

RIGHTS AND RESPONSIBILITIES OF MEMBERSHIP

Carefree Boat Club of Houston

dba: Carefree Boat Club

1900 Shipyard Dr seabrook texas 77586

281-975-4000

The Rights and Responsibilities herein apply to Members of the Carefree Boat Club (CLUB)

Houston Boat Club Inc.

17317 Westbeach Rd., Austin Tx, 78734

1900 Shipyard Drvie, Seabrook Tx, 77586

11880 Anchorage Marina Rd. #5797, Willis Tx, 77318

RIGHTS AND RESPONSIBILITIES OF MEMBERSHIP

The Rights and Responsibilities herein apply to Members of the Houston Boat Club

- 1) AGE LIMIT: Member(s) must be at least 21 years of age to operate CLUB vessels.

Fees & Dues:

- 2) ACCOUNT: No Member will be allowed to use CLUB vessels unless the Member's account is current. This could include unpaid fuel bills, incurred service charges, repair invoices, finance payments, dues, etc. If account becomes past due, CLUB may cancel reservations and boat usage until charges are paid in full. **A \$50 late fee will be charged if more than 30 days late. Accounts past due more than 90 days are subject to Termination.**

- 3) CREDIT CARD AUTHORIZATION: Members are required to have a current credit card on file, and gives CBC authorization to debit credit card for fuel billings, damage/repairs deemed the responsibility of member, service fee's, due's and supplemental insurance payments if applicable.

- 4) RIGHTS OF OWNERSHIP: Member's rights are for the prepaid use of CLUB watercraft(s) only, and nothing contained in this Agreement is intended or shall be construed as creating any rights of ownership, legal or equitable, in any of the watercraft(s) or in CLUB, its stock, or assets.

- 5) ALL SUMS PAID TO HOUSTON BOAT CLUB BY THE MEMBER PURSUANT TO THIS AGREEMENT, WHETHER BY WAY OF DEPOSITS, MEMBERSHIP FEES, INSTALLMENT PAYMENTS, DUES, OR OTHERWISE, ARE NON-REFUNDABLE AND SHALL NOT BE SUBJECT TO CLAIM FOR REFUND FOR ANY CAUSE WHATSOEVER.

- 6) ASSIGNMENT OF PROCEEDS: CLUB may assign its right to receive any deferred payment obligations or dues or any other sums which may be due or become due to CLUB pursuant to this Agreement. Upon written notice to Member of any such Agreement, all sums thereby assigned shall be payable directly to the assignee and at the address designated.

Boating Safety & Training:

- 7) SAFETY COURSE: Member(s) must pass the Boating Safety Orientation Course and successfully pass the "on the water" Boat Handling training before using CLUB vessels. Two "on the water" trainings are typically conducted which includes vessels 17' to 27'. After a few outings and/or at the sole discretion of the CLUB Dock Master, the member(s) will attend another "on the water" training including cruising vessels 25' to 27'. All training must be completed before Extended Hour Use or Overnight privileges are permitted. Sailing orientation and training is available upon request and by reservation.

- 8) CHECK IN/OUT: Before and after boating, Member(s), with assistance of the dock staff, must complete the "Check Out/Check In Sheet" which involves a visual inspection/inventory of the boat hull, prop, canvass, upholstery, and the on board safety equipment.

- 9) WEATHER: Member is responsible to plan for inclement weather and monitor forecast throughout the boating time period. Member is further responsible to make decisions to seek shelter, come back early or delay boat trip if weather

forecasted poses any danger to member, guest, or vessel. HBC reserves the right to recall, limit, or shut down boating if weather poses any possible dangers.

