

PROCESS AND SCHEDULE FOR THE ASSIGNMENT OF BOAT SLIP NUMBER 10

AT THE

SPARKLING WATERS ANNUAL MEETING, APRIL 5, 2020

Eligibility. To be eligible for the assignment, you must meet the criteria below. You must:

- Be an owner of property within the Sparkling Waters Subdivision;
- Not have an existing private dock or a boat slip assignment on the community dock;
- Be willing to sign the Boat Slip Assignment and Agreement; and
- Be able to pay \$8158.00 by cash or certified check (\$6000 for the assignment, \$825 for the boat lift pilings in slip #10, and \$1333 for the Florida DEP transfer fee).

Qualifying. To qualify, the owner must submit the following items to the Association not later than the start of the 2020 SWHA Annual Meeting on **April 5, 2020 at 2 PM**. Upon successful completion and submission of the above items, the owner will be designated a Qualified Owner and may participate in the selection process.

- A completed copy of the attached Qualification Form;
- A signed and notarized copy of the Boat Slip Assignment and Agreement document tailored for the owner; and
- \$2000.00 in cash or certified check.

Selection of Assignee: The assignee will be selected by random drawing from among all Qualified Owners at the Sparkling Waters HOA Annual Meeting on April 5, 2020. A non-interested owner—not an officer or director or their relative, and not a Qualified Owner or their relative—will place the names of all Qualified Owners into a container and will select them at the designated time. All names will be drawn to establish the selection order from first to last.

Finalization of Assignment: The first Qualified Owner to be selected will be assigned Boat Slip #10 provided that they can submit to the Association the remaining \$6158.00 within two (2) business days (i.e. 5 PM on April 7, 2020). If the first Qualified Owner does not submit the money by the deadline, they will lose the assignment and it will be offered to the second Qualified Owner. The second Qualified Owner will also have two (2) business days to submit the money. If they fail to do so, they will lose the assignment and it will be offered to the third Qualified Owner, and so on from first until last until one of the Qualified Owners submits the entire \$8158.00 within their deadline. All funds submitted by Qualified Owners who did not receive the assignment will be returned.

Schedule: Any owner wishing to receive the Assignment of Boat Slip #10 must submit the qualifying items to the Association **NLT 2 PM on April 5, 2020**. The Assignment drawing will be held at the SWHA Annual Meeting on April 5, 2020.

QUALIFICATION FORM
FOR THE
ASSIGNMENT OF BOAT SLIP NUMBER 10
SPARKLING WATERS COMMUNITY DOCK

I wish to qualify for the assignment of Sparkling Waters community dock boat slip #10. To do so, I make the following statements and attest that they are true and correct:

1. I am an owner of property within the Sparkling Waters subdivision. I own lot _____ with the following street address: _____. The deed for this property showing my name is recorded in the Official Records of Okaloosa County, Florida.
2. I certify that I have neither a private dock (if I own a waterfront lot), nor a boat slip assignment on the Sparkling Waters Community Dock.
3. I have signed and notarized my counterpart of the Boat Slip Assignment and Agreement document for boat slip #10 and I have attached it to this form. I understand that the Association will only execute their counterpart of the document if I am awarded the Assignment. Otherwise, the document will be destroyed after the selection is complete.
4. I attest that I am capable of paying \$8158.00 cash or certified check for the assignment. The first \$2000.00 of this amount are included with this form. I attest that I will be able to provide to the Association the remaining \$6158.00 due for the assignment within two (2) business days (i.e. NLT 5 PM on April 7,2020) if I am awarded the assignment. I understand that if I do not receive the Assignment, all funds I have provided to the Association for the purpose of this selection process will be returned to me. I further understand that the \$1333 for the Florida DEP transfer fee may be refunded to me if I have a Homestead Exemption on the lot to which the boat slip will be associated, and if Florida DEP waives the transfer fee due to said exemption.

Signed

Date

PRINTED NAME

BOAT SLIP ASSIGNMENT AND AGREEMENT

THIS AGREEMENT entered into this ____ day of _____, 2020, by and between Sparkling Waters Homeowners Association Inc., a Florida corporation not for profit (“Association”), and _____, who is/are the owner(s) of Lot ____, Block __ at Sparkling Waters Subdivision (“Owner”).

