

**OAKS AT EGRET BAY TOWNHOMES
COMMUNITY ASSOCIATION, INC.**

RULES AND REGULATIONS

Rule 1: Boat Slips

As of December 18, 2011

1.1 **Purposes.** The primary purposes of this Rule 1 are to confirm the current holders of Utilization Rights for Slips and to provide for a fair and orderly transfer of Utilization Rights, hereafter in light of the fact there are a total of twenty-three Lots in the Subdivision and only fifteen Slips, to maximize utilization of the Boat Slips, and to provide for the utilization, maintenance, regulation and use of the Boat Slips.

1.2 **Definitions.** Except as otherwise provided herein, the definitions set forth in Article II of the Declaration are incorporated by reference herein. In addition to any other definitions set forth herein, the following definitions apply when used in this Rule 1:

1.2.1 **"Association"** means OAKS AT EGRET BAY TOWNHOMES ASSOCIATION, INC., a Texas non-profit corporation, and its successors (by merger, consolidation or otherwise) and assigns.

1.2.2 **"Board"** or **"Board of Directors"** means the Board of Directors of the Association.

1.2.3 **"Boat Slips"** means the fifteen boat slips as more particularly described in the Second Amendment of the Declaration heretofore filed under Clerk's File No. 20080303931, Official Public Records of Real Property of Harris County, Texas, and as depicted on Exhibit "A" attached hereto and incorporated by reference herein, including all right, title and interest of the Association in the Boat Slips, and the waterfront (being the submerged area at mean high tide), docks, piers, boat slips, and utilities and facilities pertaining and relating thereto.

1.2.4 **"Boat Slip Application"** means a form substantially in the form attached hereto as Exhibit "B" and incorporated by referenced herein as more particularly described in Rule 1.7.

1.2.5 **"Declaration"** means the Boat Slips are therefore subject to, the Declaration of Covenants, Conditions, Restriction and Easements for Oaks at Egret Bay Townhomes, as

amended (the "Declaration"), heretofore filed under Clerk's File Nos. V402690, W541073 and 20080303931, Official Public Records of Real Property of Harris County, Texas;

1.2.6 "Notice and Opportunity to be heard" means and refers to the procedures outlined in Rule 1.6.

1.2.7 "Permitted Vessels" means a vessel which is a minimum of 2000 lbs. dry weight and does not exceed the length of the applicable slip, is motorized and which is sea worthy. Upon written request, the Board may grant variances regarding permitted vessel type and length.

1.2.8 "Slip" or "Slips" means each of the individual boat slips designated as "Slip 1" through "Slip 15" on Exhibit "A" hereto, which individually and collectively comprise the Boat Slips.

1.2.9 "Utilization Rights" means all rights applying to each Lot which has as herein provided an appurtenant right to use one Slip in accordance with and subject to this Rule 1.

1.3 Assignment of Utilization Rights.

1.3.1 Current Assignments. The Board of Directors may assign slips or otherwise regulate the use of same by amendment of this Rule 1. Utilization Rights are hereby assigned to Slips 1-15 and the corresponding Lot as identified in Exhibit A.

1.4 Termination of Utilization Rights. The Board of Directors may, after notice and opportunity to be heard except as herein otherwise provided, terminate all Utilization Rights appurtenant to a Lot for any of the following reasons:

1.4.1 Sale of a Lot with appurtenant Utilization Rights and failure of the new Owner to obtain transfer of the Utilization Rights to the new Owner as provided in Rule 1.5.1;

1.4.2 Sale of a Permitted Vessel and failure to replace the vessel as provided in Rule 1.5.2;

1.4.3 Sale of a Permitted Vessel by one Owner to another Owner as provided in Rule 1.5.3;

1.4.4 Leasing of a Lot with Utilization Rights as provided in Rule 1.5.4;

1.4.5 Cessation by the Owner of a Lot with Utilization Rights of use of the Lot as their primary residence.

1.4.6 Failure to use a Slip for more than three consecutive months or more than four months in any calendar year; provided that any period of time that a Permitted Vessel is placed in off-site dry storage (there are no dry storage facilities within the Subdivision) during the months of November through February shall not be considered;

1.4.7 Failure to pay any Slip Rental fees as provided in Rule 1.8 or any other charges due pursuant to this Rule 1, or to pay any assessments due pursuant to the Declaration;

1.4.8 Failure to maintain proper registration of a Permitted Vessel;

1.4.9 Failure to maintain proper insurance on a Permitted Vessel; and

1.4.10 Any other violations of this Rule 1 or Section 7.04 of the Declaration (nuisance; unsightly or unkempt conditions), and failure to cure after notice and opportunity to be heard.

