

**BYLAWS  
OF  
ESTERO PALMS HOMEOWNER'S ASSOCIATION, INC.  
(a Florida Not-For-Profit Corporation)**

Additions indicated by underlining.  
Deletions indicated by ~~striking through~~.

**SECTION 1. IDENTIFICATION OF ASSOCIATION.**

These are the Bylaws of ESTERO PALMS HOMEOWNER'S ASSOCIATION, INC. (the "Association") as duly adopted by its Board of Directors ("Board"). The Association is a Corporation Not-for-Profit, organized pursuant to Chapter 617, Florida Statutes.

1.1 **Association Address.** The office of the Association shall be for the present at ~~373 Egret Avenue~~ 3530 Kraft Road, Suite 204, Naples, Collier County, Florida ~~34108~~ 34105, Collier County, Florida, and thereafter may be located at any place in ~~Lee County~~, Florida (the "County") designated by the Board

1.2 **Fiscal Year.** The fiscal year of the Association shall be the calendar year.

1.3 **Corporate Seal.** The seal of the Association shall bear the name of the Association, the word "Florida", and the words "Corporation Not-for-Profit".

**SECTION 2. EXPLANATION OF TERMINOLOGY.**

**Definitions.** The terms defined in the Articles of Incorporation of the Association (the "Articles") and the Declaration of Covenants, Conditions and Restrictions for Estero Palms ("Declaration") are incorporated herein by reference.

**SECTION 3. MEMBERSHIP; MEMBERS MEETINGS; VOTING AND PROXIES.**

3.1 **Membership.** The qualification of Members, the manner of their admission to membership in the Association and termination of such membership and the voting by Members shall be as set forth in the Articles and the Declaration.

3.2 **Annual Members' Meeting.** The Members shall meet annually ("Annual Members' Meeting"). The Annual Members' Meeting shall be held at the office of the Association or at such other place ~~in the County~~ on such day or days and at such time or times as is designated by the Board in the notice of such meeting commencing with the year following the year in which the Articles are filed with the Secretary of State of the State of Florida. The purpose of the Annual Members' Meeting shall be to hear reports of the officers, elect members of the Board (when that shall be appropriate as determined by the provisions of the Articles and Declaration) and transact any other business authorized to be transacted at such Annual Members' Meeting. For purposes of these Bylaws, provisions applicable to meetings of Members shall also apply to meetings of Class Members.

**3.3 Special Meetings.** Special Meetings of the Membership as a whole or of a class of Members (meetings other than the Annual Members' Meeting) shall be held at any place ~~within the County~~ whenever called by the President or Vice-President or by a majority of the Board. A special meeting must be called by such President or Vice-President upon receipt of a written request from Members having the right to vote at least one-third (1/3) of the total number of votes entitled to be cast by Members at such special meeting or, as to any Class Members, upon receipt of a written request for two-thirds (2/3) of the Members of such Class. Special Meetings of the Membership shall be conducted in the same manner as Annual Members' Meetings.

**3.4 Notice.** A written notice of all Members' Meetings, whether the Annual Members' Meeting or "Special Meetings" (collectively "Meeting"), shall be given to each Member at his last known address as it appears on the books of the Association, and shall be mailed to the said address not less than fourteen (14) days nor more than forty-five (45) days prior to the date of the Meeting. Proof of such mailing shall be given by the affidavit of the person giving the notice. Any notice given hereunder shall state the day, time and place of the Meeting. Notice of any Special Meeting shall describe the purpose or purposes of the meeting, and business at any Special Meeting shall be limited to the purpose or purposes described in the notice of the meeting. The notice of all Annual Members Meetings shall, in addition, specify the number of Directors of the Association ~~to be designated by Developer~~ and the number of Directors to be elected by the Members. All notices shall be signed by an officer of the Association or reflect a facsimile of such a signature. Notwithstanding any provisions hereof to the contrary, notice of any Meeting may be waived before, during or after such Meeting by a Member or by the person entitled to vote for such Member by signing a document setting forth the waiver of such notice. Attendance of a Member at a meeting, either in person or by proxy, constitutes waiver of notice and waiver of any and all objection to the place, time, or manner in which the meeting has been called or convened, unless the Member attends the meeting solely for the purpose of stating, at the beginning of the meeting, any such objection or objections to the transaction of affairs.

