

## CONSTITUTION AND BY-LAWS

### FOR

### EAGLE MOUNTAIN HOMEOWNERS ASSOCIATION, INC.

#### ARTICLE I

#### NAME AND LOCATION

- 1.1 **Name and Location.** The name of this organization is Eagle Mountain Homeowners Association, Inc. herein after referred to as the Eagle Mountain HOA or Association.

#### ARTICLE II

#### DEFINITIONS

- 2.1 **General.** The terms used in these By-laws, unless otherwise specified or unless the context otherwise requires, shall have the meanings specified in the Georgia Nonprofit Corporation Code, as amended (the "Act") and the Declaration of Protective and Restrictive Covenants for "Eagle Mountain" (hereinafter called the "Declaration"). Statutory references shall be construed as meaning the referenced statute or portion thereof as the same may exist from time to time.

#### ARTICLE III

#### ASSOCIATION: MEMBERSHIP, MEETINGS OF MEMBERS, QUORUM, VOTING, PROXIES

- 3.1 **Membership.** Membership shall be restricted to residents and owners of property of Eagle Mountain Subdivision located in Bartow County subject to the Declaration of Covenants, Conditions and Restrictions for Eagle Mountain duly filed for record in Book 1399, Page 0542, in the Clerk's office of Bartow County.
- 3.2 **Membership Appurtenant to Ownership.** Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, and such membership shall be terminated without the necessity of any formal action upon the recording of a valid instrument terminating or transferring the vested, present interest of the Owner in any Lot.
- 3.3 **Place of Meeting.** Regular meetings of the Members may be held at such time and place as shall be determined from time to time by the Board of Directors.
- 3.4 **Annual Members' Meetings.** The annual meeting of the members of the Association is **required** and shall be held at the time and place designated by the Directors of the corporation. The annual meeting of the members for any year shall be held no later than thirteen (13) months after the last preceding annual meeting of members. At a minimum this meeting will include: the financial status of the Association; review of the previous and current year's budget; conduct the annual Board of Directors election.
- 3.5 **Special Members' Meetings.** Special meetings of the Members may be called at any time by the President, or if the President is absent or is unable or refuses to act, by the Vice-President, or by

any two (2) members of the Board or by one (1) Board member if there is only one member or upon a petition signed by at least ten percent (10%) of the voting interests.

**3.6 Notice of Members' Meetings.** The Secretary of the Association ("Secretary") shall cause written notice stating the place, day, and hour of any meeting of the Members to be delivered by hand delivery or United States mail, postage prepaid, to each Member, or, if permitted by Georgia law, by facsimile, computer, fiber optics, cable, or other similar communication devices or such other manner which is reasonably calculated, as determined in the discretion of the Board, to provide personal notice to the Members. Such notice shall be delivered not less than seven (7) nor more than sixty (60) days before the date of such meeting.

**3.6.1 *If mailed,*** the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his or her address as it appears on the records of the Association, with postage prepaid. If sent by facsimile, computer, fiber optics, cable, or such other similar communication device, notice shall be deemed to be delivered when transmitted to the Member at his or her address or number as it appears on record with the Association. The failure of any Member to receive actual notice of the meeting of the Members shall not affect the validity of any action taken at such meeting.

**3.7 Waiver of Notice.** Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, in person or by proxy, waive notice of any meeting of the Association, before or after such meeting. Neither the affairs transacted, nor the purpose of the meeting need be specified in the written waiver. Attendance at a meeting by a Member, either in person or by proxy, constitutes waiver of notice and waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, unless the Member attends a meeting solely for the purpose of stating, at the beginning of the meeting, any such objection or objections to the transaction of affairs.

**3.8 Adjournment of Meetings.** A majority of the Members who are present at any annual or special members' meeting must adjourn to a different date, time, or place, if a **quorum does not exist**. However, any such adjournment to a different date, time, or place must be announced before the adjournment is taken or notice must be given of the new date, time, or place pursuant to section above. Any business that might have been transacted on the original date of the meeting may be transacted at the adjourned meeting.

