

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549

Form 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended September 30, 2020  
Commission File Number 1-14173

**MarineMax, Inc.**

(Exact Name of Registrant as Specified in Its Charter)

Florida  
(State of Incorporation)

59-3496957  
(I.R.S. Employer Identification No.)

2600 McCormick Drive  
Suite 200  
Clearwater, Florida 33759  
(727) 531-1700

(Address, including zip code, and telephone number, including area code, of principal executive offices)

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class  
Common Stock, par value \$0.01 per share

Trading Symbol  
HZO

Name of Each Exchange on Which Registered  
New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act:

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Non-accelerated filer

Accelerated filer

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes  No

The aggregate market value of common stock held by non-affiliates of the registrant (20,687,048 shares) based on the closing price of the registrant's common stock as reported on the New York Stock Exchange on March 31, 2020, which was the last business day of the registrant's most recently completed second fiscal quarter, was \$215,559,040. For purposes of this computation, all officers and directors of the registrant are deemed to be affiliates. Such determination should not be deemed to be an admission that such officers and directors are, in fact, affiliates of the registrant.

As of November 25, 2020, there were outstanding 22,073,368 shares of the registrant's common stock, par value \$0.01 per share.

**Documents Incorporated by Reference**

Portions of the registrant's definitive proxy statement for the 2021 Annual Meeting of Shareholders are incorporated by reference into Part III of this report.

MARINEMAX, INC.

ANNUAL REPORT ON FORM 10-K  
Fiscal Year Ended September 30, 2020

TABLE OF CONTENTS

|                        |  |    |
|------------------------|--|----|
| <b><u>PART I</u></b>   |  |    |
| Item 1                 | <a href="#">Business</a>   | 1  |
| Item 1A                | <a href="#">Risk Factors</a>   | 16 |
| Item 1B                | <a href="#">Unresolved Staff Comments</a>  | 27 |
| Item 2                 | <a href="#">Properties</a>   | 27 |
| Item 3                 | <a href="#">Legal Proceedings</a>  | 30 |
| Item 4                 | <a href="#">Mine Safety Disclosures</a>  | 30 |
| <b><u>PART II</u></b>  |  |    |
| Item 5                 | <a href="#">Market for the Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities</a> | 31 |
| Item 6                 | <a href="#">Selected Financial Data</a>  | 33 |
| Item 7                 | <a href="#">Management's Discussion and Analysis of Financial Condition and Results of Operations</a>                            | 34 |
| Item 7A                | <a href="#">Quantitative and Qualitative Disclosures about Market Risk</a>   | 42 |
| Item 8                 | <a href="#">Financial Statements and Supplementary Data</a>  | 43 |
| Item 9                 | <a href="#">Changes in and Disagreements with Accountants on Accounting and Financial Disclosure</a>                             | 43 |
| Item 9A                | <a href="#">Controls and Procedures</a>  | 43 |
| Item 9B                | <a href="#">Other Information</a>  | 47 |
| <b><u>PART III</u></b> |  |    |
| Item 10                | <a href="#">Directors, Executive Officers and Corporate Governance</a>   | 47 |
| Item 11                | <a href="#">Executive Compensation</a>   | 47 |
| Item 12                | <a href="#">Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters</a>                   | 47 |
| Item 13                | <a href="#">Certain Relationships and Related Transactions, and Director Independence</a>  | 47 |
| Item 14                | <a href="#">Principal Accountant Fees and Services</a>   | 47 |
| <b><u>PART IV</u></b>  |  |    |
| Item 15                | <a href="#">Exhibits, Financial Statement Schedules</a>  | 47 |

**Statement Regarding Forward-Looking Information**

The statements contained in this report on Form 10-K that are not purely historical are forward-looking statements within the meaning of applicable securities laws. Forward-looking statements include statements regarding our "expectations," "anticipations," "intentions," "plans," "beliefs," or "strategies" regarding the future. Forward-looking statements also include statements regarding revenue, margins, expenses, and earnings for fiscal 2021 and thereafter; our belief that our practices enhance our ability to attract more customers, foster an overall enjoyable boating experience, and offer boat manufacturers stable and professional retail distribution and a broad geographic presence; our assessment of our competitive advantages, including our hassle-free sales approach, prime retail locations, premium product offerings, extensive facilities, strong management and team members, and emphasis on customer service and satisfaction before and after a boat sale; our belief that our core values of customer service and satisfaction and our strategies for growth and enhancing our business, including without limitation, our acquisition strategies and pursuit of contract manufacturing and vertical integration, will enable us to achieve success and long-term growth as economic conditions continue to recover; our belief that our retailing strategies are aligned with the desires of consumers; and the scope and duration of the COVID-19 pandemic and its impact on global economic systems, our employees, sites, operations, customers, suppliers and supply chain, managing growth effectively. All forward-looking statements included in this report are based on information available to us as of the filing date of this report, and we assume no obligation to update any such forward-looking statements. Our actual results could differ materially from the forward-looking statements. Among the factors that could cause actual results to differ materially are the factors discussed under Item 1A, "Risk Factors."

PART I

Item 1. *Business*

Introduction

**Our Company**

We are the largest recreational boat and yacht retailer in the United States. Through 77 retail locations in Alabama, California, Connecticut, Florida, Georgia, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, Texas, Washington and Wisconsin, we sell new and used recreational boats, including pleasure and fishing boats, with a focus on premium brands in each segment. We also sell related marine products, including engines, trailers, parts, and accessories. In addition, we provide repair, maintenance, and slip and storage services; we arrange related boat financing, insurance, and extended service contracts; we offer boat and yacht brokerage sales; yacht charter services; and we operate a yacht charter business in the British Virgin Islands. We also own Fraser Yachts Group and Northrop & Johnson, leading superyacht brokerage and luxury yacht services companies with operations in multiple countries.

In October 2020, we purchased all of the outstanding equity of Skipper Marine Corp., Skipper Marine of Madison, Inc., Skipper Marine of Fox Valley, Inc., Skipper Bud's of Illinois, Inc., Skipper Marine of Chicago-Land, Inc., Skipper Marine of Michigan, Inc., and Skipper Marine of Ohio, LLC, (collectively, the "SkipperBud's"). This acquisition significantly increased our presence in the Great Lakes region and the West Coast of the United States. In addition, we believe that the increase of our marina/storage services will help decrease our seasonality. SkipperBud's is one of the largest sales, brokerage, service and marina/storage groups in the United States.

We are the nation's largest retailer of Sea Ray and Boston Whaler recreational boats and yachts which are manufactured by Brunswick Corporation ("Brunswick"). Sales of new Brunswick boats accounted for approximately 33% of our revenue in fiscal 2020. Sales of new Sea Ray and Boston Whaler boats, both divisions of Brunswick, accounted for approximately 15% and 16%, respectively, of our revenue in fiscal 2020. Brunswick is a world leading manufacturer of marine products and marine engines. We believe our sales represented approximately 12% of all Brunswick marine sales during our fiscal 2020. We have agreements with Brunswick covering Sea Ray products and Boston Whaler products and are the exclusive dealer of Sea Ray and Boston Whaler boats in almost all of our geographic markets. Additionally, we are the exclusive dealer for Harris aluminum boats, a division of Brunswick, in most of our geographic markets. We also are the exclusive dealer for Italy-based Azimut-Benetti Group, or Azimut, for Azimut and Benetti mega-yachts, yachts, and other recreational boats for the United States. Sales of new Azimut boats and yachts accounted for approximately 9% of our revenue in fiscal 2020. Additionally, we are the exclusive dealer for certain other premium brands that serve certain industry segments in our markets as shown by the table on page three.

We also are involved in other boating-related activities. We sell used boats at our retail locations, online, and at various third-party marinas and other offsite locations; we sell marine engines and propellers, primarily to our retail customers as replacements for their existing engines and propellers; we sell a broad variety of parts and accessories at our retail locations and at various offsite locations, and through our print catalog; we offer maintenance, repair, and slip and storage services at most of our retail locations; we offer finance and insurance, or F&I, products at most of our retail locations and at various offsite locations and to our customers and independent boat dealers and brokers; we offer boat and yacht brokerage sales at most of our retail locations and at various offsite locations; and we conduct a yacht charter business in which we offer customers the opportunity to charter third-party and Company owned power yachts in exotic locations.

Beginning in March 2020, we had temporarily closed certain departments or locations based on guidance from local government or health officials as a result of the COVID-19 global pandemic. We are following guidelines to ensure we are safely operating as recommended. As the COVID-19 pandemic is complex and evolving rapidly with many unknowns, the Company will continue to monitor ongoing developments and respond accordingly. Management expects its business, across all of its geographies, will be impacted to some degree, but the significance of the impact of the COVID-19 pandemic on the Company's business and the duration for which it may have an impact cannot be determined at this time.

MarineMax commenced operations as a result of the March 1, 1998 acquisition of five previously independent recreational boat dealers. Since that time, we have acquired 30 additional previously independent recreational boat dealers, four boat brokerage operations, and two full-service yacht repair operations. We attempt to capitalize on the experience and success of the acquired companies in order to establish a high national standard of customer service and responsiveness in the highly fragmented retail boating industry. As a result of our emphasis on premium brand boats, our average selling price for a new boat in fiscal 2020 was approximately \$215,000, a slight increase from approximately \$204,000 in fiscal 2019, compared with the industry average selling price for calendar 2019 of approximately \$56,000 based on industry data published by the National Marine Manufacturers Association. Our stores that operated at least 12 months averaged approximately \$25.8 million in annual sales in fiscal 2020. We

consider a store to be one or more retail locations that are adjacent or operate as one entity. Our same-store sales increased 10% in fiscal 2018, increased 1% in fiscal 2019 and increased 25% in fiscal 2020.

The U.S. recreational boating industry generated approximately \$43.1 billion in retail sales in calendar 2019, which is slightly above the former peak of \$41.8 billion in calendar 2018. Total powerboats sold in calendar 2019 were approximately 201,400 units as compared to 206,900 units sold in calendar 2018. The retail sales include sales of new and used boats; marine products, such as engines, trailers, equipment, and accessories; and related expenditures, such as fuel, insurance, docking, storage, and repairs. Retail sales of new and used boats, engines, trailers, and accessories accounted for approximately \$33.4 billion of these sales in 2019 based on industry data from the National Marine Manufacturers Association. The highly-fragmented retail boating industry generally consists of small dealers that operate in a single market and provide varying degrees of merchandising, professional management, and customer service. We believe that many small dealers find it increasingly difficult to make the managerial and capital commitments necessary to achieve higher customer service levels and upgrade systems and facilities as required by boat manufacturers and often demanded by customers. We also believe that many dealers lack an exit strategy for their owners. We believe these factors contribute to our opportunity to gain a competitive advantage in current and future markets, through market expansions and acquisitions.

#### **Material Updates to Our Strategy**

Since the last discussion of our strategy in our Form 10-K for our fiscal year ended September 30, 2019, our primary goal remains to enhance our position as the nation's leading recreational boat and yacht retailer. In addition, we have broadened our strategy, including through our recent acquisitions of Fraser Yachts Group, Northrop & Johnson and SkipperBud's, to increase our superyacht brokerage and luxury yacht services and marina/storage services. Our goal is that this broadening of our strategy will potentially increase our margins.

In addition, we continue to broaden and strengthen our digital initiatives. Our digital services are always available and offer our full selection of boats, yachts and charters, as well as our expert team to answer customers' questions and help them find a boat virtually. Additionally, our Boatyard digital platform allows marine businesses effective and customized digital solutions delivering great customer experiences by enabling customers to interact through a personalized experience tailored to their needs.

#### **Development of the Company; Expansion of Business**

Since our initial acquisitions in March 1998, we have acquired 30 additional recreational boat dealers, four boat brokerage operations, and two full-service yacht repair operations. Acquired dealers operate under the MarineMax name.

We continually attempt to enhance our business by providing a full range of services, offering extensive and high-quality product lines, maintaining prime retail locations, pursuing the MarineMax One Price hassle-free sales approach, and emphasizing a high level of customer service and satisfaction.

We also from time to time evaluate opportunities to expand our operations by potentially acquiring recreational boat dealers to expand our geographic scope, expanding our product lines, opening new retail locations within or outside our existing territories, and offering new products and services for our customers and by potentially acquiring companies to pursue contract manufacturing or vertical integration strategies.

Apart from acquisitions, we have opened 35 new retail locations in existing territories, excluding those opened on a temporary basis for a specific purpose. We also monitor the performance of our retail locations and close retail locations that do not meet our expectations. Based on these factors and previous depressed economic conditions, we have closed 74 retail locations since March 1998 which includes the 2008 financial crisis, excluding those opened on a temporary basis for a specific purpose and including 11 during the last three fiscal years.

The following table sets forth information regarding the businesses that we have acquired and their geographic regions since fiscal year 2011.

| Acquired Companies          | Acquisition Date | Geographic Region                                   |
|-----------------------------|------------------|---|
| Treasure Island Marina, LLC | February 2011    | Florida Panhandle                                   |
| Bassett Marine, LLC         |                  | Connecticut, Rhode Island and Western Massachusetts |
| Parker Boat Company         | September 2012   |   |
| Ocean Alexander Yachts      | March 2013       | Central Florida                                     |
| Bahia Mar Marina            | April 2014       | Eastern United States                               |
| Russo Marine                | January 2016     | Florida Panhandle                                   |
| Hall Marine Group           | April 2016       | Eastern Massachusetts and Rhode Island              |
| Island Marine Center        | January 2017     | North Carolina, South Carolina and Georgia          |
| Tera Miranda                | January 2018     | New Jersey  |
| Bay Pointe Marina           | April 2018       | Oklahoma  |
| Sail & Ski Center           | September 2018   | Massachusetts                                       |
| Fraser Yachts Group         | April 2019       | Texas   |
| Boatyard, Inc.              | July 2019        | United States and Europe                            |
| Northrop & Johnson          | February 2020    | Worldwide   |
| SkipperBud's                | July 2020        | United States and Europe                            |
|                             | October 2020     | Great Lakes region and West Coast United States     |

In addition to acquiring recreational boat dealers and opening new retail locations, we also add new product lines to expand our operations. The following table sets forth certain of our current product lines that we have added to our existing locations during the years indicated.

| Product Line              | Fiscal Year | Current Geographic Regions   |
|---------------------------|-------------|--|
| Boston Whaler             | 1998        | West Central Florida, Stuart, Florida, and Dallas, Texas   |
| Hatteras Yachts           | 1999        | Florida  |
| Grady-White               | 2002        | Houston, Texas   |
| Boston Whaler             | 2004-2005   | North and South Carolina (2004), Houston, Texas (2005)   |
| Azimut                    | 2006        | Northeast United States from Maryland to Maine   |
| Grady-White               | 2006-2010   | Pensacola, Florida (2006), Jacksonville, Florida (2010)  |
| Azimut                    | 2008        | Florida  |
| Boston Whaler             | 2009-2012   | Southwest Florida (2009), Pompano Beach, Florida (2012)  |
| Harris                    | 2010        | Missouri, Minnesota, and New Jersey  |
| Nautique by Correct Craft | 2010        | West Central Florida and Minnesota   |
| Harris                    | 2011-2012   | West Central Florida (2011), Alabama (2012), North and Southwest Florida (2012), and Texas (2012)            |
| Crest                     | 2011-2018   | Georgia (2011), Oklahoma (2012), North Carolina and South Carolina (2012), New Jersey (2015), Florida (2018) |
| Azimut                    | 2012        | United States other than where previously held   |
| Scout                     | 2012        | Southeast Florida, Maryland, and New Jersey  |
| Sailfish                  | 2013        | Connecticut, New Jersey, North Carolina, Ohio, and Rhode Island  |
| Ocean Alexander Yachts    | 2014        | Eastern United States  |
| Scout                     | 2014        | Texas, New York  |
| Aquila                    | 2014        | Worldwide, excluding China   |
| Galeon                    | 2015        | North America, Central America, and South America  |
| Grady-White               | 2016        | Miami, Florida   |
| Yamaha Jet Boats          | 2017        | Georgia, North Carolina, and South Carolina  |
| Bennington                | 2017        | South Carolina   |
| Mastercraft               | 2018        | South Carolina   |
| NauticStar                | 2018        | Panama City, Florida, Oklahoma, Missouri, Minnesota, North Carolina and South Carolina                       |
| Tigé                      | 2018 - 2019 | Orlando, Florida, Oklahoma, Georgia, and North Carolina  |
| Benetti                   | 2019        | United States and Canada   |
| Aviara                    | 2019        | United States  |
| MJM Yachts                | 2019        | Florida  |
| ATX Surf Boats            | 2020        | Orlando, Florida, Oklahoma, Georgia, and North Carolina  |

We add brands with the intent to either offer a migration path for our existing customer base or fill a gap in our product offerings. As a result, we believe that new brands we offer are generally complementary and do not negatively impact the business generated from our other prominent brands. We also discontinue offering product lines from time to time, primarily based upon customer preferences.

We strive to maintain our core values of high customer service and satisfaction and plan to continue to pursue strategies that we believe will enable us to achieve long-term success and growth. We believe our expanded product offerings have strengthened our same-store sales growth. We plan to further expand our business through both acquisitions in new territories and new store openings in existing territories. In addition, we plan to continue to expand our other traditional services, including conducting used boat sales at our retail locations, at offsite locations, and digitally; selling related marine products, including engines, trailers, parts, and accessories at our retail locations and at various offsite locations; providing maintenance, repair, and storage services at most of our retail locations; offering our customers the ability to finance new or used boats; offering extended service contracts; arranging insurance coverage, including boat property, credit-life, accident, disability, and casualty coverage; offering boat and yacht brokerage sales at most of our retail locations and at various offsite locations; offering boat storage; and conducting our yacht charter business. Our expansion plans will depend, in large part, upon economic and industry conditions.

