



BOAT CLUB RULES AND REGULATIONS

These Boat Club Rules and Regulations (these "Rules") are adopted by **Choto Boat Club, LLC**, a Tennessee limited liability company with a mailing address of P.O. Box 23160, Knoxville, Tennessee 37933, its successors and assigns ("CBC") effective as of the date set forth in the upper right-hand corner herein above (the "Effective Date").

These Rules shall govern the use of any and all watercraft owned and/or operated by CBC which are made available for use to a Member from and after the Effective Date pursuant to a "Boat Club Agreement" between CBC and such Member or pursuant to a "Freedom Boating Plan Agreement" by and between CBC as successor in interest to VBC and such Member (each of which shall be referred to herein as the "Agreement").

- 1) AGE & TRAINING: Each Member: (a) must be at least 21 years of age; (b) must have completed CBC's Boating Orientation and Boating Safety Course to CBC's sole and absolute satisfaction; and (c) if the Member will be using watercraft over 29 feet in length, must have passed the Coast Guard Boating Course and written proof thereof accepted by CBC as determined in CBC's sole and absolute discretion.

- 2) CHECK-IN/CHECK-OUT & FUEL: A Member must complete CBC's check-in process (in a format and containing such information as CBC deems from time to time as appropriate) prior to taking possession of any CBC watercraft. Each Member must also complete CBC's check-out process (in a format and containing such information as CBC deems from time to time as appropriate) upon returning any such CBC watercraft to CBC after Member's use thereof. The check-in and check-out process is for CBC's and Member's protection as it provides Member an opportunity to point out any defects in the condition of any CBC watercraft prior to their taking possession of it (to establish a baseline for comparison when the watercraft is returned by Member) and CBC the opportunity to identify any damage to such watercraft that did not exist prior to Member's taking possession thereof. It is Member's responsibility to ensure that the check-in and check-out process is completed upon each use of CBC watercraft. In the event Member discovers any mechanical issues with a CBC watercraft upon leaving CBC's dock, Member agrees to immediately return such watercraft to the CBC dock and immediately notifying CBC's Dock Master of the same.

Absent Member's completion of the check-in or check-out process (or immediately returning the watercraft to CBC's dock, in the event of any mechanical issues), Member agrees that CBC's internal records regarding the condition of CBC's watercraft shall be conclusive as to what condition such watercraft was in at the time of Member's taking possession and its condition upon its return to CBC.

If damage is discovered by CBC at any point after check-in and CBC determines, in its sole and absolute discretion, that the Member is responsible for such damage, the Member will be billed for all damages/costs incurred by CBC to restore the CBC watercraft to the same condition as originally delivered to the Member. CBC may suspend such responsible Member's CBC membership, including such Member's rights to reserve or use any CBC watercraft, until CBC has received full compensation for any damage to the damaged CBC watercraft at issue (including \$1,000 in liquidated damages for the loss of use of such watercraft while being repaired). In addition, CBC may require the responsible Member to attend further training on use of CBC's watercraft before reinstating such Member's CBC membership.

All CBC watercraft reserved by Members will be made available by CBC with full fuel tanks. Upon Member's return of such watercraft, CBC will refill the fuel tank back to full. Member agrees that CBC is authorized to charge the cost thereof back to the Member at the current price of fuel at the Choto Marina fuel dock on the date of such refilling.

- 3) ARRIVAL DEADLINE & CANCELATION: Members must check in at the CBC dock located at 12214 Choto Marina Way, Knoxville, TN 37922 no later than one (1) hour prior to such Member's scheduled reservation time. Each Member must call CBC's Dock Master at **865-320-3040** within one (1) hour of the reservation time if such Member does not anticipate arriving at least one (1) hour in advance to check in. Members who wish to cancel a reservation must notify the Dock Master by email at sneely@chotomarina.com no later than two (2) hours prior to the applicable reservation time. If a Member fails to timely arrive/provide notification or their inability to timely arrive or timely cancel a reservation, such Member's reservation may be assigned to another CBC member and a "No Show Fee" of \$50.00 will be assessed to the tardy Member.
- 4) RETURN DEADLINE & LATE FEES: Each Member must return CBC watercraft by sunset unless prior arrangements have been made with the Dock Master and consented to by CBC in writing (email will suffice). Absent such prior written consent, a \$50.00 per half-hour charge after such deadline will be assessed to the Member. Notwithstanding the foregoing, CBC watercraft may only be operated during daylight hours.
- 5) NO FISHING FROM WATERCRAFT: Fishing is not permitted on any CBC watercraft unless prior arrangements have been made with the Dock Master and consented to by CBC in writing (email will suffice). In any event, no fish may be cleaned onboard any CBC watercraft.

