

BY-LAWS

OF

CAPE MARCO PROPERTY OWNERS ASSOCIATION, INC.

A Corporation Not-For-Profit

I. IDENTITY.

A. These are the By-Laws of CAPE MARCO PROPERTY OWNERS ASSOCIATION, INC., (the "Association"), a Florida Corporation Not-For-Profit. The Association has been organized for the purpose of administering the operation and management of the Common Properties and improvements of Cape Marco, in accordance with the Declaration of Restrictive Covenants and Easements (the "Declaration") for said Development to be recorded in the Public Records of Collier County, Florida.

B. The provisions of these By-Laws are applicable to the Declarations of Condominium which are located within Cape Marco and any other property within Cape Marco which is subjected to the Declaration, and are subject to the provisions of the Articles of Incorporation of CAPE MARCO PROPERTY OWNERS ASSOCIATION, INC. The terms and provisions of the Articles of Incorporation and the Declaration of Restrictive Covenants and Easements shall control wherever the same may conflict herewith and bear the same meaning herein as is given to them in such documents.

C. All members of the Association, and all present or future owners, tenants and guests of units in the individual condominiums located within Cape Marco or any of the facilities thereof in any manner, are subject to these By-Laws, the Articles and the Declaration.

D. The office of the Association shall be at 1079 Bald Eagle Drive, Suite 5, Marco Island, Florida 33937.

E. The fiscal year of the Association shall be the calendar year.

F. The seal of the Association shall bear the name of the Association, the word "Florida", and the words "Corporation Not-For-Profit", and the year of incorporation.

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## II. MEMBERSHIP, VOTING, QUORUM AND PROXIES.

A. The qualification of members of the Association (the "Members"), the manner of their admission to membership and termination of such membership, and voting interests of Members, shall be as set forth in the Articles, the provisions of which are incorporated her. in by reference.

B. A quorum at the meeting of Members shall consist of persons present in person or by proxy entitled to cast a majority of the voting interests of the entire Membership.

C. Each Class A Member shall have one (1) vote for each condominium unit represented by such Member. The Class B Member shall have one (1) vote for each condominium unit subject to the Declaration, plus one (1).

D. Except where otherwise required under the provisions of The Articles of Incorporation, these By-Laws or the Declaration of Restrictive Covenants and Easements, the affirmative vote of the persons holding a majority of the votes of the membership represented in person or by proxy at any meeting of the Members duly called and at which a quorum is present, shall be binding upon the Members.

E. Votes may be cast in person or by proxy, subject to the limitations of 718.112(2)(b)(2), Florida Statutes. Proxies may be made by any person entitled to exercise the voting interest of a Member and shall be valid only for the particular meeting designated therein and must be filed with the Secretary before the appointed time of the meeting. No proxy shall be used in the election of board members.

## III. ANNUAL AND SPECIAL MEETINGS OF THE MEMBERSHIP.

A. The annual meeting of the Members shall be held, at the office of the Association or such other place in Collier County, Florida, as may be specified in the notice of the meeting, at 5:30 p.m. on the second Tuesday in April of each year for the purpose of electing Directors and of transacting any other business authorized to be transacted by the Members; provided, however, that if that day is a legal holiday, the meeting shall be held at the same hour on the next succeeding regular business day.

B. Special meetings of the Members shall be held whenever called by the President or Vice President or by a majority of the Board of Directors, and must be called by such officers upon receipt of a written request from Members holding a majority of the votes within the Association.

C. Notice of all meetings of Members shall be given by the Secretary or, in the absence of the Secretary, another officer of the Association, to each Member (unless waived in writing). Each Notice shall be written or printed and shall state the time and place of and purpose for which the meeting is called. Each notice shall be given to each Member not less than ten (10) days nor more than thirty (30) days prior to the date set for the meeting, and shall be mailed by first class mail or delivered personally to each Member. If delivered personally, receipt of the notice shall be signed by the Member, indicating the date received. If mailed, such notice shall be deemed mailed to the Member at his Post Office address as it appears on the records of the Association, with postage prepaid. Proof of mailing shall be given by the affidavit of the person giving the notice. Any Member, may in writing signed by such Member, waive such notice, and such waiver, when filed in the records of the Association, whether before, at, or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such Member. If any meeting of Members cannot be held because membership required to constitute a quorum for particular purposes is not present, the Members who are present, may adjourn the meeting to another date.

When a meeting is adjourned to another date, time or place and the date, time and place to which the meeting is adjourned is announced at the meeting at which the adjournment is taken, no further notice shall be necessary.

D. At meetings of Members, the President shall preside, or in his absence, the Members present shall select a chairman of the meeting.

