including a personal interview if requested by the Board of Directors must either approve or disapprove the continuance of the Unit Owner's ownership of his Unit.

**17.3.2.3 Approval of Occupant.** If the Unit Owner or purchaser is a corporation, partnership, trust, some other entity, or more than one individual who are not husband and wife, the approval of ownership by the corporation, partnership, trust, other entity or multiple persons shall be conditioned upon approval of a Primary Occupant.

**17.4 Disapproval by Board of Directors.** If the Board of Directors shall disapprove a transfer of ownership of a Unit, the matter shall be disposed of in the following manner:

**17.4.1 Sale.** If the proposed transaction is a sale and if the notice of sale given by the Unit Owner shall so demand, then within forty-five (45) days after receipt of such notice and information the Association shall deliver or mail by certified mail to the Unit Owner an agreement to purchase the Unit concerned by a purchaser approved by the Board of Directors (including the Association itself) who will purchase and to whom the Unit Owner must sell the Unit upon the following terms:

**17.4.1.1** At the option of the Association to be stated in the agreement, the price to be paid shall be that stated in the disapproved contract to sell or shall be the fair market value determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers, one of whom shall be appointed by the Unit Owner and the other of whom shall be appointed by the Association, who shall base their determination upon an average of their appraisals of the Unit; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be shared by the parties.

**17.4.1.2** The purchase price shall be paid in cash. The sale shall be closed within forty-five (45) days after the delivery or mailing of the agreement to purchase, or within ten (10) days after the determination of the sale price if such is by arbitration, whichever is the later. If the Association shall fail to provide a purchaser upon the demand of the Unit Owner in the manner provided, or if a purchaser furnished by the Association shall default in his agreement to purchase, then notwithstanding the disapproval, the proposed transaction shall be deemed to have been approved and the Association shall furnish a certificate of approval.

**17.4.2 Gifts, Devise or Inheritance; Other Transfers.** If the Unit Owner giving notice has acquired his title by gift, devise or inheritance, or in any other manner, then within

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thirty (30) days after receipt from the Unit Owner of the notice and information required to be furnished, the Board of Directors shall deliver or mail by certified mail to the Unit Owner an agreement to purchase the Unit concerned by a purchaser approved by the Board of Directors (including the Association itself) who will purchase and to whom the Unit Owner must sell the Unit upon the following terms:

**17.4.2.1** The sale price shall be the fair market value determined by agreement between the seller and purchaser within thirty (30) days from the delivery or mailing of such agreement. In the absence of agreement as to price, the price shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers, one of whom shall be appointed by the Association and the other of whom shall be appointed by the Unit Owner, who shall base their determination upon an average of their appraisals of the Unit; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be shared by the parties.

**17.4.2.2** The purchase price shall be paid in cash. The sale shall be closed within ten (10) days following the determination of the sale price. If the Board of Directors shall fail to provide a purchaser as required by this instrument, or if a purchaser furnished by the Association shall default in his agreement to purchase, then notwithstanding the disapproval such ownership shall be deemed to have been approved, and the Association shall furnish a certificate of approval as elsewhere provided, which shall be recorded in the public records of Collier County, Florida, at the expense of the Unit Owner.

**17.4.3 Disapproval for Good Cause.** Approval of the Association for title transfers shall be withheld only if a majority of the whole Board so votes. The Board shall consider the following factors and may confer freely with counsel in reaching its decision. Only the following may be deemed to constitute good cause for disapproval:

**17.4.3.1** The application for approval on its face, or subsequent investigation thereof, indicates that the person seeking approval (which shall hereinafter include all proposed occupants) intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the condominium.

**17.4.3.2** The person seeking approval has been convicted of a crime involving violence to persons, a crime demonstrating dishonesty or moral turpitude or any felony;

**17.4.3.3** The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts.

**17.4.3.4** The person seeking approval has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his conduct in

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other social organizations or associations, or by his conduct in this condominium or other residences as a tenant, or owner;

17.4.3.5 The person seeking approval failed to provide the information, fees or appearance required to process the application in a timely manner;

17.4.3.6 The Unit Owner requesting the transfer has had fines assessed against him or her which have not been paid; or

17.4.3.7 All assessments and other charges against the unit have not been paid in full.

If the Board disapproves a prospective transfer on the grounds for disapproval set forth above, the Association shall have no duty to purchase the unit or furnish an alternate purchaser, and the transaction shall not be made.

17.5 **Transfer Fee.** The Association may charge a processing fee for the approval of transfers of title. The fee may not exceed the maximum permitted by law per transaction.

17.6 **Unauthorized Transactions.** Any sale, lease, mortgage or other transfer of ownership or possession not authorized pursuant to the terms of this Declaration shall be voidable unless subsequently approved by the Association.

18. **METHOD OF AMENDMENT OF DECLARATION.** Except as elsewhere provided otherwise, this Declaration of Condominium may be amended in the following manner:

18.1 **Proposal of Amendments.** An amendment may be proposed by either a majority of the Directors or by twenty-five percent (25%) of the entire voting interests.

18.2 **Proposed Amendment Format.** Proposals to amend the existing Declaration of Condominium shall contain the full text of the article to be amended. New words shall be underlined and words to be deleted shall be ~~lined through~~ with hyphens. If the proposed change is so extensive that this procedure would hinder rather than assist understanding, a notation must be inserted immediately preceding the proposed amendment saying, "SUBSTANTIAL REWORDING OF DECLARATION OF CONDOMINIUM. SEE ARTICLE NUMBER FOR PRESENT TEXT."

18.3 **Notice.** Copies of proposed amendments shall be included in the notice of any meeting at which a proposed amendment is to be considered or in connection with documentation for action without a meeting.

18.4 **Adoption of Amendments.** Except as provided specifically to the contents elsewhere herein, a resolution for the adoption of a proposed amendment may be adopted by a vote of seventy-five percent (75%) of the voting interests of the Association present (in person or by

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proxy) and voting at a duly noticed meeting at which a quorum is present, or by the written agreement of seventy-five percent (75%) of the entire voting interests. Amendments correcting errors, omissions or scrivener's errors may be executed by the officers of the Association, upon Board approval, without need for Association membership vote.

**18.5 Effective Date.** An amendment when adopted shall become effective after being recorded in the Collier County Public Records according to law.

**18.6 Automatic Amendment.** Whenever Chapter 718, Florida Statutes (2000) Chapter 617, Florida Statutes (2000) or other applicable statutes or administrative regulations, as amended from time to time, are amended to impose procedural requirements less stringent than set forth in this Declaration of Condominium, the Board may operate the Association pursuant to the less stringent requirements. The Board of Directors, without a vote of the owners, may adopt by majority vote, amendments to this Declaration of Condominium as the Board deems necessary to comply with such operational changes as may be enacted by future amendments to Chapters 607, 617, and 718 of the Florida Statutes (2000), or such other statutes or administrative regulations as required for the operation of the Association, all as amended from time to time.

**18.7. Proviso.** Provided, however, that no amendment shall change the configuration of any unit or the share in the common elements appurtenant to it, or increase the owner's share of the common expenses, unless the record owner of the unit concerned and all record owners of the mortgages on such apartment shall join in the execution of the amendment, and all other Unit Owners approve the amendment.

**19. TERMINATION.** The Condominium shall be terminated in the following manner:

**19.1** If all Unit Owners and the holders of all liens and mortgages upon all of the Condominium Parcels executed and duly record an instrument terminating the Condominium Property, or if "major damage" occurs as defined herein and subject to Article 13.3, the Condominium Property shall be removed from the provisions of the Condominium Act and thereafter owned in common by the Unit Owners. The undivided interest in the Property owned in common by each Unit Owners shall then be the percentage of the undivided interest previously owned by such Owner in the Common Elements, and any liens which encumbered any Condominium Parcel shall be transferred to said undivided interest of the Unit Owner in the Property.

**19.2** If the Condominium is terminated, the Owners of the Unit shall continue to be responsible for their share of the Common Expenses attributable to the Condominium Property and all other Association expenses, as set forth in the Declaration and the By-Laws.