- 10) **VHF RESPONSIBILITY:** For your safety, a VHF radio will be provided on each vessel. Please keep the VHF radio **ON** at all times while using any CBC vessels; **channel 16** (Coast Guard), or CLUB designated channel if applicable. If the weather turns inclement while you are out, please return to the marina immediately, or to the nearest safe shelter, and notify CLUB of your position and situation. It will be the member's responsibility to return the vessel to home port after situation remedy.
- 11) **CANCELLATION:** In an effort to maintain the safety of the members and the vessels, CLUB reserves the right to restrict/cancel boating at any time due to weather and/or other conditions/reasons. If weather is inclement, or if small craft advisories have been posted, we encourage you call before arrival to inquire about the status of boating.
- 12) **TOWING:** The CLUB will provide Tow coverage for the vessels during clubs normal operation hours for the purpose of mechanical breakdowns. Towing services will be provided either through third party operators or CLUB boats and employees, only. Towing and on the water repair charges and expenses due to members negligence will be the responsibility of the member. Member will be responsible for all towing charges incurred after clubs normal operating hours regardless of the circumstance. Towing charges will not be covered under clubs insurance policy.
- 13) **RENDERING ASSISTANCE:** Member(s) may not use CLUB boats to tow another boat unless absolutely necessary to render assistance to a boater in trouble, otherwise permission from a CLUB agent is necessary.
- 14) **LAW ENFORCEMENT:** Any law enforcement violation by a Member involving a CLUB watercraft, including coast guard violations, and including but not limited to BUI (Boating Under the Influence), reckless driving, wake zone speed violations, etc., may result in suspension or termination of membership. Member is responsible to law enforcement local and federal; any and all fines imposed is sole responsibility of member.

Boat Availability & Reservations:

- 15) **AVAILABILITY:** Member's selection of dates and watercraft will at all times be subject to availability and must be reserved by Member in accordance with HBC Rules and Regulations. HBC reserves the right to substitute, alter, or cancel boats that are reserved or scheduled by Member. All HBC Members will have equal rights to reserve and use watercraft. Scheduling will be handled by HBC on a first-come, first-serve basis.
- 16) **RESNET:** Member agrees to use the RESNET online reservation system with Houston Boat Club. Reservations within the Houston Boat Club network primarily will be made using the RESNET online reservation system. If RESNET systems are not available or member is unable to access system, members may call in to local Dock master on duty Tuesday thru Friday between the hours of 8:30 am and 2:00pm to make reservations. CLUB reserves the right to substitute, alter, or cancel boats that are reserved or scheduled by Member. The Reservationists' contact info can be found within the New Member package.
- 17) Normal boat usage hours are from sun up to sunset 8:00 a.m. to 5:00 p.m... From Memorial Day to Labor Day, normal boat usage hours are extended to accommodate longer days and are typically 8:00 a.m. to 8:00 p.m. For Earlier Pick up Please inform the Dock master, The Operation hours are posted at each location. See rule #23 for extended hours/overnight usage.
- 18) **MEMBERSHIP BOAT USAGE PRIVILEGES:** In order to make a reservation, the Member's account with CLUB must be current, and Member must be in compliance with all Terms and Rights and Responsibilities of Membership. Members shall have unlimited yearly reservations. However,
CLUB Members may not have more than _____ () reservations with boats booked at any given time, and only _____ () may be on a weekend. To maintain a fair level of availability for all members, Members are not allowed to make reservations two days in a row.
For reservation purposes, reservations may be scheduled up to six (6) months in advance. Failure to use Membership privileges shall not relieve Members of any liability for payments of any and all money due.
- 19) **"SPUR OF THE MOMENT" PRIVILEGES:** Member shall have unlimited use of CLUB watercraft on an as-available, same-day usage basis, except on days when the Club is closed (see Rule #22). The Member may call the CLUB Dock Master on the morning of desired use to check on availability. Dock Master Contact numbers by location are available upon request and are also found in New Member package.
- 20) **DESIGNATION OF CLUB locations:** The CLUB will be the sole designator of Club locations and the specific locations of CLUB's watercraft(s). CLUB retains the right to move/add/subtract watercraft(s) and/or CLUB locations. If the CLUB is denied access to docking or storage or other privileges become unavailable for any reason at any specific watercraft location, The CLUB's only obligation is to provide an alternate facility as close as practical under the circumstances.