#### **U.S. Recreational Boating Industry**

The U.S. recreational boating industry generated approximately \$43.1 billion in retail sales in calendar 2019, which is slightly above the former peak of \$41.8 billion in calendar 2018. The retail sales include sales of new and used recreational boats; marine products, such as engines, trailers, parts, and accessories; and related boating expenditures, such as fuel, insurance, docking, storage, and repairs. Retail sales of new and used boats, engines, trailers, equipment, and accessories accounted for approximately \$33.4 billion of such sales in calendar 2019. Total powerboats sold in calendar 2019 were approximately 201,400 units as compared to 206,900 units sold in calendar 2018. To provide historical perspective, annual retail recreational boating sales were \$17.9 billion in 1988, but declined to a low of \$10.3 billion in 1992 based on industry data published by the National Marine Manufacturers Association. We believe this decline was attributable to several factors, including a recession, the Gulf War, and the imposition throughout 1991 and 1992 of a luxury tax on boats sold at prices in excess of \$100,000. The luxury tax was repealed in 1993, and retail boating sales increased each year thereafter except for 1998, 2003, and 2007 through 2010. We believe recreational boating has a natural appeal to consumers, along with other outdoor activities, and will continue to grow in favorable economic conditions absent any unusual industry headwinds (see Risk Factors).

The recreational boat retail market remains highly fragmented with little consolidation having occurred to date and consists of numerous boat retailers, most of which are small companies owned by individuals that operate in a single market and provide varying degrees of merchandising, professional management, and customer service. We believe that many boat retailers are encountering increased pressure from boat manufacturers to improve their levels of service and systems, increased competition from larger national retailers in certain product lines, and, in certain cases, business succession issues.

#### **Products and Services**

We offer new and used recreational boats and related marine products, including engines, trailers, parts, and accessories. While we sell a broad range of new and used boats, we focus on premium brand products. In addition, we assist in arranging related boat financing, insurance, and extended service contracts; provide boat maintenance and repair services; offer slip and storage accommodations; provide boat and yacht brokerage sales; and conduct a yacht charter business.

#### ***New Boat Sales***

We primarily sell recreational boats, including pleasure boats and fishing boats. A number of the products we offer are manufactured by Brunswick, a leading worldwide manufacturer of recreational boats and yachts, including Sea Ray pleasure boats, Boston Whaler fishing boats, and Harris aluminum boats. Sales of new Brunswick boats accounted for approximately 33% of our revenue in fiscal 2020. Sales of new Sea Ray and Boston Whaler boats, both divisions of Brunswick, accounted for approximately 15% and 16%, respectively, of our revenue in fiscal 2020. We believe our sales represented approximately 12% of all Brunswick marine sales during our fiscal 2020. Certain of our dealerships also sell luxury yachts, fishing boats, and pontoon boats provided by other manufacturers, including Italy-based Azimut. Sales of new Azimut boats and yachts accounted for approximately 9% of our revenue in fiscal 2020. During fiscal 2020, new boat sales accounted for approximately 70.2% or \$1.06 billion of our revenue.

We offer recreational boats in most market segments, but have a particular focus on premium quality pleasure boats and yachts as reflected by our fiscal 2020 average new boat sales price of approximately \$215,000 a slight increase from approximately \$204,000

in fiscal 2019, compared with an estimated industry average selling price for calendar 2019 of approximately \$56,000 based on industry data published by the National Marine Manufacturers Association. Given our locations in some of the more affluent, offshore-oriented boating areas in the United States and emphasis on high levels of customer service, we sell a relatively higher percentage of large recreational boats, such as mega-yachts, yachts, and sport cruisers. We believe that the product lines we offer are among the highest quality within their respective market segments, with well-established trade-name recognition and reputations for quality, performance, and style.

The following table is illustrative of the range and approximate manufacturer suggested retail price range of new boats that we currently offer, but is not all inclusive.

| Product Line and Trade Name | Overall Length | Manufacturer Suggested Retail Price Range |
|-----------------------------|----------------|---|
| <b>Motor Yachts</b>         |                |   |
| Azimut                      | 40' to 120'+   | \$800,000 to \$16,000,000+                |
| Hatteras Motor Yachts       | 60' to 100'+   | 2,000,000 to 10,000,000+                  |
| Ocean Alexander Yachts      | 45' to 155'+   | 1,500,000 to 35,000,000+                  |
| Benetti                     | 30M to 145M    | 12,000,000 to 24,000,000+                 |
| <b>Convertibles</b>         |                |   |
| Hatteras Convertibles       | 45' to 77'+    | 2,000,000 to 7,000,000+                   |
| <b>Pleasure Boats</b>       |                |   |
| Sea Ray                     | 19' to 40'     | 30,000 to 800,000+                        |
| Aquila                      | 32' to 48'     | 400,000 to 1,200,000                      |
| Galeon                      | 40' to 80'     | 750,000 to 6,000,000+                     |
| NauticStar                  | 19' to 32'     | 30,000 to 300,000                         |
| MJM Yachts                  | 35' to 50'+    | 800,000 to 2,000,000+                     |
| Aviara                      | 32' to 40'     | 400,000 to 800,000+                       |
| <b>Pontoon Boats</b>        |                |   |
| Harris                      | 18' to 27'     | 25,000 to 250,000                         |
| Crest                       | 20' to 27'     | 40,000 to 175,000                         |
| Bennington                  | 17' to 25'     | 20,000 to 250,000                         |
| <b>Fishing Boats</b>        |                |   |
| Boston Whaler               | 11' to 42'     | 12,000 to 1,200,000                       |
| Grady White                 | 18' to 45'     | 40,000 to 1,200,000                       |
| Scout                       | 17' to 53'     | 20,000 to 2,700,000                       |
| Sailfish                    | 19' to 36'     | 35,000 to 500,000                         |
| <b>Ski Boats</b>            |                |   |
| Nautique by Correct Craft   | 20' to 25'     | 80,000 to 325,000                         |
| Tigé                        | 20' to 25'     | 80,000 to 180,000                         |
| ATX Surf Boats              | 20' to 24'     | 70,000 to 150,000                         |
| Mastercraft                 | 20' to 26'     | 70,000 to 250,000                         |
| <b>Jet Boats</b>            |                |   |
| Yamaha Jet Boats            | 19' to 24'     | 30,000 to 80,000                          |

*Motor Yachts.* Hatteras Yachts, Ocean Alexander Yachts, and Azimut are three of the world's premier yacht builders. The motor yacht product lines typically include state-of-the-art designs with live-aboard luxuries. Hatteras offers a flybridge with extensive guest seating; covered aft deck, which may be fully or partially enclosed, providing the boater with additional living space; an elegant salon; and multiple staterooms for accommodations. Azimut yachts are known for their Americanized open layout with Italian design and powerful performance. The luxurious interiors of Azimut yachts are accented by windows and multiple accommodations that have been designed for comfort. Ocean Alexander Yachts are known for their excellent engineering, performance, and functionality combined with luxuries typically found on larger mega yachts. Benetti yachts and mega yachts are known for maintaining the highest quality standards with excellent aesthetic and functional results as well as combining the finest Italian tradition and craftsmanship with the latest technology.

*Convertibles.* Hatteras Yachts is one of the world's premier convertible yacht builders and offers state-of-the-art designs with live-aboard luxuries. Convertibles are primarily fishing vessels, which are well equipped to meet the needs of even the most serious tournament-class competitor. Hatteras features interiors that offer luxurious salon/galley arrangements, multiple staterooms with private heads, and a cockpit that includes a bait and tackle center, fishbox, and freezer.

*Pleasure Boats.* Sea Ray pleasure boats target both the luxury and the family recreational boating markets and come in a variety of configurations to suit each customer's particular recreational boating style. Sea Ray pleasure boats feature custom instrumentation that may include an electronics package; various hull, deck, and cockpit designs that can include a swim platform; bow pulpit and raised bridge; and various amenities, such as swivel bucket helm seats, lounge seats, sun pads, wet bars, built-in ice chests, and refreshment centers. Most Sea Ray pleasure boats feature Mercury or MerCruiser engines. Galeon specializes in luxury yacht and motor boats with over thirty years of experience. Galeon is one of Europe's leading and premier boat manufacturers. We believe Galeon yachts combine the latest technology, hand crafted excellence, excellent attention to detail, superb performance, and great innovative designs with modern styling and convenience. Aquila power catamarans provide form, function, and offer practicality and comfort with trend setting innovation. We believe NauticStar provides sport deck boats that combine comfort, features, economy, and versatility that make NauticStar a popular choice among experienced boaters. MJM Yachts combine speed, performance, greater stability, innovative designs and layouts, along with comforts and space for entertaining in addition to a patent-protected MJM signature look. Aviaira is the newest brand manufactured by MasterCraft focused on the production of vessels 30-feet and over with the goal of creating an elevated open water experience by fusing progressive style, effortless comfort, and modern luxury.

*Pontoon Boats.* Harris is a pontoon industry leader and offers a variety of some of the most innovative, luxurious, and premium pontoon models to fit boaters' needs. Harris is known for exceptional performance combined with a stable and safe platform. Crest provides a variety of pontoon models that are designed to provide extreme levels of quality, safety, style and comfort to meet family recreational needs. Bennington offers what we believe to be industry leading design, meticulous craftsmanship, and a quiet, smooth, ride. With a variety of designs and options, the pontoon boats we offer appeal to a broad audience of pontoon boat enthusiasts and existing customers.

*Fishing Boats.* The fishing boats we offer, such as Boston Whaler, Grady-White, Scout, and Sailfish, range from entry level models to advanced models designed for fishing and water sports in lakes, bays, and off-shore waters, with cabins with limited live-aboard capability. The fishing boats typically feature livewells, in-deck fishboxes, rodholders, rigging stations, cockpit coaming pads, and fresh and saltwater washdowns.

*Ski Boats.* The ski boats we offer are Nautique by Correct Craft, Tigé, ATX Surf Boats, and Mastercraft, which range from entry level models to advanced models and all of which are designed to achieve an ultimate wake for increased skiing, surfing, and wakeboarding performance and safety. With a variety of designs and options, Nautique, Tigé, ATX Surf Boats, and Mastercraft ski boats appeal to the competitive and recreational user alike.

*Jet Boats.* Yamaha jet boats are designed to offer a reliable, high performing, internal propulsion system with superior handling. Yamaha is a worldwide leader in jet boats. With a variety of designs and options, the jet boats we offer appeal to a broad audience of jet boat enthusiasts and existing customers.

#### **Used Boat Sales**

We sell used versions of the new makes and models we offer and, to a lesser extent, used boats of other makes and models generally taken as trade-ins. During fiscal 2020, used boat sales accounted for 15.1% or approximately \$228 million of our revenue, and 45.1% of the used boats we sold were Brunswick models.

Our used boat sales depend on our ability to source a supply of high-quality used boats at attractive prices. We acquire substantially all of our used boat inventory through customer trade-ins. We intend to continue to increase our used boat business as a result of the availability of quality used boats generated from our new boat sales efforts, the increasing number of used boats that are well-maintained through our service initiatives, our ability to market used boats throughout our combined dealership network to match used boat demand, and the experience of our yacht brokerage operations. Additionally, substantially all of our used boat inventory is posted on our digital properties, which expands the awareness and availability of our products to a large audience of boating enthusiasts. We also sell used boats at various marinas and other offsite locations throughout the country.

To further enhance our used boat sales, we offer the Brunswick Product Protection warranty plan available for used Brunswick boats less than nine years old. The Brunswick Product Protection plan applies to each qualifying used boat, which has passed a 48-point inspection, and provides protection against failure of most mechanical parts for up to three years. We believe this type of program enhances our sales of used boats by motivating purchasers of used boats to complete their purchases through our dealerships.

#### **Marine Engines, Related Marine Equipment, and Boating Parts and Accessories**

We offer marine engines and equipment, predominantly manufactured by Mercury Marine, a division of Brunswick, and Yamaha. We sell marine engines and propellers primarily to retail customers as replacements for their existing engines or propellers. Mercury Marine and Yamaha have introduced various new engine models that are designed to reduce engine emissions to comply with current Environmental Protection Agency requirements. See "Business — Environmental and Other Regulatory Issues."



Industry leaders, Mercury Marine and Yamaha, specialize in state-of-the-art marine propulsion systems and accessories. Many of our dealerships have been recognized by Mercury Marine as "Premier Service Dealers." This designation is generally awarded based on meeting certain standards and qualifications.

We also sell a broad variety of marine parts and accessories at our retail locations, at various offsite locations, and through our print catalog. These marine parts and accessories include marine electronics; dock and anchoring products, such as boat fenders, lines, and anchors; boat covers; trailer parts; water sport accessories, such as tubes, lines, wakeboards, and skis; engine parts; oils; lubricants; steering and control systems; corrosion control products and service products; high-performance accessories, such as propellers and instruments; and a complete line of boating accessories, including life jackets, inflatables, and water sports equipment. We also offer novelty items, such as shirts, caps, and license plates bearing the manufacturer's or dealer's logos. In all of our parts and accessories business, we utilize our industry knowledge and experience to offer boating enthusiasts high-quality products with which we have experience.

The sale of marine engines, related marine equipment, and boating parts and accessories, which are all tangible products, accounted for approximately 3.0% or \$45 million of our fiscal 2020 revenue.

#### ***Maintenance, Repair, and Storage Services***

Providing customers with professional, prompt maintenance and repair services is critical to our sales efforts and contributes to our success. We provide maintenance and repair services at most of our retail locations, with extended service hours at certain of our locations. In addition, in many of our markets, we provide mobile maintenance and repair services at the location of the customer's boat. We believe that this service commitment is a competitive advantage in the markets in which we compete and is critical to our efforts to provide a trouble-free boating experience. To further this commitment, in certain of our markets, we have opened stand-alone maintenance and repair facilities in locations that are more convenient for our customers and that increase the availability of such services. We also believe that our maintenance and repair services contribute to strong customer relationships and that our emphasis on preventative maintenance and quality service increases the potential supply of well-maintained boats for our used boat sales.

We perform both warranty and non-warranty repair services, with the cost of warranty work reimbursed by the manufacturer in accordance with the manufacturer's warranty reimbursement program. For warranty work, most manufacturers, including Brunswick, reimburse a percentage of the dealer's posted service labor rates, with the percentage varying depending on the dealer's customer satisfaction index rating and attendance at service training courses. We derive the majority of our warranty revenue from Brunswick products, as Brunswick products comprise the largest percentage of our products sold. Certain other manufacturers reimburse warranty work at a fixed amount per repair. Because boat manufacturers permit warranty work to be performed only at authorized dealerships, we receive substantially all of the warranted maintenance and repair work required for the new boats we sell. The third-party extended warranty contracts we offer also result in an ongoing demand for our maintenance and repair services for the duration of the term of the extended warranty contract.

Our maintenance and repair services are performed by manufacturer-trained and certified service technicians. In charging for our mechanics' labor, many of our dealerships use a variable rate structure designed to reflect the difficulty and sophistication of different types of repairs. The percentage markups on parts are similarly based on manufacturer suggested prices and market conditions for different parts.

At many of our locations, we offer boat storage services, including in-water slip storage and inside and outside land storage. These storage services are offered at competitive market rates and include both in-season and out-of-season storage.

Maintenance, repair, and storage services accounted for approximately 4.8% or \$72 million of our revenue during fiscal 2020 of which, approximately 3.1% or \$47 million related to repair services, approximately 0.7% or \$10 million related to parts and accessories for repairs, and approximately 1.0% or \$15 million related to income from storage service rentals. This includes warranty and non-warranty services.

#### ***F&I Products***

At each of our retail locations and at various offsite locations where applicable, we offer our customers the ability to finance new or used boat purchases and to purchase extended service contracts and arrange insurance coverage, including boat property, disability, undercoating, gel sealant, fabric protection, and casualty insurance coverage (collectively, "F&I"). We have relationships with various national marine product lenders under which the lenders purchase retail installment contracts evidencing retail sales of boats and other marine products that are originated by us in accordance with existing pre-sale agreements between us and the lenders. These arrangements permit us to receive a portion of the finance charges expected to be earned on the retail installment contract based on a variety of factors, including the credit standing of the buyer, the annual percentage rate of the contract charged to the buyer, and

the lender's then current minimum required annual percentage rate charged to the buyer on the contract. This participation is subject to repayment by us if the buyer prepays the contract or defaults within a designated time period, usually 0 to 180 days. To the extent required by applicable state law, our dealerships are licensed to originate and sell retail installment contracts financing the sale of boats and other marine products.

We also offer third-party extended service contracts under which, for a predetermined price, we provide all designated services pursuant to the service contract guidelines during the contract term at no additional charge to the customer above a deductible. While we sell all new boats with the boat manufacturer's standard hull and engine warranty, extended service contracts provide additional coverage beyond the time frame or scope of the manufacturer's warranty. Purchasers of used boats generally are able to purchase an extended service contract, even if the selected boat is no longer covered by the manufacturer's warranty. Generally, we receive a fee for arranging an extended service contract. Most required services under the contracts are provided by us and paid for by the third-party contract holder. Beginning in fiscal 2021, we have partnered with a third-party to offer prepaid maintenance plans.

We also are able to assist our customers with the opportunity to obtain property and casualty insurance. Property and casualty insurance covers loss or damage to the boat. We do not act as an insurance broker or agent or issue insurance policies on behalf of insurers. We do, however, provide marketing activities and other related services to insurance companies and brokers for which we receive marketing fees. One of our strategies is to generate increased marketing fees by offering more competitive insurance products.