WHEREAS, the Covenants, Restrictions and Reservations of Sparkling Waters, as recorded in Official Record Book 2695, Pages 0993-1003 and Official Record Book 3288, Pages 2698-2703 of the Official Records of Okaloosa County, Florida (“Covenants”) provides that the boat slips of Sparkling Waters shall be for the exclusive use, enjoyment and benefit of specific lots in the community. The Covenants authorize the Association to assign exclusive use rights of the boat slips on terms and conditions acceptable to the Association; and

WHEREAS, Association wishes to assign the exclusive use right to a boat slip at Sparkling Waters to Owner; and

WHEREAS, Association and Owner wish to enter in this Agreement to clarify the rights and obligations of the parties hereto; and

NOW, THEREFORE, for and in consideration of the sum of \$10.00, the covenants and conditions contained herein, and other good and value considerations, the receipt and sufficiency of which are hereby acknowledged, the Association and the Owner agree as follows:

1. The above recitals are true and correct.
2. This Agreement shall be subject to the provisions and conditions set forth in the Covenants and the Rules and Regulations of the Association, as amended from time to time. Additionally, this Agreement is expressly subject to Sovereignty Submerged Lands Lease Number #460345211, as recorded in Official Records Book 3202, Pages 2764-2786 of the Public Records of Okaloosa County, Florida.
3. For the purposes of this Agreement, the Mooring Facility and Community Dock are defined as follows. The Community Dock, which may be used by all members of the Association, includes the main walkway, all platforms, and any other portions originally constructed at Association expense. The Mooring Facility includes finger piers, water access and fixtures, electrical access and fixtures and any other items used exclusively for the Mooring Facility.
4. Association hereby assigns Boat Slip No. 10, along with use of associated finger piers and electrical access and fixtures (“Boat Slip”), as depicted in the attached Exhibit A, to and for the exclusive use of Owner, subject to all applicable terms and conditions of the Covenants, and any rules and regulations regarding the use, upkeep, maintenance and enjoyment of the boat slips, which are promulgated by the Board from time to time.
5. Owner will comply with all laws of the United States, the State of Florida, all local ordinances and all rules and requirements of the police, marine and fire departments, and will pay any taxes or fees due to any authority arising out of Owner’s use of the facilities, including but not limited to sales and property tax. Additionally, Owner shall be responsible for the payment of any fees charged by the Association, from time to time, related to the assigned boat slip and Mooring Facility, as further described below.

Each Owner who is assigned the exclusive use right to a boat slip shall be subject to any such fees which the Association determines necessary for the expenses of utilities, repair, maintenance, insurance and other costs related to the Mooring Facility ("Slip Fees"). The Slip Fees will include a proportionate share (1/12th) of some fixed expenses (i.e. Submerged Land Lease, insurance, etc.) and an equitable share of other expenses, such as electrical and water. The cost of the Slip Fees shall be determined by the Association from time to time and payable upon demand by the Association.

6. Owner shall have the right to reassign the Boat Slip, either as part of the sale of his/her/their lot, or as a stand-alone transfer to another Sparkling Waters lot owner. Notice of the assignment must be given to the Association, in writing, and a new Agreement, on the form provided by the Association, must be executed between the Association and the new owner. All reassignments are subject to the terms and conditions of this Agreement, the Covenants and Rules and Regulations, as adopted or amended from time to time.

7. The exclusive use right granted in this Agreement and Assignment will terminate in the event Owner conveys his/her/their interest in the lot, without also assigning the use of the boat slip, as provided for in this Agreement. In that event, the right to use the boat slip shall revert to the Association.

8. In the event the Owner fails to maintain his/her/their boat slip in a first class manner and in good working order, and otherwise in accordance with the provisions of Rules and Regulations and this Agreement, upon fifteen (15) days prior written notice from the Association to the Owner, the Association shall have the right, but not the obligation, to make the repairs, and the Owner shall be responsible for the reimbursement of all costs incurred by the Association in connection with such repairs.

9. The Boat Slip shall be used only by the Owners and their occasional, accompanied guests, or by another resident of the Sparkling Waters subdivision with the Owner's express permission. The Boat Slip shall not be rented or leased to anyone who does not physically reside within Sparkling Waters. Any lease or rental agreement shall explicitly include a requirement for the lessee or tenant to comply with the terms of this agreement, and all other rules and regulations incorporated by reference. In no case shall the boat slip be used as long-term storage for an absentee boat owner.

10. Owner acknowledges that he/she has inspected the Boat Slip and Mooring Facility, have satisfied himself/herself that said space is adequate for safe mooring of his/her vessel and accept the said Boat Slip and Mooring Facility in its present condition. Owner shall remove his/her vessel, if so ordered by Association, in the event of pending adverse weather, such as a hurricane.

11. In the event the Owner abandons the use of the Boat Slip, fails to comply with the terms of this Agreement, Covenants or rules and regulations and/or fails to make the payment of fees charged by the Association related to the Boat Slip or Mooring Facility, such abandonment, failure to comply and/or failure to make payments shall constitute a default under this Agreement. In such instance, the Association shall take such action, as it deems reasonably necessary, to seek compliance, including but not limited initiating collection process for delinquencies, levy a fine for violations, terminating the Owner's right to use the Boat Slip, or such other remedy as the Association deems appropriate.

12. A fine may be imposed for each day of continuing violation at the highest rate allowed by law per violation with a single notice and opportunity for hearing, provided that no fine shall in the aggregate exceed the maximum amount permissible by law.