- 21) TYPE OF WATERCRAFT: The CLUB intends to provide a variety of powerboat and sailboat types. Boat Club vessels range from 17 feet to 27 feet in length. CLUB makes no representation of specific types of watercraft so long as each watercraft is seaworthy. CLUB will not exceed an overall availability ratio of ten active memberships per vessel, (active members are defined as members whom have used watercraft in the past 28 days. Member and co-member(s) or anyone sharing a membership number are as a group considered to be one member for the purposes of determining membership limit).
- 22) LOCATION CLOSURE: During periods of light boating, the CLUB may choose to keep designated clubs closed or working shorter hours of operation. If, on a particular day, no boats are scheduled from a Club, the dock-staff is often assigned to other off-site work. Therefore, if you wish to take a boat on an "as available" basis, please call the Reservationists' or Dock staff in advance to see if the Club is open that day and if any boats are available.
- 23) EXTENDED HOURS & OVERNIGHT USAGE: No HBC boat may be underway after sundown or before sunrise. All HBC boats must be safely secured to a fixed dock between sunset and sunrise. Extended Hours and Overnight Usage is an **occasional privilege** extended to Members that have successfully passed all provided training, have an account in good standing, and proven himself/herself as a safe & conscientious boater. Such privileges are subject to availability and after approval, Must be reserved through the reservation system. Member Must have a credit/debit card on file with CLUB before Extended Hours & Overnight Use will be permitted. Member will be billed for any and all charges for damage/loss occurring to the boat (note, the maximum \$X (X = same as in #44) until the boat is checked-in by the staff. In addition to the Check Out/In Sheet, Member will be required to sign the Extended Hours/Overnight Usage Sheet. Permission will normally be granted except during periods of heavy extended hour usage and at the sole discretion of the Reservationist or the Dock Master.
- 24) SERVICE FEES: No member will be allowed to utilize vessels on an Extended Hour & Overnight basis without a credit card on file. Extended Hour & Overnight usage may not allow the member to refuel or pump/dump out toilet waste. CLUB will conveniently provide these services in member's absence at the time of Check In. The refueling fee is \$75.00 and toilet pump/dump out is \$50.00. The fuel costs plus any fees will be detailed within a paid invoice along with an attached receipt and sent to the member each month.
- 25) LOCATION: Members must return watercraft to the same location where Member was checked out by 1:00PM for half-day morning use and by 5:00PM / 8:00PM for full-day or half-day afternoon use unless otherwise specified by the Dock Master or as dictated by Extended Boat Usage hours during peak season.
- 26) PARTNER NETWORK USAGE: Members may have access to boats at other Club locations as a benefit of there subscription to RESNET. Club makes no representation regarding such reciprocal access. Clubs are independent businesses that may or may not work in conjunction with other club locations in the US. Agreements for reciprocal club usage are established between individual locations. Members are asked to contact Reservationists for reciprocity details and availability. The CLUB makes no guarantee and establishes no specific rights to boat usage at other Boating Club locations in membership contract. Reciprocal boat usage is a privilege and when permitted, is on a "limited, as available basis". Regarding visited Club locations, Houston Boat Club makes no specific representation of type or condition of boats and will be held harmless of any incidents occurring at visited locations. **Members must complete "5" Home reservations before reciprocal access is granted.**
- 27) HOLIDAY'S: Club will be Closed: Easter Sunday, Thanksgiving Day, Christmas Day, and New Years Day. The Club will be open from 8:00am to 12:00 noon on: Christmas Eve and New Years Eve. CLUB Operations are closed on Mondays with the exception of Memorial Day, Labor Day and/or Independence Day. CLUB Operations will be Closed the day following these holidays.

Member Responsibilities & Codes of Conduct:

- 28) COMPLIANCE WITH LAWS AND ORDINANCES: 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 the use and utilization of watercraft. Member shall also comply with all requirements of any insurance companies providing insurance for the CLUB and the Rights, Responsibilities, and/or Laws of any marina or other docking facility in which CLUB watercraft(s) are located. Member is solely responsible to contact the US Coast Guard, State and Local officials as required if an accident or incident occurs that results in injury property damage loss and or death.
- 29) MEMBER CONDUCT: Member is expected at all times when at Club locations, while using a CLUB watercraft, and/or speaking with CLUB employees, marina staff or members either directly or on the phone to display acceptable, proper, and courteous speech/behavior/conduct. At the sole discretion of CLUB, failure to follow this conduct rule may result in Member being suspended or having Member's membership terminated.
- 30) LATE PICKUP: If Member(s) is late and may arrive later than one hour from the scheduled time to pick up a

boat, the Member Must call HBC at location of pick up, or the dock, to notify the CLUB of such lateness. If a member is more than one hour late, the boat reservation may be assigned to another Member.