- 6) RETURN OF WATERCRAFT IN UNACCEPTABLY DIRTY CONDITION: If any CBC watercraft is returned unacceptably dirty (as determined in CBC's sole and absolute discretion), the returning Member will be assessed a fee for the expenses incurred by CBC, including overhead for internal staff or amounts paid to third parties, to detail the watercraft for the next Member's use, which shall, in any event, be no less than \$50.00.
- 7) RESERVATION OF WATERCRAFT: A Member's account must be current and Member must at all times be in compliance with these Rules in order to place a reservation for CBC watercraft. Selection of dates and watercraft are subject to availability and must be reserved by a Member in accordance with these Rules. Scheduling will be handled on first-come, first-served basis. Each Member shall have unlimited yearly reservations. However, no Member may have more than four (4) reservations booked at any given time. Reservations may be scheduled up to sixty (60) days in advance. Failure by a Member to use any CBC watercraft that is reserved shall not relieve Member of any liability of payments due to CBC as set forth herein or as otherwise agreed to by such Member.

CBC watercraft reservations may be made by phone Monday through Friday, 9 am to 5pm (local time in Knoxville, TN) by calling **865-320-3040**. CBC reserves the right to substitute, alter, or cancel any watercraft that are reserved or scheduled by a Member as determined in CBC's sole and absolute discretion at any time (including after such Member has taken possession of the CBC watercraft at issue) upon providing notice to the Member at issue.

- 8) AVAILABILITY OF WATERCRAFT: Each Member shall have unlimited use of CBC watercraft on an as-available, same day usage basis except on days when CBC is closed (which may be decided on the day of due to inclement weather). Members may call the Dock Master to check availability. CBC will be closed on Thanksgiving Day, Christmas Eve, Christmas Day, and New Year's Day.
- 9) OVERNIGHT POSSESSION: Any Member wishing to maintain possession of any CBC watercraft overnight must submit an Overnight Request Form in the form provided by CBC upon Member's request at least forty-eight (48) hours prior to the desired reservation time, which CBC may approve or deny as determined in CBC's sole and absolute discretion. If CBC approves, the Member at issue must reserve the watercraft at issue for extended hours. In no event shall such consent by CBC be deemed CBC's consent to use its watercraft on the water outside of daylight hours. Member expressly acknowledges and agrees that CBC's watercraft do not have any of the equipment which would be necessary for use outside of daylight hours.
- 10) CONTROL OF CBC WATERCRAFT/ACCESSORIES: Each Member shall be solely and exclusively responsible for any loss of or damage to any CBC watercraft and accessory equipment in such Member's possession (or in such Member's control, if reserved by another CBC Member) up until it is returned to CBC and the CBC check-out process is completed. **Member specifically acknowledges and agrees that they are obligated to be in complete custody and control of CBC watercraft that they reserve from completion of the check-in process until completion of the check-out process, and that they will remain solely and exclusively responsible for any loss of or**

damage to any such CBC watercraft or accessories thereto regardless of who is in actual physical custody or control of the CBC watercraft or accessories at the time of any such loss or damage.