The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing by being given notice of not less than fourteen (14) days. Notice shall be effective when mailed by United States Mail, certified, return receipt requested, to the address of the Owner listed in the official records of the Association. Said notice shall include a statement of the date, time, and place of the hearing; a statement of the alleged violation and short and plain statement of the matters asserted by the Association.

The party against whom the fine may be levied shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Association. The hearing shall be held before a Committee of Owners appointed by the Board, which may not include Board members nor persons residing in a Board member's household. If the Committee does not agree with the fine, the fine may not be levied.

Should the Association be required to initiate legal proceedings to collect a duly levied fine, the prevailing party in an action to collect said fine shall be entitled to an award of costs, and a reasonable attorney's fee incurred before trial (including in connection with the preparation for and conduct of fining hearings), at trial, and on appeal.

13. Should Owner be in default of any clause of this Agreement or fails to comply with the Covenants and rules and regulations, the Association shall, after due notice and opportunity for a hearing, as set forth in Paragraph 12, have the right to terminate the Agreement and institute an action for eviction, removal of the vessel at Owner's expense, monetary damages, injunctive relief, or declaratory relief, as provided by law and/or this Agreement. The Association's remedies shall be considered cumulative. The failure of Association to exercise its rights in any one instance will not bar Association from doing so in any other instance, nor operate as a waiver.

14. Owner shall not injure, nor mar, nor in any manner deface the Boat Slip or Mooring Facility, and shall not cause or permit anything to be done whereby the said premises shall be in any manner injured, marred or defaced.

15. Owner shall make no alteration or improvements to the boat slips, finger piers, Community Dock or Mooring Facility and shall install no pilings, dock boxes, or other equipment or apparatus, without the prior approval of the Association.

16. Owner hereby agrees to hold Association harmless and to indemnify it against any liability and/or property damage liability which may arise or accrue by reasons of the use by Owner (or his guests or invitees) of the facilities. In case of emergency, as that term is reasonably defined by the Association, Owner hereby agrees that Association, its agents and/or employees, is authorized to take whatever measures Association deems appropriate and necessary to prevent damage to the Association property, Owner's vessel, or any other vessel; however, in no case shall the Association, its agents and/or employees, have liability for undertaking or failing to undertake any such measures.

17. Owner hereby agrees to assume all responsibility for insurance respecting the vessel moored at the Boat Slip during use under this Agreement, and to assert no claim of coverage under any insurance policy of Association for claims arising out of such use. Association shall not

be responsible for theft of the vessel or any personal property therein or a part thereof, nor shall Association be responsible for any damage to the vessel nor damage or injury to person or property.

18. This Agreement shall be governed by the laws of the State of Florida. Venue for any action shall be in Okaloosa County, Florida. In the event either party is required to take legal action to enforce the terms and conditions of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, at trial and for any appeal, for the other party.

19. If any part, term or provision of this Agreement shall be determined by the court to be invalid or unenforceable, all other provisions nevertheless shall remain valid and effective as it is the intention of the parties that each provision hereof is being agreed upon separately.

20. Failure to insist upon strict compliance with any of the terms, conditions, representations and/or warranties of this Agreement shall not be deemed a waiver of such terms, conditions, representations and/or warranties nor shall any waiver or relinquishment of any right or power hereunder at any one time or more times be deemed a waiver or relinquishment of such right or power at any other time or times, absent written notice to such effect, delivered by the appropriate party to the other.

21. This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

22. This Agreement supersedes any and all prior assignments and agreements made to Owner and their predecessors in title, specifically the assignment recorded in Book 2971 Pages 1467 – 1472 of the Official Records of Okaloosa County, Florida.

IN WITNESS WHEREOF, the parties have set their hands and seals on the date written above.

WITNESSES:

OWNERS:

Printed Name: _____

Printed Name: _____

Printed Name: _____

Printed Name: _____

STATE OF FLORIDA
COUNTY OF OKALOOSA

The foregoing instrument was executed and acknowledged before me this ____ day of _____, 2020, by _____, (____) to me personally known/(____) who produced the following form of identification:_____.

NOTARY PUBLIC

Printed Name of Notary
My Commission Expires:

FOR THE SPARKLING WATERS HOMEOWNERS ASSOCIATION:

WITNESSES:

SPARKLING WATERS HOMEOWNERS
ASSOCIATION, INC.

Printed Name: _____

Printed Name: _____
Title: _____

Printed Name: _____

STATE OF FLORIDA
COUNTY OF OKALOOSA

The foregoing instrument was executed and acknowledged before me this ____ day of _____, 2020, by _____, as _____ of Sparkling Waters Homeowners Association, Inc., (____) to me personally known/(____) who produced the following form of identification: _____.

NOTARY PUBLIC

Printed Name of Notary
My Commission Expires:

EXHIBIT "A"

SLIP ASSIGNMENTS