During fiscal 2020, fee income generated from F&I products accounted for approximately 2.7% or \$41 million of our revenue. We believe that our customers' ability to obtain competitive financing quickly and easily at our dealerships complements our ability to sell new and used boats. We also believe our ability to provide customer-tailored financing on a "same-day" basis gives us an advantage over many of our competitors, particularly smaller competitors that lack the resources to arrange boat financing at their dealerships or that do not generate sufficient volume to attract the diversity of financing sources that are available to us.

#### **Brokerage Sales**

Through employees or subcontractors that are licensed boat or yacht brokers where applicable, we offer boat or yacht brokerage sales at most of our retail locations. For a commission, we offer for sale brokered boats or yachts, listing them digitally on various sites, advising our other retail locations of their availability through our integrated computer system, and posting them on our website, [www.MarineMax.com](http://www.MarineMax.com). Often sales are co-brokered, with the commission split between the buying and selling brokers. We believe that our access to potential used boat customers and methods of listing and advertising customers' brokered boats or yachts is more extensive than is typical among brokers. In addition to generating revenue from brokerage commissions, our brokerage sales also enable us to offer a broad array of used boats or yachts without increasing related inventory costs. Also, through Fraser Yachts and Northrop & Johnson we offer yacht and superyacht brokerage. During fiscal 2020, brokerage sales commissions accounted for approximately 2.6% or \$39 million of our revenue.

Our brokerage customers generally receive the same high level of customer service as our new and used boat customers. Our waterfront retail locations enable in-water demonstrations of an on-site brokered boat. Our maintenance and repair services, including mobile service, also are generally available to our brokerage customers. The purchaser of a boat brokered through us also can take advantage of MarineMax Getaways!® weekend and day trips and other rendezvous gatherings and in-water events, as well as boat operation and safety seminars. We believe that the array of services we offer are unique in the brokerage business.

#### **Yacht Charter**

In 2011 we launched a yacht charter business in which we offer customers the opportunity to charter power yachts in exotic destinations, starting with our initial location in the British Virgin Islands (BVI). In this business, we sell specifically designed yachts to third parties for inclusion in our yacht charter fleet; enter into yacht management agreements under which yacht owners enable us to put their yachts in our yacht charter program for a period of several years for a fixed monthly fee payable by us; provide our services in storing, insuring, and maintaining their yachts; and charter these yachts to vacation customers at agreed fees payable to us. The yacht owners will be able to utilize the yachts for personal use for a designated number of weeks during the terms of the management agreement and take possession of their yachts following the expiration of the yacht management agreements.

In addition to the specific business we launched in the BVI, we also offer yacht charter services. For a fee, we assist yacht owners in the charter of their vessel by third-parties. Additionally, through Fraser Yachts and Northrop & Johnson we offer yacht and superyacht chartering, charter management, yacht management, crew placement, new boat build oversight services and other luxury yacht services. During fiscal 2020, the income from rentals of chartering power yachts, yacht charter fees, and other charter services accounted for approximately 1.6% or \$24 million of our revenue. Our facilities in the British Virgin Islands and yacht charter fleet suffered damage from Hurricane Irma in September of 2017. We maintain insurance for inventory damage, subject to deductibles. The yacht charter fleet resumed charters during fiscal 2019 on a limited basis as damage was repaired and returned to full operations in 2020. Beginning in March 2020, we have temporarily closed our facilities in the British Virgin Islands and yacht charters based on guidance from local government and health officials as a result of the COVID-19 global pandemic. We expect yacht charters to resume during fiscal 2021, but impact of the COVID-19 pandemic and the duration for which it may have an impact cannot be determined at this time.

#### ***Offsite Sales***

We sell used boats, offer F&I products, and sell parts and accessories at various third-party offsite locations, including marinas.

#### ***Retail Locations***

We sell our recreational boats and other marine products and offer our related boat services through 77 retail locations in Alabama, California, Connecticut, Florida, Georgia, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, Texas, Washington and Wisconsin. Each retail location generally includes an indoor showroom (including some of the industry's largest indoor boat showrooms) and an outside area for displaying boat inventories, a business office to assist customers in arranging financing and insurance, maintenance and repair facilities, and at certain retail locations boat storage services, including in-water slip storage and inside and outside land storage.

Many of our retail locations are waterfront properties on some of the nation's most popular boating locations, including the Norwalk Harbor and Westbrook Harbor in Connecticut; multiple locations on the Intracoastal Waterway, the Atlantic Ocean, Boca Ciega Bay, Caloosahatchee River, Naples Bay, Tampa Bay, Pensacola Bay, and the Saint Andrews Bay in Florida; Lake Lanier and Wilmington River in Georgia; Chesapeake Bay in Maryland; Lake Minnetonka, and the St. Croix River in Minnesota; Lake of the Ozarks in Missouri; Barnegat Bay, Lake Hopatcong, Little Egg Harbor Bay, and the Manasquan River in New Jersey; Huntington Harbor in New York; Town River in Massachusetts; Masonboro Inlet in North Carolina; Lake Wylie in South Carolina; Lake Erie in Ohio; Grand Lake in Oklahoma; Newport Bay, San Diego Bay, and Richardson Bay in California; Saginaw River, Lake St. Clair, Cass Lake, Spring Lake, and Lake Fenton in Michigan, Lake Union in Washington, Sturgeon Bay, Lake Mendota, Kinnickinnic River, and Lake Butte Des Mortes in Wisconsin, Lake Michigan and Lake Marie in Illinois, Newport Harbor in Rhode Island; and Clear Lake and Lake Lewisville in Texas. Our waterfront retail locations, most of which include marina-type facilities and docks at which we display our yachts and boats, are easily accessible to the boating populace, serve as in-water showrooms, and enable the sales force to give customers immediate in-water demonstrations of various boat models. Most of our other locations are in close proximity to water.

#### ***Operations***

##### ***Dealership Operations and Management***

We have adopted a generally decentralized approach to the operational management of our dealerships. While certain administrative functions are centralized at the corporate level, local management is primarily responsible for the day-to-day operations of the retail locations. Each retail location is managed by a general manager, who oversees the day-to-day operations, personnel, and financial performance of the individual store, subject to the direction of a regional president or district president, who generally has responsibility for the retail locations within a specified geographic region. Typically, each retail location also has a staff consisting of an F&I manager, a parts manager, a service manager, sales representatives, maintenance and repair technicians, and various support personnel.

##### ***Sales and Marketing***

Our sales philosophy focuses on selling the pleasures of the boating lifestyle. We believe that the critical elements of our sales philosophy include our appealing retail locations, no-hassle sales approach, highly trained sales representatives, high level of customer service, emphasis on educating the customer and the customer's family on boating, and providing our customers with opportunities for boating through our MarineMax Getaways!®. We strive to provide superior customer service and support before, during, and after the sale. Our team and customers are United by Water®.

Each retail location offers the customer the opportunity to evaluate a variety of new and used boats in a comfortable and convenient setting. Our full-service retail locations facilitate a turn-key purchasing process that includes attractive lender financing packages, extended service agreements, and insurance. Many of our retail locations are located on waterfronts and marinas, which attract boating enthusiasts and enable customers to operate various boats prior to making a purchase decision.

The brands we offer are diverse in size and use and are spread across our customer activities of leisure, fishing, watersports, luxury, and vacations. We believe the transformative qualities of the water should be shared by everyone, so we created our boat lineup accordingly. Our promise gives our brands meaning and reason to exist next to one another on our showroom floor.

We sell our boats at posted MarineMax "One Price" that generally represent a discount from the manufacturer's suggested retail price. Our sales approach focuses on customer service by minimizing customer anxiety associated with price negotiation.

As a part of our sales and marketing efforts, our digital marketing activity is important, with the majority of leads coming through our digital properties, [www.MarineMax.com](http://www.MarineMax.com). Social media is a growing venue for customer engagement with stores and prospecting of new leads. Additionally, we hold online experience events that allow participants to explore boats and yachts from multiple manufactures, segments, and models from nearly any electronic device including their phone, tablet, laptop or desktop computer.

We participate in boat shows and in-the-water sales events at area boating locations, typically held in January, February, March, and toward the end of the boating season, in each of our markets and in certain locations in close proximity to our markets. Boat shows and other offsite promotions are an important venue for generating sales orders. The boat shows also generate a significant amount of interest in our products resulting in boat sales after the show. Online we are always available and can offer our full selection of boats, yachts and charters, as well as our expert team to answer customers' questions and help them find a boat virtually.

We emphasize customer education through one-on-one education by our sales representatives and, at some locations, our delivery captains, before and after a sale, and through in-house seminars for the entire family on boating safety, the use and operation of boats, and product demonstrations. Typically, one of our delivery captains or the sales representative delivers the customer's boat to an area boating location and thoroughly instructs the customer about the operation of the boat, including hands-on instructions for docking and trailering the boat. To enhance our customer relationships after the sale, we lead and sponsor MarineMax Getaways!® group boating trips to various destinations, rendezvous gatherings, and on-the-water organized events that promote the pleasures of the boating lifestyle. Each Company-sponsored event, planned and led by a Company employee, also provides a favorable medium for acclimating new customers to boating, sharing exciting boating destinations, creating friendships with other boaters, and enabling us to promote new product offerings to boating enthusiasts.

As a result of our relative size, we believe we have a competitive advantage within the industry by being able to conduct an organized and systematic advertising and marketing effort. Part of our marketing effort includes an integrated customer relationship management system that tracks the status of each sales representative's contacts with a prospect, automatically generates follow-up correspondence, and facilitates Company-wide availability of a particular boat or other marine product desired by a customer.

#### ***Suppliers and Inventory Management***

We purchase substantially all of our new boat inventory directly from manufacturers, which allocate new boats to dealerships based on the amount of boats sold by the dealership and their market share. We also exchange new boats with other dealers to accommodate customer demand and to balance inventory.

In fiscal 2020, sales of new Brunswick and Azimut boats and yachts accounted for approximately 33% and 9% of our revenue, respectively. Sales of new Sea Ray and Boston Whaler boats, both divisions of Brunswick, accounted for approximately 15% and 16%, respectively, of our revenue in fiscal 2020. No purchases of new boats and other marine related products from any other manufacturer accounted for more than 10% of our revenue in fiscal 2020. We believe our sales represented approximately 12% of all Brunswick marine product sales during fiscal 2020.

We have entered into multi-year agreements with Brunswick covering Sea Ray and Boston Whaler. We also have a multi-year agreement with Azimut-Benetti Group for its Azimut product line. We typically deal with each of our manufacturers, other than Brunswick and Azimut-Benetti Group, under an annually renewable, non-exclusive dealer agreement.

The dealer agreements do not restrict our right to sell any product lines or competing products provided that we are in compliance with the material obligations of our dealer agreements. The terms of each dealer agreement appoints a designated geographical territory for the dealer, which is exclusive to the dealer provided that the dealer is able to meet the material obligations of its dealer agreement.

Manufacturers generally establish prices on an annual basis, but may change prices at their sole discretion. Manufacturers typically discount the cost of inventory and offer inventory financing assistance during the manufacturers' slow seasons, generally October through March. To obtain lower cost of inventory, we strive to capitalize on these manufacturer incentives to take product delivery during the manufacturers' slow seasons. This permits us to gain pricing advantages and better product availability during the selling season. Arrangements with certain other manufacturers may restrict our right to offer some product lines in certain markets.

We transfer individual boats among our retail locations to fill customer orders that otherwise might take substantially longer to fill from the manufacturer. This reduces delays in delivery, helps us maximize inventory turnover, and assists in minimizing potential overstock or out-of-stock situations. We actively monitor our inventory levels to maintain levels appropriate to meet current anticipated market demands. We are not bound by contractual agreements governing the amount of inventory that we must purchase in any year from any manufacturer, but the failure to purchase at agreed upon levels may result in the loss of certain manufacturer incentives or dealership rights.

#### ***Inventory Financing***

Marine manufacturers customarily provide interest assistance programs to retailers. The interest assistance varies by manufacturer and may include periods of free financing or reduced interest rate programs. The interest assistance may be paid directly to the retailer or the financial institution depending on the arrangements the manufacturer has established. We believe that our financing arrangements with manufacturers are standard within the industry.

We account for consideration received from our vendors in accordance with FASB Accounting Standards Codification 606, "Revenue from Contracts with Customers" ("ASC 606"). ASC 606 requires us to classify interest assistance received from manufacturers as a reduction of inventory cost and related cost of sales as opposed to netting the assistance against our interest expense incurred with our lenders. Pursuant to ASC 606, amounts received by us under our co-op assistance programs from our manufacturers are netted against related advertising expenses.

We are party to a Loan and Security Agreement (the "Credit Facility") with Wells Fargo Commercial Distribution Finance LLC, M&T Bank of the West, and Truist Bank. The Credit Facility has a three-year term and expires in May 2023, subject to extension for two one-year periods, with lender approval. The Credit Facility provides the Company a line of credit with asset based borrowing availability of up to \$440 million for working capital and inventory financing, with the amount permissible pursuant to a borrowing base formula. The Credit Facility is further discussed in the "Management's Discussion and Analysis of Financial Condition and Results of Operation" section of this Annual Report on Form 10-K.

#### ***Management Information System***

We believe that our management information system, which is utilized by each of our dealerships and was developed over a number of years through cooperative efforts with a common vendor, enhances our ability to integrate successfully the operations of our dealerships and future acquisitions, facilitates the interchange of information, and enhances cross-selling opportunities throughout our company. The system integrates each level of operations on a Company-wide basis, including but not limited to purchasing, inventory, receivables, payables, financial reporting, budgeting, and sales management. The system enables us to monitor each dealership's operations in order to identify quickly areas requiring additional focus and to manage inventory. The system also provides sales representatives with prospect and customer information that aids them in tracking the status of their contacts with prospects, automatically generates follow-up correspondence to such prospects, facilitates the availability of a particular boat Company-wide, locates boats needed to satisfy a particular customer request, and monitors the maintenance and service needs of customers' boats. Company representatives also utilize the system to assist in arranging financing and insurance packages. We mitigate cybersecurity risks by employing a number of measures, including employee training, systems, monitoring and testing, and maintenance of protective systems and contingency plans.

#### ***Human Capital Resources***

As of September 30, 2020, we had 1,736 employees, 1,626 (94%) of whom were in store-level operations and 110 (6%) of whom were in corporate administration and management. We are not a party to any collective bargaining agreements. We consider our relations with our employees to be excellent.

In managing the business, we devote substantial efforts to recruit employees that we believe to be exceptionally well qualified for their position. We also train our employees to understand our core retail philosophies, which focus on making the purchase of a boat and its subsequent use as hassle-free and enjoyable as possible. Through our MarineMax University, or MMU, we teach our retail philosophies to existing and new employees at various locations and online, through MMU-online. MMU is a modularized and instructor-led educational program that focuses on our retailing philosophies and provides instruction on such matters as the sales

process, customer service, F&I, accounting, leadership, and human resources. We also have a specialized service training center and program in Clearwater, Florida where we train our service technicians in best practices.

Sales representatives receive compensation primarily on a commission basis. Each general manager is a salaried employee with incentive bonuses based on the performance of the managed dealership. Maintenance and repair service managers receive compensation on a salary basis with bonuses based on the performance of their departments. Our management information system provides each store and department manager with daily financial and operational information, enabling them to monitor the performance their personnel on a daily, weekly, and monthly basis. We have a uniform, fully integrated management information system serving each of our dealerships.

Our philosophy is to pay competitive base salaries to team members at levels that help us to attract, motivate, and retain highly qualified team members and reduce turnover. Cash incentive bonuses are designed to reward individuals based on our Company's financial results as well as the achievement of personal and corporate objectives designed to contribute to our long-term success in building shareholder value. Grants of stock-based awards under our 2011 Stock-Based Compensation Plan are intended to align compensation with the price performance of our common stock. Total compensation levels reflect corporate positions, responsibilities, and achievement of goals. As a result of our performance-based compensation philosophy, pay levels may vary significantly from year to year and among our various team members. Performance metrics utilized by our cash compensation plans include pretax income performance bonus, aged inventory, district and regional financial performance targets, and net promoter score (customer satisfaction).

#### **Trademarks and Service Marks**

We have registered trade names and trademarks with the U.S. Patent and Trademark Office for various names, including "MarineMax," "MarineMax Getaways!®," "MarineMax Care," "MarineMax Delivering the Boating Dream," "Newcoast Financial Services," "MarineMax Boating Gear Center," "Boating Gear Center Powered by MarineMax," "MarineMax Vacations," "United by Water," "Women on Water," "MarineMax Maximizing Your Enjoyment on the Water," "MarineMax Hall Marine," "MarineMax Fort Myers at Deep Lagoon," "MarineMax Yacht Gala," "MarineMax Rewards Club," "Myboat.com," "Nukleus," and "Max Makeover." We have registered the name "MarineMax" in the European Union, China, Australia, Brazil, India, and Cuba; "MarineMax Maximizing Your Enjoyment on the Water" in the European Union, Cuba, India, and Australia; and "United by Water" in the European Union, China, Australia, India, and Cuba. We have trade names and trademarks registered in Canada for various names, including "MarineMax," "Delivering the Dream," "United by Water," "The Water Gene," "MyBoat.com," and "Nukleus." We have various trade name and trademark applications outside of the United States for various marks, specifically "Nukleus" in India, and "United by Water" in Brazil. There can be no assurance that any of these applications will be granted.

#### **Seasonality and Weather Conditions**

Our business, as well as the entire recreational boating industry, is highly seasonal, with seasonality varying in different geographic markets. Over the three-year period ended September 30, 2020, the average revenue for the quarters ended December 31, March 31, June 30 and September 30 represented approximately 20%, 22%, 32%, and 26%, respectively, of our average annual revenues. With the exception of Florida, we generally realize significantly lower sales and higher levels of inventories and related short-term borrowings, in the quarterly periods ending December 31 and March 31. The onset of the public boat and recreation shows in January generally stimulates boat sales and typically allows us to reduce our inventory levels and related short-term borrowings throughout the remainder of the fiscal year. Our expansion into boat storage may act to reduce our seasonality and cyclicality.

