

# Typhoon Tommy's at Lake Oconee, LLC

## WAIVER, RELEASE OF LIABILITY AND ASSUMPTION OF RISK AGREEMENT

### **I. DISCLAIMER**

**YOU MUST BE AT LEAST 21 YEARS OF AGE TO RENT ANY PERSONAL WATERCRAFT. ANYONE UNDER THE AGE OF 21 SHALL NOT OPERATE ANY PERSONAL WATERCRAFT AT ANY TIME. YOU MUST BE AT LEAST 25 YEARS OF AGE TO RENT ANY PONTOON BOAT OR SKI BOAT. ANY ONE UNDER THE AGE OF 25 SHALL NOT OPERATE ANY PONTOON BOAT OR SKI BOAT AT ANY TIME.**

This Waiver, Release of Liability and Assumption of Risk Agreement (hereinafter the "Rental Agreement") is applicable to all renters, operators, passengers, and any other users of personal watercraft, pontoon boats, ski boats and boating equipment and accessories (hereinafter collectively the "Watercraft") provided by Typhoon Tommy's at Lake Oconee, LLC, a Georgia limited liability company (hereinafter "Typhoon Tommy's") as well as any other affiliated entities or individuals thereunder. For purposes of this Rental Agreement, the term "Typhoon Tommy's" shall include all members, managers, officers, employees, agents, representatives, assigns, successors, insurers and subsidiaries of Typhoon Tommy's. You agree that you are also signing this Rental Agreement on behalf of any minor children for whom you are the parent, guardian, or whom you are otherwise responsible for the care, custody or control. You agree that you will disclose to Typhoon Tommy's all potential renters, operators, passengers and users of the Watercraft. You further agree that in the event that you fail to notify Typhoon Tommy's of all potential renters, operators, passengers or users of such Watercraft, you will be personally liable for any injuries or damages to the undisclosed individuals, **even if such damages arise out of the gross negligence of Typhoon Tommy's.**

### **II. EXPRESS ASSUMPTION OF RISK—CAUTION!! READ BEFORE SIGNING**

I ACKNOWLEDGE THAT THE RENTAL, OPERATION OR USE OF A WATERCRAFT HAS INHERENT RISKS THAT MAY LEAD TO BODILY INJURY, DEATH, DROWNING OR PROPERTY LOSS OR DAMAGE. I FURTHER UNDERSTAND THAT I AM NOT BOUND OR REQUIRED TO PARTICIPATE IN ANY OF THE ACTIVITIES RELATING TO THE RENTAL, OPERATION AND USE OF THE WATERCRAFT, BUT I HAVE WILLINGLY AND VOLUNTARILY DECIDED TO PARTICIPATE IN SUCH ACTIVITIES. I REALIZE THAT I AM FREE TO REFUSE TO PARTICIPATE IN ANY OR ALL ACTIVITIES RELATING TO THE RENTAL, OPERATION AND USE OF THE WATERCRAFT INCLUDING THOSE ACTIVITIES I FEEL UNCOMFORTABLE WITH OR WHICH I DETERMINE CANNOT BE COMPLETED SAFELY BY ME. I KNOWINGLY AND VOLUNTARILY ASSUME ALL RISK OF INJURY, ILLNESS, DAMAGE OR LOSS, BOTH KNOWN AND UNKNOWN, ASSOCIATED WITH THE RENTAL, OPERATION OR USE OF THE WATERCRAFT OR ASSOCIATED RENTAL EQUIPMENT, EVEN IF ARISING FROM THE NEGLIGENCE OR OMISSION OF TYPHOON TOMMY'S, AND ASSUME FULL RESPONSIBILITY FOR MY PARTICIPATION IN THE RENTAL, OPERATION AND USE OF THE WATERCRAFT.