**3.5 Quorum and Vote Required.** The percentage of voting interests required to constitute a quorum at a meeting of the Members shall be thirty percent (30%) of the total voting interests. A quorum of the members of a Class shall consist of Class Members entitled to cast thirty percent (30%) of the total number of votes of the Class Members of that Class. Unless otherwise provided by law or the Governing Documents, decisions that require a vote of the members must be made by the concurrence of at least a majority of the voting interests present, in person or by proxy, at a meeting at which a quorum has been attained.

**3.6 Member Action.** Any Member may join in the action of any Meeting by signing and concurring in the minutes thereof and such a signing shall constitute the presence of such Member for the purpose of determining a quorum. When a quorum is present at any Meeting and a question which raises the jurisdiction of such Meeting is presented, the holders of a majority of the voting rights present in person or represented by written proxy shall be required to decide the question. If the question is one upon which a vote other than the majority vote of a quorum is required by express provision of the Documents, then such express provision shall govern and control the required vote on the decision of such question.

3.7 Election Qualification of Directors. Election to the Board of Directors shall be made by a Nomination Committee selected by the President or by nomination from the floor. A Member may nominate himself or herself as a candidate for the Board of Directors at any meeting at which an election of Directors is to be held. Election to the Board of Directors shall be by written ballot. At such election, the Members may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. Persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted. The Developer has the right to select one or all of the Directors pursuant to the provisions of the Declaration, which provisions shall control over the Articles and these Bylaws. The election of directors shall be by secret ballot. Following the "Turnover Event" as defined in the Declaration, for elections of members of the Board of Directors, Members shall cast their vote only by ballot that the Member personally casts. All Directors shall be Members or the spouse of a Member. When a Lot is owned by a corporation, a partnership, limited liability company or similar entity, the Primary Occupant, as designated pursuant to the Declaration, and the spouse of the Primary Occupant shall be eligible for Board membership. Trustees and beneficiaries of trusts (provided that the beneficiaries reside in the Dwelling Unit located on the Lot), and the spouses of such persons, shall be considered eligible for Board membership.

3.8 Election Procedures.

(A) Not less than 60 days before a scheduled election, the Association shall mail, or deliver, whether by separate Association mailing or included in another Association mailing or delivery including regularly published newsletters, to each Member entitled to vote, a first notice of the date of the election. Any person eligible to serve as a Director may qualify as a candidate and have his or her name placed on the ballot by notifying the Association in writing, in such manner as the Association may direct, at least forty-five (45) days in advance of the election, of his or her desire to be a candidate for any vacancy. All eligible persons giving timely written notice of their desire to be a candidate shall be listed alphabetically by surname on the ballot distributed to the Members and used by the Association. Association Members may also nominate themselves from the floor at the Annual Meeting for so long as same is required by law.

(B) Candidates shall have a reasonable opportunity to communicate their qualifications to the voting Members and to solicit votes. Upon request of a candidate, a one-sided, one page information sheet, no larger than 8 ½ inches by 11 inches, which must be furnished by the candidate at least thirty-five (35) days before the election, shall be included with ballots with the costs to be borne by the Association. The Association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the Association may print or duplicate the information sheets on both sides of the paper.

(C) Ballots shall be cast using a double-envelope system in order to ensure secrecy in the election process. The outer envelope must include the Member's name and such other information as the Association may require as is sufficient to ensure that no more than one vote is received from each Dwelling Unit.