Our business is also subject to weather patterns, which may adversely affect our results of operations. For example, prolonged winter conditions, drought conditions (or merely reduced rainfall levels) or excessive rain, may limit access to area boating locations or render boating dangerous or inconvenient, thereby curtailing customer demand for our products. In addition, unseasonably cool weather and prolonged winter conditions may lead to a shorter selling season in certain locations. Hurricanes and other storms could result in disruptions of our operations or damage to our boat inventories and facilities, as has been the case when Florida and other markets were affected by hurricanes, such as Hurricanes Harvey and Irma in 2017. Although our geographic diversity is likely to reduce the overall impact to us of adverse weather conditions in any one market area, these conditions will continue to represent potential, material adverse risks to us and our future financial performance.

#### **Governmental Regulations, including Environmental Regulations**

Our operations are subject to extensive regulation, supervision, and licensing under various foreign, federal, state, and local statutes, ordinances, and regulations. While we believe that we maintain all requisite licenses and permits and are in compliance with all applicable federal, state, and local regulations, there can be no assurance that we will be able to maintain all requisite licenses and permits. The failure to satisfy those and other regulatory requirements could have a material adverse effect on our business, financial

condition, and results of operations. The adoption of additional laws, rules, and regulations could also have a material adverse effect on our business. Various foreign, federal, state, and local regulatory agencies, including the Occupational Safety and Health Administration, or OSHA, the United States Environmental Protection Agency, or EPA, and similar foreign, federal, state, and local agencies, have jurisdiction over the operation of our dealerships, repair facilities, and other operations with respect to matters such as consumer protection and privacy, workers' safety, and laws regarding protection of the environment, including air, water, and soil.

The EPA has various air emissions regulations for outboard marine engines that impose more strict emissions standards for two-cycle, gasoline outboard marine engines. The majority of the outboard marine engines we sell are manufactured by Mercury Marine. Mercury Marine's product line of low-emission engines, including the OptiMax, Verado, SeaPro, Pro XS, and other four-stroke outboards, have achieved the EPA's mandated 2006 emission levels. While we remain committed to supporting sustainable manufacturing and a sustainable environment for all boaters, any increased costs of producing engines resulting from EPA standards, or the inability of our manufacturers to comply with EPA requirements, could have a material adverse effect on our business.

Certain of our facilities own and operate underground storage tanks, or USTs, and above ground storage tanks, or ASTs, for the storage of various petroleum products. The USTs and ASTs are generally subject to federal, state, and local laws and regulations that require testing and upgrading of tanks and remediation of contaminated soils and groundwater resulting from leaking tanks. In addition, if leakage from Company-owned or operated tanks migrates onto the property of others, we may be subject to civil liability to third parties for remediation costs or other damages. Based on historical experience, we believe that our liabilities associated with tank testing, upgrades, and remediation are unlikely to have a material adverse effect on our financial condition or operating results.

As with boat dealerships generally, and parts and service operations in particular, our business involves the use, handling, storage, and contracting for recycling or disposal of hazardous or toxic substances or wastes, including environmentally sensitive materials, such as motor oil, waste motor oil and filters, transmission fluid, antifreeze, freon, waste paint and lacquer thinner, batteries, solvents, lubricants, degreasing agents, gasoline, and diesel fuels. Accordingly, we are subject to regulation by federal, state, and local authorities establishing requirements for the use, management, handling, and disposal of these materials and health and environmental quality standards, and liability related thereto, and providing penalties for violations of those standards. We are also subject to laws, ordinances, and regulations governing investigation and remediation of contamination at facilities we operate to which we send hazardous or toxic substances or wastes for treatment, recycling, or disposal.

We do not believe we have any material environmental liabilities or that compliance with environmental laws, ordinances, and regulations will, individually or in the aggregate, have a material adverse effect on our business, financial condition, or results of operations. However, soil and groundwater contamination has been known to exist at certain properties owned or leased by us. We have also been required and may in the future be required to remove aboveground and underground storage tanks containing hazardous substances or wastes. As to certain of our properties, specific releases of petroleum have been or are in the process of being remedied in accordance with state and federal guidelines. We are monitoring the soil and groundwater as required by applicable state and federal guidelines. In addition, the shareholders of certain of the acquired dealers have indemnified us (and such indemnification is continuing) for specific environmental issues identified on environmental site assessments performed by us as part of the acquisitions. We maintain insurance for pollutant cleanup and removal. The coverage pays for the expenses to extract pollutants from land or water at the insured property, if the discharge, dispersal, seepage, migration, release, or escape of the pollutants is caused by or results from a covered cause of loss. We also have additional storage tank liability insurance and "Superfund" coverage where applicable. In addition, certain of our retail locations are located on waterways that are subject to federal or state laws regulating navigable waters (including oil pollution prevention), fish and wildlife, and other matters.

Three of the properties we own were historically used as gasoline service stations. Remedial action with respect to prior historical site activities on these properties has been completed in accordance with federal and state law. We do not believe that any of these environmental issues will result in any material liabilities to us.

Additionally, certain states have required or are considering requiring a license in order to operate a recreational boat. While such licensing requirements are not expected to be unduly restrictive, regulations may discourage potential first-time buyers, thereby limiting future sales, which could adversely affect our business, financial condition, and results of operations.

#### **Environmental Responsibility**

We operate many retail locations near or on bodies of water that are acutely susceptible to the risks associated with climate change. Such risks include those related to the physical impacts of climate change, such as possibly more frequent and severe weather events, rising sea levels, and/or long term shifts in climate patterns, and risks related to the transition to a lower-carbon economy, such as reputational, market and/or regulatory risks. Our commitment to environmental responsibility and initiatives to reduce our environmental footprint are outlined in our "Environmental Policy." Our Environmental Policy can be found on the Investor

Relations section of our website at [www.MarineMax.com](http://www.MarineMax.com) under Governance Documents. Our Environmental Policy and associated climate related risks and opportunities are reviewed by our Board of Directors on an annual basis or more frequently as needed.

We have engaged in many efforts to mitigate and adapt to climate change. For example, we seek out, to the extent feasible, manufacturers committed to the highest levels of sustainability, environmental stewardship, and low-emissions as demonstrated by Mercury Marine. Mercury Marine's commitment to sustainability and successes are detailed in its 2019 Sustainability Report. Mercury Marine's accomplishments include winning the 2018 Sustainable Product of the Year from the Wisconsin Sustainable Business Council for its Active Trim technology and the 2018 Business Friend of the Environment Award for their new V6 and V8 outboard engines. For the ninth consecutive year, the Wisconsin Sustainable Business Council awarded Mercury Marine a "Green Masters" designation, a program measuring a broad range of sustainability issues including energy and water conservation, waste management, community outreach, and education. Additionally, Azimut Yachts was awarded ISO 14001 certification, for its consistent and effective management system aimed at reducing the environmental impact of its operations. Also, to maximize the eco-compatible standards of their yachts, Azimut Yachts adopted RINA (an organization specializing in classification, certification, testing, and inspection) principles to achieve RINA Green Plus notation.

Further, while not our primary focus, as opportunities arise we have made targeted investments to support new technology, innovations, and research in the marine industry to reduce emissions, provide environmental stewardship, and support a sustainable environment for all boaters. The Fraser Yachts Group has become the first yacht company to sign the Pact for Energy Transition with the Monaco Government. The energy transition pact was created by the Monaco government to improve energy efficiency and promote renewable energy sources, with the target to reducing greenhouse gas emissions, by allowing residents, workers, businesses, institutions and associations to contribute to the energy transition effort.

We take pride in maintaining our retail locations and marinas for the benefit of the local communities and boaters we serve. We strive to execute a proactive strategy related to environmental, health, and safety laws and regulations, and environmental stewardship, which includes investing significant resources in maintaining and developing our retail locations and marinas for the long term. Additionally, several of our Florida locations have been designated Clean Marinas through the Florida Department of Environmental Protection Clean Marina Program. The Clean Marina Program recognizes facilities engaging in environmental best practices and exceeding regulatory requirements in and around Florida's waterways.

#### **Corporate Social Responsibility**

Our commitment to social responsibility is outlined in our "Human Rights Policy." Our Human Rights Policy can be found on the Investor Relations section of our website at [www.MarineMax.com](http://www.MarineMax.com) under Governance Documents. Our Human Rights Policy is reviewed by our Board of Directors on an annual basis or more frequently as needed. We strive to conduct our business in an ethical and socially responsible way, and are sensitive to the needs of the environment, our customers, our shareholders, our team members and our communities. Our ethical and social responsibility is guided by our MarineMax culture and values which are honesty, trust, loyalty, professionalism, consistency, always do what is right, treat others as we want to be treated, and always consider the long term. Our culture, values, and mission are shared and reinforced with our team members through daily stand up meetings, team events, and online communications. We pride ourselves in supporting our local communities both on and off the water. One way in which our presence is felt within the local community is by providing our team members time to volunteer and assist with Habitat for Humanity housing projects in addition to making charitable donations to Habitat for Humanity. Additionally, we are proud to support the ocean cleanup company 4ocean and its mission to end the world's plastic pollution crises. 4ocean is a global company that actively removes trash from the ocean and coastlines, helps create sustainable economies around the world and inspires individuals to work together for a cleaner ocean.

#### **Product Liability**

The products we sell or service may expose us to potential liabilities for personal injury or property damage claims relating to the use of those products. Historically, the resolution of product liability claims has not materially affected our business. Our manufacturers generally maintain product liability insurance, and we maintain third-party product liability insurance, which we believe to be adequate. However, we may experience legal claims in excess of our insurance coverage, and those claims may not be covered by insurance. Furthermore, any significant claims against us could adversely affect our business, financial condition, and results of operations and result in negative publicity. Excessive insurance claims also could result in increased insurance premiums.



## Executive Officers

The following table sets forth information concerning each of our executive officers as of December X, 2020:

| Name                    | Age | Position   |
|-------------------------|-----|--|
| William H. McGill Jr.   | 76  | Executive Chairman of the Board and Director                               |
| William Brett McGill    | 52  | Chief Executive Officer, President and Director                            |
| Michael H. McLamb       | 55  | Executive Vice President, Chief Financial Officer, Secretary, and Director |
| Charles A. Cashman      | 57  | Executive Vice President and Chief Revenue Officer                         |
| Anthony E. Cassella, Jr | 51  | Vice President and Chief Accounting Officer                                |

*William H. McGill Jr.* has served as the Executive Chairman of the Board since October 2018. Mr. McGill served as Chief Executive Officer of MarineMax from January 23, 1998 to September 30, 2018 and as the Chairman of the Board and as a director of the Company since March 6, 1998. Mr. McGill served as the President of the Company from January 23, 1988 until September 8, 2000 and re-assumed the position from July 1, 2002 to October 1, 2017. Mr. McGill was the principal owner and president of Gulfwind USA, Inc., one of our operating subsidiaries, from 1973 until its merger with us in 1998. In December 2016, Mr. McGill joined the Board of Directors of Joi Scientific, Inc., an energy company with which we have a licensing agreement.

*William Brett McGill* has served as Chief Executive Officer since October 2018, as President since October 2017, and as a director since February 21, 2019. Mr. McGill served as President and Chief Operating Officer of MarineMax from October 2017 to October 2018. Mr. McGill served as Executive Vice President and Chief Operating Officer from October 2016 to October 2017, Executive Vice President Operations of the Company from October 2015 to September 2016, as Vice President of West Operations of the Company from May 2012 to September 2015, and was appointed as an executive officer by our Board of Directors in November 2012. Mr. McGill served as one of our Regional Presidents from March 2006 to May 2012, as Vice President of Information Technology, Service and Parts of the Company from October 2004 to March 2006, and as Director of Information Services from March 1998. Mr. McGill began his professional career with a software development firm, Integrated Dealer Systems, prior to joining MarineMax in 1996. William Brett McGill is the son of William H. McGill, Jr.

*Michael H. McLamb* has served as Executive Vice President of MarineMax since October 2002, as Chief Financial Officer since January 23, 1998, as Secretary since April 5, 1998, and as a director since November 1, 2003. Mr. McLamb served as Vice President and Treasurer of the Company from January 23, 1998 until October 22, 2002. Mr. McLamb, a certified public accountant, was employed by Arthur Andersen LLP from December 1987 to December 1997, serving most recently as a senior manager.

*Charles A. Cashman* has served as Executive Vice President and Chief Revenue Officer of MarineMax since October 2016. Mr. Cashman served as Executive Vice President Sales, Marketing, and Manufacturer Relations of the Company from October 2015 to September 2016, served as Vice President of East Operations from May 2012 to September 2015, and was appointed as an executive officer by our Board of Directors in November 2012. Mr. Cashman served as Regional President of East Florida from October 2008 to May 2012, and as District Manager of the East Coast of Florida from March 2007 to October 2008. Mr. Cashman served several other positions of increasing responsibility, including Sales Consultant, Sales Manager, and General Manager, since joining MarineMax in 1992.

*Anthony E. Cassella, Jr.* has served as Vice President of MarineMax since February 2016, Chief Accounting Officer since October 2014, and Vice President of Accounting and Shared Services since February 2011. Mr. Cassella served as Director of Shared Services from October 2007 until February 2011 and Regional Controller from March 1999 until October 2007. Mr. Cassella was the Controller of Merit Marine which the Company acquired in March 1999. Mr. Cassella, a certified public accountant, worked in public accounting from June 1991 to February 1998, serving most recently as manager.

**Competition and Industry Conditions Risk Factors**

*Our success depends to a significant extent on the well-being, as well as the continued popularity and reputation for quality of the boating products, of our manufacturers, particularly Brunswick's Sea Ray and Boston Whaler boat lines and Azimut-Benetti Group's Azimut products. The failure to obtain a high quality and desirable mix of competitively priced products that our customers demand could have a material adverse effect on our business, financial condition, and results of operations.*

Approximately 33% of our revenue in fiscal 2020 resulted from sales of new boats manufactured by Brunswick, including approximately 15% from Brunswick's Sea Ray division, 16% from Brunswick's Boston Whaler division, and approximately 2% from Brunswick's other divisions. Additionally, approximately 9% of our revenue in fiscal 2020 resulted from sales of new boats manufactured by Azimut-Benetti Group. The remainder of our fiscal 2020 revenue from new boat sales resulted from sales of products from a limited number of other manufacturers, none of which accounted for more than 10% of our revenue.

We depend on our manufacturers to provide us with products that compare favorably with competing products in terms of quality, performance, safety, and advanced features, including the latest advances in propulsion and navigation systems. Any adverse change in the production efficiency, product development efforts, technological advancement, expansion of manufacturing footprint, supply chain and third-party suppliers, marketplace acceptance, marketing capabilities, ability to secure adequate access to capital, and financial condition of our manufacturers, particularly Brunswick including Mercury Marine a division of Brunswick, and Azimut-Benetti Group given our reliance on Sea Ray, Boston Whaler, Mercury Marine engines, and Azimut, would have a substantial adverse impact on our business. Any difficulties encountered by any of our manufacturers, particularly Brunswick and Azimut-Benetti Group, resulting from economic, financial, or other factors, such as the COVID-19 pandemic, could adversely affect the quality and amount of products that they are able to supply to us and the services and support they provide to us.

Any interruption or discontinuance of the operations of Brunswick, Azimut-Benetti Group or other manufacturers, as experienced in June 2018 with Brunswick discontinuing its Sea Ray sport yacht and yacht models, could cause us to experience shortfalls, disruptions or delays with respect to needed inventory. Although we believe in our brand, our product diversification and that adequate alternate sources would be available that could replace any manufacturer other than Brunswick and Azimut-Benetti Group as a product source, those alternate sources may not be available at the time of any interruption, and alternative products may not be available at comparable quality and price.

***Boat manufacturers exercise substantial control over our business.***

We depend on our dealer agreements. We have dealer agreements with Brunswick covering Sea Ray and Boston Whaler products. Each dealer agreement has a multi-year term and provides for the lowest product prices charged by the Sea Ray division of Brunswick or Boston Whaler, as applicable, from time to time to other domestic Sea Ray or Boston Whaler dealers, as applicable. These terms are subject to:

- the dealer meeting all the requirements and conditions of the manufacturer's applicable programs; and
- the right of Brunswick in good faith to charge lesser prices to other dealers
  - to meet existing competitive circumstances;
  - for unusual and non-ordinary business circumstances; or
  - for limited duration promotional programs.

Each dealer agreement designates a specific geographical territory for the dealer, which is exclusive to the dealer provided that the dealer is able to meet the material obligations of its dealer agreement.

We are the exclusive dealer for Azimut-Benetti Group's Azimut product line for the United States. The Azimut dealer agreement provides a geographic territory to promote the product line and to network with the appropriate clientele through various independent locations designated for Azimut retail sales. Our dealer agreement is a multi-year term but requires us to be in compliance with its terms and conditions.

As is typical in the industry, we generally deal with manufacturers, other than Sea Ray and Boston Whaler (both divisions of Brunswick) and Azimut, under renewable annual dealer agreements. These agreements do not contain any contractual provisions

concerning product pricing or required purchasing levels. Pricing is generally established on a model year basis, but is subject to change in the manufacturer's sole discretion. Any change or termination of these arrangements for any reason could adversely affect product availability and cost and our financial performance.