E. The order of business at annual meetings of Members, and as far as practical, at other meetings of Members, shall be:

- (1) Calling of the roll and certifying of proxies;
- (2) Proof of notice of meeting or waiver of notice;
- (3) Reading or waiver of reading of minutes of previous meeting of Members;
- (4) Reports of Officers;
- (5) Reports of Committees;
- (6) Appointment by Chairman of Inspectors of Election;
- (7) Election of Directors;
- (8) Unfinished business;
- (9) New business; and
- (10) Adjournment.

#### IV. BOARD OF DIRECTORS.

A. The Articles of Incorporation control the election, number and qualification of the Board of Directors.

B. The organizational meeting of a newly elected or designated Board shall be held within a reasonable time after their election or designation, at such time and place as shall be fixed at the meeting at which they were elected, and no further notice of the organizational meeting shall be necessary; provided that a quorum shall be present.

C. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone or telegram, at least seven (7) days prior to the day named for such meeting, unless notice is waived. Unit Owners shall have the right to attend all meetings of the Board, but no Unit Owner shall have the right to speak or otherwise participate in the meetings without the permission of the Board.

D. Special meetings of the Board may be called by the President, and must be called by the Secretary at the written request of one-third of the Directors. Not less than three (3) days' notice of a special meeting shall be given to each Director, personally or by mail, telephone or telegram, which notice shall state the time, place and purpose of the meeting.

E. Any Director may waive notice of a meeting before, at or after the meeting, and such waiver shall be deemed equivalent to the giving of notice.

F. Adequate notice of all meetings of the Board shall be placed conspicuously on the Common Property at least forty-eight (48) hours in advance except in an emergency. Notice of meetings of the Board may be waived only in the event of emergency where circumstances exist which pose such a danger to person or property that prompt action is required. In such event, such notice shall be given as is practical under the circumstances.

G. A quorum at meetings of the Board shall consist of the Directors entitled to cast a majority of the votes of the Board, except as may be specifically otherwise provided in the Articles, these By-Laws or the Declaration. If any meeting of the Board cannot be held because a quorum is not present, or because a greater percentage of the Directors is required to constitute a quorum for particular purposes is not present, the Directors who are present may adjourn the meeting from time to time until a quorum or the required percentage of attendance is present. At any adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice. No member of

the Board may vote by proxy or secret ballot at a meeting of the Board, nor may a Director abstain from voting except in cases of conflict of interest.

H. The presiding officer of meetings of the Board shall be the Chairman of the Board, if such officer has been elected, or, if not, the President of the Association. In the absence of the presiding officer, the Directors shall designate one of their members to preside.

I. Except as provided in the Articles of Incorporation or the Declaration, all of the powers and duties of the Association shall be exercised by the Board.

J. The first Board of Directors of the Association shall be comprised of the persons named as such in the Articles, who shall serve until their successors are designated by the Developer or elected or appointed at an annual meeting of the Members. Should any member of the first Board be unable to serve for any reason, Point Marco Development Corporation, a Florida Corporation, (Developer) shall have the right to select and designate a successor to act and serve for the unexpired term of the Director who is unable to serve.

K. Directors who have been elected by Class A Members may be removed from office with or without cause in the following manner:

(1) The voting interest of ten percent (10%) of the Units represented by a Class A Member upon a written petition calling for the recall or removal of the Board Member elected by such Class A Member, may call a special meeting of the Owners within such Class A Member for that purpose.

(2) The first order of business at the meeting shall be the election of a person to preside over the meeting. The election shall be by vote of the majority of the voting interests present at the meeting.

(3) Any member of the Board of Directors who is the subject of the recall petition shall be given a reasonable opportunity to speak at the meeting, prior to the vote on the question of removal.

(4) The vote necessary for removal shall be a majority of all voting interests of such Class A or Member, including those voting by proxy or absentee ballot.

(5) If any member of the Board of Directors is removed at the special meeting, the vacancy(cies) shall be filled by the Owners within such Class A Member entitled to elect such director(s).

V. ADDITIONAL PROVISIONS - MEETINGS OF MEMBERS AND DIRECTORS.

Notwithstanding anything contained in these By-Laws to the contrary, any meeting of Members of the Board may be held at any place, within or without the State of Florida, designated in the notice of any such meeting, or notice of which is waived.

VI. OFFICERS.

A. The Board shall elect a President, Secretary, Treasurer, and as many Vice Presidents, Assistant Secretaries and Assistant Treasurers as the Board shall deem advisable from time to time. The President shall be elected from the membership of the Board, but no other officer need be a Director. The same person may hold two offices, the duties of which are not incompatible; provided, however, that the offices of President and Vice President shall not be held by the same person, nor shall the offices of President and Secretary be held by the same person. The Board may from time to time elect such other officers, and designate their powers and duties, as the Board may deem necessary to properly manage the affairs of the Association. Officers may be removed from office by the Board.