### **III. RELEASE / COVENANT NOT TO SUE—CAUTION!! READ BEFORE SIGNING**

I HEREBY RELEASE AND HOLD HARMLESS TYPHOON TOMMY'S FROM ALL LIABILITY, CLAIMS, DEMANDS, LAWSUITS, ARBITRATIONS OR CAUSES OF ACTION FOR ANY INJURY, ILLNESS, DISABILITY, DEATH, OR LOSS OR DAMAGE TO ANY PERSON OR PROPERTY SUSTAINED BY ME AND/OR ANY MINOR CHILDREN FOR WHOM I AM A PARENT, LEGAL GUARDIAN, OR WHOM I AM OTHERWISE RESPONSIBLE, WHETHER CAUSED BY THE NEGLIGENCE OF TYPHOON TOMMY'S OR OTHERWISE. THIS INCLUDES ANY INJURY, ILLNESS, DISABILITY, DEATH, OR LOSS OR DAMAGE TO PERSON OR PROPERTY SUSTAINED AS A RESULT OF A HIDDEN, LATENT OR OBVIOUS DEFECT ON THE WATERCRAFT OR ANY OF THE RENTAL EQUIPMENT USED, OR ANY FAILURE ON THE PART OF TYPHOON TOMMY'S TO PROPERLY INSTRUCT, SUPERVISE OR TRAIN ME ON THE OPERATION OF THE WATERCRAFT. AS PART OF THE CONSIDERATION FOR USING THE WATERCRAFT, I PROMISE NOT TO FILE A LAWSUIT OR OTHER PROCEEDING OR MAKE A CLAIM AGAINST TYPHOON TOMMY'S FOR ANY DEATH, ILLNESS, INJURIES, OR DAMAGE OR LOSS TO PERSONS OR PROPERTY SUFFERED AS A RESULT OF MY PARTICIPATION IN THE RENTAL, OPERATION AND USAGE OF THE WATERCRAFT. IT IS THE INTENT OF THIS RENTAL AGREEMENT TO FULLY AND COMPLETELY RELEASE TYPHOON TOMMY'S FROM ANY AND ALL LAWSUITS, PROCEEDINGS OR CLAIMS OF ANY TYPE WHATSOEVER.

### **IV. INDEMNITY / LIABILITY TO THIRD PARTIES—CAUTION!! READ BEFORE SIGNING**

I AGREE THAT I WILL INDEMNIFY AND HOLD HARMLESS TYPHOON TOMMY'S FOR ALL PERSONAL INJURIES, DEATHS, PROPERTY LOSS OR DAMAGE, OR ANY OTHER DAMAGES TO ANY AND ALL THIRD PARTIES, INCLUDING, BUT NOT LIMITED TO, OPERATORS AND PASSENGERS OF OTHER WATERCRAFT, SWIMMERS AND MINOR CHILDREN UNDER MY CUSTODY, CARE, AND CONTROL, AS A RESULT OF ANY AND ALL ACTIVITIES RELATED TO MY RENTAL, OPERATION, OR USE OF WATERCRAFT PROVIDED BY TYPHOON TOMMY'S, EVEN IF SUCH DAMAGES ARISE OUT OF THE NEGLIGENCE OR FAULT OF TYPHOON TOMMY'S.

**V. GENERAL TERMS AND CONDITIONS**

I certify that I have received adequate and proper safety and operational instruction for the Watercraft from Typhoon Tommy's. I am capable in all aspects of the handling and operation of such Watercraft and following all safety instructions provided by Typhoon Tommy's. I agree not to use, nor permit the use of the Watercraft (a) for any unlawful purpose; (b) in a careless, reckless, or negligent manner; (c) while under the influence of alcohol and/or drugs; (d) in violation of the safety instructions I received from Typhoon Tommy's; or (e) in violation of the Rental Policy and Operation Procedures attached hereto.

I expressly agree that Typhoon Tommy's shall not be liable for any loss or damage to any personal property left, stored or transported by me in or upon the Watercraft.

This Rental Agreement sets forth the entire agreement and understanding between the parties, and all previous discussions, understandings, representations, negotiations, and agreements with respect to the matters included in this Rental Agreement are merged herein. Additionally, the consideration recited herein is the full, complete and entire consideration for this Rental Agreement, and there is no further consideration to be paid by any party to any other party except as recited herein.

If any provision or part of this Rental Agreement shall be determined to be void or unenforceable by a court of competent jurisdiction, the remainder of the Rental Agreement shall remain valid and enforceable by any party to this Rental Agreement.

This Rental Agreement shall be governed by and construed under the laws of the State of Georgia and venue in Putnam County, Georgia. In the event Typhoon Tommy's prevails in any litigation or claim relating to the enforcement of the provisions contained herein, I agree to pay and indemnify Typhoon Tommy's for its litigation expenses, including without limitation, reasonable attorneys fees and court costs.

I acknowledge and agree that Typhoon Tommy's is not affiliated with Seed Orchard, LLC, The Golf Club at Cuscowilla, LLC or any other subsidiaries or affiliates of those entities and that this Rental Agreement is a contract solely between Typhoon Tommy's and me.