Through these dealer agreements, boat manufacturers (particularly Brunswick and Azimut) exercise significant control over their dealers, restrict them to specified locations, and retain approval rights over changes in management and ownership, among other things. Failure to meet the customer satisfaction, market share goals, and other conditions set forth in any dealer agreement could have various consequences, including the following:

- the termination of the dealer agreement;
- the imposition of additional conditions in subsequent dealer agreements;
- limitations on boat inventory allocations;
- reductions in reimbursement rates for warranty work performed by the dealer;
- loss of certain manufacturer to dealer incentives;
- denial of approval of future acquisitions; or
- the loss of exclusive rights to sell in the geographic territory.

These events could have a material adverse effect on our competitive position and financial performance.

***Our business, as well as the entire recreational boating industry, is highly seasonal, with seasonality varying in different geographic markets.***

Over the three-year period ended September 30, 2020, the average revenue for the quarterly periods ended December 31, March 31, June 30 and September 30 represented approximately 20%, 22%, 32%, and 26%, respectively, of our average annual revenue. With the exception of Florida, we generally realize significantly lower sales and higher levels of inventories and related short-term borrowings in the quarterly periods ending December 31 and March 31. The onset of the public boat and recreation shows in January typically stimulates boat sales and allows us to reduce our inventory levels and related short-term borrowings throughout the remainder of the fiscal year. Our business could become substantially more seasonal if we acquire dealers that operate in colder regions of the United States, which are generally closed or experience lower volume in the winter months.

***The failure to receive rebates and other dealer incentives on inventory purchases or retail sales could substantially reduce our margins.***

We rely on manufacturers' programs that provide incentives for dealers to purchase and sell particular boat makes and models or for consumers to buy particular boat makes or models. Any eliminations, reductions, limitations, or other changes relating to rebate or incentive programs that have the effect of reducing the benefits we receive, whether relating to the ability of manufacturers to pay or our ability to qualify for such incentive programs, could increase the effective cost of our boat purchases, reduce our margins and competitive position, and have a material adverse effect on our financial performance.

***Other recreational activities, poor industry perception, and potential health risks from environmental conditions can adversely affect the levels of boat purchases.***

Demand for our products can be adversely affected by competition from other activities that occupy consumers' time, including other forms of recreation as well as religious, cultural and community activities. In addition, real or perceived health risks from engaging in outdoor activities and local environmental conditions in the areas in which we operate dealerships could adversely affect the levels of boat purchases. Further, as a seller of high-end consumer products, we must compete for discretionary spending with a wide variety of other recreational activities and consumer purchases. In addition, perceived hassles of boat ownership and customer service and lack of customer education throughout the retail boat industry, which has traditionally been perceived to be relatively poor, represent impediments to boat purchases.

***We face intense competition.***

We operate in a highly competitive environment. In addition to facing competition generally from recreation businesses seeking to attract consumers' leisure time and discretionary spending dollars, the recreational boat industry itself is highly fragmented, resulting in intense competition for customers, quality products, boat show space, and suitable retail locations. We rely to a certain extent on boat shows to generate sales.

We compete primarily with single-location boat dealers and, with respect to sales of marine parts, accessories, and equipment, with national specialty marine parts and accessories stores, online catalog retailers, sporting goods stores, and mass merchants. Competition among boat dealers is based on the quality of available products, the price and value of the products, and attention to customer service. There is significant competition both within markets we currently serve and in new markets that we may enter. We compete in each of our markets with retailers of brands of boats and engines we do not sell in that market. In addition, several of our competitors, especially those selling marine equipment and accessories, are large national or regional chains that have substantial financial, marketing and other resources. Private sales of used boats represent an additional source of competition.

Due to various matters, including environmental concerns, permitting and zoning requirements, and competition for waterfront real estate, some markets in the United States have experienced an increased waiting list for marina and storage availability. In general, the markets in which we currently operate are not experiencing any unusual difficulties. However, marine retail activity could be adversely affected in markets that do not have sufficient marine and storage availability to satisfy demand.

***Timing of large boat and yacht sales and failure to adequately anticipate consumer preference and demand may have an adverse impact on our business.***

Forecasting optimal inventory levels is difficult to predict based on, among other things, changes in economic conditions, consumer preferences, delivery of new models from manufacturers, and timing of large boat and yacht sales. Failure to adequately anticipate consumer demand and preferences could negatively impact our inventory management strategies, inventory carrying costs, and our operating margins.

#### **Strategy Risk Factors**

***Failure to implement strategies to enhance our performance or our strategies could have a material adverse effect on our business and financial condition.***

We are increasing our efforts to grow our financing and insurance, parts and accessories, service, yacht charter, brokerage, and boat storage businesses to better serve our customers and thereby increase revenue and improve profitability as a result of these higher margin businesses. In addition, we have implemented programs to increase the lead capture and digital sales of used boats, parts, accessories, and a wide range of boating supplies and products. These efforts and programs are designed to increase our revenue and reduce our dependence on the sale of new boats. We are also pursuing certain acquisitions as discussed in the immediately following Risk Factors. These business initiatives have required, and will continue to require, us to add personnel, invest capital, enter businesses in which we do not have extensive experience, and encounter substantial competition. As a result, our strategies to enhance our performance may not be successful and we may increase our expenses or write off such investments if not successful.

***Our success depends, in part, on our ability to continue to make successful acquisitions at attractive or fair prices and to integrate the operations of acquired dealers and each dealer we acquire in the future.***

Since March 1, 1998, we have acquired 30 recreational boat dealers, four boat brokerage operations, and two full-service yacht repair facilities. Each acquired dealer and entity operated independently prior to its acquisition by us. Our success depends, in part, on our ability to continue to make successful acquisitions at attractive or fair prices that align with our culture and focus on customer service and to integrate the operations of acquired dealers, including centralizing certain functions to achieve cost savings and pursuing programs and processes that promote cooperation and the sharing of opportunities and resources among our dealerships. We may not be able to oversee the combined entity efficiently, realize anticipated synergies, or implement effectively our growth and operating strategies. To the extent that we successfully pursue our acquisition strategy, our resulting growth will place significant additional demands on our management and infrastructure. Our failure to pursue successfully our acquisition strategies or operate effectively the combined entity could have a material adverse effect on our rate of growth and operating performance.

***We may pursue acquisition strategies in new lines of business.***

We have historically pursued strategic acquisitions to capitalize upon the consolidation opportunities in the highly fragmented recreational boat dealer industry by acquiring additional dealers and related operations and improving their performance and profitability through the implementation of our operating strategies. We have also recently pursued, and may continue to pursue, potential contract manufacturing, vertical integration strategies, yacht charter and brokerage, marinas, boat storage, or other acquisitions as opportunities arise. To the extent we are successful in pursuing one or more of these strategies, we will face certain risks in addition to those that exist with acquisitions more closely related to our historical business, including potential inexperience in a line of business that is either new to us or that has become materially more significant to us as a result of a transaction, the potential difficulty of presenting a unified corporate image, greater uncertainties in the financial benefits and potential liabilities associated with this expanded base of acquisitions, different types of legal and operational risks, and different types of applicable financial metrics and

goals. Our failure to pursue successfully our acquisition strategies in new lines of business, operate effectively the combined entity, and/or mitigate any potential new risks, could have a material adverse effect on our rate of growth and operating performance.

***Unforeseen expenses, difficulties, and delays frequently encountered in connection with expansion through acquisitions could inhibit our growth and negatively impact our profitability.***

The acquisition of additional recreational boat dealers, boat storage facilities, yacht brokerage operations, and marinas, which is one of our growth strategies, and vertical integration strategies, all involve significant risks. This strategy entails reviewing and potentially reorganizing acquired business operations, corporate infrastructure and systems, and financial controls. Unforeseen expenses, difficulties and delays frequently encountered in connection with expansion through acquisitions could inhibit our growth and negatively impact our profitability. We may be unable to identify suitable acquisition candidates or to complete the acquisitions of candidates that we identify. Increased competition for acquisition candidates or increased asking prices by acquisition candidates may increase purchase prices for acquisitions to levels beyond our financial capability or to levels that would not result in expected returns required by our acquisition criteria to be in the best interest of shareholders. Acquisitions also may become more difficult or less attractive in the future as we acquire more of the most attractive dealers that best align with our culture and focus on customer service. In addition, we may encounter difficulties in integrating the operations of acquired dealers with our own operations, difficulties in retaining employees, potential risks of losing customers, suppliers, or other business relationships, and difficulties in managing acquired dealers profitably without substantial costs, delays, or other operational or financial problems.

Our ability to continue to grow through acquisitions depends upon various factors, including the following:

- the availability of suitable acquisition candidates at attractive purchase prices;
- the ability to compete effectively for available acquisition opportunities;
- the availability of cash on hand, borrowed funds or stock with a sufficient value to complete the acquisitions;
- the ability to obtain any requisite manufacturer or governmental approvals;
- the ability to obtain approval of our lenders under our current credit agreement; and
- the absence of one or more manufacturers attempting to impose unsatisfactory restrictions on us in connection with their approval of acquisitions.

If we finance future acquisitions in whole or in part through the issuance of common stock or securities convertible into or exercisable for common stock, existing shareholders will experience dilution in the voting power of their common stock and earnings per share could be negatively impacted. Any borrowings made to finance future acquisitions or for operations could make us more vulnerable to a downturn in our operating results, a downturn in economic conditions, or increases in interest rates on borrowings that are subject to interest rate fluctuations.

***We may be required to obtain the consent of Brunswick and various other manufacturers prior to the acquisition of other dealers.***

In determining whether to approve acquisitions, manufacturers may consider many factors, including our financial condition and ownership structure. Manufacturers also may impose conditions on granting their approvals for acquisitions, including a limitation on the number of their dealers that we may acquire. Our ability to meet manufacturers' requirements for approving future acquisitions will have a direct bearing on our ability to complete acquisitions and effect our growth strategy. There can be no assurance that a manufacturer will not terminate its dealer agreement, refuse to renew its dealer agreement, refuse to approve future acquisitions, or take other action that could have a material adverse effect on our acquisition program.

***Our internal growth and operating strategies of opening new locations and offering new products involve risk.***

In addition to pursuing growth by acquiring boat dealers, we intend to continue to pursue a strategy of growth through opening new retail locations and offering new products in our existing and new territories. This strategy may entail obtaining additional distribution rights from our existing and new manufacturers. We may not be able to secure additional distribution rights or obtain suitable alternative sources of supply if we are unable to obtain such distribution rights. The inability to expand our product lines and geographic scope by obtaining additional distribution rights could have a material adverse effect on the growth and profitability of our business.

Accomplishing these goals for expansion will depend upon a number of factors, including the following:

- our ability to identify new markets in which we can obtain distribution rights to sell our existing or additional product lines;

- our ability to lease or construct suitable facilities at a reasonable cost in existing or new markets;
- our ability to hire, train, and retain qualified personnel;
- the timely and effective integration of new retail locations into existing operations;
- our ability to achieve adequate market penetration at favorable operating margins without the acquisition of existing dealers; and
- our financial resources.

Our dealer agreements with Brunswick require Brunswick's consent to open, close, or change retail locations that sell Sea Ray or Boston Whaler products as applicable, and other dealer agreements generally contain similar provisions. We may not be able to open and operate new retail locations or introduce new product lines on a timely or profitable basis. Moreover, the costs associated with opening new retail locations or introducing new product lines may adversely affect our profitability.

As a result of these growth strategies, we expect to continue to expend significant time and effort in opening and acquiring new retail locations, improving existing retail locations in our current markets, and introducing new products. Our systems, procedures, controls, financial resources, and management and staffing levels may not be adequate to support expanding operations. The inability to manage our growth effectively could have a material adverse effect on our business, financial condition, and results of operations.

***In addition to our traditional repeat and referral business in our physical locations, digital channels are increasingly significant in serving our existing customer base and reaching new customers. Our continued expansion and success will be negatively impacted if we are not able to fully exploit these channels.***

Our digital channels are subject to a number of risks and uncertainties that are beyond our control, including the following:

- changes in technology;
- cybersecurity risk;
- changes in consumer willingness to conduct business electronically, including increasing concerns with consumer privacy and risk and changing laws, rules, and regulations, such as the imposition of or increase in taxes;
- technology or security impediments that may inhibit our ability to electronically market our products and services;
- changes in applicable international, federal, state and commercial regulation;
- failure of our service providers, suppliers or service partners to perform their services properly and in a timely and efficient manner;
- failure to adequately respond to customers, process orders or deliver services;
- our failure to assess and evaluate our digital product and service offerings to ensure that our products and services are desired by boating enthusiasts; and
- the potential exposure to liability with respect to third-party information, including but not limited to copyright, trademark infringement, or other wrongful acts of third parties; false or erroneous information provided by third parties; or illegal activities by third parties, such as the sale of stolen boats or other goods.

Further, we may also be vulnerable to competitive pressures from the growing electronic commerce activity in our market, both as they may impact our own on-line business, and as they may impact the operating results and investment values of our existing physical locations.

***Various operations in multiple countries around the world expose us to international political, economic, foreign currency, and other risks.***

Our operations involve certain international activities, including our sales of yachts produced by the Azimut-Benetti Group in Italy, yachts produced by Galeon in Poland, and power catamarans for our charter fleet produced by Sino Eagle in China, as well as our Fraser Yacht and Northrop & Johnson operations. These activities in multiple countries around the world expose us to international political, economic, foreign currency, and other risks. Some of our sales and purchases of inventory are denominated in a currency other than the U.S. dollar. Consequently, a strong or weak U.S. dollar may adversely affect reported revenues and our profitability. We may hedge certain foreign currency exposures to lessen and delay, but not to completely eliminate, the effects of foreign currency fluctuations on our financial results. Our future financial results could be significantly affected by the value of the

U.S. Dollar in relation to the foreign currencies in which we conduct business. The degree to which our financial results are affected for any given time period will depend in part upon the success and extent of our hedging activities.

Additionally, protectionist trade legislation in the United States, the European Union, Poland, or China, such as a change in current tariff structures, export or import compliance laws, or other trade policies could adversely affect our ability to import yachts from these foreign suppliers under economically favorable terms and conditions. There have been recent changes and additional changes may occur in the future, to United States and foreign trade and tax policies, including heightened import restrictions, import and export licenses, new tariffs, trade embargoes, government sanctions, and trade barriers. Any of these restrictions could prevent or make it difficult or more costly for us to import yachts from foreign suppliers under economically favorable terms and conditions. Increased tariffs could require us to increase our prices which likely could decrease demand for our products. In addition, other countries may limit their trade with the United States or retaliate through their own restrictions and/or increased tariffs which would affect our ability to export products and therefore adversely affect our sales. Many of these challenges, particularly tariffs, are present in commerce with China, a market from which we purchase products. While such tariffs may be delayed or cancelled before coming into effect and we believe we have taken steps to mitigate their potential effects, such tariffs would likely increase our costs for our Chinese suppliers.

Our international operations create a number of logistical and communications challenges. The economic, political and other risks we face resulting from these operations include the following:

- compliance with U.S. and local laws and regulatory requirements, including labor, tax, and environmental, health and safety, as well as changes in those laws and requirements;
- transportation delays or interruptions and other effects of less developed infrastructures;
- effects from the voter-approved exit of the United Kingdom from the European Union (often referred to as Brexit), including any resulting deterioration in economic conditions, volatility in currency exchange rates, or adverse regulatory changes;
- limitations on imports and exports;
- adverse foreign exchange rate fluctuations;
- imposition of restrictions on currency conversion or the transfer of funds;
- withdrawal from or revision to international trade agreements;
- national and international conflicts, including foreign policy changes, political or economic instability, or terrorist acts;
- the effects of issued or threatened government sanctions, tariffs and duties, trade barriers or economic restrictions;
- maintenance of quality standards; and/or
- possible employee turnover or labor unrest.

#### **Operational Risk Factors**

*The availability and costs of borrowed funds can adversely affect our ability to obtain adequate boat inventory and the ability and willingness of our customers to finance boat purchases.*

The availability and costs of borrowed funds can adversely affect our ability to obtain and maintain adequate boat inventory and the holding costs of that inventory as well as the ability and willingness of our customers to finance boat purchases. We rely on the Credit Facility led by Wells Fargo Commercial Distribution Finance LLC to purchase and maintain our inventory of boats. The Credit Facility provides a floor plan financing commitment of up to \$440.0 million. The collateral for the Credit Facility is all of our personal property with certain limited exceptions. None of our real estate has been pledged for collateral for the Credit Facility. As of September 30, 2020, we were in compliance with all of the covenants under the Credit Facility and our additional available borrowings under the Credit Facility was approximately \$82.0 million based upon the outstanding borrowing base availability.

Our ability to borrow under the Credit Facility depends on our ability to continue to satisfy our covenants and other obligations under the Credit Facility and the ability for our manufacturers to be approved vendors under our Credit Facility. The variable interest rate under our Credit Facility will fluctuate with changing market conditions and, accordingly, our interest expense will increase as interest rates rise. A significant increase in interest rates could have a material adverse effect on our operating results. The aging of our inventory limits our borrowing capacity as defined provisions in the Credit Facility reduce the allowable advance rate as our inventory ages. Depressed economic conditions, weak consumer spending, turmoil in the credit markets, and lender difficulties, among other potential reasons, could interfere with our ability to maintain compliance with our debt covenants and to utilize the Credit

Facility to fund our operations. Any inability to utilize the Credit Facility or the acceleration of amounts owed, resulting from a covenant violation, insufficient collateral, or lender difficulties, could require us to seek other sources of funding to repay amounts outstanding under the Credit Facility or replace or supplement the Credit Facility, which may not be possible at all or under commercially reasonable terms.

Similarly, decreases in the availability of credit and increases in the cost of credit adversely affect the ability of our customers to purchase boats from us and thereby adversely affect our ability to sell our products and impact the profitability of our finance and insurance activities.