**3.9 Voting of Members.** Members may vote at a meeting by voice vote, written ballot, general or limited proxy. All votes of the Members at meetings shall be subject to the quorum requirements of *Section 3.12 of these By-Laws*.

All Members shall be entitled to one (1) vote for each Residential Unit in which they hold the interests required for membership. In the event that more than one (1) person, group of persons or entities is a record owner of a fee interest in any Residential Unit, then the vote for membership appurtenant to such Residential Unit shall be exercised as such persons among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Residential Unit. In the event Owners cannot agree as to which Owner shall be entitled to vote or cannot agree as to a unified vote on the issue being voted upon, then in that event said vote shall **not** be a valid vote and shall **not be counted** in a tabulation of the votes but **will** be counted for a quorum.

**3.10 Suspension of Voting Rights.** During any period in which a Residential Unit Owner shall be in default in payment of any assessment, the Board of Directors may suspend the voting rights of such Owner until such assessment has been paid. Such rights of the Owner may also be suspended, for a period not to exceed 30 days, for violation of any rules and regulations established by the Board of Directors.

**3.10.1 *Proxies.*** Members may vote in person or by proxy. Each proxy shall be in writing, dated and duly signed, shall state the date, time, and place of the meeting for which it was given, and shall be filed with the Secretary prior to the vote at the meeting for which the proxy states it is to be effective. Proxies shall be deemed filed with the Secretary, upon receipt if delivered by personal delivery, U.S. mail or facsimile addressed to the Secretary at the address or facsimile number for the Association. Each proxy shall be revocable by written notice to the Association. Each proxy shall automatically cease upon conveyance by a Residential Unit Owner and shall be effective only for the meeting specified therein. The presence in person by the giver of the proxy at a meeting for which the proxy is given shall automatically invalidate the proxy for that meeting. A proxy holder may not appoint a substitute proxy holder.

**3.11 Majority.** As used in these By-Laws, the term “majority” shall mean those votes, Members, or other group, as the context may indicate, totaling more than 50% of the total eligible number.

**3.12 Quorum.** 30% of the members entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of members.

**3.12.1 *If a quorum is present,*** the affirmative vote of the majority of the members represented at the meeting and entitled to vote on the subject matter shall be the act of the members unless otherwise provided by law or these By-laws.

**3.12.2 *After a quorum has been established,*** at a members’ meeting the subsequent withdrawal of members, so as to reduce the number of members entitled to vote at the meeting below the number required for a quorum, shall **not** affect the validity of any action taken at the meeting or any adjournment thereof.

**3.13 Conduct of Meetings.** The President shall preside over all meetings of the Association. In the event that the President is unable attend or otherwise incapacitated, the Vice President will preside over the meeting. The Secretary shall ensure that the minutes of the meeting are kept and that all resolutions adopted at the meeting, as well as all transactions occurring at the meeting, are recorded in a minute book.

#### **ARTICLE IV** **OFFICERS AND BOARD OF DIRECTORS**

**4.1 General Powers.** Subject to the limitations of the Articles of Incorporation and these By-laws, all Association powers shall be exercised by or under the authority of the Officers and Board of Directors. The business and affairs of the Association shall be controlled by the Officers and the Board of Directors.

**4.2 Number, Tenure, Qualifications and Elections.** The Association shall be managed by a Board of Directors consisting of a minimum of 4 Officers and max of 6). Officers of the Board of

Directors shall serve until the next succeeding annual meeting and until their successors have been elected and qualified. *The following positions are required:*

*President;*

*Vice-President;*

*Secretary;*

*Treasurer*

*The following positions are recommended:*

Director at Large (max of 2)

**4.3 Powers.** The Officers/Directors shall have all the powers and duties necessary and appropriate for the governance of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Declaration, these By-Laws, the Articles, and as provided by Georgia law. The Officers/Directors may do or cause to be done all acts and things not required by the Declaration, the Articles, these By-Laws, or Georgia law to be done and exercised exclusively by the Members. The Officers/Directors may delegate powers to committees, a management agent or agents, or employees of the Association.