**I EXPRESSLY WARRANT AND REPRESENT THAT BEFORE EXECUTING THIS RENTAL AGREEMENT I HAVE FULLY INFORMED MYSELF OF THE TERMS, CONDITIONS AND EFFECT OF THIS RENTAL AGREEMENT, AND THAT I HAVE RELIED SOLELY ON MY OWN JUDGMENT IN EXECUTING THIS RENTAL AGREEMENT.**

**I HAVE READ THE TERMS OF THIS RENTAL AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE PROVISIONS REGARDING ASSUMPTION OF RISK, RELEASE AND COVENANT NOT TO SUE, AND INDEMNITY, AND I UNDERSTAND THAT I AM WAIVING SUBSTANTIAL RIGHTS IN CONSIDERATION FOR MY USE OF TYPHOON TOMMY'S WATERCRAFT. I ENTER INTO THIS RENTAL AGREEMENT FREELY AND VOLUNTARILY WITHOUT ANY INDUCEMENT.**

**CAUTION!!! READ THE ENTIRE THREE PAGES OF THIS RENTAL AGREEMENT BEFORE SIGNING. THIS RENTAL AGREEMENT AFFECTS YOUR LEGAL RIGHTS AND RELEASES ALL OF YOUR CLAIMS AGAINST TYPHOON TOMMY'S**

**Signature below indicates that you have read this entire Rental Agreement and agree to its terms and conditions.**

**Please Select Rental Watercraft:**     Personal Watercraft     Pontoon Boat     Ski Boat

**Please Select Rental Location:**     The Marina at South Bay     Cuscowilla

<b>Name:</b>	
<b>Address:</b>	
<b>City, State, Zip:</b>	
<b>Telephone Number (Home):</b>	
<b>Telephone Number (Cell):</b>	
<b>Driver's License Number:</b>	
<b>Cardholder Name:</b>	
<b>Credit Card Number / Type:</b>	
<b>Security Code:</b>	
<b>Expiration Date:</b>	
<b>Charge Amount:</b>	
<b>Email Address:</b>	
<b>Departure Time:</b>	
<b>Scheduled Return Time:</b>	

(All Information must be completed prior to rental)

# Typhoon Tommy's at Lake Oconee, LLC

## RENTAL POLICY & OPERATIONAL PROCEDURES

- Typhoon Tommy's at Lake Oconee, LLC (hereinafter "Typhoon Tommy's") may refuse, at its sole discretion, to rent to persons Typhoon Tommy's feels are not qualified to operate the Personal Watercraft, Pontoon Boats or Ski Boats.
- Renter is responsible for entire watercraft rental rate once a credit card number is received regardless of whether you cancel or leave early. Deposits are refunded if notice is received 48 hours prior to scheduled rental period. Typhoon Tommy's is not responsible for renter's inability to arrive or if renter chooses to depart early for any reason. As a result, no refunds will be offered.
- Before leaving with the rental watercraft, you and a Typhoon Tommy's at Lake Oconee employee must inspect the rental watercraft and complete a check out form to identify any preexisting damage. You will be deemed to have accepted the rental watercraft in the condition noted on the check-out form. Upon your return of the rental watercraft, you and a Typhoon Tommy's at Lake Oconee employee will re-inspect the rental watercraft. You are fully responsible to pay for any damage (or the estimated amount thereof), and all other amounts due hereunder.
- Operation of the Personal Watercraft, Pontoon Boat & Ski Boat is not allowed after dark. The liability insurance of Typhoon Tommy's specifically excludes liability coverage one half hour prior to dusk and one half hour after dawn.
- Renter & passengers must know how to swim and agree to wear a life vest at all times during rental and use on the Personal Watercraft.
- Life vests are provided by Typhoon Tommy's at no charge. A \$50.00 fee will be charged for each life vest which is not returned to Typhoon Tommy's.
- All children under the age of 10 must wear a life vest at all times while on the Pontoon Boat and the Ski Boat.
- No pets are allowed on any of the rental Watercraft at any time.
- Typhoon Tommy's accepts Checks, Cash, Visa, MasterCard, Discover and Debit Cards.
- A Driver's License and Credit Card is required to rent a Personal Watercraft, Pontoon Boat and Ski Boat.
- All rental Watercraft must be returned to the location from which it was rented at the conclusion of the rental period. Late returns will be charged \$25.00 for every 15 minutes past agreed rental return time.
- Rental rates do not include fuel charges. A full tank of fuel is provided upon rental departure by Typhoon Tommy's. The Renter is responsible for returning all rental watercraft with a full tank of fuel at the conclusion of the rental period.

### **Personal Watercraft (Renter and all Operators must be at least 21 years of Age)**

- Max Occupancy: (3) Passengers with a weight limit of 350 lbs
- Do not start or operate the watercraft in less than 3 feet of water
- No racing or contests allowed
- No water splashing allowed
- **No water tubing allowed - Any violation will result in an automatic \$500.00 fine by Typhoon Tommy's (NO EXCEPTIONS)**

### **Pontoon Boat (Renter and all Operators must be at least 25 years of Age)**

- Aqua Patio Max Occupancy: (12) Passengers
- Sweet Water Max Occupancy: (10) Passengers
- No water skiing allowed
- No wake boarding allowed
- No knee boarding allowed
- No fishing allowed

### **Ski Boat (Renter and all Operators must be at least 25 years of Age)**

- Sea Ray Max Occupancy: (8) Passengers
- Water skiing & tubing allowed except as otherwise determined by Typhoon Tommy's in its sole discretion.