**19.3** If the Owners of at least seventy-five (75%) percent of the Common Elements elect to terminate, they shall have the option to buy the undivided shares in the Common Elements held by the other Owners for a period of sixty (60) days from the date of the meeting wherein the election to terminate was held. The purchase price shall be the fair market value of the

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common elements purchased as determined in the following manner: A majority of the owners desiring to purchase the undivided shares in the common elements shall as a group choose one appraisal firm who does business in Collier County Florida, a majority of the owners desiring to sell their undivided shares in the common element shall as a group select one appraisal firm who does business in Collier County Florida, together these appraisal firms select a third appraiser who shall be a MAI appraiser. This third appraiser shall determine the fair market value of the undivided shares in the common elements being sold. The price shall be paid in cash within sixty (60) days of the determination of the same.

**19.4 Amendment.** This section concerning termination cannot be amended without the consent of ninety-five (95%) percent of all Unit Owners and of all record owners of first mortgages upon the Units.

## **20. CONDEMNATION.**

In case at any time or times the Condominium Property or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all proceeds paid for or on account of such taking shall be payable to the Condominium Association as trustee for all Unit Owners and mortgagees according to the loss or damage to their respective interests in the Condominium Property, as follows:

**20.1. All Units Remain Tenantable.** If such taking does not reduce or make untenable any of the Units, said proceeds shall be used promptly to replace or restore improvements unless vote of seventy-five percent (75%) of the Voting Interests vote otherwise. In the event seventy-five percent (75%) of the Voting Interests do not approve the replacement and restoration of the property so taken, the proceeds shall be distributed to the Unit Owners in proportion to the impairment of their respective interests.

**20.2 Some Units are Made Untenantable.** If such taking reduces or makes untenable any of the Units, the proceeds, shall be distributed to the Unit Owners and mortgagees affected by such taking jointly and in proportion to the impairment of their respective interests. The shares in the Common Elements appurtenant to the Units which continue as part of the Condominium shall be equitably adjusted to distribute the ownership of the Common Elements among the reduced number of Owners.

**20.3 All Units are Untenantable.** If such reduces or makes untenable all of the Units, the proceeds shall be distributed by the Association in the same manner as insurance proceeds as provided above, unless seventy-five percent (75%) the Voting Interests vote to restore or replace the portions of the Condominium Property so taken. In the event said Voting Interests approve the restoration and replacement of said property, the Association shall disburse the award to contractors engaged in such replacement and restoration in appropriate progress payments; provided, however, any such replacement or restoration must be according to plans and specifications approved by the Board of Directors of the Association and by the owners of not less than seventy-five percent (75%) of the Voting Interests. If the award is not sufficient to pay the cost

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of such replacement and restoration, then additional assessments may be made against Unit Owners as provided in the By-Laws.

## 21. COMPLIANCE AND DEFAULT.

**21.1. Duty to Comply; Right to Sue.** Each Unit Owner, his tenants and guests, and the Association shall be governed by and shall comply with the provisions of the Condominium Act, this Declaration, the documents creating the Association, the By-Laws and the Rules and Regulations. Action for damages or for injunctive relief, or both, for failure to comply may be brought by the Association or by a Unit Owner against:

21.1.1 The Association;

21.1.2 A Unit Owner; or

21.1.3 Anyone who occupies a unit as a tenant or is a guest in a unit.

**21.2. Waiver of Rights.** The failure of the Association to enforce any right, provision, covenant or condition which may be granted by the Condominium Documents shall not constitute a waiver of the right of the Association to enforce such right, provision, covenant or condition in the future. A provision of the Condominium Act may not be waived if the waiver would adversely affect the rights of the Unit Owner or defeat the purpose of the provision, except that Unit Owners or Directors may waive notice of specific meetings as provided in the By-Laws.

**21.3. Attorney's Fees.** In any legal proceeding arising out of an alleged failure of a Unit Owner, tenant, guest, or invitee or the Association to comply with the requirements of the Condominium Act or the Condominium Documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs and expenses of the proceeding and a reasonable attorney's fee before trial, at trial and on appeal. The Association may also recover attorney's fees it incurs because of noncompliance with the Condominium Documents in cases where no court action is filed including, but not limited to, arbitration and pre-litigation fees incurred in the collection of delinquent assessments, and fees reasonably incurred by the Association in obtaining compliance with the Condominium Documents. Said costs and fees shall be secured by a lien for charges, as provided in Article 10.8 hereof.

**21.4. No Election of Remedies.** All rights, remedies and privileges granted to the Association or Unit Owners under any terms, provisions, covenants, or conditions of the Condominium Documents shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising such other additional rights, remedies, or privileges as may be granted by the Condominium Documents, or at law or in equity.

## 21.5. Notice of Lien or Suit.

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**21.5.1 Notice of Lien.** A Unit Owner shall give to the Association written notice of every lien upon his unit other than for permitted first mortgages, taxes and special assessments, within five (5) days after the Unit Owner receives actual notice of the attachment thereof.

**21.5.2 Notice of Suit.** A Unit Owner shall give notice, in writing, to the Association of every suit or other proceeding which may affect the title to his unit, such notice to be given five (5) days after the Unit Owner receives actual knowledge thereof.

**21.5.3 Failure to Comply.** Failure of an owner to comply with this Section 21.5 will not affect the validity of any judicial suit, however, the failure may render the owner liable to any party injured by such failure.

## **22. MEMBERSHIP IN PELICAN BAY OF NAPLES FOUNDATION, INC.; BAY COLONY COMMUNITY ASSOCIATION, INC.**

**22.1 The Foundation.** Each Unit Owner is required to be a member of the Pelican Bay of Naples Foundation, Inc. ("Foundation") which provides certain common facilities and services to all Pelican Bay residents. Assessments are levied annually by the Foundation, but are to be made payable to the Condominium Association for remittance to the Foundation. Each unit is entitled to one vote in Foundation matters, as provided in the Foundation Governing Documents, as amended from time to time. Foundation assessments are payable on an equal basis (i.e. not weighted as are common expenses of this Condominium). Foundation assessments also include bulk cable television, which is obtained through the Foundation. The Foundation also has certain architectural approval rights regarding modifications to the Condominium Property.

**22.2 BCCA.** Membership is also mandatory in Bay Colony Community Association, Inc. ("BCCA"). BCCA provides certain common facilities and security services to residents of the Bay Colony section of Pelican Bay. BCCA also has certain architectural approval rights regarding modifications to the Condominium Property. Voting rights are as set forth in the BCCA Governing Documents. Assessments levied by BCCA are collected by the Condominium Association.

**22.3 Incorporation of Foundation and BCCA Governing Documents.** Unit Owners in the Contessa, as members of the Foundation and BCCA are expected to retain a current set of Governing Documents for both organizations. The Governing Documents for these organizations specify rights and responsibilities affiliated with membership in those Association. Further, these Governing Documents may impose additional restrictive covenants, additional to those set forth in these Condominium Documents, which may govern use of the Condominium Property.

## **23. MISCELLANEOUS PROVISIONS.**

Amended and Restated Declaration of Condominium  
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23.1. The covenants and restrictions as herein contained, or forming a part of the Condominium Documents, shall be deemed to run with the land.

23.2. If any provision of the Condominium Documents hereto, as the same now exist or as may be later amended or any portion thereof, shall be held invalid by any Court, the validity of the remainder of said Condominium Documents shall remain in full force and effect.

23.3. These Condominium Documents shall be binding upon the heirs, nominees, successors, administrators, executors and assigns of all Unit Owners.

23.4. All notices shall be given as provided in the By-Laws.

23.5. There shall be no limitation upon sale, lease or occupancy of any unit based upon race, creed, color, sex, religion, national origin, handicap or familial status. The Association may make reasonable accommodations, including reasonable waiver of the covenants and restrictions of the Condominium Documents, when necessary to afford handicapped individuals the opportunity to enjoy the condominium premises.

23.6. The Developer granted to each Unit Owner a non-exclusive easement for streets, walks and other rights of way serving the unit as a part of the common elements. All liens and leaseholds shall be subordinate and subsequent to the rights of easement herein granted to each Unit Owner.