***Higher energy and fuel costs along with adequate supply may adversely affect our business.***

All of the recreational boats we sell are powered by diesel or gasoline engines. Consequently, an interruption in the supply, or a significant increase in the price or tax on the sale of fuel on a regional or national basis could have a material adverse effect on our sales and operating results. Increases in fuel prices negatively impact boat sales. The supply of fuels may be interrupted, rationing may be imposed, or the price of or tax on fuels may significantly increase in the future, adversely impacting our business. Also, increases in energy costs can adversely affect the pricing and availability of petroleum-based raw materials such as resins and foam that are used in many of the marine products produced by boat manufacturers increasing our cost of inventory. Additionally, higher fuel prices may also have an adverse effect on demand for our parts and accessories business, because higher fuel prices increase the cost of boat ownership and possibly affect product use.

***The availability of boat insurance is critical to our success.***

The ability of our customers to secure reasonably affordable boat insurance that is satisfactory to lenders that finance our customers' purchases is critical to our success. Any difficulty of customers to obtain affordable boat insurance could impede boat sales and adversely affect our business.

***Elements of our yacht charter and charter brokerage businesses expose us to certain risks.***

Our yacht charter business entails the sale of specifically designed yachts to third parties for inclusion in our yacht charter fleet; a yacht management agreement under which yacht owners enable us to put their yachts in our yacht charter program for a period of several years for a fixed monthly fee payable by us; our services in storing, insuring, and maintaining their yachts; and the charter by us of these yachts to vacation customers at agreed fees payable to us. Our failure to find purchasers for yachts intended for our charter fleet will increase our boat inventory and related operating costs; lack of sales into our charter fleet may result in increased losses due to market adjustments of our yacht charter inventory; and our failure to generate a sufficient number of vacation charter customers will require us to absorb all the costs of the monthly fees to the yacht owners as well as other operating costs.

Customers consider safety and reliability a primary concern in selecting a yacht charter provider. The yacht charter business may present a number of safety risks including, but not limited to, catastrophic disaster, adverse weather and marine conditions, such as Hurricane Irma in 2017, mechanical failure and collision, and health issues such as the COVID-19 pandemic. If we are unable to maintain acceptable records for safety and reliability, our ability to retain current customers and attract new customers may be adversely affected. Additionally, any safety issue encountered during a yacht charter may result in claims against us as well as negative publicity. Beginning in March 2020, we have temporarily closed our facilities in the British Virgin Islands and yacht charters based on guidance from local government and health officials as a result of the COVID-19 global pandemic. Additionally, our yacht charter brokerage business in Europe has slowed as a result of the COVID-19 global pandemic. We expect yacht charters and our charter brokerage business to resume during fiscal 2021, but impact of the COVID-19 pandemic and the duration for which it may have an impact cannot be determined at this time. These events could have a material adverse effect on the competitive position and financial performance of both our yacht charter business and our core retail sales business.

The yacht charter business is also highly fragmented, consisting primarily of local operators and franchisees. Competition among charter operators is based on location, the type and size of yachts offered, charter rates, destinations serviced, and attention to customer service. Yacht charters also face competition from other travel and leisure options, including, but not limited to, cruises, hotels, resorts, theme parks, organized tours, land-based casino operators, and vacation ownership properties. We therefore risk losing business not only to other charter operators, but also to vacation operators that provide such alternatives.

***We depend on income from financing, insurance and extended service contracts.***

A portion of our income results from referral fees derived from the placement or marketing of various finance and insurance, or F&I products, consisting of customer financing, insurance products, and extended service contracts, the most significant component of which is the participation and other fees resulting from our sale of customer financing contracts.



The availability of financing for our boat purchasers and the level of participation and other fees we receive in connection with such financing depend on the particular agreement between us and the lender and the current rate environment. Lenders may impose terms in their boat financing arrangements with us that may be unfavorable to us or our customers. Laws or regulations may be enacted nationally or locally which could result in fees from lenders being eliminated or reduced, materially impacting our operating results. If customer financing becomes more difficult to secure, it may adversely impact our business.

Changes, including the lengthening of manufacturer warranties, may reduce our ability to offer and sell extended service contracts which may have a material adverse impact on our ability to sell F&I products.

The reduction of profit margins on sales of F&I products or the lack of demand for or the unavailability of these products could have a material adverse effect on our operating margins.

***Our continued success is dependent on positive perceptions of our MarineMax brand which, if impaired, could adversely affect our sales.***

We believe that our MarineMax brand is one of the reasons our customers choose to come to us for their boating needs. To be successful, we must preserve our reputation. Reputational value is based in large part on perceptions, and broad access to social media makes it easy for anyone to provide public feedback that can influence perceptions of us. It may be difficult to control negative publicity, regardless of whether it is accurate. While reputations may take decades to build, any negative incidents can quickly erode trust and confidence, particularly if they result in significant negative mainstream and/or social media publicity, governmental investigations, or litigation. Additionally, an isolated business incident at a single retail location could materially adversely affect our other stores, retail brands, reputation and sales channels, particularly if such incident results in significant adverse publicity, governmental investigations or litigation. Negative incidents, such as quality and safety concerns or incidents related to our manufacturers' products, could lead to tangible adverse effects on our business, including lost sales or team member retention and recruiting difficulties. In addition, vendors and others with whom we choose to do business may affect our reputation.

***Our operations are dependent upon key personnel and team members.***

Our success depends, in large part, upon our ability to attract, train and retain, qualified team members and executive officers, as well as the continuing efforts and abilities of team members and executive officers. Although we have employment agreements with certain of our executive officers and management succession plans, we cannot ensure that these or other executive personnel and team members will remain with us, or that our succession planning will adequately mitigate the risk associated with key personnel transitions. As a result of our decentralized operating strategy, we also rely on the management teams of our dealerships. In addition, we likely will depend on the senior management of any significant businesses we acquire in the future.

***The products we sell, or services we provide, may expose us to potential liability for personal injury or property damage claims relating to the use of those products.***

Manufacturers of the products we sell generally maintain product liability insurance. We also maintain third-party product liability insurance that we believe to be adequate. We may experience claims that are not covered by, or that are in excess of, our insurance coverage. The institution of any significant claims against us could subject us to damages, result in higher insurance costs, and harm our business reputation with potential customers.

#### **Environmental and Geographic Risk Factors**

***Weather and environmental conditions may adversely impact our business.***

Weather and environmental conditions may adversely impact our operating results. For example, drought conditions, reduced rainfall levels, excessive rain and environmental conditions, and hurricanes may force boating areas to close or render boating dangerous or inconvenient, thereby curtailing customer demand for our products. While we traditionally maintain a full range of insurance coverage for any such events, there can be no assurance that such insurance coverage is adequate to cover losses that we sustain as a result of such disasters. In addition, unseasonably cool weather and prolonged winter conditions may lead to shorter selling seasons in certain locations. Many of our dealerships sell boats to customers for use on reservoirs, thereby subjecting our business to the continued viability of these reservoirs for boating use. Although our geographic diversity and any future geographic expansion should reduce the overall impact on us of adverse weather and environmental conditions in any one market area, weather and environmental conditions will continue to represent potential material adverse risks to us and our future operating performance. Additionally, to the extent unfavorable weather conditions are exacerbated by global climate change, regardless of the cause, resulting

in environmental changes including, but not limited to, severe weather, changing sea levels, poor water conditions, or reduced access to water, which could disrupt or negatively affect our business.

***Environmental and climate changes could affect our business.***

We operate many retail locations near or on bodies of water that are acutely susceptible to the risks associated with climate change. Such risks include those related to the physical impacts of climate change, such as more frequent and severe weather events, rising sea levels, and/or long term shifts in climate patterns, and risks related to the transition to a lower-carbon economy, such as reputational, market and/or regulatory risks. Climate change and climate events could result in social, cultural and economic disruptions in these areas, including supply chain disruptions, the disruption of local infrastructure and transportation systems that could limit the ability of our team members and our customers to access our retail locations. These events could also compound adverse economic conditions and impact consumer confidence and discretionary spending.

***A significant amount of our boat sales are from the State of Florida.***

Economic conditions, weather and environmental conditions, competition, market conditions, and any other adverse conditions impacting the State of Florida in which we generated approximately 51%, 54% and 54% of our revenue during fiscal 2018, 2019, and 2020, respectively, could have a major impact on our operations.

***Environmental and other regulatory issues may impact our operations.***

Our operations are subject to extensive regulation, supervision, and licensing under various federal, state and local statutes, ordinances and regulations, such as those relating to finance and insurance, consumer protection, consumer privacy, escheatment, anti-money laundering, environmental, emissions, health or safety, U.S. trade sanctions, the U.S. Foreign Corrupt Practices Act and employment practices. With respect to employment practices, we are subject to various laws and regulations, including complex federal, state and local wage and hour and anti-discrimination laws. The failure to satisfy those and other regulatory requirements could have a material adverse effect on our business, financial condition, and results of operations, as well as potentially the assessment of damages, the imposition of penalties, changes to our processes, or a cessation of our operations, and/or damage to our image and reputation.

Various federal, state, and local regulatory agencies, including the Occupational Safety and Health Administration (“OSHA”), the United States Environmental Protection Agency (“EPA”), and similar federal and local agencies, have jurisdiction over the operation of our dealerships, repair facilities, and other operations, with respect to matters such as consumer protection, workers’ safety, and laws regarding protection of the environment, including air, water, and soil. The EPA promulgated emissions regulations for outboard marine engines that impose stricter emissions standards for two-cycle, gasoline outboard marine engines. It is possible that environmental regulatory bodies (including state regulatory bodies) may impose higher emissions standards in the future for these and other marine engines. Any increased costs of producing engines resulting from current or potentially higher EPA or state standards in the future could be passed on to our company, or could result in the inability or potential unforeseen delays of our manufacturers to comply with current and future EPA or state requirements, and these potential consequences could have a material adverse effect on our business.

Certain of our facilities own and operate underground storage tanks (“USTs”), and above ground storage tanks (“ASTs”) for the storage of various petroleum products. USTs and ASTs are generally subject to federal, state and local laws and regulations that require testing and upgrading of tanks and remediation of contaminated soils and groundwater resulting from leaking tanks. In addition, we may be subject to civil liability to third parties for remediation costs or other damages if leakage from our owned or operated tanks migrates onto the property of others.

Our business involves the use, handling, storage, and contracting for recycling or disposal of hazardous or toxic substances or wastes, including environmentally sensitive materials, such as motor oil, waste motor oil and filters, transmission fluid, antifreeze, freon, waste paint and lacquer thinner, batteries, solvents, lubricants, degreasing agents, gasoline and diesel fuels. Accordingly, we are subject to regulation by federal, state and local authorities establishing investigation and health and environmental quality standards, and liability related thereto, and providing penalties for violations of those standards.

We also are subject to laws, ordinances, and regulations governing investigation and remediation of contamination at facilities we operate or to which we send hazardous or toxic substances or wastes for treatment, recycling or disposal. In particular, the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA” or “Superfund”) imposes joint, strict, and several liability on:

- owners or operators of facilities at, from, or to which a release of hazardous substances has occurred;

- parties that generated hazardous substances that were released at such facilities; and
- parties that transported or arranged for the transportation of hazardous substances to such facilities.

A majority of states have adopted Superfund statutes comparable to and, in some cases, more stringent than CERCLA. If we were to be found to be a responsible party under CERCLA or a similar state statute, we could be held liable for all investigative and remedial costs associated with addressing such contamination. In addition, claims alleging personal injury or property damage may be brought against us as a result of alleged exposure to hazardous substances resulting from our operations. In addition, certain of our retail locations are located on waterways that are subject to federal or state laws regulating navigable waters (including oil pollution prevention), fish and wildlife, and other matters.

Soil and groundwater contamination has been known to exist at certain properties owned or leased by us. We have also been required and may in the future be required to remove aboveground and underground storage tanks containing hazardous substances or wastes. As to certain of our properties, specific releases of petroleum have been or are in the process of being remediated in accordance with state and federal guidelines. We are monitoring the soil and groundwater as required by applicable state and federal guidelines. We also may have additional storage tank liability insurance and Superfund coverage where applicable. Environmental laws and regulations are complex and subject to frequent change. Compliance with amended, new or more stringent laws or regulations, more strict interpretations of existing laws, or the future discovery of environmental conditions may require additional expenditures by us, and such expenditures may be material.

Additionally, certain states have required or are considering requiring a license in order to operate a recreational boat. These regulations could discourage potential buyers, thereby limiting future sales and adversely affecting our business, financial condition, and results of operations.

#### **General Risk Factors**

##### ***General economic conditions and consumer spending patterns can have a material adverse effect on our business, financial condition, and results of operations.***

General economic conditions and consumer spending patterns can negatively impact our operating results. Unfavorable local, regional, national, or global economic developments or uncertainties regarding future economic prospects could reduce consumer spending in the markets we serve and adversely affect our business. Economic conditions in areas in which we operate dealerships, such as corporate downsizing, military base closings, and inclement weather such as hurricanes or other storms, environmental conditions, and specific events, such as the BP oil spill in the Gulf of Mexico in 2010, or Hurricanes Harvey and Irma in 2017, also could adversely affect, and in certain instances have adversely affected, our operations in certain markets.

In an economic downturn, consumer discretionary spending levels generally decline, at times resulting in disproportionately large reductions in the sale of luxury goods. Consumer spending on luxury goods also may decline as a result of lower consumer confidence levels, even if prevailing economic conditions are favorable. As a result, an economic downturn could impact us more than certain of our competitors due to our strategic focus on a higher end of our market.

Unfavorable economic conditions can cause us to reduce our acquisition program, delay new store openings, reduce our inventory purchases, engage in inventory reduction efforts, close a number of our retail locations, reduce our headcount, and amend and replace our credit facility, and could also interfere with our supply of certain brands by manufacturers, reduce marketing and other support by manufacturers, decrease revenue, put additional pressures on margins, and result in our failure to satisfy covenants under our credit agreement.

##### ***The ongoing COVID-19 pandemic may adversely affect our revenues, results of operations and financial condition***

Our business could be materially adversely affected by the widespread outbreak of contagious disease, including the recent COVID-19 pandemic. COVID-19 has spread in many of the geographic areas in which we operate. National, state and local governments in affected regions have implemented and will continue to implement safety precautions, including quarantines, travel restrictions, business closures, cancellations of public gatherings and other measures, for an indefinite time period. Other organizations and individuals are taking additional steps to avoid or reduce infection, including limiting travel and staying home from work. These measures are disrupting normal business operations both in and outside of affected areas and have had significant negative impacts on businesses and financial markets worldwide.

We continue to monitor our operations and government recommendations and have made modifications to our normal operations, including taking proactive steps to enhance financial flexibility including working to extract capital from our debt-free sizable real estate holdings, taking action to monetize our unlevered inventory, implementing operating cost savings plans, and delaying or reducing capital expenditures. The onset of the COVID-19 pandemic caused a number of adverse impacts, including

reductions in demand for our products, inefficiencies caused by team members working remotely, and certain closed departments or locations based on guidance from each local government or health officials. Disruptions in the capital markets as a result of the COVID-19 outbreak may also adversely affect us if these impacts continue for a prolonged period and we need additional liquidity. While it is not possible at this time to estimate the entirety of the impact that COVID-19 will have on our business, customers, suppliers or other business partners, depending on the severity of the COVID-19 pandemic the length of time of its impact and the applicable government actions in response to it, the effect of the adverse impacts identified in this paragraph may increase and additional adverse impacts may arise.

***Adverse federal or state tax policies can have a negative effect on us.***

Changes in federal and state tax laws, such as an imposition of luxury taxes on new boat purchases, increases in prevailing federal or state tax rates, and removal of certain interest deductions, also influence consumers' decisions to purchase products we offer and could have a negative effect on our sales. For example, during 1991 and 1992, the federal government imposed a luxury tax on new recreational boats with sales prices in excess of \$100,000, which coincided with a sharp decline in boating industry sales from a high of more than \$17.9 billion in 1988 to a low of \$10.3 billion in 1992.

***Increased cybersecurity requirements, vulnerabilities, threats and more sophisticated and targeted computer crime could pose a risk to our systems, networks, data and our third-party service providers. Our business operations could be negatively impacted by an outage or breach of our informational technology systems or a cybersecurity event.***

Our business is dependent upon the efficient operation of our information systems. The systems facilitate the interchange of information and enhance cross-selling opportunities throughout our company. The systems integrate each level of operations on a Company-wide basis, including but not limited to purchasing, inventory, receivables, payables, financial reporting, budgeting, marketing, sales management, as well as to prepare our consolidated financial and operating data. The failure of our information systems to perform as designed or the failure to maintain and enhance or protect the integrity of these systems and the systems of our third-party service providers, could disrupt our business operations, impact sales and the results of operations, expose us to customer or third-party claims, or result in adverse publicity.

Increased global cybersecurity vulnerabilities, threats and more sophisticated and targeted cyber-related attacks pose a risk to the security of our and our customers', suppliers' and third-party service providers' products, systems and networks and the confidentiality, availability and integrity of our data. Unauthorized parties may also attempt to gain access to our systems or facilities, or those of third parties with whom we do business, through fraud, trickery or other forms of deceiving our team members, contractors, vendors, and temporary staff. While we attempt to mitigate these risks by employing a number of measures, including employee training, systems, monitoring and testing, and maintenance of protective systems and contingency plans, we remain potentially vulnerable to additional known or unknown threats.

We may also have access to sensitive, confidential or personal data or information that is subject to privacy, security laws, and regulations. Despite our efforts to protect sensitive, confidential or personal data or information, we and our third-party service providers may be vulnerable to security breaches, theft, misplaced or lost data, programming errors, employee errors and/or malfeasance that could potentially lead to the compromising of sensitive, confidential or personal data or information, improper use of our systems, unauthorized access, use, disclosure, modification or destruction of information, and operational disruptions.