31) REFUELING BOATS: Member is responsible to ensure boats are completely refueled after use. If boat is not completely topped off HBC reserves the right to debit members credit card on file for fuel used. If there is a major discrepancy in fuel pumped HBC will use average consumption rate (GPH) times engine hours to determine if fuel pumped is legitimate **plus a \$75 refueling fee**. Note: Boats consumption rate's are an average; some usage may have lower GPH use or higher GHP use depending on boat conditions, RPM's, speed, water, temp, weight, etc...

32) EXCESSIVE CANCELLATIONS: Members are encouraged to reserve boats only on dates and times that they actually plan to utilize boats. If Member has an excessive number of cancellations Member's reservation privileges may be reduced or suspended. For one instance of a no show or three cancellations with less than four days notice, members spur of the moment privileges will be suspended for four weeks. If the same member has additional no shows or cancellations, members reservation privileges may be suspended or reduced and member will be charged \$100 per incident.

33) TARDINESS: It is the Member's responsibility to get fueled and return to the dock on time. Starting from the due return time, a fee of \$35.00 per every half hour of tardiness will be charged to the Member. Unforeseen circumstances such as a mechanical failure or inclement weather will be taken in consideration providing the situation is communicated to the dock master.

34) FISHING: To keep non-fishing boats free of fishy odors and upholstery from being damaged by fishing equipment, Members may only fish from a designated fishing boat. If you are unsure about a boat's designation, ask the Reservationists or Dock Master. This does not cover fresh water fishing or out of state fishing. It is the member's responsibility to know the difference between fresh water and salt water territories as out lined by the State Department of Game and inland fisheries and abide by those rules. For species fishing, example tuna a special permit may be required. It is the member's responsibility to acquire special fishing permits and abide by state rules. It is the members sole responsibility to ensure all fishing licensing, and rules and regulations set forth by the Texas Parks and Wildlife are adhered to.

35) CLEANING: If Member returns a CLUB watercraft in an excessive dirty condition, Member will be charged \$75.00 for cleaning. Fishing boats must have the deck cleaned of fish mess, and fish boxes and bait wells emptied & rinsed clean prior to returning to the dock. All items such as personal items, garbage, fish or bait waste Must be removed by the Member upon return of the vessel. We ask members to treat the vessels as if they were their own.

36) PETS: Due to potential damage to interior carpets and upholstery, NO PETS of any kind are permitted on a vessel with a cabin. Members will pay a \$500 non-refundable pet deposit to be eligible to bring pets on the dock and boats. Member is responsible for the safety of pets brought aboard and for any damage or loss that may result from the pet(s) being aboard. CLUB will be held harmless in any instance involving a pet.

37) DEFAULT: Any of the following shall constitute events of default with respect to this Agreement:

- (a) any failure by the Member to pay when due the full amount of any deferred payment under obligation, monthly or annual installment payment, service fees, repair costs, or other charge hereunder;
- (b) the making by Member of any misrepresentation of fact, including misrepresentation by failure to disclose any material fact in any credit application or financial statement which may be given by Member to the CLUB in order to induce an extension of credit by the CLUB;
- (c) any breach of any covenant or obligation on the part of the Member pursuant to this Agreement;
- (d) the failure of Member to abide by and adhere to the Rights and Responsibilities of Membership or of the marina where CLUB watercraft(s) are docked, as now in effect or as hereafter published or amended or;
- (e) the failure or inability of the Member, as demonstrated to CLUB in its sole judgment reasonably exercised, to operate the watercraft

1) in a safe, alert, and cautious manner,

2) exercising due caution to protect boat and engine from damage or if problems occur, from compounding the damage, and

3) within any operational requirements or limitations published by CLUB with regard thereto, or Member's use of CLUB's watercraft in any manner posing a nuisance upon the seas or a substantial risk of personal injury and/or property damage. No waiver or indulgence by CLUB with respect to any given default shall constitute a waiver of CLUB rights with respect to any subsequent default or breach.