**4.3.1 Powers and Duties.** The Officers/Directors of the Association shall each have such powers and duties as generally pertain to their respective offices:

- A. **President.** The President shall be the chief executive officer of the Association and shall exercise general supervision and direction of all the affairs of the Association. Shall preside over all regular and special Board of Director Meetings and all regular and special Member meetings.
- B. **Vice President.** The vice president shall in the event of the absence or inability of the president to exercise his or her office become acting president of the organization with all the rights, privileges, powers, and responsibilities as if he or she had been the duly elected president. In addition, the vice-president shall be chairperson of the architectural committee.
- C. **Secretary.** The Secretary shall be responsible for keeping the minutes of all meetings of the Association and the Board. The Secretary shall be responsible for giving out all notices to the members and Directors. He or she shall have custody of the seal of the Association and shall affix it to instruments requiring the seal when duly signed. He or she shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of the secretary of the association and as may be required by the President. He or she shall be the attorney contact for new homeowners, maintain a homeowner database, conduct all correspondence, and annually renew incorporation. Shall have the ability to sign checks on behalf of the Association.
- D. **Treasurer.** The Treasurer shall have the care and custody of all monies belonging to the organization, be solely responsible for such monies or securities of the

organization and be one of the officers who shall sign checks for the organization. No special fund may be set aside that shall make it unnecessary for the Treasurer to sign the checks issued upon it. The Treasurer shall have custody of all property of the Association, including funds, securities, and evidence of indebtedness. He or she shall keep books of account for the Association in accordance with good accounting practices, which, together with substantiating papers, shall be made available to the Officers/Directors for examination at reasonable times. He or she shall submit a Treasurer's report at reasonable intervals and shall perform all other duties incident to the office of Treasurer and as may be required by the President. All money and other valuable effects shall be kept for the benefit of the Association in such depositories as may be designated by a majority of the Officers/Directors. He or she will also be responsible for drafting the annual budget for the Annual Members Meeting of the Association.

**E. Director at Large.** During Regular and Special Meetings, He or She will vote and fill in for an absent director, other than the President. He or she will also fulfill all requirements and tasks assigned by the President.

**4.4 Annual Election.** Directors will be elected at an Annual Meeting of the Members of the Association and will hold office for one year. Candidates receiving the majority votes shall be elected. The Directors shall determine their office amongst themselves at their first Regular Board Meeting.

**4.5 Removal of Officers/Directors.** Officers/Directors may be removed, and vacancies filled as follows:

**(a) By the Members:**

A member must obtain a petition with the minimum 10% signatures of eligible voting members requesting a Special Meeting of the Members with the intent to vote to remove an active Director. Once the required petition requirements have been met, the President will call a Special Meeting of the Members and the Secretary will issue the required notifications to all eligible voting members. At the meeting, the director who has been proposed for removal by the members will be offered time to be heard. The director can then be removed from office with 50% affirmative vote of all eligible voters of the Association.

**(b) By the Officers/Board:**

Any Officer/Director who has three (3) or more consecutive unexcused absences from Board meetings may be removed by a vote of a majority of the other Directors at a Regular or Special Meeting of the Board. No such action may be taken without reasonable notice to the subject Director and giving him or her the opportunity to be heard at a Regular or Special Board Meeting. Any Director who is in default on their Association dues will automatically be removed from the office after 60 days delinquent.

**4.5.1** *A vacancy in any office* arising because of death, resignation, or removal will be filled for the remainder of the term by appointment of a majority vote of the Board of Directors.