(D) During the Annual Meeting, Members designated by the Board (not including current Directors, officers, or candidates for the Board, or their spouses or family members) shall

open the sealed outer envelopes once the information on all outer envelopes has been verified against a list of qualified voting Members. The Association may verify outer envelope prior to the Annual Meeting. Association Members shall be entitled to attend and observe the ballot counting, although the Annual Meeting of the Association may take place while ballots are counted. The inner envelopes shall be opened and the ballots tabulated after all nominations from the floor, if required, and if any, have been received and the Members have had a chance to cast their ballots, and the polls have closed. There shall be no quorum requirement for the election of Directors, provided that at least twenty percent (20%) of the Members eligible to vote have cast a ballot. The election results will be tabulated, and the new Director will take office at the final adjournment of the Annual Meeting. Each Lot/Dwelling Unit shall be entitled to cast one vote for each position on the Board that is up for election. Cumulative voting is not permitted. A tie vote shall be broken by agreement between the tied candidates, or, in the absence of such an agreement, by run off election conducted within twenty-one (21) days of the Annual Meeting. Any dispute as to the validity of any ballots shall be resolved by the incumbent Board and subject to arbitration as may be required by law.

(E) It is the intention of this provision that it be liberally construed so as to enfranchise, rather than disenfranchise, Owners in casting their ballots in the election of Directors. Minor errors or omissions in the election process, including but not limited to deadline compliance and Owner completion of voting documents, shall not negate any election unless the Board of Directors determines that such error or omission would have a material and prejudicial effect on the conduct of a fair election.

**3-8 3.9 Adjournment if No Quorum.** Adjournment of an annual or special meeting to a different date, time or place must be announced at that meeting before an adjournment is taken, or notice must be given of the new date, time or place pursuant to Section 3.4 above. Any business that might have been transacted on the original date of the meeting may be transacted at the adjourned meeting. If a new record date for the adjourned meeting is or must be fixed under Florida Statutes or the Governing Documents, notice of the adjourned meeting must be given to persons who are entitled to vote and are Members as of the new record date but were not Members as of the previous record date.

**3-9 3.10 Minutes of Meetings.** Minutes of all Meetings shall be kept in a business like manner and be available for inspection by the Members and Directors at all reasonable times.

**3-10 3.11 Voting Rights.** Voting rights of Members shall be as stated in the Articles and Declaration.

**3-11 3.12 Proxy Voting.** Unless otherwise provided in the Governing Documents, Members may vote in person or by proxy, except in the election of Directors, which shall be conducted as provided in Articles 3.7 and 3.8 of these Bylaws. To be valid, a proxy must be dated, must state the date, time and place of the meeting for which it was given, and must be signed by the authorized person who executed the proxy. A proxy is effective only for the specific meeting for which it was originally given, as the meeting may lawfully be adjourned and reconvened from time to time, and automatically expires ninety (90) days after the date of the meeting for which it was originally given. A proxy is revocable at any time at the pleasure of the

person who executes it. If the proxy form expressly so provides, any proxy holder may appoint, in writing, a substitute to act in his or her place. Only Members who are natural persons shall be authorized to hold proxies.

~~3.12~~ **3.13 Secret Ballot.** The voting on any matter at a Meeting shall be by secret ballot upon request of the holders of ten percent (10%) of the votes represented at such Meeting and entitled to be cast on such matter if such request is made prior to the vote in question, except for election of directors, which shall always be by secret ballot.

#### **SECTION 4. BOARD OF DIRECTORS; DIRECTORS' MEETINGS**

**4.1 Association Business.** The business and administration of the Association shall be by its Board of Directors.

**4.2 Number of Directors and Term.** The number of Directors which shall constitute the whole Board of Directors shall be three (3). Any person elected or designated as a Director shall have all rights, privileges, duties and obligations of a Director of the Association. In order to provide for a continuity of experience by establishing a system of staggered terms, ~~at the first election at which Members other than the Developer elect a majority of the Directors, one (1) Director shall be elected to serve a one (1) year term, one (1) Director shall be elected to serve a two (2) year term, and one (1) Director shall be elected to serve a three (3) year term. At that first election, the candidate receiving the highest number of votes shall be elected to the three (3) year term, the candidate receiving the second highest number of votes shall be elected to the two (2) year term and the candidate receiving the third highest number of votes shall be elected to the one (1) year term. In the case of tie votes, the Directors elected shall decide among themselves who shall serve the longer terms. Thereafter, each~~ Each Director shall be elected for three (3) year terms, such that the term of one (1) Director expires each year. To maintain a staggered Directorate, the Board may hold seats in future elections open for one, two or three year terms, when necessary or appropriate. In any election where candidates are elected for different terms, those candidates receiving the higher number of votes shall be elected to the lengthier seat. In the event that there is no election, such as in a case where there are fewer pre-qualified candidates than open seats, the Directors who are seated shall agree amongst themselves which shall serve the lengthier terms and which shall serve the shorter terms. This decision shall be recorded in the minutes of a duly noticed Board of Directors' meeting. In the event the Directors cannot agree on which among them shall serve the lengthier and shorter seats, the Board shall hold a "run-off" election, wherein those receiving the most votes will be elected to a lengthier term. Each Director shall serve until his or her successor ~~is~~ duly elected term expires, unless he or she shall sooner resign or is removed as provided herein.