Member agrees and acknowledges that the operation of any watercraft is an activity that requires specialized training and experience and that use of such watercraft, with or without such training and experience, presents obvious and nonobvious dangers to anyone aboard or within the vicinity of the watercraft. Member acknowledges that many such dangers produce risk of injury to Member, Member's passengers and the general public regardless of the training and experience of the operator of the watercraft and regardless of the maintenance and condition of the watercraft. Accordingly, Member knowingly accepts sole and exclusive responsibility at all times for the safety of all persons and property on board or within the vicinity of the CBC watercraft while in such Member's possession (after check-in and before check-out), including Member, Member's passengers and for general public.

11) **INDEMNIFICATION: EACH MEMBER AGREES TO RELEASE, INDEMNIFY, DEFEND AND HOLD CBC, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS HARMLESS FROM AND AGAINST ANY CLAIMS, LOSS, DAMAGE, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS AND EXPENSES OF LITIGATION) FOR INJURY TO OR LOSS OF ANY SORT, INCLUDING BODILY INJURY, DEATH, PROPERTY DAMAGE OR OTHER LOSS OF ANY KIND OR NATURE, WHETHER KNOWN OR UNKNOWN, FORSEEN OR UNFORSEEN, PATENT OR LATENT ARISING FROM OR RELATING TO THE USE OR OPERATION OF ANY CBC WATERCRAFT. THIS RELEASE AND INDEMNIFICATION OF CBC, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS SHALL EXTEND TO ANY INJURY OCCASIONED WHOLLY OR IN PART BY ANY ACT OR OMISSION OF CBC, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS AND SHALL NOT APPLY ONLY TO THE EXTENT SUCH LOSS, DAMAGE OR EXPENSE RESULTS FROM CBC'S INTENTIONAL OR WILLFUL MISCONDUCT.**

12) **LIMITATION ON MEMBER'S RIGHTS**: Each Member's rights extend only to the limited, non-exclusive and non-assignable and use of CBC watercraft subject to these Rules and the terms of Member's agreement with CBC. Nothing contained in these Rules or the Agreement is intended or shall be construed as creating any rights of ownership, legal or equitable, or any leasehold rights beyond those granted herein in any of CBC's watercraft or CBC's other assets.

13) **COMPLIANCE WITH LAWS AND ORDINANCE**: Member shall comply with all applicable governmental laws, ordinances, orders, and regulations now in force or which may hereafter be in force insofar as they pertain to such Member's use, operation and utilization of any CBC watercraft. Member shall also comply with all requirements of any insurance companies providing insurance for CBC and the rules and regulations of any body of water or marina/other docking facility in which CBC watercraft are located or operated from time to time.

14) **DEFAULT; REMEDIES**: CBC may, as determined in CBC's sole and absolute discretion, suspend or terminate a Member's membership with CBC, or otherwise prohibit a Member from reserving or operating CBC watercraft, in addition to any other remedies provided CBC by law or in equity, if any of the following occur, each of

which shall be deemed a default herein: (a) Member's failure to timely pay any amounts due CBC as set forth herein or in the Agreement; (b) Member's misuse of alcohol or drug use; (c) Member's or Member's guests/invitees usage of language or behavior which is deemed unacceptable to CBC; (d) Member's negligent or reckless operation of CBC watercraft, including allowing anyone else to operate or exercise control of CBC watercraft; (e) Member's failure to adhere to these Rules; or (f) any other reason which CBC determines, in its sole and absolute discretion, as grounds for suspension or termination of a Member's membership with CBC. Member shall remain liable for all payments due CBC as set forth in these Rules and the Agreement, notwithstanding CBC's suspension or termination of such Member's membership as provided herein. In the event of termination of a Member's membership with CBC, all amounts due and payable by Member to CBC for the duration of the Term of such Member's membership with CBC shall, at CBC's option, be accelerated and due and payable immediately. Member agrees to reimburse CBC for any and all attorneys' fees and other costs, including overhead to CBC employees, which are incurred by CBC in connection with CBC's enforcement of these Rules against Member or collection of any amounts due CBC.

- 15) NO WAIVER: No waiver by CBC with respect to any right to suspend or terminate a Member's membership shall constitute a waiver of CBC's rights with respect to any subsequent default or breach.