38) **REMEDIES ON DEFAULT:** The Member's privileges may be suspended at HBC's sole and absolute discretion at any time without prior notice to Member pending HBC's investigation and resolution of any alleged incident, violation of a Rule or Regulation or default. In addition, the Member may, at HBC's sole and absolute discretion, be required to attend a meeting to discuss any alleged incident or violation where a warning requiring certain actions, prior to future boat usage, may result. Upon the occurrence of any event of the default and Member's failure to cure such default fully within fifteen (15) days after written notice by HBC is personally delivered or mailed, US first class postage prepaid, to Member at Member's last known address, HBC may at its option (a) in case of any or all monetary default, terminate the Member Agreement (Including all Member rights and privileges under these Additional Terms, Rules and Regulations or under any other Agreement between the Parties hereto) and declare any and all of any portion of the Membership Initiation Fee which shall have been financed, and any finance charges accruing thereon to the date of default, and all Membership Fees, insurance deductibles, and other charges that have been accrued, to be immediately due and payable; (b) in the case of non-monetary default, terminate the Member Agreement (including these Additional Terms, Rules and Regulations or any other Agreement between the Parties hereto) and all membership rights of Member thereunder; in which case HBC shall be entitled to retain as liquidated damages and not as a penalty, all sums theretofore paid to HBC by Member pursuant to the Member Agreement, these Additional Terms, Rules and Regulations or any other Agreement between the Parties hereto; it being recognized by Member that it may be impractical to determine actual damages resulting from Member's default, and determine fair compensation to HBC; (c) HBC shall have all legal and equitable remedies available in the event of any default, hold harmless, or indemnify, and shall take any such judicial action needed at the sole discretion of HBC. Any dispute shall be referred to mediation and/or to binding arbitration at any time at HBC's request. In the event of any legal proceedings brought by any party to construe or enforce the provisions of the Member Agreement or these Additional Terms, Rules and Regulations, the prevailing party shall be entitled to reasonable attorney's fees and costs. The venue of any and all such mediations, arbitrations and/or legal proceedings shall be exclusively in city of Willis, Texas 77318 irrespective of the residence elsewhere of any other party.

39) **SAFE BOATING:** The CLUB reserves the right to prohibit a Member from operating a boat if, at the sole discretion of an agent of CLUB, the Member appears to be in such condition as to not be able to operate the boat in a safe and prudent manner. At the sole discretion of the CLUB, if abuse of alcohol and/or drugs has taken place while the Member is in possession of CLUB vessels, punitive actions, including but not limited to those listed below, may be incurred by the Member:

- a) The Member may be suspended or the Membership terminated.
- b) The Member may be subject to criminal charges and/or fines.
- c) In addition to a) and/or b), the Member may be required to attend a meeting to discuss the incident, a warning requiring certain actions, prior to future boat usage, may result.

40) **HBC's RIGHT TO TERMINATE MEMBERSHIP:** At all times, the CLUB, at its sole discretion, reserves the right to suspend or terminate a Member's membership for a serious, and/or continuous, violation(s) of the Rights and Responsibilities herein, and/or if Member's account is not kept current.

Cancellation

41) **TRANSFERABILITY OF MEMBERSHIP:** TRANSFERABILITY OF MEMBERSHIP, Paid in Full Programs: Only memberships that are pre-paid or are paid in full can be transferred. Membership and its privileges shall be transferable by Member to any other party 21 years old or over after expressing intent to transfer to CLUB and requesting a "Transfer of Membership" package. The following Rules apply:

- A) Member must give 60 day notice of early termination. After Intent is given, the Member is totally responsible for selling the membership. The CLUB will not buy back memberships, or participate directly in the reselling of memberships.
- B) The Member's membership and/or account must be paid in full, and the Member account is current.
- C) The Member may advertise the membership time remaining, but NOT the asking price for the membership.
- D) A transfer fee of \$1500 must be paid to Houston Boat Club.
- E) Bonus promotions or special circumstances are not transferable by member
- F) Any sale of membership will require buyer to sign current rights and responsibilities
- G) Memberships that are sold or transferred may not be sold a second time

42) **CANCELLATION OF MEMBERSHIP:** Member must give a 60 day notice of early termination. Financed Programs: Financed memberships or memberships with uncollected fee balances cannot be transferred or sold. However, the Member may terminate their membership contract by paying an early termination fee. The early termination fee is twenty percent (20 %) of the balance remaining due on the contract obligation.