**4.3 Organizational Meeting.** The organizational meeting of a newly elected Board shall be held within ten (10) days of their election at such place and time as shall be fixed by the Directors at the meeting at which they are elected. No further notice of the organizational meeting shall be necessary.

**4.4 Regular and Special Meetings.** Regular meetings of the Board may be held at such times and places ~~in the County~~ as shall be determined from time to time by a majority of Directors. Special meetings of the Board may be called at the discretion of the President and

Vice-President. Special meetings of the Board must be called by the Secretary at the written request of at least one-third (1/3) of the Directors. Such Special meeting may be held in the County at such time and place as determined by the Directors requesting such meeting or in such other place as all Directors shall agree upon.

4.5 **Notice.** Notice of the time and place of regular and special meetings of the Board, or adjournments thereof, shall be given to each Director personally or by mail, telephone or telegraph electronic transmission at least three (3) days prior to the day named for such meeting unless such notice is waived before, during or after such meeting. Any Director may waive notice of the meeting in writing before, during, or after a meeting and such shall be deemed equivalent to the receipt of notice by such Director. Notice in a conspicuous place in the Neighborhood at least forty eight (48) hours in advance of a meeting, except in an emergency. If a Notice is not posted in a conspicuous place in the community, notice of each Board meeting must be mailed or delivered to each member at least seven (7) days before the meeting, except in an emergency.

4.6 **Quorum.** A quorum of the Board of Directors shall consist of the Directors entitled to cast a majority of the votes of the entire Board. A Director may join in the action of a meeting of the Board of Directors by signing the minutes thereof, and such signing shall constitute the presence of such Director for the purpose of determining a quorum. Matters approved by a majority of the Directors present at a meeting at which a quorum is present shall constitute the official acts of the Board of Directors, except as may be otherwise specifically provided by law, by the Articles or by the Documents. If at any meetings of the Board there shall be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any meeting that takes place on account of a previously adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted. In the case of the adjournment of a meeting, no further notice of the adjourned meeting need be given unless otherwise determined by the Board of Directors.

4.7 **Presiding Officer.** The presiding officer at all Board of Directors meetings shall be the president. In the absence of the President, the Directors shall designate any one of their number to preside.

4.8 **Directors' Fees.** Directors' fees, if any, shall be determined by the Members.

4.9 **Minutes.** Minutes of all meetings of the Board shall be kept in a business like manner and be available for inspection by Members and Directors at all reasonable times. These Minutes shall be retained for not less than seven (7) years from the date of the meeting.

4.10 **Executive Committee.** The Board of Directors shall have the power to appoint an Executive Committee of the Board. An Executive Committee shall have and exercise such powers of the Board of Directors as may be delegated to such Executive Committee by the Board of Directors.

4.11 **Meetings Open to Members.** ~~After the Turnover Event, all~~ All meetings of the Board of Directors shall be open to the Members and properly noticed as described herein,

except for meetings between the Board and its attorney with respect to proposed or pending litigation.

**4.12 Removal of Director.** A Director elected by all the Members may be removed from office upon the affirmative vote of a majority of the Members or the agreement in writing of a majority of Members. ~~A Director appointed by Developer as provided in the Documents, may be removed only by Developer in its sole and absolute discretion and without any need of a meeting or vote. Developer shall have the unqualified right to name a successor for any Director elected or designated by it and thereafter removed by it or for any vacancy on the Board of Directors as to a Director designated by it. Developer shall notify the Board of Directors of the name of the respective successor Director and the commencement date for the term of such successor Director.~~

**4.13 Vacancies on Board of Directors.** A vacancy on the Board caused by the expiration of a Director's term, or by removal pursuant to section 4.12 above, shall be filled by electing a new Board member. Any other vacancy occurring prior to the expiration of a term shall be filled by the affirmative vote of the majority of the remaining Directors, even if the remaining Directors constitute less than a quorum, or by the sole remaining Director.