23.7. All persons joining this Declaration subjects his interest to the provisions of this Declaration and the provisions of Chapter 718, Florida Statutes, as now or hereafter amended.

23.8. In the event of a conflict between any provision of this Declaration and the Condominium Act, the Condominium Act, Section 718, Florida Statutes, shall control. In the event of a conflict between this Declaration and the other Condominium Documents, same shall be governed as provided in the By-Laws.

23.9. The Board of Directors of the Association shall be responsible for interpreting the provisions of this Declaration and of any exhibits attached hereto.

23.10. The headings and captions used in the Condominium Documents are solely for convenience sake and shall not be considered a limitation of any nature, in interpreting the Condominium Documents.

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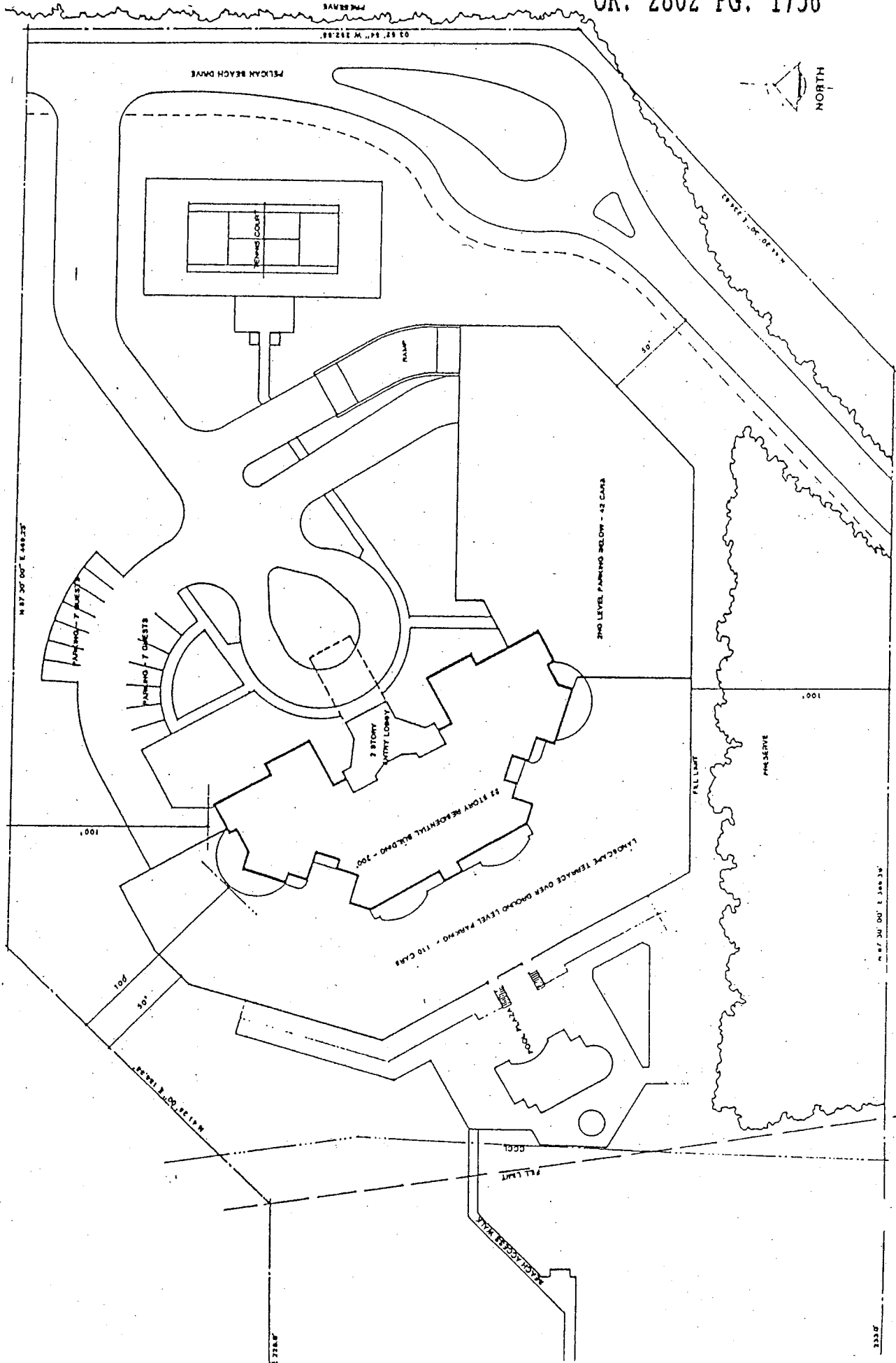
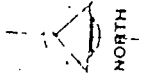