- 16) CHOICE OF LAW & VENUE: Member agrees that these Rules, the Agreement and all matters relating thereto or arising therefrom shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to any conflict of law provisions. In the event of any arbitration or legal proceedings brought by any party to construe or enforce the provisions of these Rules or the Agreement, or in the event there is any arbitration or legal proceeding, Member irrevocably and unconditionally agrees that (a) any such arbitration, suit, action, or proceeding shall be held in Knoxville, Tennessee; and (b) service of any arbitration or complaint in litigation may be effected on Member by mail to Member's physical address set forth in the Agreement, in addition to any other manners as may be provided under the applicable arbitration rules or laws of the State of Tennessee.

- 17) ARBITRATION OF DISPUTES: Member agrees that any dispute (whether under contract, tort, statutory, or otherwise) arising out of or relating in any way to these Rules, the Agreement, Member's CBC membership, Member's use of any CBC watercraft or any other dealings between Member and CBC shall be submitted to binding arbitration in Knoxville, Tennessee in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration procedure shall be governed by the United States Arbitration Act 9 U.S.C. 1-16, and the award rendered in any court having jurisdiction thereof. In any such arbitration, the arbitrator shall instruct the non-prevailing party to pay all costs of the proceedings, including the fees and expenses of the arbitrator and the reasonable attorneys' fees and expenses of the prevailing party. If the arbitrator determines that there is not a prevailing party, each party shall be instructed to bear its own costs and to share equally the fees and expenses of the arbitrator.

18) WAIVER OF JURY TRIAL: It is the intent of the parties that any dispute of any kind whatsoever between the parties to this agreement shall be settled and finally determined in arbitration before the American Arbitration Association ("AAA") in accordance with the preceding Section.

HOWEVER, IN THE EVENT IT IS DETERMINED THAT A DISPUTE BETWEEN THE PARTIES IS TO BE DETERMINED IN A COURT OF LAW, THE PARTIES TO THIS AGREEMENT HEREBY, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ARISING OUT OF OR RELATING IN ANY WAY TO THESE RULES, THE AGREEMENT, MEMBER'S CBC MEMBERSHIP, MEMBER'S USE OF ANY CBC WATERCRAFT OR ANY OTHER DEALINGS BETWEEN MEMBER AND CBC.

19) LIMITATIONS ON WARRANTIES AND LIABILITY: **CBC MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, EXCEPT THOSE INCLUDED IN THESE RULES OR AS SET FORTH IN THE AGREEMENT. MEMBER ACKNOWLEDGES THAT ALL WATERCRAFT PROVIDED BY CBC ARE PROVIDED "AS IS, WHERE IS" WITHOUT ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND INCLUDING, WITHOUT LIMITATIONS, WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN PARTICULAR, WITHOUT IN ANY MANNER LIMITING THE FOREGOING, CBC MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE QUALITY, CAPACITY, OR OTHER ATTRIBUTES OF ANY KIND TO THE WATERCRAFT THE USE OF WHICH WILL OR MAY BE FURNISHED TO MEMBER PURSUANT TO THIS AGREEMENT AND ANY SUCH REPRESENTATIONS OR WARRANTIES WHICH MAY BE MADE OR UPON WHICH MEMBER MAY RELY ARE EXCLUSIVELY THOSE OF THE MANUFACTURES OF SAID EQUIPMENT. CBC SHALL NOT BE RESPONSIBLE OR LIABLE AT ANY TIME FOR LOSS OR DAMAGE TO PERSONAL PROPERTY BROUGHT BY MEMBER, OR ANY OF THE MEMBER'S FAMILY, GUESTS, INVITEES, OR THIRD PARTY ABOARD CBC WATERCRAFT, OR ANY EQUIPMENT, APPLIANCES, OR APPARATUS UTILIZED IN CONNECTION WITH SUCH WATERCRAFT, NOR SHALL CBC BE RESPONSIBLE OR LIABLE FOR ANY INJURY OR DAMAGED CAUSED BY OR RESULTING FROM ANY DEFECT, ACT, OR OMMISION IN THE CONSTRUCTION, MAINTENANCE, OPERATION, OR ANY USE OF ANY WATERCRAFT, OR ANY EQUIPMENT, FIXTURES, APPLINANCES, OR APPARATUS UTILIZED IN CONNECTION WITH SUCH WATERCRAFT. MEMBER FURTHER ACKNOWLEDGES AND AGREES THAT MEMBERS WAIVING AND RELEASING ANY AND ALL CLAIMS WHICH MEMBER COULD MAKE AGAINST CBC, ITS PARENT AND AFFILIATES, OR ANY OFFICER, DIRECTOR, EMPLOYEE, MEMBER OR AGENT OF CBC FOR ANY PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM ANY DEFECT, LATENT, OR OTHERWISE, IN ANY WATERCRAFT OR ANY EQUIPMENT, APPLINANCES, OR APPARATUS UTILIZED IN CONNECTION WITH SUCH WATERCRAFT.**