43) **NON-TRANSPORTABLE:** Membership is considered a contract with the individual CLUB location and membership is not transportable from one location to another nor does membership establish rights of usage or benefits at other locations.

Insurance & Liability Coverage:

44) **MEMBER'S RESPONSIBILITY FOR WATERCRAFT:** The Member shall be responsible for any loss or damage to CLUB watercraft and accessory equipment from the time that such watercraft and accessory equipment is furnished to the Member up to and including the time of its return to the CLUB. Member is responsible regardless of who was in actual physical custody and control at the time of the loss or damage. The Member is responsible for filling out the Check Out/In Sheet at the dock with the assistance of the Dock Master. Any damage that occurs while in Member's possession will be noted and charged. However, some items, particularly damage to the engine (i.e., caused by entangling the prop in rope or fishing line, running the engine at high rpm after a problem occurs, etc.), may not be noticed at the check-in time and departure. However, if damage is discovered after check-in, and at the sole discretion of HBC, and HBC deems the Member to be responsible, the Member will be billed for all damage/costs incurred. At HBC's sole discretion, Member may be denied boat usage until payment is received. If loss is covered under HBC's insurance policy Member's liability may be limited to \$3500 for boats under 27 feet. Should damage or breakage occur while at a foreign port or while at sea, the Member is required to contact the CLUB and depending on the extent of the failure, the Member may be required to deliver the vessel to the nearest port and Member(s) will be responsible for their own transportation, food, shelter, etc. In addition, the CLUB may require the Member to attend a meeting to discuss the damage, and CLUB, at its sole discretion, may take any action deemed necessary, including suspension or termination of the Membership.

45) **PERSONAL INJURY AND DAMAGE TO PROPERTY:** Member recognizes that the operation of any watercraft is a specialized activity that requires training and experience and has both obvious and non-obvious dangers associated with it. Member acknowledges that many such dangers produce risk of injury to Member, Member's passengers, and the public in general regardless of the training and experience of the operator of the watercraft and regardless of the proper 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 the HBC watercraft, including Member, Member's passengers and the public in general. For purposes of personal injury claims, a Member may be treated as an additional insured on HBC's Hull & Machinery and Protection & Indemnity policy (ies), and may be afforded the same coverage and protection afforded to HBC under such an insurance policy.

46) **WATERCRAFT MAINTENANCE:** The CLUB will provide all regular and appropriate maintenance of its watercraft(s) as is deemed necessary. The CLUB's response to repairs and maintenance is completed on a priority basis and is determined solely by the CLUB. The CLUB is not obligated to repair any watercraft determined to be damaged to an extent rendering repair either impractical or uneconomical.

47) **SMOKING** is NOT permitted on any vessel or in any of the CLUB offices.

Liability Limitations:

48) **LIMITATIONS ON WARRANTIES AND LIABILITY:** THE CLUB MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, EXCEPT THOSE INCLUDED IN THIS AGREEMENT. IN PARTICULAR, WITHOUT IN ANY MANNER LIMITING THE FOREGOING, THE CLUB MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE QUALITIES, CAPACITY, OR OTHER ATTRIBUTES OF ANY OF THE WATERCRAFT(S) 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 MANUFACTURERS OF SAID EQUIPMENT. THE CLUB SHALL NOT BE RESPONSIBLE OR LIABLE AT ANY TIME FOR LOSS OR DAMAGE TO PERSONAL PROPERTY BROUGHT BY MEMBER, OR ANY OF MEMBER'S FAMILY, GUESTS, INVITEES, OR THIRD PARTY ABOARD CLUB WATERCRAFT USED BY MEMBER. THE CLUB SHALL NOT BE RESPONSIBLE OR LIABLE TO MEMBER FOR ANY DEFECT, LATENT OR OTHERWISE, IN ANY WATERCRAFT OR ANY EQUIPMENT, APPLIANCES, OR APPARATUS UTILIZED IN CONNECTION WITH SUCH WATERCRAFT, NOR SHALL THE CLUB BE RESPONSIBLE OR LIABLE FOR ANY INJURY OR DAMAGE CAUSED BY OR RESULTING FROM ANY DEFECT, ACT, OR OMISSION IN THE CONSTRUCTION, MAINTENANCE, OPERATION, OR USE OF ANY WATERCRAFT, OR ANY EQUIPMENT, FIXTURES, APPLIANCES, OR APPARATUS UTILIZED IN CONNECTION WITH SUCH WATERCRAFT.