- 4.6 Regular Meetings/Notice of the Same.** Regular meetings of the Officers/Directors shall be held at intervals as determined by the Officers/Directors but no less frequently than annually) at such time and place as the Officers/Directors shall determine. Except in the case of emergencies, fourteen (14) days' notice of the time, place of a meeting, and the reason for the meeting shall be communicated to all Members by e-mail, text, or phone call. The failure of any Member to receive actual notice of a meeting of the Officers/Directors does not affect the validity of any action taken at that meeting.
- 4.7 Special Meeting/Notice of the Same.** Special meetings of the Board of Directors may be called by the President with a seven (7) days' notice to every director given by e-mail, text, or phone call and stating the time, place and purpose of the meeting. Special meetings may be called by the President, Vice President, Secretary, or Treasurer in like manner.
- 4.8 Quorum.** At all meetings of the Officers/Directors, a majority of all active Officers/Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Officers/Directors present at a meeting at which a quorum is present shall constitute the decision of the Officers/Directors, unless otherwise specifically provided in these By-Laws, the Articles or the Declaration. If any meeting of the Officers/Directors cannot be held because a quorum is not present, a majority of the Officers/Directors present at such meeting may adjourn the meeting to another time and place and notice of any such adjourned meeting shall be given to the Officers/Directors who were not present at the time.
- 4.9 Compensation.** No Officer/Director shall receive any compensation from the Association for acting as such; provided however, any Officer/Director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other Officers/Directors.
- 4.10 Conduct of Meetings.** The President shall preside over all meetings of the Officers/Directors. The Secretary shall ensure that a minute book is kept of all meetings of the Officers/Directors, record all resolutions adopted by the Officers/Directors, and all transactions and proceedings occurring at such meetings.
- 4.11 Open Meetings.** All meetings of the Officers/Directors shall be open to all Members of the Associations, but a Member may not participate in any discussion or deliberation unless the Member speaks on a matter placed on the agenda by petition of the voting interests. There will be a three-minute time limit when speaking. Notwithstanding the above, the Officers/Directors may exclude Members and go into a closed session meeting in order to discuss confidential private community matters.
- 4.12. Management.** The Association may, but is not required to, employ a professional management agent or agents at compensation established by the Officers/Directors to perform such duties and services as the Officers/Directors shall authorize. The Officers/Directors may delegate to the management agent such powers as are necessary to perform its assigned duties; provided, the Officers/Directors may not delegate policy-making authority. Any agreement for the services of any management agent shall provide for termination by the Association with or without cause, and without payment of a termination fee, upon thirty (30) days written notice, and no such agreement shall be for a duration more than one (1) year, renewable by agreement of the parties for successive one (1) year periods.

**4.13.1** No remuneration shall be accepted by the management agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise, and anything of value accepted shall benefit the Association. In addition, any financial or other interest, which the management agent may have in any form providing goods or services to the Association, shall be disclosed promptly to the Officers/Directors.

**4.15 Borrowing and Security for Debt.** The Association, acting through its Officers/Directors, shall not have the power to borrow money for any legal purpose or to mortgage, pledge, deed in trust, or hypothecate any or all its real or personal property as security for money borrowed or debts incurred without membership approval.

**4.16 Rights of the Association.** Subject to applicable law relating to Member, Officers/Directors conflicts of interest, the Association shall have the right to contract with any person for the performance of various duties and functions. Contractors utilized by the Association shall be licensed and insured.

**4.17 Agreements, Contracts, Deeds, Leases, Checks, Etc.** All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) different individuals who are Officers/Directors of the Association. The Officers/Directors shall require signatures for the withdrawal of reserve funds of two (2) Officers/Directors. For purposes of this Section, "reserve funds" means monies the Officers/Directors has identified in the capital expenditures budgets for use to defray the future repair or replacement of those replaceable assets which the Association is obligated to maintain and for use in making additional capital improvements and purchasing additional capital assets.

**4.18 Fining and Charges** The Board may not impose a fine or a charge onto an Owner of a Residential Unit without following the following procedure. All fines will be limited to \$10/day and all charges will not exceed the cost the Association paid to rectify the infraction on the delinquent tract/Residential Unit. If the board elects to pay to fix the infraction, which will be charged to the Owner, then the Board cannot also fine the owner. If the Board elects to leave the infraction, the Board can elect to fine the Owner \$10/day until the Owner rectifies the infraction.