1.5 Transfer of Utilization Rights.

1.5.1 Sale of Lot. Within thirty days after closing on the sale of any Lot which at the time of the sale has appurtenant Utilization Rights, the new Owner must file a Boat Slip Application with the Board of Directors. A current Boat Slip Application must be used, and the form must be fully completed, dated and signed by the applicant as provided in Rule 1.7. If a Boat Slip Application is not properly submitted within the thirty-day period or the new Owner fails to obtain approval or conditional approval after notice and opportunity to be heard, the Utilization Rights appurtenant to the applicable Lot will thereupon terminate.

1.5.2 Sale of Vessel Other Than to Another Owner. If the Owner of a Lot with Utilization Rights sells their Permitted Vessel other than to another Owner and except as next provided, the Utilization Rights appurtenant to the selling Owner's Lot will immediately terminate and notice and opportunity to be heard is not required. Notwithstanding the foregoing, if the selling Owner intends to replace the sold vessel, the selling Owner must advise the Board of Directors of that fact in writing within thirty days after the date of the sale. The selling Owner must thereafter submit a Boat Slip Application to the Board and obtain approval or conditional approval of the application as provided in Rule 1.7 within ninety days after the date of the sale. The foregoing ninety-day period may be extended upon written request demonstrating good cause for the extension, provided that the request for extension must be submitted to the Board within the initial ninety-day period. No more than one extension which may not exceed ninety days is permitted. "Sale" means any transfer of ownership of a vessel.

1.5.3 Sale of Vessel to Another Owner. If the Owner of a Lot with Utilization Rights sells their Permitted Vessel to another Owner, the purchasing Owner must submit a Boat Slip Application to, and obtain approval or conditional approval of the application from, the Board of Directors as provided in Rule 1.7. If the purchasing Owner's application is approved or conditionally approved, the Utilization Rights appurtenant to the selling Owner's Lot automatically terminate and notice and opportunity to be heard is not required, and upon such termination all Utilization Rights will automatically transfer to the purchasing Owner's Lot.

1.5.4 Leasing of Lot. If the Owner of a Lot with appurtenant Utilization Rights leases the Lot, the appurtenant Utilization Rights automatically terminate as to the leasing Owner's Lot, and notice and opportunity to be heard is not required

1.5.5 Residency Required. No transfer of Utilization Rights may be made to any Owner unless the Owner maintains their primary residence at the Lot to which the Utilization Rights are to be transferred. Any termination of such residency shall automatically terminate the applicable Utilization Rights.

1.6 Notice and Opportunity to be Heard. Whenever "notice and opportunity to be heard" is required by this Rule1, the following procedures will apply:

1.6.1 Written notice must be given to the Owner in accordance with Section 12.03 of the Declaration.

1.6.2 The notice must (i) describe the bases for termination of Utilization Rights, and (ii) inform the Owner that the Owner may request a hearing before the Board of Directors within thirty days after the date of the Owner's receipt of the notice to contest the termination, which request for hearing must be in writing, dated and signed by the Owner and must state generally the basis for any content of the termination.

1.6.3 Any hearing under this Rule 1.6 will be called and conducted pursuant to Section 209.007 of the Texas Property Code. The foregoing notice and hearing requirements do not apply to the extent provided by Section 209.007(d) of the Texas Property Code. Failure of an Owner to appear at a scheduled hearing shall be deemed a waiver of any and all contests.

1.6.4 If a hearing is requested, the Board shall give the applicable Owner written notice of its determinations which determinations shall be final.

1.7 Boat Slip Applications.

1.7.1 Form. Any Owner seeking to acquire Utilization Rights must fully complete date and sign a Boat Slip Application substantially in the form attached hereto as Exhibit "B". The Board of Directors may modify the form from time to time. It is the responsibility of each applicant to obtain a current Boat Slip Application form from the Board of Directors.

1.7.2 Required Attachments. Each Boat Slip Application must have documentation attached thereto as follows:

- (a) proof of proper registration of a Permitted Vessel with the State of Texas and/or United States Coast Guard, as applicable, with the owner's name
- (b) proof of insurance as required by Rule 1.9.4;

1.7.3 Review Procedure. If a Boat Slip Application is not approved by the Board of Directors within forty-five days after receipt of the application by the Board of Directors, the application is automatically deemed to be denied. The Applicant may resubmit the Boat Slip Application to the Board (without payment of any additional fee) within thirty days after the automatic denial in which case the Board of Directors must approve, conditionally approve or deny approval of the application, in writing,

within thirty days after receipt by the Board of the re-submitted application. If the Board of Directors fails to respond in writing as aforesaid, then the application is deemed to be approved, subject to all other applicable provisions of this Rule 1.