Exhibit "A" to the Amended and Restated Declaration of Condominium

COVERED PARKING

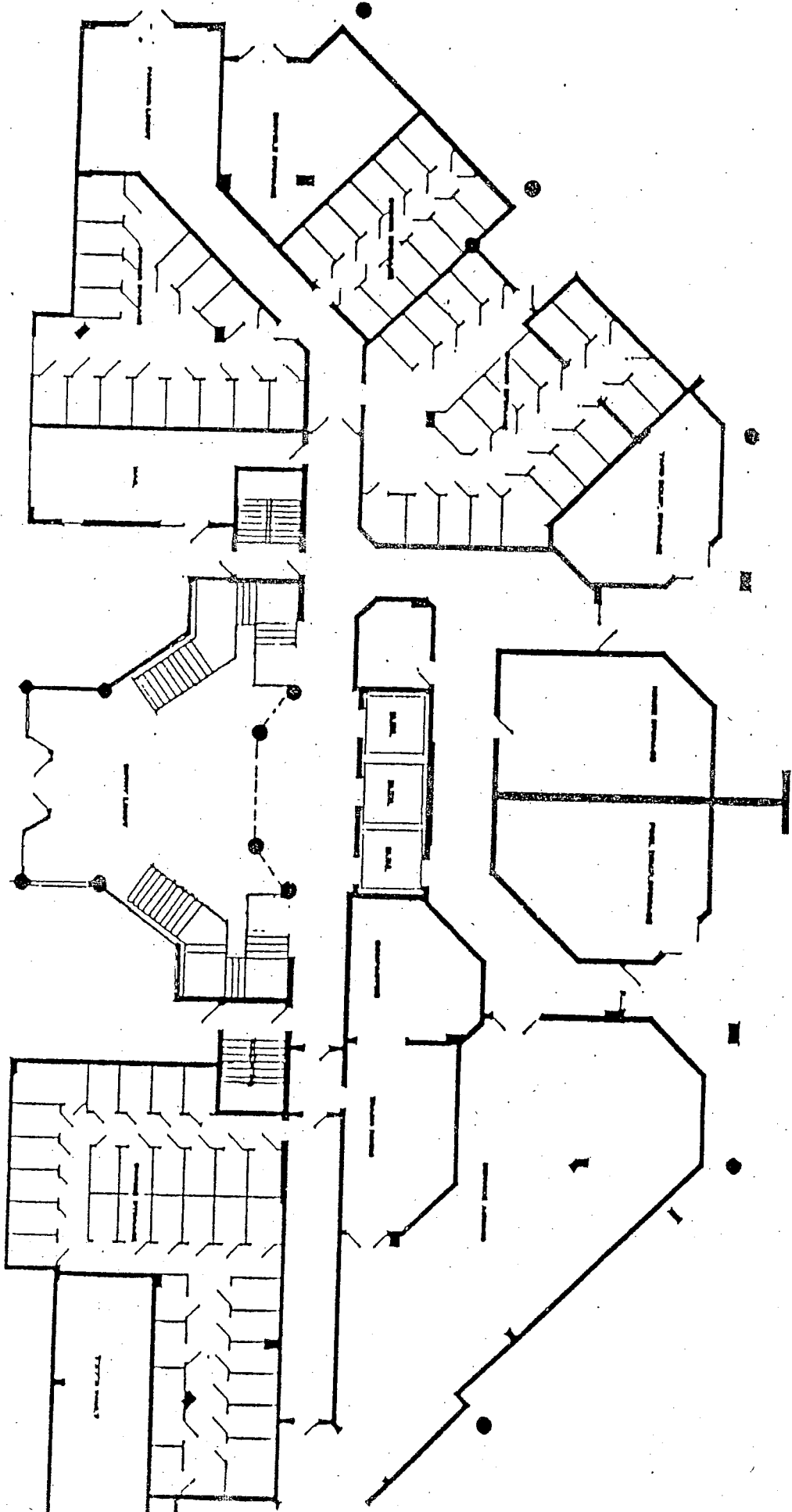
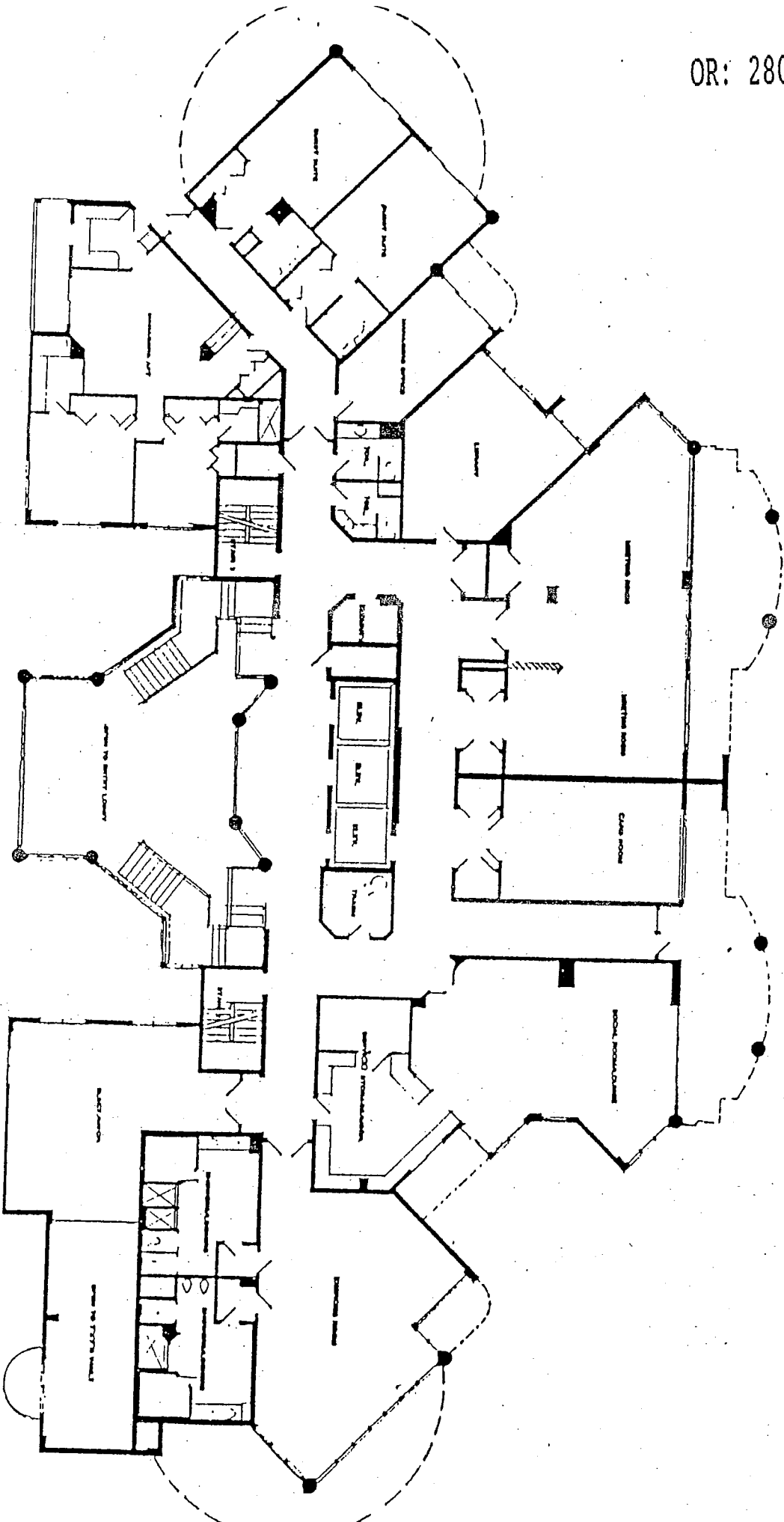