It is possible that we or our third-party service providers might not be aware of a successful cyber-related attack on our systems until well after the incident. In addition, a cyber-related attack could result in other negative consequences, including damage to our reputation or competitiveness, remediation or increased protection costs, litigation or regulatory action, and could adversely affect our business, financial condition, and results of operations. Depending on the nature of the information compromised, we may have obligations to notify customers and/or employees about the incident, and we may need to provide some form of remedy, such as a subscription to a credit monitoring service, for the individuals affected by the incident, which could result in material reputational damage to us.

We are also subject to laws and regulations in the United States and other countries concerning the handling of personal information, including laws that require us to notify governmental authorities and/or affected individuals of data breaches involving certain personal information. These laws and regulations include, for example, the European General Data Protection Regulation (GDPR), effective May 2018, and the California Consumer Privacy Act (CCPA), effective January 2020. Regulatory actions or litigation seeking to impose significant penalties could be brought against us in the event of a data breach or alleged non-compliance with such laws and regulations.

***The timing and amount of our share repurchases are subject to a number of uncertainties.***

In March 2020, the Board of Directors approved a new stock repurchase plan authorizing the Company to purchase up to 10 million shares of its common stock through March 2022. There is no guarantee that our stock repurchase plans will be able to successfully mitigate the dilutive effect of stock options and stock-based grants. The success of our stock repurchase plans is based upon a number of factors, including the price and availability of the Company's stock, general market conditions, the nature of other investment opportunities available to us from time to time, and the availability of cash.

***We do not pay cash dividends.***

We have never paid cash dividends on our common stock and we have no current intention to do so for the foreseeable future.

***Our sales may be adversely impacted by a material increase in interest rates and adverse changes in fiscal policy or credit market conditions.***

Over the past several years, our economy has been positively impacted by historically unprecedented low interest rates. Such interest rates, driven by the policies of the Federal Reserve, can be a political issue in the United States. Any change by the Federal Reserve to raise its benchmark interest rate in the future or market expectations of such change may result in significantly higher long-term interest rates, which may negatively impact our customers' willingness or desire to purchase our products.

***We may be adversely affected by changes in LIBOR reporting practices or the method by which LIBOR is determined.***

We rely on the Credit Facility led by Wells Fargo Commercial Distribution Finance LLC to purchase and maintain our inventory of boats. The interest rate for amounts outstanding under the Credit Facility is 345 basis points above the one-month LIBOR. In July 2017, the Financial Conduct Authority (the regulatory authority over LIBOR) stated they will plan for a phase out of regulatory oversight of LIBOR interest rate indices after 2021 to allow for an orderly transition to an alternate reference rate. The Alternative Reference Rates Committee ("ARRC") has proposed that the Secured Overnight Financing Rate ("SOFR") is the rate that represents the best alternative to LIBOR. The ARRC has proposed a market transition plan to SOFR from LIBOR. We are evaluating the potential impact of the eventual replacement of the LIBOR benchmark interest rate, including the possibility of SOFR as the dominant replacement. The market transition away from LIBOR towards SOFR is expected to be complicated. There can be no guarantee that SOFR will become a widely accepted benchmark in place of LIBOR. Although the full impact of any transition away from LIBOR, including the potential or actual discontinuance of LIBOR publication, remains unclear, these changes may have a material adverse impact on the availability of financing, including LIBOR-based loans, the terms of our Credit Facility, and on our financing costs.

**Item 1B. *Unresolved Staff Comments***

Not applicable.

**Item 2. *Properties***

We lease our corporate offices in Clearwater, Florida. We also lease 55 properties under leases in the United States and British Virgin Islands, many of which contain multi-year renewal options and some of which grant us right of first refusal to purchase the property at fair value. In most cases, we pay a fixed rent at negotiated rates. In substantially all of the leased locations, we are responsible for taxes, utilities, insurance, and routine repairs and maintenance. We own 28 properties associated with the retail locations we operate. Additionally, we own four retail locations that are currently closed as noted below. A store is considered one or more retail locations that are adjacent or operate as one entity. Fraser Yacht Group and Northrop & Johnson lease offices in the United States and Europe.

The following table reflects the status, approximate size, and facilities of the various retail locations in the United States and British Virgin Islands we operate as of the date of this report.

| Location            | Location Type     | Square Footage(1) | Facilities at Property                            | Operated Since(2) | Waterfront            |
|---------------------|-------------------|-------------------|---|-------------------|-----------------------|
| <b>Alabama</b>      |                   |                   |   |                   |                       |
| Gulf Shores         | Company owned     | 4,000             | Retail and service                                | 1998              | —                     |
| <b>California</b>   |                   |                   |   |                   |                       |
| New Port Beach      | Third-party lease | 1,000             | Retail only, 4 wet slips                          | 2020              | Newport Bay           |
| San Diego           | Third-party lease | 1,350             | Retail only, 12 wet slips                         | 2020              | San Diego Bay         |
| Sausalito           | Third-party lease | 2,000             | Retail and service; 6 wet slips                   | 2020              | Richardson Bay        |
| <b>Connecticut</b>  |                   |                   |   |                   |                       |
| Norwalk             | Third-party lease | 9,000             | Retail and service; 56 wet slips                  | 1994              | Norwalk Harbor        |
| Westbrook           | Third-party lease | 4,200             | Retail and service                                | 1998              | Westbrook Harbor      |
| <b>Florida</b>      |                   |                   |   |                   |                       |
| Cape Haze           | Company owned     | 18,000            | Retail, 8 wet slips                               | —                 | Intracoastal Waterway |
| Clearwater          | Company owned     | 42,000            | Retail and service; 20 wet slips                  | 1973              | Tampa Bay             |
| Cocoa               | Company owned     | 15,000            | Retail and service                                | 1968              | —                     |
| Dania               | Company owned     | 32,000            | Repair and service; 16 wet slips                  | 1991              | Port Everglades       |
| Fort Lauderdale     | Third-party lease | 1,200             | Retail only, 3 wet slips                          | 2020              | —                     |
| Fort Walton Beach   | Third-party lease | 3,000             | Repair and service; 83 wet slips                  | 2019              | Choctawhatchee Bay    |
| Fort Myers          | Company owned     | 60,000            | Retail, service, and storage; 64 wet slips        | 1983              | Caloosahatchee River  |
| Jacksonville        | Third-party lease | 9,000             | Retail and service                                | 2016              | Intracoastal Waterway |
| Key Largo           | Third-party lease | 8,900             | Retail and service; 6 wet slips                   | 2002              | Card Sound            |
| Miami               | Company owned     | 7,200             | Retail and service; 15 wet slips                  | 1980              | Little River          |
| Miami               | Company owned     | 5,000             | Service only; 11 wet slips                        | 2005              | Little River          |
| Naples              | Company owned     | 19,600            | Retail and service; 14 wet slips                  | 1997              | Naples Bay            |
| North Palm Beach    | Third-party lease | 960               | Retail only                                       | 2016              | Intracoastal Waterway |
| Orlando             | Third-party lease | 18,389            | Retail and service                                | 1984              | —                     |
| Panama City         | Third-party lease | 10,500            | Retail only; 8 wet slips                          | 2011              | Saint Andrews Bay     |
| Pensacola           | Company owned     | 52,750            | Retail, service, and storage; 60 wet slips        | 2016              | Pensacola Bay         |
| Pompano Beach       | Company owned     | 23,000            | Retail and service; 16 wet slips                  | 1990              | Intracoastal Waterway |
| Pompano Beach       | Company owned     | 5,400             | Retail and service; 24 wet slips                  | 2005              | Intracoastal Waterway |
| Sarasota            | Third-party lease | 26,500            | Retail, service, and storage; 15 wet slips        | 1972              | Sarasota Bay          |
| St. Petersburg(3)   | Company owned     | 15,000            | Retail and service; 20 wet slips                  | 2006              | Boca Ciega Bay        |
| Stuart              | Company owned     | 29,100            | Retail and service; 66 wet slips                  | 2002              | Intracoastal Waterway |
| Venice              | Company owned     | 62,000            | Retail, service, and storage; 90 wet slips        | 1972              | Intracoastal Waterway |
| <b>Georgia</b>      |                   |                   |   |                   |                       |
| Buford (Atlanta)(4) | Company owned     | 13,500            | Retail and service                                | 2001              | —                     |
| Cumming (Atlanta)   | Third-party lease | 13,000            | Retail and service; 50 wet slips                  | 1981              | Lake Lanier           |
| Savannah            | Third-party lease | 50,600            | Retail, marina, service and storage; 36 wet slips | 2017              | Wilmington River      |
| <b>Illinois</b>     |                   |                   |   |                   |                       |

|                        |                   |         |  |      |   |
|------------------------|-------------------|---------|--|------|---|
| Praire Harbor          | Third-party lease | 3,500   | Marina, 140 wet slips                              | 2020 | Lake Michigan                           |
| Sequoit Harbor Antioch | Third-party lease | 85,304  | Retail, marina, service and storage; 208 wet slips | 2020 | Lake Marie                              |
| Winthrop Harbor        | Third-party lease | 319,105 | Retail, marina, service and storage; 53 wet slips  | 2020 | Lake Michigan                           |
| <b>Maryland</b>        |                   |         |  |      |   |
| Baltimore              | Third-party lease | 7,600   | Retail and service; 17 wet slips                   | 2005 | Baltimore Inner Harbor                  |
| Joppa(4)               | Company owned     | 28,400  | Retail, service, and storage; 294 wet slips        | 1966 | Gunpowder River                         |
| White Marsh(4)         | Company owned     | 19,800  | Retail and service                                 | —    | —                                       |
| <b>Massachusetts</b>   |                   |         |  |      |   |
| Danvers                | Third-party lease | 32,000  | Retail and service                                 | 2016 | —                                       |
| Quincy                 | Company owned     | 14,700  | Retail, service, and storage; 247 wet slips        | 2018 | Town River                              |
| <b>Michigan</b>        |                   |         |  |      |   |
| Bay City               | Third-party lease | 195,810 | Retail, marina, service and storage; 59 wet slips  | 2020 | Saginaw River                           |
| Bele Mear Harbor       | Third-party lease | 8,500   | Retail and service, 4 wet slips                    | 2020 | Lake St. Clair                          |
| Cass Lake              | Third-party lease | 31,596  | Retail, marina, service and storage; 124 wet slips | 2020 | Cass Lake                               |
| Grand Haven            | Third-party lease | 32,000  | Retail, service, and storage; 6 wet slips          | 2020 | Spring Lake                             |
| Lake Fenton            | Third-party lease | 57,856  | Retail, marina, service and storage; 123 wet slips | 2020 | Lake Fenton                             |
| Mac Ray Harbor         | Third-party lease | 300     | Retail only, 4 wet slips                           | 2020 | Lake St. Clair                          |
| <b>Minnesota</b>       |                   |         |  |      |   |
| Bayport                | Third-party lease | 450     | Retail only; 10 wet slips                          | 1996 | St. Croix River                         |
| Excelsior              | Third-party lease | 2,500   | Retail only; 14 wet slips                          | 2013 | Lake Minnetonka                         |
| Rogers                 | Company owned     | 70,000  | Retail, service, and storage                       | 1991 | —                                       |
| <b>Missouri</b>        |                   |         |  |      |   |
| Lake Ozark             | Company owned     | 60,300  | Retail, service, and storage; 300 wet slips        | 1987 | Lake of the Ozarks                      |
| Laurie(4)              | Company owned     | 700     | Retail and service                                 | —    | —                                       |
| Osage Beach            | Company owned     | 2,000   | Retail and service                                 | 1987 | —                                       |
| <b>New Jersey</b>      |                   |         |  |      |   |
| Brant Beach            | Third-party lease | 3,800   | Retail, service, and storage; 36 wet slips         | 1965 | Barneget Bay                            |
| Brick                  | Company owned     | 20,000  | Retail, service, and storage; 225 wet slips        | 1977 | Manasquan River                         |
| Lake Hopatcong         | Company owned     | 4,600   | Retail and service; 80 wet slips                   | 1998 | Lake Hopatcong                          |
| Ship Bottom            | Third-party lease | 19,300  | Retail and service                                 | 1972 | —                                       |
| Somers Point           | Third-party lease | 31,000  | Retail, service, and storage; 33 wet slips         | 1987 | Little Egg Harbor Bay                   |
| Ocean View             | Third-party lease | 13,800  | Retail, service, and storage                       | 2018 | —                                       |
| North Somers Point     | Third-party lease | 500     | Storage only                                       | 2018 | Little Egg Harbor Bay                   |
| <b>New York</b>        |                   |         |  |      |   |
| Huntington             | Third-party lease | 1,200   | Retail and service                                 | 1995 | Huntington Harbor and Long Island Sound |
| <b>North Carolina</b>  |                   |         |  |      |   |
| Lake Norman            | Third-party lease | 10,300  | Retail only  | 2017 | —                                       |
| Southport              | Third-party lease | 1,600   | Retail only  | 2008 | Cape Fear River                         |
| Wrightsville Beach     | Third-party lease | 34,500  | Retail, service, and storage                       | 1996 | Masonboro Inlet                         |
| <b>Ohio</b>            |                   |         |  |      |   |
| Marina Del Isle        | Third-party lease | 163,773 | Retail, marina, service and storage; 189 wet slips | 2020 | Lake Erie                               |

|                               |                   |         |  |      |                       |
|-------------------------------|-------------------|---------|--|------|-----------------------|
| Port Clinton                  | Company owned     | 80,000  | Retail, service and storage; 8 wet slips           | 1997 | Lake Erie             |
| <b>Oklahoma</b>               |                   |         |  |      |                       |
| Afton                         | Third-party lease | 3,500   | Retail and service; 23 wet slips                   | 2003 | Grand Lake            |
| <b>Rhode Island</b>           |                   |         |  |      |                       |
| Newport                       | Third-party lease | 700     | Retail only  | 2011 | Newport Harbor        |
| <b>South Carolina</b>         |                   |         |  |      |                       |
| Charleston                    | Third-party lease | 14,800  | Retail, service, and storage                       | 2017 | —                     |
| Greenville                    | Third-party lease | 24,500  | Retail, service, and storage                       | 2017 | —                     |
| Lake Wylie                    | Third-party lease | 76,400  | Retail, marina, service, and storage; 82 wet slips | 2017 | Lake Wylie            |
| <b>Texas</b>                  |                   |         |  |      |                       |
| Austin                        | Third-party lease | 26,000  | Retail and service                                 | 2019 | —                     |
| San Antonio                   | Third-party lease | 14,100  | Retail and service                                 | 2019 | —                     |
| Lakeway                       | Third-party lease | 10,000  | Retail only  | 2019 | —                     |
| Lewisville (Dallas)           | Company owned     | 22,000  | Retail and service                                 | 2002 | —                     |
| Seabrook                      | Company owned     | 32,000  | Retail and service; 30 wet slips                   | 2002 | Clear Lake            |
| <b>Washington</b>             |                   |         |  |      |                       |
| Seattle                       | Third-party lease | 400     | Retail only, 6 wet slips                           | 2020 | Lake Union            |
| <b>Wisconsin</b>              |                   |         |  |      |                       |
| Harbor Club Marina            | Third-party lease | 1,000   | Marina, 140 wet slips                              | 2020 | Sturgeon Bay          |
| Lake Geneva                   | Third-party lease | 114,876 | Retail, service and storage; 2 wet slips           | 2020 | —                     |
| Madison                       | Third-party lease | 138,334 | Retail, marina, service and storage; 135 wet slips | 2020 | Lake Mendota          |
| Milwaukee                     | Third-party lease | 68,095  | Retail, service and storage; 11 wet slips          | 2020 | Kinnickinnic River    |
| Oshkosh                       | Third-party lease | 98,284  | Retail, marina, service and storage; 98 wet slips  | 2020 | Lake Butte Des Mortes |
| Pewaukee                      | Third-party lease | 157,200 | Retail, service and storage;                       | 2020 | —                     |
| Sturgeon Bay                  | Third-party lease | 222,150 | Retail, marina, service and storage; 260 wet slips | 2020 | Sturgeon Bay          |
| <b>British Virgin Islands</b> |                   |         |  |      |                       |
| Tortola                       | Third-party lease | 2,550   | Vacation Charters; 45 wet slips                    | 2011 | Caribbean Sea         |

- (1) Square footage is approximate and does not include outside sales space or dock or marina facilities.  
(2) Operated since date is the date the facility was opened by us or opened prior to its acquisition by us.  
(3) Initially a joint venture; full ownership acquired in February 2016.  
(4) Owned location that is currently closed.

We have leased offices in the United States through the Fraser Yachts Group and Northrop & Johnson in Ft. Lauderdale, Florida and San Diego, California as well as leased offices outside the United States in Monaco (two offices), France (two offices), Italy, Spain (two offices), and the United Kingdom.

**Item 3. Legal Proceedings**

We are party to various legal actions arising in the ordinary course of business. While it is not feasible to determine the actual outcome of these actions as of September 30, 2020, we do not believe that these matters will have a material adverse effect on our consolidated financial condition, results of operations or cash flows.

**Item 4. Mine Safety Disclosures**

Not applicable.