1.7.4 Updating Required. Each Owner of a Lot with Utilization Rights (or other holder as herein provided) must advise the Board in writing of any material change as to any information provided in and documentation attached to the applicable Boat Slip Application within thirty days after the change. Upon not less than ten days written notice, the Board may also require any Owner (or holder) as aforesaid to confirm, in writing, the continuing accuracy of any such information and/or documentation, including requiring re-submission of a fully completed, dated and signed Boat Slip Application.

1.8 Slip Rental Fees.

1.8.1 General. The Owner of each Lot with appurtenant Utilization Rights must pay an annual "Slip Rental Fee" to the Association. The initial Slip Rental Fee will be due and payable within thirty days after the date notice of adoption of this Rule 1 is given to the Owners. Thereafter, the Slip Rental Fee will be due and payable on the first day of each calendar year.

1.8.2 Initial Fee. The initial annual Slip Rental Fee is hereby set at \$0 per Lot with Utilization Rights per year.

1.8.3 Subsequent Computation. The Board of Directors shall adopt a budget at least annually to determine sums deemed necessary and adequate to pay all expenses of the Association relating to the Boat Slips, including for payment of any leasing or licensing fees, taxes and any other fees or charges required to be paid to the State of Texas or other governmental authority, costs of maintenance, repair or replacement, administrative costs, and reasonable amounts for funding of capital, contingency and other reserves. Beginning with the 2012 Slip Rental Fee, the Board of Directors shall set the amount of the annual Slip Rental Fee based on the budget. At least thirty days written notice must be given to all Owners if any change is made as to the amount of the annual Slip Rental Fee. A late charge in the amount of \$25.00 per month is due as to any Slip Rental Fee which is not paid in full as of the first day of the month following the due date for payment of the fee. Failure to pay any Slip Rental Fees when due (and late charges, as applicable) is grounds for termination of Utilization Rights after notice and opportunity to be heard.

1.9 Utilization Rules.

1.9.1 Permitted Vessels. Only Permitted Vessels may be kept in any Slip. No canoes, rubber rafts, non-motorized water craft or jet skis are permitted except in specific PWC areas as from time to time designated by the Board of Directors.

1.9.2 Ownership. No Permitted Vessel is permitted except for Permitted Vessels which are owned by an Owner of a Lot with appurtenant Utilization Rights. Vessels owned by a business entity are not allowed. Partial or joint ownership of a vessel by a household member of an Owner is permitted.

1.9.3 One Slip Per Lot Limit. No Lot may acquire Utilization Rights for more than one Slip.

1.9.4 Insurance. The Owner of each Permitted Vessel must continuously maintain replacement cost insurance on the Permitted Vessel, and personal liability insurance and all-risk property damage insurance in minimum amounts of \$200,000.00 per occurrence, and with a deductible which does not exceed \$1,000.00. All policies must name the Association as an additional insured, and must require not less than thirty days written notice to the Association of any cancellation.

1.9.5 Registration. Registration must remain current as to each Permitted Vessel with the State of Texas, United States Coast Guard and other application governmental agencies, if any.

1.9.6 Alterations. No part of the Boat Slips or any Slip may be altered or modified in any manner whatsoever without prior written approval of the Board of Directors obtained in accordance with Article IV of the Declaration.

1.9.7 Board Transfers Only; Temporary Assignments. No Owner may assign or otherwise transfer Utilization Rights. Utilization Rights may be transferred only by the Board of Directors in accordance with this Rule 1. Notwithstanding the foregoing, upon written request to and written approval by the Board of Directors, Utilization Rights may be temporarily assigned by one Owner to another Owner upon such terms and conditions as determined by the Board of Directors. In addition, if at any time there is one or more Slips available as to which no resident Owner has qualified to obtain Utilization Rights for same, the Board of Directors may temporarily assign the Slip or Slips upon such terms and conditions as determined by the Board, first to any non-resident Owner and then to any lessee. Any such temporary assignment to a non-resident Owner or lessee will automatically terminate upon qualification of a resident Owner to obtain Utilization Rights.

1.9.8 Owner Maintenance. The Owner of each Lot with appurtenant Utilization Rights must at all time keep their applicable Slip clean and free of trash and debris, must promptly report to the Board of Directors in writing any need for maintenance, repair or replacement regarding their Slip, and is liable for any and all costs, expenses and damages resulting from any misuse or any other damage to a Slip caused by the Owner, or the Owner's Related Parties (as defined in the Declaration), and for other costs and expenses as provided in Section 6.01.2 of the Declaration.

1.9.9 RELEASE OF LIABILITY. THE OWNER OF EACH LOT WITH APPURTENANT UTILIZATION RIGHTS, BY VIRTUE OF ACQUISITION OF THE UTILIZATION RIGHTS, AGREES TO RELEASE THE ASSOCIATION FROM, AND TO INDEMNIFY AND HOLD THE ASSOCIATION HARMLESS FROM ALL LIABILITIES, CLAIMS, CAUSES OF ACTION AND SUIT, AND COSTS AND EXPENSES (INCLUDING ALL COSTS OF DEFENSE AND ANY ATTORNEYS FEES) RELATING DIRECTLY OR INDIRECTLY TO THE UTILIZATION RIGHTS AND ALL MATTERS PERTAINING THERETO.