Exhibit "A" to the Amended and Restated Declaration of Condominium



ABILITY LEVEL

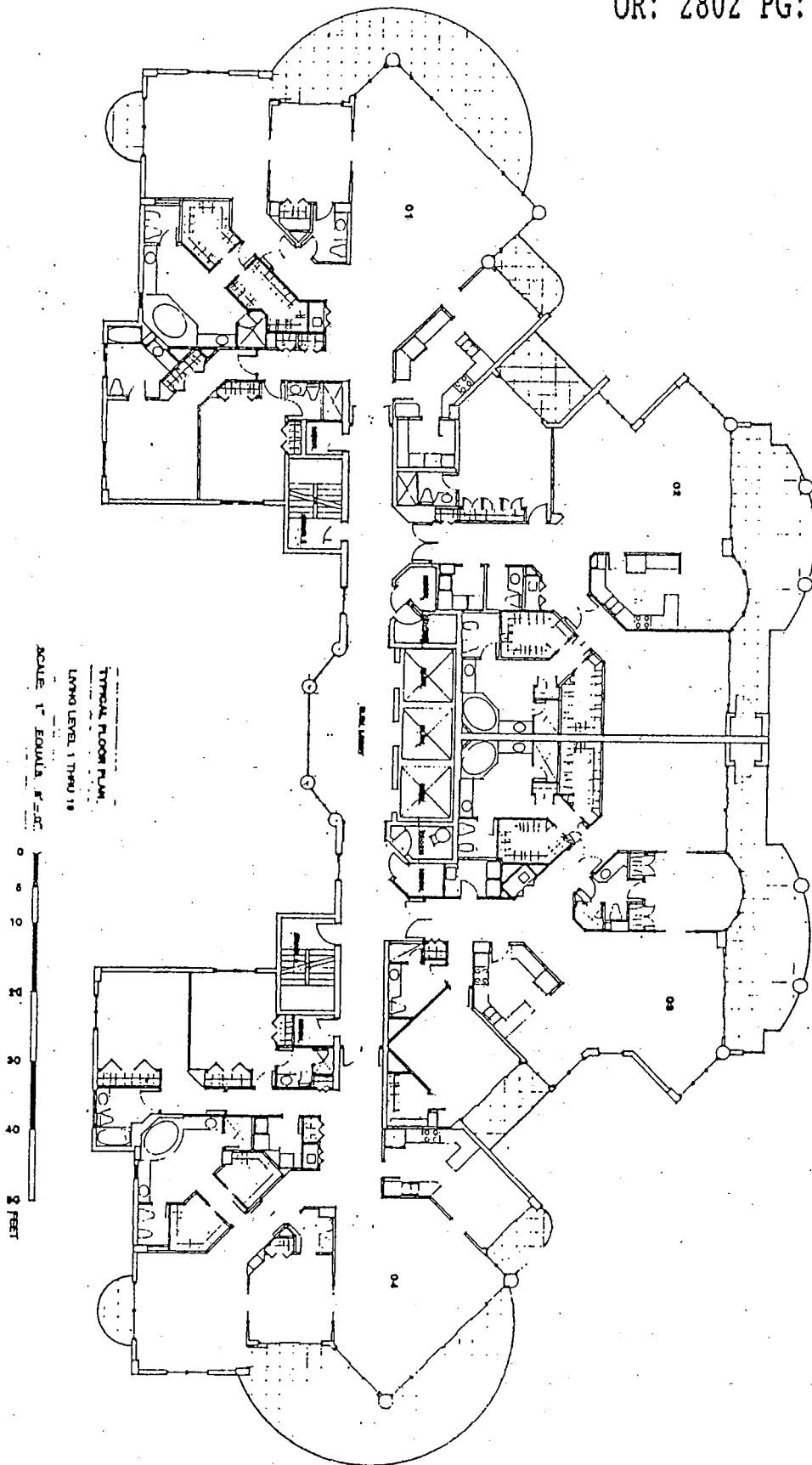
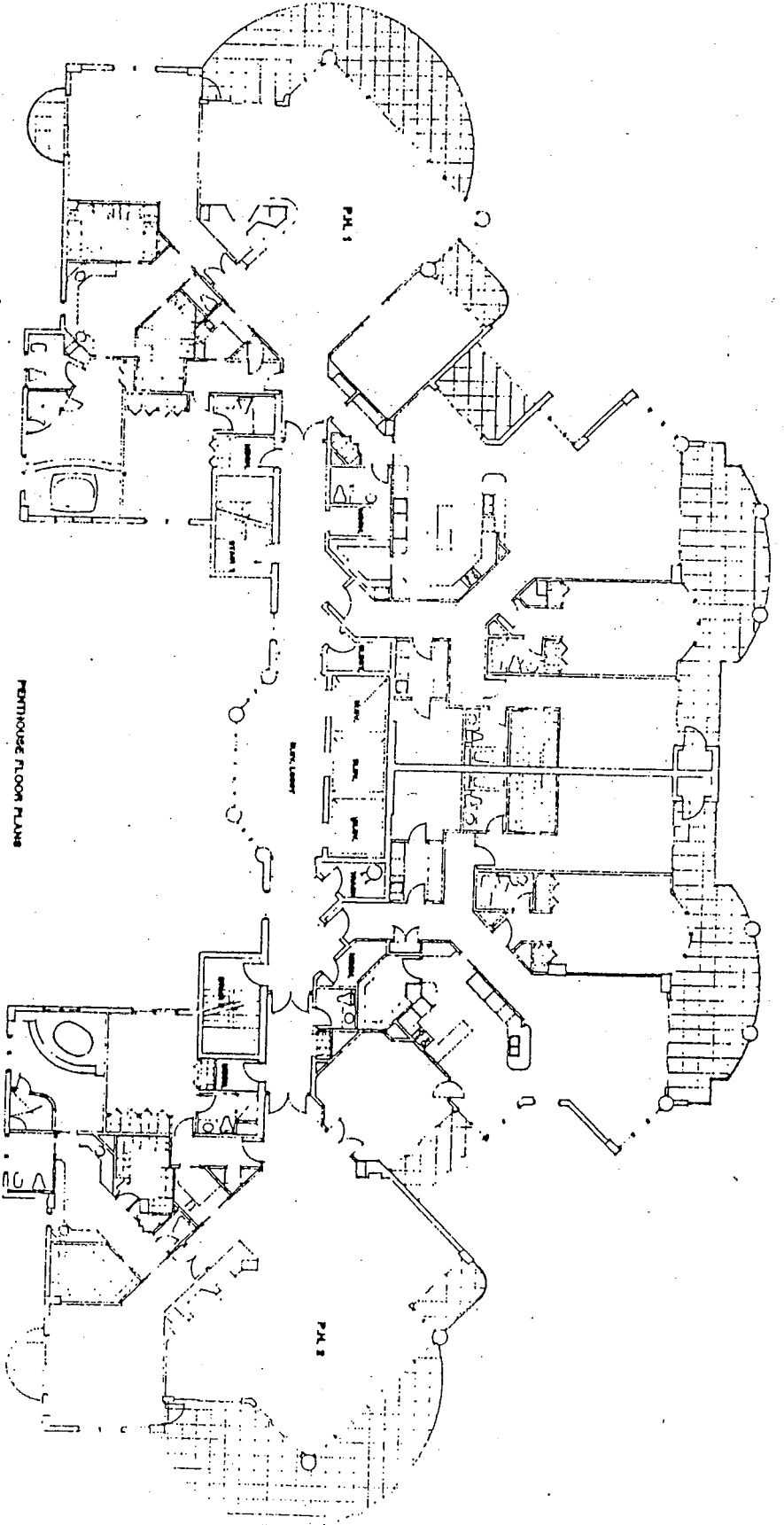


Exhibit "A" to the Amended and Restated Declaration of Condominium

1 AUC



PENTHOUSE FLOOR PLANS  
PENTHOUSE LEVEL, NO. 1 & 2  
SCALE 1" EQUALS 8'-0"