49) **EXCUSE FROM PERFORMANCE FORCE MAJEURE:** The CLUB shall be excused from performance or any delays in performance hereunder, due to fire, flood, earthquakes, hurricane, acts of God, unavailability of materials, equipment or fuel, war, act of terrorism, declaration of hostilities, revolt, civil strife, altercation or commotion, strike, labor disputes, epidemic, lack of or 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, beyond the reasonable control and without the fault or negligence of the CLUB.

50) **BINDING EFFECT: ENTIRE AGREEMENT: MODIFICATIONS:** If any provision of this Agreement shall be invalid, the remainder of the Agreement shall not be affected thereby. This Agreement is binding upon the parties hereto and their heirs, legal representatives, successors, and permitted assigns, and shall be governed by Virginia Law. This Agreement contains the entire understanding or writings, which are merged herein and extinguished. This Agreement may only be

amended or modified by written instrument signed by the CLUB and all parties designated herein as Member, except that Rights and Responsibilities may be changed from time to time as set forth in Rule #52.

51) MARINA'S: Member agrees to abide by all agreements between Club locations' landlords. Member will also abide by all Club marinas', Member visited marinas', and/or other Club locations', rules, and regulations.

52) ARBITRATION OF DISPUTES: The parties to this agreement specifically agree that any dispute (whether contract, tort, statutory, or otherwise) arising under or relating in any way to (i) the rules and regulations and Membership agreement of HBC, (ii) Member's membership in HBC, (iii) Member's use of any watercraft in connection with Member's membership or (iv) any other dealings between Member and HBC, including but not limited to any claims for money damages or for personal injury or wrongful death shall be submitted to binding arbitration in city of Hampton, Virginia in accordance with the Commercial Arbitration Rules of the American Arbitration Association by a single arbitrator. The arbitrator shall be selected by mutual agreement of HBC and Member within twenty (20) days following the initiation of arbitration hereunder, or, absent such agreement, by appointment by 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 by the arbitrator shall be final and binding on the parties and may be entered in any court having jurisdiction thereof.

Each party shall have discovery rights as provided by the Federal Rules of Civil Procedure within the limits imposed by the arbitrator; provided, however, that all such discovery shall be commenced and concluded within ninety (90) days of the selection or appointment of the arbitrator.

It is the intent of the parties that any arbitration shall be concluded as quickly as reasonably practicable. Unless the parties otherwise agree, once commenced, the hearing on the disputed matters shall be held four (4) days a week until concluded, with each hearing date to begin at 9:00 a.m. and to conclude at 5:00 p.m. unless otherwise agreed. The arbitrator shall use all reasonable efforts to issue the final award or awards within a period of five (5) business days after closure of the proceedings. Failure of the arbitrator to meet the time limits of this Section shall not be a basis for challenging the award.

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.

53) 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 section 19. 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 OR RELATING IN ANY WAY TO MEMBERSHIP IN HBC

54) RIGHTS AND RESPONSIBILITIES: Member agrees to abide by the Rights and Responsibilities promulgated and from time to time modified by the CLUB. Changes in Rights and Responsibilities shall become effective upon adoption by the CLUB. A copy of the revised Rights and Responsibilities will be provided to the Member as well as available at each CLUB location.

55) MEMBER AGREES TO RELEASE, INDEMNIFY, DEFEND AND HOLD HBC, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS HARMLESS FROM AND AGAINST ANY CLAIMS, LOSS, DAMAGE, EXPENSE (INCLUDING REASONABLE ATTORNEY'S FEES AND COST AND EXPENSES OF LITIGATION) FOR INJURY 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 AN HBC WATERCRAFT. THIS RELEASE AND INDEMNIFICATION OF HBC, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS SHALL EXTEND TO ANY INJURY OCCASIONED WHOLLY OR IN PART BY AN ACT OR OMISSION OF HBC, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS.

The undersigned Member(s) have read, understand, and agree to adhere to the above Rights and Responsibilities of Membership.

Member: _____

Date: _____

Spouse: _____

Date: _____

Club Agent: _____

Date: _____