1.9.10 Proof of Compliance; Fines. Any Owner of a Lot with appurtenant Utilization Rights (or lessee, as applicable) must provide to the Board of Directors, upon not less than ten days written notice, documentation or other information sufficient to demonstrate full compliance with all rules, procedures and requirements of this Rule 1, including this Rule 1.9. After notice and opportunity to be heard, the Board may assess fines for any violations of this Rule 1, or the Declaration or other governing documents or Board directives regarding Utilization Rights, not to exceed \$25.00 per day per violation.

1.10 Other Board Authority.

1.10.1 Variances. The Board of Directors may grant specific variances to this Rule 1 as provided in this Rule 1.10.1. A variance may be granted only with respect to specific instances upon written request therefore, it is not binding with respect to any other request for a variance whether or not similar in nature, and it does not constitute a waiver, modification or repeal of any of the provisions of this Rule 1, the Declaration or any other governing documents except for the limited purpose of and to the extent of the specific variance expressly granted. A variance may be granted only upon specific findings that the variance will not materially and adversely affect the use of any other Slips or the Utilization Rights of any other Owner (or holder). WHETHER OR NOT SO STATED IN A VARIANCE AND NOTWITHSTANDING ANYTHING IN A VARIANCE TO THE CONTRARY, A VARIANCE SHALL EXTEND ONLY FOR THE PERIOD OF TIME DURING WHICH AND TO THE EXTENT THAT THE CIRCUMSTANCES THAT FORMED THE BASIS THEREFOR CONTINUE TO EXIST. THE BOARD RETAINS FULL AUTHORITY AS TO ANY VARIANCE AT ANY TIME TO TERMINATE OR MODIFY SAME IN ACCORDANCE WITH ANY SUCH CHANGE IN CIRCUMSTANCES. NO VARIANCE MAY BE TRANSFERRED TO ANY OTHER OWNER (OR HOLDER) EXCEPT WITH THE WRITTEN APPROVAL OF THE BOARD. ANY VARIANCE AUTOMATICALLY TERMINATES UPON TERMINATION OF THE UTILIZATION RIGHTS OF THE OWNER (OR HOLDER) TO WHICH THE VARIANCE WAS GRANTED.

1.10.2 Removal. The Board of Directors has the right, but not the obligation, to remove or require the applicable Owner to remove any vessel from any Slip if the vessel does not meet all applicable safety requirements (state and federal), is not properly maintained or for any reason is not sea worthy, or if proper insurance coverage is not maintained or proof thereof provided, or for any other reason which the Board of Directors determines creates a health or safety hazard, or due to any violation of this Rule 1 and failure to cure after notice and opportunity to be heard. In addition, the Board of Directors may, but has no obligation to, remove or require applicable Owners to remove any vessel upon approach of any hurricane, tropical storm or other inclement weather. Upon termination of Utilization Rights as to a Lot, the Board of Directors has the right, but not the obligation, to remove or require the applicable Owner (or any successor owner) to remove any mooring devices, including floating or fixed platforms used to elevate a vessel from the water, from the application Slip. If not removed within ninety days after written request by the Board, all such devices left in place are conclusively presumed to be abandoned, shall thereafter be subject to removal, alteration or any other disposition as determined by the Board without liability whatsoever as to the Association, the Board or any of their Related Parties (as defined in the Declaration). All costs of removal, whether at the direction of the Board or by an Owner, shall be paid in full by the applicable Owner, either directly or by reimbursement to the Association upon demand. NEITHER THE ASSOCIATION, THE BOARD OF DIRECTORS NOR THEIR RELATED PARTIES (AS DEFINED IN THE DECLARATION) HAVE ANY OBLIGATION OR LIABILITY OF ANY KIND WHATSOEVER FOR DOCKING OF ANY VESSELS WITHIN ANY SLIP, REMOVAL OF ANY SUCH VESSEL, OR ANY OTHER MATTERS PERTAINING TO ANY UTILIZATION RIGHTS.

1.11 Effective Date; Amendment. This Rule 1 shall be effective from date of acceptance by the community and subject to amendment as next provided. This Rule 1 may be amended from time to time and at any time, in whole or in part, by the Board of Directors; provided, any amendment which would terminate Utilization Rights of any Owner as of the effective date of the amendment other than as permitted prior to the amendment must also be approved by the Owners of not less than two-thirds of the Lots then contained in the Subdivision.