### **CAUTION!! PHYSICAL DAMAGES**

**By my signature below, I agree that I have read and fully understand the Waiver and Release of Liability and agree to pay for any and all repair costs and other physical damages that may occur to the watercraft during my rental, operation or other use from any cause whatsoever as specifically set forth in Exhibit "A" of this rental agreement.**

**In the event of damages to the rental watercraft, I hereby authorize Typhoon Tommy's at Lake Oconee to charge the amount of such excess damages to my credit card listed on page 2 of the rental agreement.**

*Signature* \_\_\_\_\_ *Date* \_\_\_\_\_

# EXHIBIT "A"

I hereby voluntarily and of my own volition give Typhoon Tommy's at Lake Oconee the right to immediately charge my credit card in the event there is any damage to, accident or incident of any kind regarding the rented watercraft during the rental period. This includes damages done to the rental watercraft, motor, or equipment as a result of beaching, running aground, reckless operation, negligence, equipment loss, or violation of the rules. I understand that Typhoon Tommy's at Lake Oconee will conduct an estimate for repairs by a licensed repair person of their choosing and provide me with a copy for review. I further covenant and agree not to challenge the charge on my credit card with the bank or financial institution issuing my card. I recognize that Typhoon Tommy's at Lake Oconee has a good faith basis for requiring this provision as it is the only way to protect them from me cancelling my credit card or challenging the charges in the event of damages to the watercraft.

Damages deemed extreme by Typhoon Tommy's at Lake Oconee will be investigated by the Putnam and Green County Sheriff's Department.

## Service & Damage Estimate Guide

Tow service is \$120.00/hour

Mechanical service is \$85.00/ hour + parts (this includes making trips to fuel empty boats)

### Fiberglass Damage (Estimate Required)

- Scratches
- Puncture in hull above water line
- Puncture in hull below water line
- Structural hole through fiberglass substructure

### Mechanical Damage (Estimate Required)

- Damaged propeller
- Damaged jet drive impeller
- Broken/bent skeg impact
- Bent prop shaft impact
- Damaged lower drive impact
- Engine swamped

### Equipment Missing or Damaged (Estimate Required)

- Tube replacement
- Life vest replacement
- Tow line replacement
- Fender/Buoy replacement

### Canvas/Upholstery/Carpet Damage (Estimate Required)

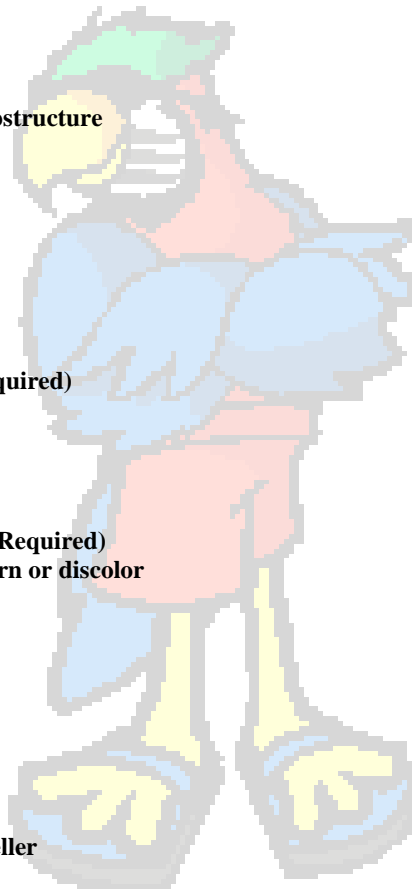
- Canvas/upholstery/carpet chafing, burn or discolor
- Damaged snap hardware
- Bent canvas/canopy frame

### Exterior Damage (Estimate Required)

- Damaged rub rail/bow rail
- Broken window
- Damaged ski tow
- Damaged ladder
- Damaged tape stripe
- Remove ski line from jet drive / propeller
- Transducer (Depth Finder)

### Interior Damage (Estimate Required)

- Broken speaker
- Damaged hatch doors/hinges
- Broken/missing navigation lights
- Damaged shift selector
- Broken seats



*Acknowledged and agreed the \_\_\_\_\_ day of \_\_\_\_\_, 2010.*

\_\_\_\_\_  
*Signature*