B. The President shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of President of a corporation not-for-profit, including, but not limited to, the power to appoint committees from among the Members from time to time, as he may in his discretion determine appropriate, to assist in the conduct of the affairs of the Association. He shall have such additional powers as the Board may designate.

C. The Vice President shall, in the absence or disability of the President, exercise the powers and perform the duties of President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Board.

D. The Secretary shall keep the minutes of all proceedings of the Board and the Members. He shall attend to the giving and serving of all notices to the Members and Board, and such other notices as may be required by law. He shall have custody of the seal of the Association and affix



the same to instruments requiring a seal when duly signed. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of Secretary of a corporation not-for-profit and as may be required by the Board and the President. The Assistant Secretary shall perform the duties of Secretary when the Secretary is absent.

E. The Treasurer shall have custody of all of the property of the Association, including funds, securities and evidences of indebtedness. He shall keep the assessment rolls and accounts of the members; he shall keep the books of the Association in accordance with good accounting practices; and he shall perform all other duties incident to the office of Treasurer.

F. The compensation of all officers and employees of the Association shall be fixed by the Board. This provision shall not preclude the Board from employing a Director as an employee of the Association, nor preclude contracting with a Director for the management of the Common Property.

#### VII. FISCAL MANAGEMENT.

The provisions for fiscal management of the Association set forth in the Declaration and Articles shall be supplemented by the following provisions:

A. The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Member. Such account shall designate the name and mailing address of the owner(s) of each Unit within such account, the amount of each assessment against the owner(s) of each Unit, the due date thereof, and all amounts paid, and the balance due upon each assessment.

B. The Board shall adopt, for, and in advance of, each calendar year, a budget showing the estimated costs of performing all of the functions of the Association for the year. Each proposed budget shall show the total estimated expenses of the Association for that year and shall contain an itemized breakdown of the Common Expenses. Each budget shall also show the proportionate share of the total estimated expenses to be assessed against and collected from each Member and the due date(s) and amounts of installments thereof. Each due date shall constitute the beginning of an Assessment Period.

C. A copy of the proposed annual budget of the Association shall be mailed to the owners of Units not less than fourteen (14) days prior to the meeting of the Board at which the budget will be considered, together with a notice of the time and place of the meeting. Such meeting of the Board shall be open to such owners. If a budget is adopted by the

Board which requires assessment of such owners in any budget year exceeding 115% of such assessments for the preceding budget year, upon written application of persons holding 10% of the voting interests of all such owners, a special meeting of the owners shall be held upon not less than ten (10) days' written notice to each owner, but within thirty (30) days of the delivery of such notice, at which special meeting owners may consider only and enact only a revision of the budget. At such meeting, each owner shall have the same number of votes as are allocated in the Articles to the type of unit owned by such owner. Any such revision of the budget shall require a vote of persons holding not less than two-thirds (2/3) of the votes of all owners.

The Board may in any event first propose a budget to the owners of Units at a meeting of the owners or by writing, and if such budget or proposed budget is approved by a majority of the votes of all owners, such budget may not thereafter be reexamined by the Unit owners in the manner hereinabove set forth.

D. In determining whether assessments exceed 115% of similar assessments in the prior budget year, there shall be excluded in the computation reasonable reserves made by the Board for repair and replacement of Common Properties, or for anticipated expenses by the Association which are not anticipated to be incurred on a regular or annual basis; and there shall be excluded from such computation, assessments or betterments to the Common Properties. Provided, however, that so long as Developer is in control of the Board of Directors, the Board shall not impose an assessment for a budget year greater than 115% of the prior budget year's assessment without approval of a majority of the votes of all owners, exclusive of the Developer.

E. Upon adoption of the budget, the Board shall cause a written copy thereof to be delivered to each owner. If any budget is subsequently amended, a copy shall be furnished each affected owner. Delivery of a copy of any budget or amended budget to an owner shall not affect the liability of any owner for any such assessment, nor shall delivery of a copy of such budget or amended budget be considered as a condition precedent to the effectiveness of the budget and assessments levied pursuant thereto. Nothing herein contained shall be construed as a limitation upon the additional assessment in the event that any budget originally adopted shall appear to be insufficient to pay costs and expenses of operation and management, or in the event of emergencies.

F. Assessments shall be made against owners by billing each Member based upon the number of Units assigned to the Member. Each Member shall be responsible for billing and



collecting the assessments from that Member's owners and remitting the same to the Association prior to the date of delinquency, together with a list of names and addresses of owners who have not paid.

G. The depository of the Association shall be such bank or banks as shall be designated from time to time by the Board, in which all monies of the Association shall be deposited. Withdrawal of monies from such bank(s) shall be only by checks signed by such persons as are designated by the Board.