Exhibit "A" to the Amended and Restated Declaration of Condominium

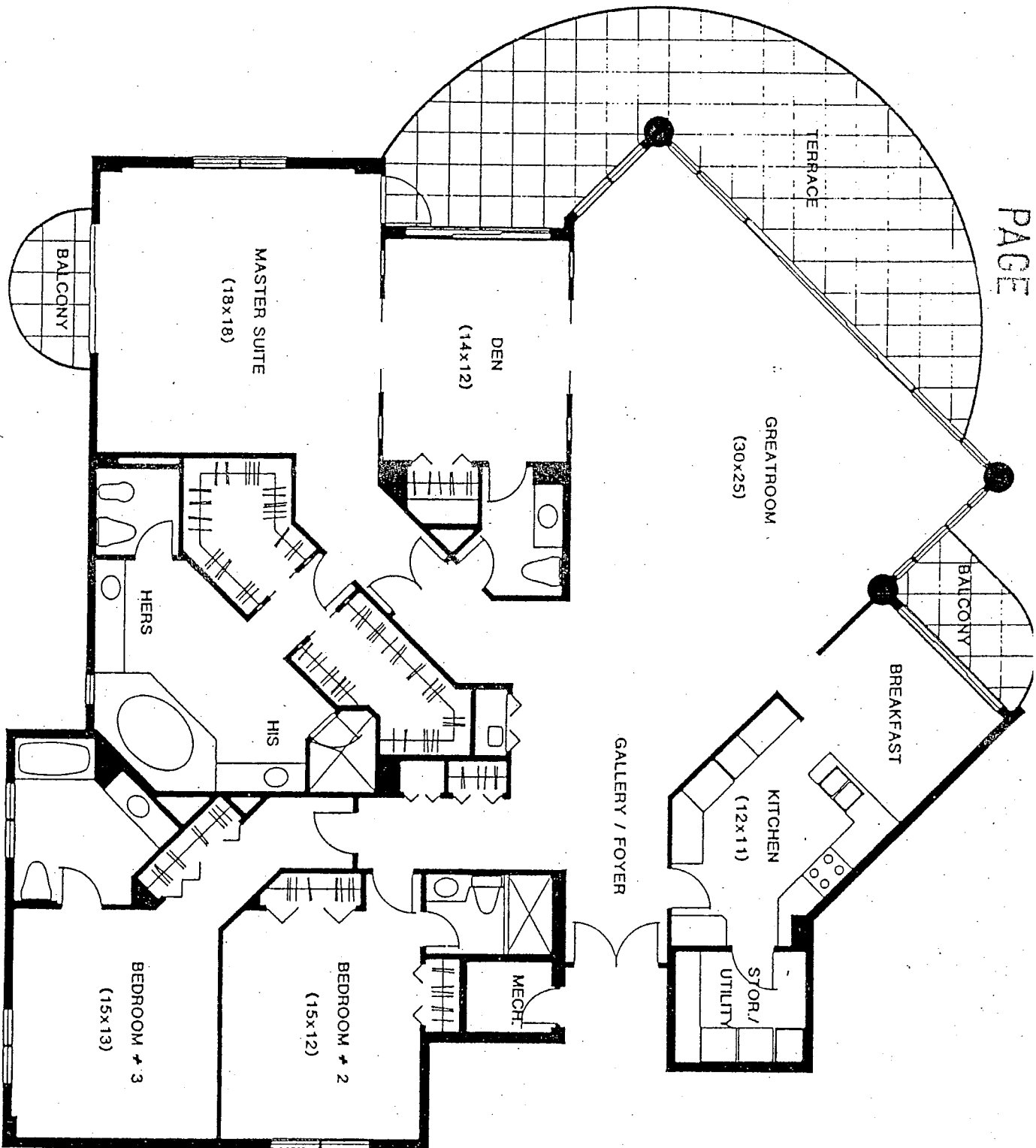


Exhibit "A" to the Amended and Restated Declaration of Condominium



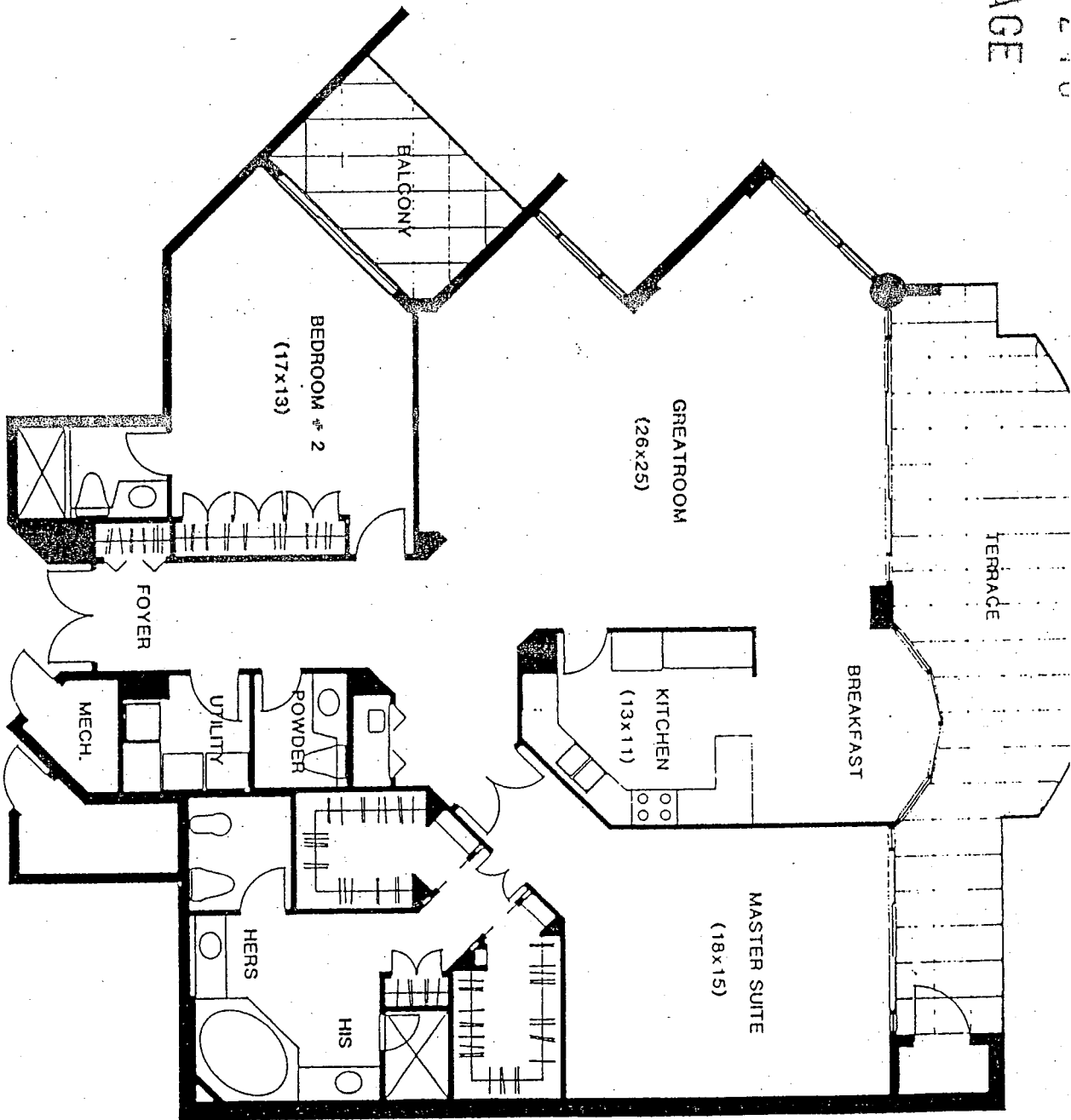


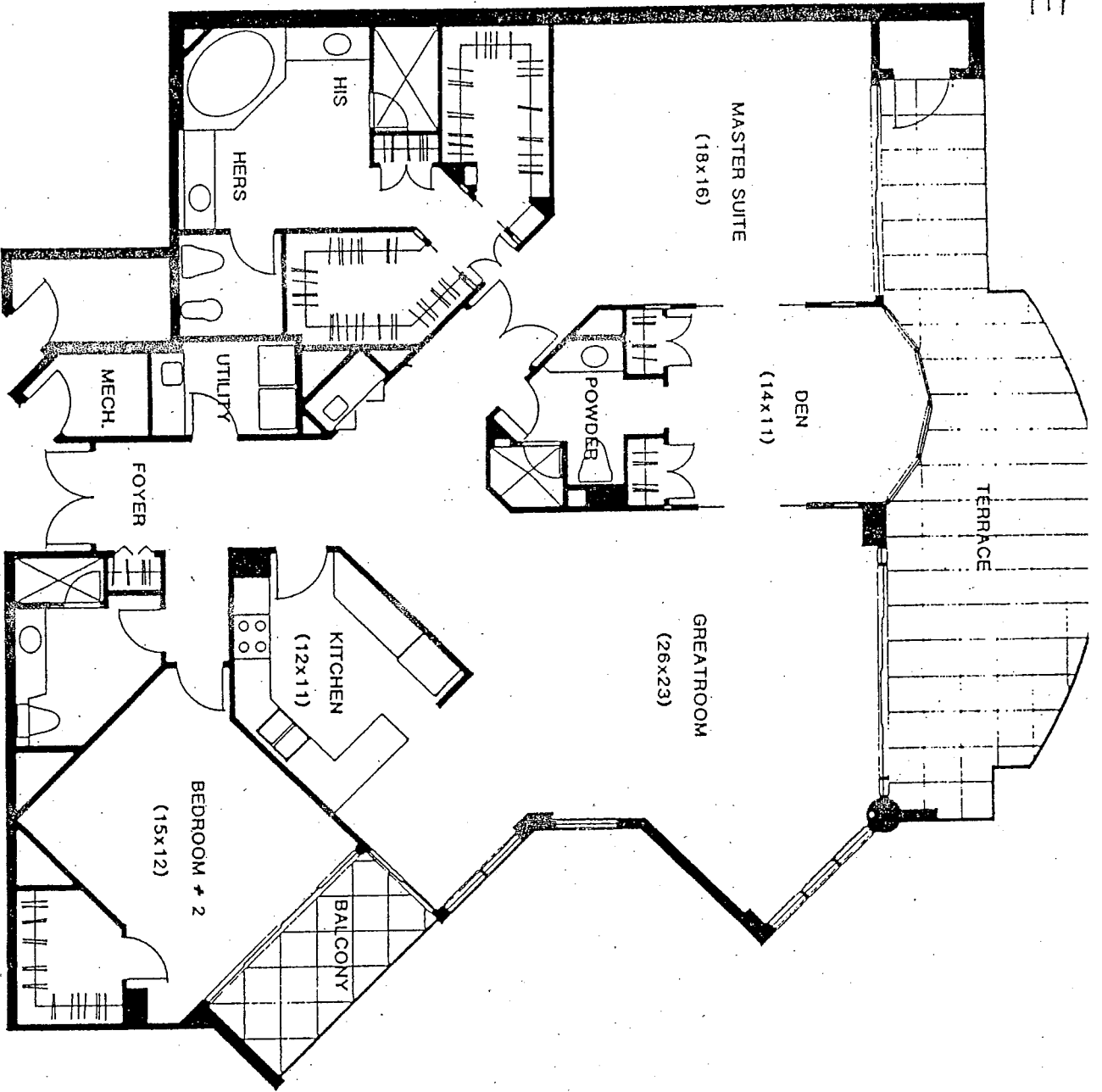
Exhibit "A" to the Amended and Restated Declaration of Condominium

APT. TYPE 02

SCALE 1/4" EQUALS 1'-0"