20) FORCE MAJEURE: CBC shall be excused from performance, or any delays in performance hereunder, due to fire, flood, earthquakes, hurricanes, acts of God, unavailability of inventory, parts, materials, equipment or fuel, war, declaration of hostilities, revolt, civil strife, altercation or a commotion, strike, labor disputes, epidemic, lack of failure of fork lift or transportation facilities, mechanical breakdowns, any law, order, proclamation, regulation or ordinance of any government or subdivision thereof, or for any other cause whether similar or dissimilar to those enumerated which is beyond the reasonable control of CBC.

- 21) TRANSFERABILITY OF MEMBERSHIP: Member's CBC membership and any privileges contained in the Agreement or in these Rules shall not be transferable by Member to any other party without the prior written consent of CBC, which consent may be withheld as determined in CBC's sole and absolute discretion. **CBC will not repurchase memberships.**
- 22) PAYMENTS NON-REFUNDABLE: ANY AND ALL AMOUNTS PAID BY MEMBER PURSUANT TO THE AGREEMENT OR THESE RULES ARE CONSIDERED EARNED BY CBC UPON MEMBER'S PAYMENT/CBC'S RECEIPT, ALL OF WHICH SHALL BE NONREFUNDABLE AND SHALL NOT BE SUBJECT TO CLAIM FOR REFUND FOR ANY CAUSE WHATSOEVER.
- 23) ASSIGNMENT BY CBC: CBC retains the absolute right to assign any or all of its rights and obligations as set forth in the Agreement, in these Rules or as otherwise pertains to Member's CBC membership without the need to obtain consent from any Member.
- 24) TOWING: Member shall be responsible for payment of the costs associated with any tow services rendered by CBC, or any third party on behalf of CBC, which result from Member's failure to properly operate any CBC watercraft, as determined by CBC in its sole and absolute discretion.
- 25) BINDING EFFECT; ENTIRE AGREEMENT; MODIFICATIONS: If any provision of these Rules or the Agreement is declared invalid or unenforceable for any reason, the remainder thereof shall not be affected and shall remain in full force and effect. These Rules and the Agreement are binding upon the parties hereto and their heirs, beneficiaries, estates, legal/personal representatives, successors, and permitted assigns. The parties hereby agree that these Rules, in conjunction with the Agreement, contains the entire agreement between parties and there is and can be no other oral or written agreement or understanding, written or oral, unless the same is set forth in writing signed by Member and an authorized representative of CBC. Any waiver or consent shall be effective only if such waiver is in writing, signed by an authorized representative of CBC, and such waiver shall be narrowly construed as set forth in such written document.
- 26) REVISIONS TO THESE RULES: Member agrees and acknowledges that these Rules are subject to change, without notice being provided to Member, as may be determined by CBC in its absolute and sole discretion from time to time, and that the latest copy of the Rules will be located at www.chotomarina.com/boat-club/rulesandregulations and will be deemed effective (and supplemented as Exhibit A to each and every Agreement) at the time of CBC's publishing of such revised Rules at such address. Member agrees and acknowledges that it is Member's sole and exclusive duty to check CBC's website for any updates to these Rules throughout the term of Member's CBC membership.