H. An accounting (or audit if required by law or underwriting guidelines of federal agencies or corporations which guarantee or purchase mortgages) of the accounts of the Association shall be made annually by a Certified Public Accountant, and a copy of the report shall be mailed or furnished by personal delivery to each owner not later than April 1 of the year following the year for which the report is made. The report shall show the amounts of receipts by accounts and receipt classifications and shall show the amounts of expenses by accounts and expense classifications.

#### VIII. PARLIAMENTARY RULES.

General Parliamentary Procedure shall govern the conduct of Association Meetings when not in conflict with the Articles of Incorporation or these By-Laws.

#### IX. AMENDMENTS TO BY-LAWS.

Amendments to these By-Laws shall be proposed and adopted in the following manner:

A. Amendments to these By-Laws may be proposed by the Board, acting upon vote of a majority of the Directors, or by Members holding 20% of the votes of the Association whether meeting as Members or by instrument in writing signed by them.

B. Upon any amendment or amendments to these By-Laws being proposed by the Board or Members, such proposed amendment or amendments shall be transmitted to the President of the Association, or acting Chief Executive Officer in the absence of the President, who shall thereupon call a special meeting of the Members for a date not sooner than ten (10) days or later than thirty (30) days from receipt by such officer of the proposed amendment or amendments, and it shall be the duty of the Secretary to give each Member written or printed notice of such meeting in the same form and in the same manner as notice of the call of a special meeting of the Members is required as herein set forth; provided, that

proposed amendments to the By-Laws may be considered and voted upon at annual meetings of the Members.

C. In order for such amendment or amendments to become effective, the same must be approved by an affirmative vote of Members holding two-thirds (2/3) of the votes in the Association. Thereupon, such amendment or amendments to these By-Laws shall be transcribed, certified by the President and Secretary of the Association, and a copy thereof shall be recorded in the Public Records of Collier County, Florida, within thirty (30) days from the date on which any amendment or amendments have been affirmatively approved by the Members.

D. Notwithstanding the foregoing provisions of this Article IX, no amendment to these By-Laws which shall abridge, amend or alter the right of Developer to designate a majority of the Members of each Board of Directors of the Association, as provided in the Articles, may be adopted or become effective without the prior written consent of Developer.

X. RULES AND REGULATIONS.

Rules and Regulations governing the use of the units and the Common Property and Restricted common property of the Association and the conduct of owners, occupants and guests shall be adopted in the following manner:

A. Initial Rules and Regulations. At its first meeting, the Board of Directors of the Association (all of whom shall have been designated by Developer in accordance with the Articles of Incorporation and these By-Laws) shall adopt an initial set of Rules and Regulations, which, after adoption, shall be annexed to these By-Laws in the form of an Exhibit.

B. Amendment to Rules and Regulations. The Board of Directors may from time to time by majority vote at a duly called meeting of the Board, adopt, modify, amend, add to, or detract from the Rules and Regulations; provided, however a vote of a majority of the membership votes at a meeting of the Members at which a quorum is present may override the Board with respect to any such changes. All changes to the Rules and Regulations made by the Board shall be mailed by first class mail to each owner not less than thirty (30) days prior to the effective date of the change. No modification, amendment, addition or detracton to the Rules and Regulations may be adopted by the Board if it would conflict with a provision of the Declaration.

C. Enforcement of Rules and Regulations. All violations of Rules and Regulations or of any provisions of the Declaration, Articles and/or By-Laws shall be reported

immediately to a member of the Board of Directors, an Association officer and/or the management agent. Disagreements concerning violations, including, without limitation, disagreement regarding the proper interpretation and effect of Rules and Regulations or other provisions of the Declaration shall be presented to and determined by the Board of Directors of the Association, whose interpretation and/or whose remedial action shall be dispositive.

In the event that any person, firm or entity subject to the Rules and Regulations, or other provisions of the Declaration, fails to abide by them, as they are interpreted by the Board of Directors, they may be fined by the Association for each such failure to comply or other violation. Such fine shall be collected by the Association and shall be an asset of the Association. If the Board of Directors of the Association deems it necessary, it may seek all available remedies and may bring action at law or in equity to enforce the Rules and Regulations, or other provisions of the Declaration including the provision herein for fines. In the event any such action is instituted, and reduced to judgment in favor of the Association, the Association shall in addition be entitled to recover its costs and attorneys' fees at the trial level and at all levels of appeal.

We hereby certify that the foregoing were adopted as the By-Laws of CAPE MARCO PROPERTY OWNERS ASSOCIATION, INC., a Corporation Not-For-Profit, under the laws of the State of Florida, at the first meeting of the Board of Directors on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
JACK J. ANTARAMIAN, Director

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CHARLES J. THOMAS, Director

\_\_\_\_\_  
ROBERT M. FRAZITTA, Director

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