ALL DIMENSIONS SHOWN ARE APPROXIMATE



APT. TYPE 03

SCALE 1/4" EQUALS 1'-0"  
0 6 12 FEET

Exhibit "A" to the Amended and Restated Declaration of Condominium

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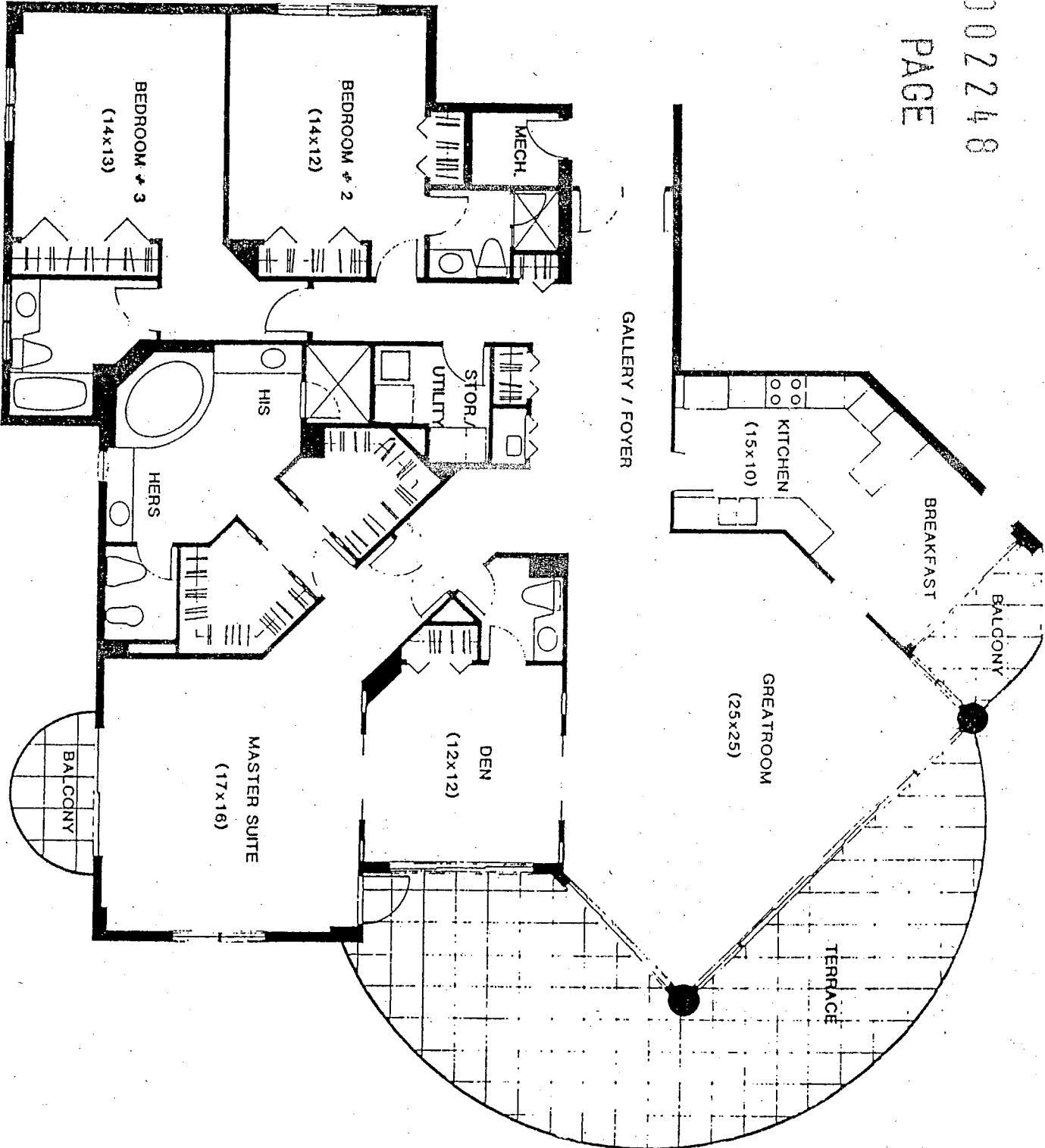
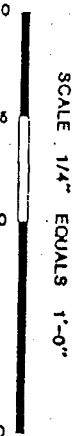


Exhibit "A" to the Amended and Restated Declaration of Condominium

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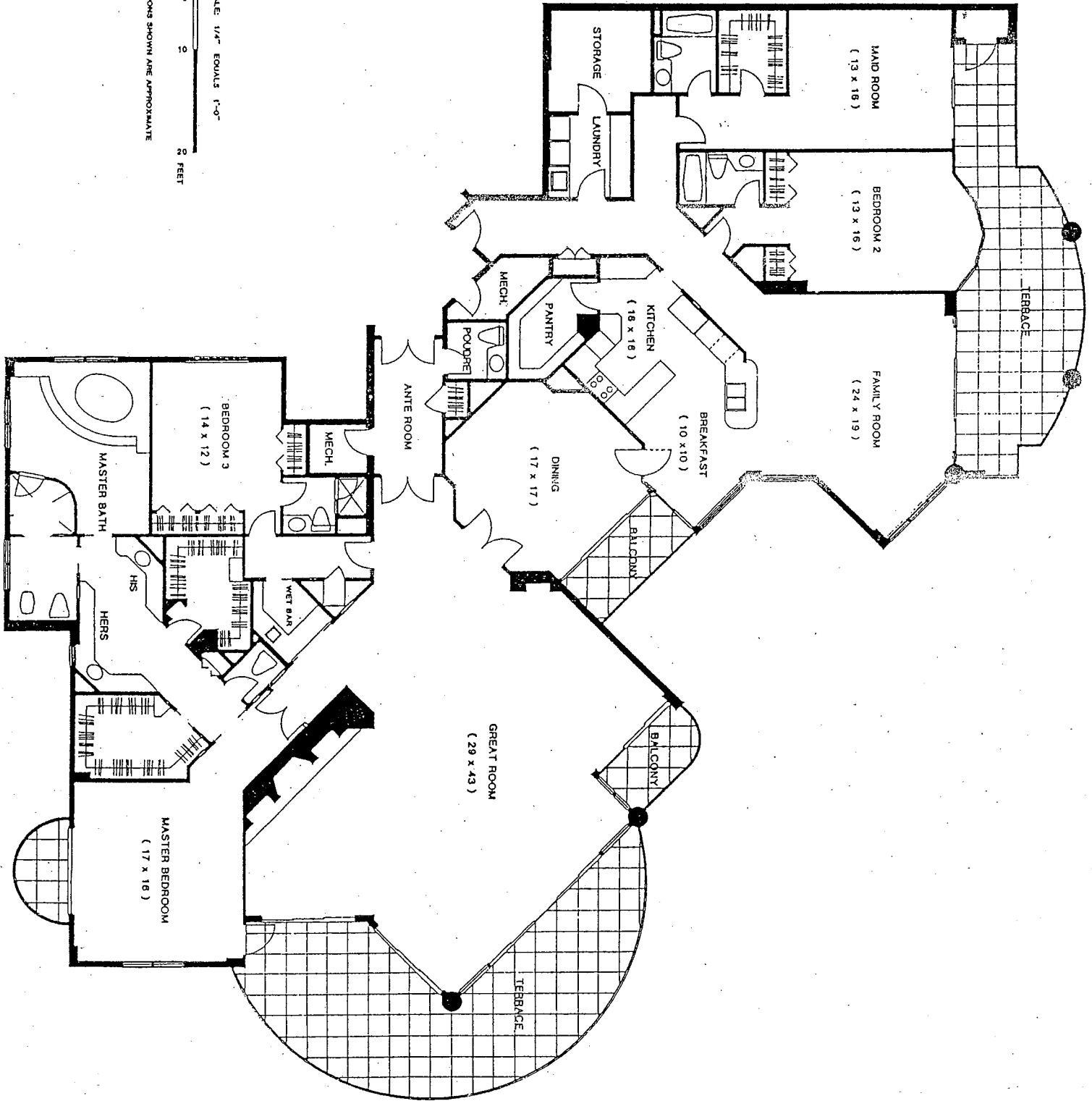