## **SECTION 5. POWER AND DUTIES OF THE BOARD OF DIRECTORS.**

All powers and duties of the Association shall be exercised by the Board of Directors. Such powers and duties shall include, but not be limited to, all powers and duties set forth in the Documents.

## **SECTION 6. OFFICERS OF THE ASSOCIATION.**

**6.1 Executive Officers.** Executive officers of the Association shall be the President, who shall be a Director, one (1) or several Vice-Presidents, a Treasurer, and a Secretary, all of whom shall be elected annually by the Board of Directors. Each officer shall hold office for a term of one (1) year unless he or she shall sooner resign or shall be removed or otherwise disqualified to serve. Any officer may be removed without cause from office by vote of the Directors at any meeting of the Board of Directors. The Board of Directors may, from time to time, elect such other officers and assistant officers and designate their powers and duties as shall be required to manage the affairs of the Association. One person may hold any two offices simultaneously except where the functions of such offices are incompatible.

**6.2 President.** 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 the President of an association or a corporation not-for-profit, including, but not limited to, the power to appoint such committees at such times from among the Members as he may in his discretion determine appropriate to assist in the conduct of the affairs of the Association. If in attendance, the President shall preside at all meetings of the Board of Directors.

**6.3 Vice-President.** In the absence or disability of the President, a Vice-President shall exercise the powers and perform the duties of the President. The Vice-President(s) shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Board of Directors. In the event there shall be more than one Vice-

President elected by the Board of Directors, then they shall be designated "First", "Second", etc., and shall exercise the powers and perform the duties of the Presidency in such order.

**6.4 Secretary.** The Secretary shall keep the minutes of all meetings of the Board of Directors and the Members, which minutes shall be kept in a business like manner and be available for inspection by Members and Directors at all reasonable times. He shall have custody of the seal of the Association and affix the same to instruments requiring such seal when duly authorized and directed to do so. He shall be custodian for the corporate records of the Association, except those of the Treasurer, and shall perform all of the duties incident to the office of the Secretary of the Association as may be required by the Board of Directors or the President. The Assistant Secretary, if any, shall perform the duties of the Secretary when the Secretary is absent and shall assist the Secretary under the supervision of the Secretary.

**6.5 Treasurer.** The Treasurer shall have the custody of all of the monies of the Association, including funds, securities and evidences of indebtedness. He shall keep the assessment rolls and accounts of the Members and shall keep the books of the Association in accordance with the good accounting practices and he shall perform all of the duties incident to the office of the Treasurer. The Assistant Treasurer, if any, shall perform the duties of the Treasurer when the Treasurer is absent and shall assist the Treasurer under the supervision of the Treasurer.

**6.6 Compensation.** The compensation, if any, of the officers and other employees of the Association shall be fixed by the Board of Directors. This provision shall not preclude the Board of Directors from hiring a Director as an employee of the Association or preclude the contracting with a Director or a party affiliated with a Director for the management or performance of contract services for the Association.

## **SECTION 7. ACCOUNTING RECORDS; FISCAL MANAGEMENT.**

**7.1 Accounting Records.** The Association shall maintain accounting records in accordance with good accounting practices, which shall be open to inspection by Members and institutional Mortgagees or their respective authorized representatives at reasonable times and upon reasonable notice. The authorization of a Member must be in writing and signed by the person giving the authorization and dated with sixty (60) days of the date of the inspection. Written summaries of the accounting records shall be available at least annually to the Members. Such records shall include, but not be limited to: (i) a record of all receipts and expenditures; and, (ii) an account for each Lot which shall designate the name and address of the owner thereof, the amount of Individual Assessments and all other Assessments, if any, charged to the Lot, the amounts and due dates for payment of same, the amounts paid upon the account and the balance.