- A.** Notify the owner of infraction via USPS mail or by e-mail registered with the Association with a read receipt. Allowing Owner ten (10) days to comply with request to fix the infraction.
- B.** After ten (10) days, Certified Mail of infraction will be mailed to the address on file with the Association.
- C.** An additional ten (10) days will be offered from the date of the letter to comply and/or fix the infraction or contact the Board to discuss the issue.
- D.** Association can take action to fix infraction, cost will be charged to Owner, or The Board can elect to initiate a fine of \$10/day for the recorded infraction.

**ARTICLE V**  
**COMMITTEES**

1. **Committees.** The Officers/Directors shall establish such committees as are required under the Declaration or these By-Laws and may establish such other committees as are authorized or that it deems appropriate. Any such committee may perform such tasks and functions as the Officers/Directors may designate; provided, no committee or committee member may exercise any power or authority which could not otherwise be exercised by the Officers/Directors.

5.1.1 Committee members may, but need not, be an Officer/Director, employees of the Association or the managing agent, or Members. Committee members serve at the Officers'/Directors' discretion for such periods as they may designate. Each committee shall operate in accordance with the terms of the motion or resolution establishing such committee or as may be provided in the Declaration.

1. **Meeting Requirements.** Except as provided below, in conducting its duties and responsibilities, each committee shall abide by the procedures and requirements applicable to the Officers/Directors set forth in these By-laws. Notwithstanding the above, the following exceptions apply:

- 1.1. regular meetings of committees may be held more or less frequently than monthly at the discretion of each committee;
- 1.2. the membership notice requirements contained in Sections 3.6 and 4.6 and 4.7 and the open meeting requirements contained in Section 4.11 shall only apply as follows:
- 1.3. when committees will make a final decision regarding the expenditure of association funds;
- 1.4. for all committee meetings of any committee vested with the power to approve or disapprove architectural decisions with respect to a Lot; or
- 1.5. for all committee meetings when a quorum of the full board is in attendance at any committee meeting.

**ARTICLE VI**  
**MISCELLANEOUS**

1. **Fiscal Year.** The fiscal year of the Association shall be each calendar year, January 1 through December 31 unless otherwise established by Officers'/Directors' resolution.
2. **Parliamentary Rules.** Except as may be modified by Officers'/Directors' resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with Georgia law, the Articles, the Declaration, or these By-Laws.
3. **Conflicts.** If there are conflicts between the provisions of Georgia law, the Articles, the Declaration, and these By-Laws, the provisions of Georgia law, the Declaration, the Articles, and the By-Laws (in that order) shall prevail.



- 4. **Books and Records.** The Association shall keep such books and records as by law provided and shall make same available for inspection by any Owner, any institutional holder of a first mortgage on a Residential Unit, and their respective agents and attorneys, for any proper purpose at any reasonable time. In addition, an annual report of the receipts and expenditures of the Association shall be rendered by the Board of Directors to all Owners, and to each institutional holder of a first mortgage on a Unit having theretofore requested same in writing, within three (3) months after the end of each fiscal year.
- 5. **Notices.** Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications shall be in writing and shall be sent as follows:
  - a. if to a Member, at the address (including e-mail) which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot owned by a Member;
  - b. if to the Association, the Officers/Directors, or the management agent, at the principal office of the Association or the management agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this section;
- 6. **Indemnification.** Subject to any limitations imposed by applicable law, the Association shall indemnify every officer, Director, employee, or agent of the Association as provided in the Articles.
- 7. **Amendment.** These By-Laws may be amended only by the affirmative vote of a majority of two-thirds (2/3) of the eligible voting members of the Association at a regular or special meeting of the Members called for that purpose; provided however, that these By-Laws may not be so amended in any manner which would be inconsistent with the Declaration or the Articles.

Amendments to these By-Laws shall become effective upon the recordation of an amendatory instrument executed by the President and Secretary of the Association and recorded in the Public Records of Bartow County, Georgia.

The foregoing was adopted as the By-Laws of Eagle Mountain Homeowners Association, Inc., a corporation not for profit under the laws of the State of Georgia, by majority vote of the Lot owners in accordance with the Articles of Incorporation of the Association on this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Eagle Mountain Homeowners Association, Inc.

Signatures:

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
As Its President

ATTEST:

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

As Its Secretary