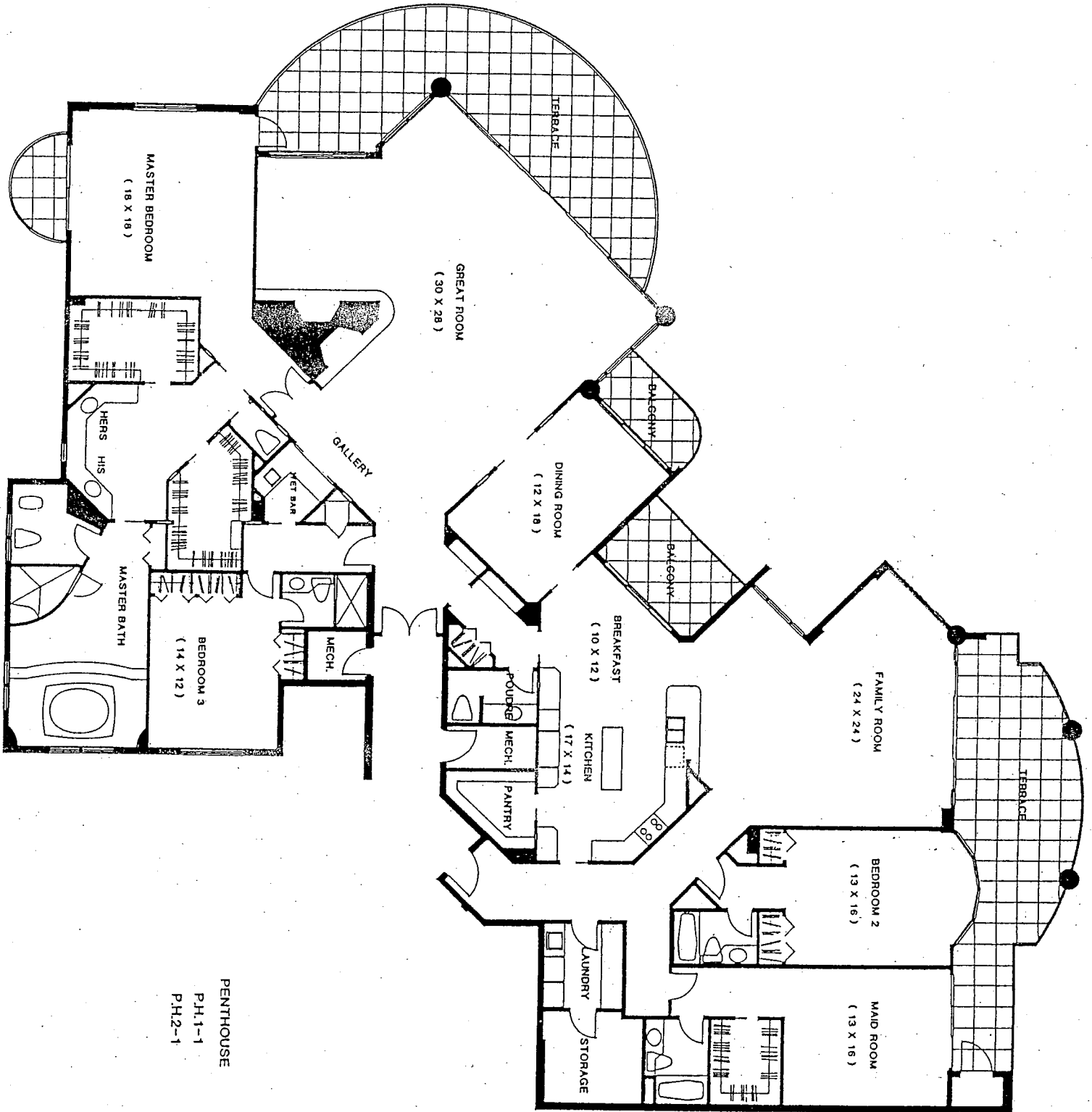
PENTHOUSE

P.H.1-2

P.H.2-2

ALL DIMENSIONS SHOWN ARE APPROXIMATE





PENTHOUSE  
 P.H.1-1  
 P.H.2-1

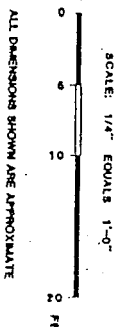


Exhibit "A" to the Amended and Restated Declaration of Condominium

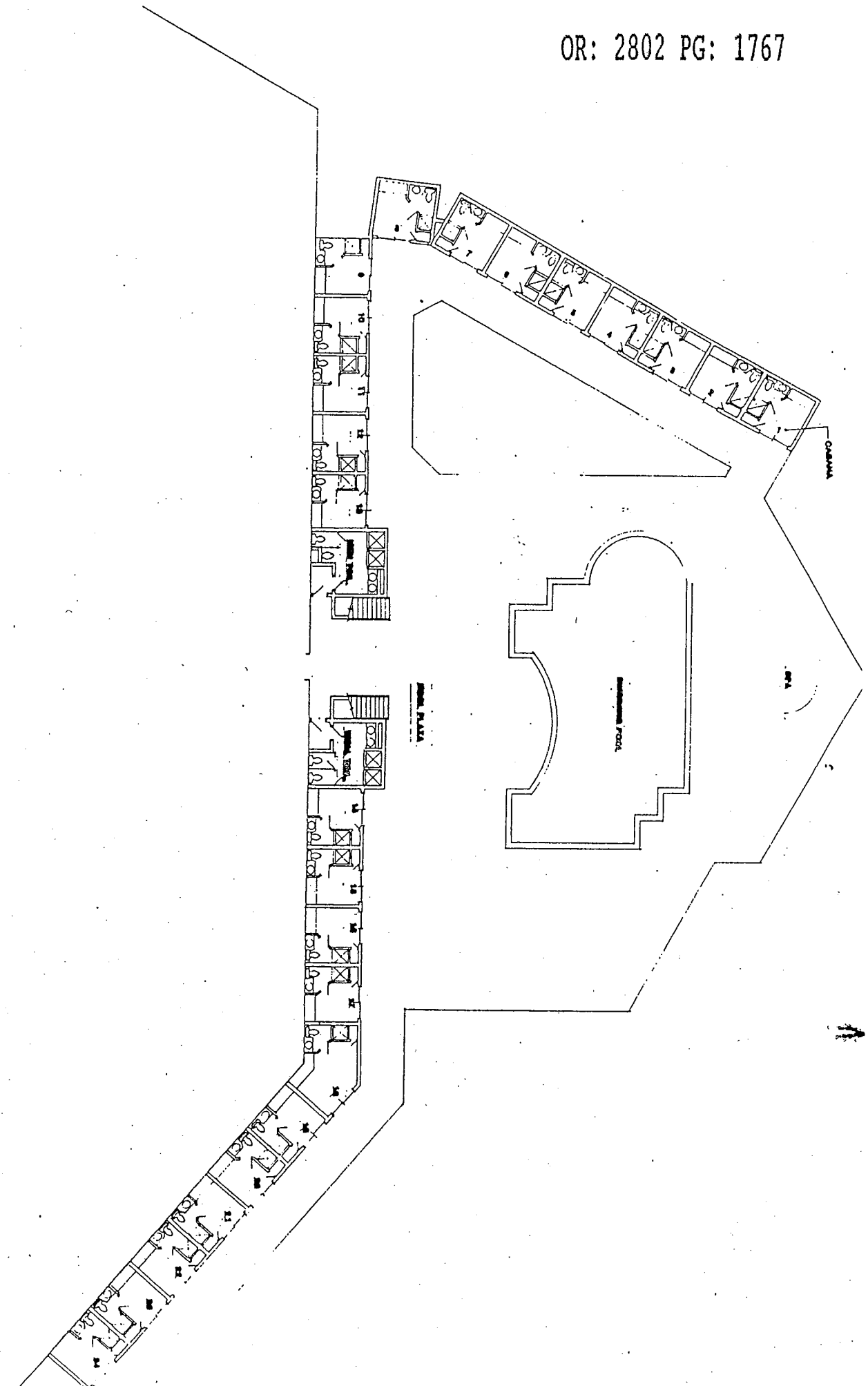


Exhibit "A" to the Amended and Restated Declaration of Condominium