**7.2 Budget.** The Board of Directors shall adopt a Budget (as provided for in the Declaration) of the anticipated Association expenses and income for each forthcoming calendar year (the fiscal year of the Association being the calendar year) at a special meeting of the Board of Directors ("Budget Meeting") called for that purpose to be held preceding the year to which the Budget applies. No vote of the members shall be required but notice of the special meeting shall be given as provided in these Bylaws. Prior to the Budget Meeting, a proposed Budget for



the Association Expenses shall be prepared by or on behalf of the Board of Directors. Within thirty (30) days after adoption of the Budget, a copy thereof shall be furnished to each Member and each owner shall be given notice of the Individual Assessment applicable to his Lot. The copy of the Budget shall be deemed furnished and the notice of the Individual Assessment shall be deemed given upon its delivery or upon its being mailed to the Member shown on the records of the Association at his last known address as shown on the records of the Association.

**7.3 Financial Procedures and Reports.** In administering the finances of the Association, the following procedures shall govern: (i) the fiscal year shall be the calendar year; (ii) any monies received by the Association in any calendar year may be used by the Association to pay expenses incurred in the same calendar year; (iii) there shall be apportioned between the calendar years on a pro-rata basis any expenses which are prepaid in any one calendar year for the Association Expenses which cover more than such calendar year; (iv) assessments may be made monthly but shall not be made less than quarterly, at the discretion of the Board, in amounts no less than are required to provide funds in advance for payment of all of the anticipated current Association Expenses and for all unpaid Association Expenses previously incurred; (v) items of Association Expenses incurred in a Calendar year shall be charged against income for the same calendar year regardless of when the bill for such expenses is received; and (vi) within sixty (60) days of the conclusion of each fiscal year, the Association shall prepare an annual financial report in accordance with section 617.303, Florida Statutes, and any amendment thereto and provide Members with a copy of the financial report or with written notice that the report is available upon request at no charge to the Member. Notwithstanding the foregoing, the Assessments for Association Expenses and any periodic installments thereof shall be of sufficient magnitude to insure an adequacy and availability of cash to meet all budgeted expenses in any calendar year as such expenses are incurred in accordance with the cash basis method of accounting.

**7.4 Assessments.** The individual Assessment shall be payable as provided for in the Declaration.

**7.5 Deficiencies.** No Board of Directors shall be required to anticipate revenue from Assessments or expend funds to pay for Association Expenses not budgeted or which shall exceed budgeted items, and no Board of Directors is required to engage in deficit spending. Should there exist any deficiency which results from there being greater Association Expenses than monies from Assessments, then such deficits shall be carried into the next succeeding year's Budget as a deficiency or shall be the subject of an adjustment to the applicable Assessment (e.g., Individual Assessment or Special Assessment) which determination shall be in the discretion of the Board of Directors.

**7.6 Association Depository.** The depository of the Association shall be such bank or banks as shall be designated from time to time by the Board of Directors in which the monies of the Association shall be deposited. Withdrawal of monies from such account shall be only by checks signed by such persons as are authorized by the Board.

**7.7 Official Records of the Association.** Following the ~~"Turnover Event"~~, the The Association shall maintain official records and accounting records of the Association in the

manner and extent required by Section 617.303(3) and (4), Florida Statutes or any subsequent amendment thereto.

## **SECTION 8. RULES AND REGULATIONS.**

The Board of Directors may at any meeting adopt rules and regulations or amend, modify or rescind then existing rules and regulations for the operation and use of any of the Land provided, however, that such rules and regulations are not inconsistent with the terms or provision of the Documents. Copies of any rules and regulations promulgated, amended or rescinded shall be mailed or delivered to all Members shown on the records of the Association at the time of such delivery or mailing at the last known address for such Members as shown on the records of the Association and shall not take effect until forty-eight (48) hours after such delivery or mailing. Notwithstanding the foregoing, where rules and regulations are to regulate the use of specific portions of the Land, the same shall be conspicuously posted on such property and such rules and regulations shall be effective immediately upon such posting. Care shall be taken to insure that posted rules and regulations are conspicuously displayed and easily readable and that posted signs or announcements are designed with a view towards protection from weather and the elements. Posted rules and regulations which are torn down or lost shall be promptly replaced.

## **SECTION 9. PARLIAMENTARY RULES.**

The then latest edition of Robert's Rules of Order shall govern the conduct of meetings of all Members of the Association and the Board; provided, however, if such rules of order are in conflict with any of the Documents, Robert's Rules of Order shall yield to the provision of the documents.

## **SECTION 10. AMENDMENT OF THE BYLAWS.**

10.1 These Bylaws may be amended as hereinafter set forth in this Section 10.

10.2 **Vote Required.** After the Turnover Event, any Any Bylaw of the Association may be amended or repealed, and any new Bylaw of the Association may be adopted by majority vote of the voting interests represented at a meeting at which a quorum is present, and any such amendment shall become effective as provided for in the Florida Not For Profit Corporation Act.

~~10.3 **Developer Rights.** Notwithstanding any of the foregoing provisions of this Section 10 to the contrary, until the Turnover Event, all amendments or modifications to these Bylaws and adoption or repeal of Bylaws shall only be made by action of the First Board of Directors, appointed by the Developer and defined in the Articles of Incorporation, which Board shall have the power to amend, modify, adopt and repeal any Bylaws without the requirement of any consent or approval or vote of the Members.~~

~~10.4 **Developer Consent.** Notwithstanding any provision of this Section 10 to the contrary, these Bylaws shall not be amended in any manner which shall amend, modify or affect any provision, terms, conditions, rights or obligations set forth in any other of the Documents (as the same may be amended from time to time in accordance with the provisions thereof) including, without limitation, any rights of Developer or of an Institutional Mortgagee (as~~

~~defined in the Declaration) without the prior written consent by Developer or Institutional Mortgagee, as the case may be.~~

~~10.5~~ 10.2     **Recording of Amendment.** Any instrument amending, modifying, repealing or adding Bylaws shall identify the particular Section or Sections affected and give the exact language of such modification, amendment or addition or of the provisions repealed. A copy of each such amendment, modification, repeal or addition shall be certified by the Secretary or Assistant Secretary of the Association and shall become effective upon recording amongst the public records of the County.

ACTIVE: 3944633\_2

**PROXY**

The undersigned, owner(s) or designated voter of Lot No./Address \_\_\_\_\_  
in *Estero Palms* appoints (Check one)

- \_\_\_\_\_ a) *Amber Glisson*, Secretary of the Association, on behalf of the Board of Directors, or
- \_\_\_\_\_ b) \_\_\_\_\_ (if you check b, write in the name of your proxy.)

as my proxyholder\* to attend the meeting of the members of *Estero Palms Homeowners Association, Inc.*, to be held *Wednesday, August 15, 2012, at 5:30 P.M.*, at the *South County Regional Library, 21100 Three Oaks Parkway, Estero Florida 33928*. The proxyholder named above has the authority to vote and act for me to the same extent that I would if personally present, with power of substitution, except that my proxyholder's authority is limited as indicated below:

***I SPECIFICALLY AUTHORIZE AND INSTRUCT MY PROXYHOLDER TO CAST MY VOTE IN REFERENCE TO THE FOLLOWING MATTERS AS INDICATED BELOW:***

- 1. Vote on Proposed Amendments to Bylaws. (The Board recommends voting "In Favor" of Proposed Amendment.)

\_\_\_\_\_ IN FAVOR OF  
PROPOSED AMENDMENT

\_\_\_\_\_ OPPOSED TO  
PROPOSED AMENDMENT

Owner(s) or Designated Voter Sign Here:

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

\*Failure to check either (a) or (b), or, if (b) is checked, failure to write in the name of the proxy, shall be deemed an appointment of the Secretary of the Association as your proxyholder.

THIS PROXY IS REVOCABLE BY THE MEMBER AND IS VALID ONLY FOR THE MEETING FOR WHICH IT IS GIVEN AND ANY LAWFUL ADJOURNMENT. IN NO EVENT IS THE PROXY VALID FOR MORE THAN NINETY (90) DAYS FROM THE DATE OF THE ORIGINAL MEETING FOR WHICH IT WAS GIVEN.