PART II

Item 5. *Market for the Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities*

**Market Information, Holders**

Our common stock is listed on the New York Stock Exchange under the symbol HZO. The following table sets forth high and low sale prices of the common stock for each calendar quarter indicated as reported on the New York Stock Exchange.

|  | High     | Low      |
|--|----------|----------|
| <b>2018</b>                                |          |          |
| Fourth quarter                             | \$ 26.11 | \$ 16.57 |
| <b>2019</b>                                |          |          |
| First quarter                              | \$ 21.09 | \$ 17.11 |
| Second quarter                             | \$ 19.99 | \$ 15.34 |
| Third quarter                              | \$ 17.33 | \$ 13.73 |
| Fourth quarter                             | \$ 18.76 | \$ 14.56 |
| <b>2020</b>                                |          |          |
| First quarter                              | \$ 23.15 | \$ 7.25  |
| Second quarter                             | \$ 23.00 | \$ 7.80  |
| Third quarter                              | \$ 34.06 | \$ 21.93 |
| Fourth quarter (through November 25, 2020) | \$ 35.22 | \$ 25.54 |

On November 25, 2020, the closing sale price of our common stock was \$33.66 per share. On November 25, 2020, there were approximately 100 record holders and approximately 9,400 beneficial owners of our common stock.

**Dividends**

We have never declared or paid cash dividends on our common stock. We currently plan to retain any earnings to finance the growth of our business rather than to pay cash dividends. Payments of any cash dividends in the future will depend on our financial condition, results of operations, statutory restrictions, loan covenants and capital requirements as well as other factors deemed relevant by our board of directors (such as market expectations).

**Purchases of Equity Securities by the Issuer**

The following table presents information with respect to our repurchases of our common stock during the three months ended September 30, 2020.

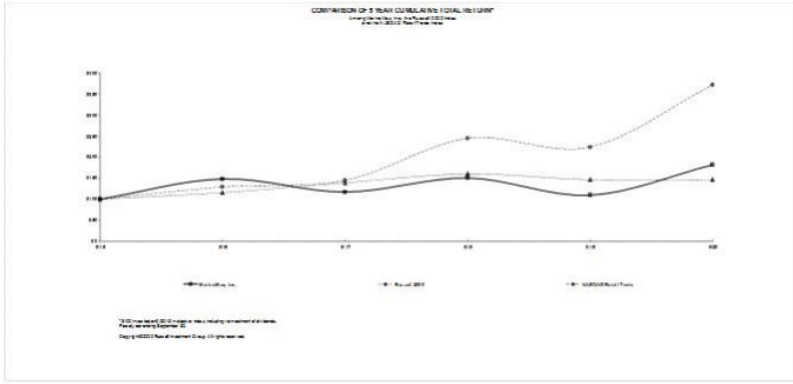
| Period                                  | Total Number of Shares Purchased (1)(2) | Average Price Paid per Share | Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs | Maximum Number of Shares that may be Purchased Under the Plans or Programs |
|---|---|------------------------------|--|--|
| July 1, 2020 to July 31, 2020           | —                                       | —                            | —  | 9,919,764  |
| August 1, 2020 to August 31, 2020       | —                                       | —                            | —  | 9,919,764  |
| September 1, 2020 to September 30, 2020 | 44,927                                  | \$ 25.67                     | —  | 9,919,764  |
| Total                                   | 44,927                                  | \$ 25.67                     | —  | 9,919,764  |

(1) Under the terms of the program, the Company is authorized to purchase up to 10 million shares of its common stock through March 2022.

(2) 44,927 shares reported in September 2020 are attributable to shares tendered by employees for the payment of applicable withholding taxes in connection with the vesting of restricted stock or restricted stock unit awards.

**Performance Graph**

The following line graph compares cumulative total shareholder returns for the five years ended September 30, 2020 for (i) our common stock, (ii) the Russell 2000 Index, and (iii) the Nasdaq Retail Trade Index. The graph assumes an investment of \$100 on September 30, 2014. The calculations of cumulative shareholder return on the Russell 2000 Index and the Nasdaq Retail Trade Index include reinvestment of dividends. The calculation of cumulative shareholder return on our common stock does not include reinvestment of dividends because we did not pay any dividends during the measurement period. The historical performance shown is not necessarily indicative of future performance.



The performance graph above shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or Exchange Act, or otherwise subject to the liability of that section. The performance graph above will not be deemed incorporated by reference into any filing of our company under the Exchange Act or the Securities Act of 1933, as amended.

**Item 6. Selected Financial Data**

The following table contains certain financial and operating data and is qualified by the more detailed consolidated financial statements and notes thereto included elsewhere in this report. The balance sheet and statement of operations data were derived from the consolidated financial statements and notes thereto that have been audited by KPMG LLP. The financial data shown below should be read in conjunction with the consolidated financial statements and the related notes thereto and "Management's Discussion and Analysis of Financial Condition and Results of Operations" included elsewhere in this report.

|  | Fiscal Year Ended September 30,  |              |              |              |              |
|--|--|--------------|--------------|--------------|--------------|
|  | 2016   | 2017         | 2018         | 2019         | 2020         |
|  | (Amounts in thousands except share, per share, and retail location data) |              |              |              |              |
| <b>Statement of Operations Data:</b>         |  |              |              |              |              |
| Revenue                                      | \$ 942,050   | \$ 1,052,320 | \$ 1,177,371 | \$ 1,237,153 | \$ 1,509,713 |
| Cost of sales                                | 716,022  | 787,005      | 879,138      | 914,321      | 1,111,000    |
| Gross profit                                 | 226,028  | 265,315      | 298,233      | 322,832      | 398,713      |
| Selling, general and administrative expenses | 185,776  | 220,026      | 235,050      | 262,300      | 291,998      |
| Income from operations                       | 40,252   | 45,289       | 63,183       | 60,532       | 106,715      |
| Interest expense, net                        | 5,462  | 7,481        | 9,903        | 11,579       | 9,275        |
| Income before income tax provision           | 34,790   | 37,808       | 53,280       | 48,953       | 97,440       |
| Income tax provision                         | 12,208   | 14,261       | 13,968       | 12,968       | 22,806       |
| Net income                                   | \$ 22,582  | \$ 23,547    | \$ 39,312    | \$ 35,985    | \$ 74,634    |
| Net income per share:                        |  |              |              |              |              |
| Diluted                                      | \$ 0.91  | \$ 0.95      | \$ 1.71      | \$ 1.57      | \$ 3.37      |
| Weighted average number of shares:           |  |              |              |              |              |
| Diluted                                      | 24,820,847   | 24,678,800   | 23,030,662   | 22,881,147   | 22,125,338   |
| <b>Other Data (as of year-end):</b>          |  |              |              |              |              |
| Number of retail locations (1)               | 56   | 62           | 63           | 59           | 57           |
| Sales per store (2) (4)                      | \$ 18,539  | \$ 18,364    | \$ 19,873    | \$ 19,554    | \$ 25,780    |
| Same-store sales growth (3) (4)              | 22%  | 5%           | 10%          | 1%           | 25%          |
|  | September 30,  |              |              |              |              |
|  | 2016   | 2017         | 2018         | 2019         | 2020         |
| <b>Balance Sheet Data:</b>                   |  |              |              |              |              |
| Working capital                              | \$ 159,232   | \$ 139,069   | \$ 179,276   | \$ 155,690   | \$ 230,793   |
| Total assets                                 | 546,688  | 639,990      | 640,538      | 784,083      | 775,319      |
| Goodwill and other intangible assets, net    | 10,000   | 26,005       | 27,491       | 64,077       | 84,293       |
| Total shareholders' equity                   | 312,473  | 302,198      | 353,092      | 368,819      | 455,397      |

(1) Includes only those retail locations open at period end.

(2) Includes only those stores open for the entire preceding 12-month period.

(3) New and acquired stores are included in the comparable base at the end of the store's thirteenth month of operations.

(4) A store is one or more retail locations that are adjacent or operate as one entity. Sales per store and same-store sales growth is intended only as supplemental information and is not a substitute for revenue or net income presented in accordance with generally accepted accounting principles.

**Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations**

The following should be read in conjunction with Part I, including the matters set forth in the "Risk Factors" section of this report, and our Consolidated Financial Statements and notes thereto included elsewhere in this report.

**Overview**

In March 2020, the outbreak of COVID-19 caused by a novel strain of the coronavirus was recognized as a pandemic by the World Health Organization, and the outbreak has become increasingly widespread in the United States (including Florida in which we generated approximately 54% of our revenue in 2019 and 2020), and other countries in which we operate. As a result, beginning in March 2020, we had temporarily closed certain departments or locations based on guidance from local government or health officials. As of today, many of our stores are fully or partially operational. We are following guidelines to ensure we are safely operating as recommended. Where possible, we are offering private personal showings as well as virtual appointments. Our digital platform is serving as an effective solution in this environment with robust online activity. Our experienced teams continue to engage with customers virtually and in our stores to help customers select their boats, and obtain appropriate services.

We are the largest recreational boat and yacht retailer in the United States with fiscal 2020 revenue above \$1.5 billion. Through our current 77 retail locations in 21 states (as of the filing of this Annual Report on Form 10-K), we sell new and used recreational boats and related marine products, including engines, trailers, parts, and accessories. We also arrange related boat financing, insurance, and extended service contracts; provide boat repair and maintenance services; offer yacht and boat brokerage sales; yacht charter services; and, where available, offer slip and storage accommodations, as well as the charter of power yachts in the British Virgin Islands. We also own Fraser Yachts Group and Northrop & Johnson, leading superyacht brokerage and luxury yacht services companies with operations in multiple countries, and SkipperBud's, one of the largest sales, brokerage, service and marina/storage groups in the United States.

MarineMax was incorporated in January 1998 (and reincorporated in Florida in March 2015). We commenced operations with the acquisition of five independent recreational boat dealers on March 1, 1998. Since the initial acquisitions in March 1998, we have, as of the filing of this Annual Report on Form 10-K, acquired 30 recreational boat dealers, four boat brokerage operations, and two full-service yacht repair facilities. As a part of our acquisition strategy, we frequently engage in discussions with various recreational boat dealers regarding their potential acquisition by us. Potential acquisition discussions frequently take place over a long period of time and involve difficult business integration and other issues, including, in some cases, management succession and related matters. As a result of these and other factors, a number of potential acquisitions that from time to time appear likely to occur do not result in binding legal agreements and are not consummated. We completed three acquisitions in the fiscal year ended September 30, 2018, two acquisitions in the fiscal year ended September 30, 2019, and two acquisitions in the fiscal year ending September 30, 2020.

General economic conditions and consumer spending patterns can negatively impact our operating results. Unfavorable local, regional, national or global economic developments or uncertainties regarding future economic prospects could reduce consumer spending in the markets we serve and adversely affect our business. Economic conditions in areas in which we operate dealerships, particularly Florida in which we generated approximately 51%, 54% and 54% of our revenue during fiscal 2018, 2019, and 2020, respectively, can have a major impact on our operations. Local influences, such as corporate downsizing, military base closings, and inclement weather such as hurricanes and other storms, environmental conditions, and specific events, such as the BP oil spill in the Gulf of Mexico in 2010, also could adversely affect, and in certain instances have adversely affected, our operations in certain markets.

In an economic downturn, consumer discretionary spending levels generally decline, at times resulting in disproportionately large reductions in the sale of luxury goods. Consumer spending on luxury goods also may decline as a result of lower consumer confidence levels, even if prevailing economic conditions are favorable. As a result, an economic downturn could impact us more than certain of our competitors due to our strategic focus on a higher end of our market. Although we have expanded our operations during periods of stagnant or modestly declining industry trends, the cyclical nature of the recreational boating industry or the lack of industry growth may adversely affect our business, financial condition, and results of operations. Any period of adverse economic conditions or low consumer confidence is likely to have a negative effect on our business.

Historically, in periods of lower consumer spending and depressed economic conditions, we have, among other things, substantially reduced our acquisition program, delayed new store openings, reduced our inventory purchases, engaged in inventory reduction efforts, closed a number of our retail locations, reduced our headcount, and amended and replaced our credit facility.

Although past economic conditions have adversely affected our operating results, we believe we have capitalized on our core strengths to substantially outperform the industry, resulting in market share gains. Our ability to capture such market share supports the alignment of our retailing strategies with the desires of consumers. We believe the steps we have taken to address weak market conditions in the past have yielded, and will we believe yield in the future, an increase in revenue. Acquisitions remain an important strategy for us, and, subject to a number of conditions, including macro-economic conditions and finding attractive acquisition targets, we plan to explore opportunities through this strategy. We expect our core strengths and retailing strategies including our digital platform, will position us to capitalize on growth opportunities as they occur and will allow us to emerge with greater earnings potential.

#### **Application of Critical Accounting Policies**

We have identified the policies below as critical to our business operations and the understanding of our results of operations. The impact and risks related to these policies on our business operations are discussed throughout Management's Discussion and Analysis of Financial Condition and Results of Operations when such policies affect our reported and expected financial results.

In the ordinary course of business, we make a number of estimates and assumptions relating to the reporting of results of operations and financial condition in the preparation of our financial statements in conformity with accounting principles generally accepted in the United States. We base our estimates on historical experiences and on various other assumptions (including future earnings) that we believe are reasonable under the circumstances. The results of these assumptions form the basis for making judgments about the carrying values of assets and liabilities, including contingent assets and liabilities such as contingent consideration liabilities from acquisitions, which are not readily apparent from other sources. Actual results could differ significantly from those estimates under different assumptions and conditions. We believe that the following discussion addresses our most critical accounting policies, which are those that are most important to the portrayal of our financial condition and results of operations and require our most difficult, subjective, and complex judgments, often as a result of the need to make estimates about the effect of matters that are inherently uncertain.

#### **Revenue Recognition**

The majority of our revenue is from contracts with customers for the sale of boats, motors, and trailers. We recognize revenue from boat, motor, and trailer sales upon transfer of control of the boat, motor, or trailer to the customer, which is generally upon acceptance or delivery to the customer. At the time of acceptance or delivery, the customer is able to direct the use of, and obtain substantially all of the benefits of the boat, motor, or trailer at such time. We recognize commissions earned from a brokerage sale when the related brokerage transaction closes upon transfer of control of the boat, motor, or trailer to the customer, which is generally upon acceptance or delivery to the customer.

We do not directly finance our customers' boat, motor, or trailer purchases. In many cases, we assist with third-party financing for boat, motor, and trailer sales. We recognize commissions earned by us for placing notes with financial institutions in connection with customer boat financing when we recognize the related boat sales. Pursuant to negotiated agreements with financial institutions, we are charged back for a portion of these fees should the customer terminate or default on the related finance contract before it is outstanding for a stipulated minimum period of time. We base the chargeback allowance, which was not material to the consolidated financial statements taken as a whole as of September 30, 2020, on our experience with repayments or defaults on the related finance contracts. We recognize variable consideration from commissions earned on extended warranty service contracts sold on behalf of third-party insurance companies at generally the later of customer acceptance of the service contract terms as evidenced by contract execution or recognition of the related boat sale. We also recognize variable consideration from marketing fees earned on insurance products sold by third-party insurance companies at the later of customer acceptance of the insurance product as evidenced by contract execution or when the related boat sale is recognized.

We recognize revenue from parts and service operations (boat maintenance and repairs) over time as services are performed. Each boat maintenance and repair service is a single performance obligation that includes both the parts and labor associated with the service. Payment for boat maintenance and repairs is typically due upon the completion of the service, which is generally completed within a short period of time from contract inception. We satisfy our performance obligations, transfer control, and recognize revenue over time for parts and service operations because we are creating a contract asset with no alternative use and we have an enforceable right to payment for performance completed to date. Contract assets primarily relate to our right to consideration for work in process not yet billed at the reporting date associated with maintenance and repair services. We use an input method to recognize revenue and measure progress based on labor hours expended to satisfy the performance obligation at average labor rates. We have determined labor hours expended to be the relevant measure of work performed to complete the maintenance and repair service for the customer. As a practical expedient, since repair and maintenance service contracts have an original duration of one year or less, we do not consider the time value of money, and we do not disclose estimated revenue expected to be recognized in the future for performance obligations that are unsatisfied (or partially unsatisfied) at the end of the reporting period or when we expect to recognize such revenue.

Contract liabilities primarily consist of customer deposits. We recognize contract liabilities (customer deposits) as revenue at the time of delivery or acceptance by the customers. Total contract liabilities of approximately \$24.3 million recorded as of September 30, 2019 were recognized in revenue during the fiscal year ended September 30, 2020. Contract assets, recorded in prepaid expenses and other current assets, totaled approximately \$2.5 million and \$2.6 million as of September 30, 2019 and September 30, 2020, respectively.

#### ***Vendor Consideration Received***

We account for consideration received from our vendors in accordance with ASU 2014-09, "Revenue from Contracts with Customers (Topic 606)". ASC 606 requires us to classify interest assistance received from manufacturers as a reduction of inventory cost and related cost of sales as opposed to netting the assistance against our interest expense incurred with our lenders. Pursuant to ASC 606, amounts received by us under our co-op assistance programs from our manufacturers are netted against related advertising expenses. Our consideration received from our vendors contains uncertainties because the calculation requires management to make assumptions and to apply judgment regarding a number of factors, including our ability to collect amounts due from vendors and the ability to meet certain criteria stipulated by our vendors. We do not believe there is a reasonable likelihood that there will be a change in the future estimates or assumptions we use to calculate our vendor considerations which would result in a material effect on our operating results.

#### ***Inventories***

Inventory costs consist of the amount paid to acquire inventory, net of vendor consideration and purchase discounts, the cost of equipment added, reconditioning costs, and transportation costs relating to acquiring inventory for sale. We state new and used boat, motor, and trailer inventories at the lower of cost, determined on a specific-identification basis, or net realizable value. We state parts and accessories at the lower of cost, determined on an average cost basis, or net realizable value. We utilize our historical experience, the aging of the inventories, and our consideration of current market trends as the basis for determining a lower of cost or net realizable value valuation allowance. Our lower of cost or net realizable value valuation allowance contains uncertainties because the calculation requires management to make assumptions and to apply judgment regarding the amount at which the inventory will ultimately be sold which considers forecasted market trends, model changes, and new product introductions. We do not believe there is a reasonable likelihood that there will be a change in the future estimates or assumptions we use to calculate our lower of cost or net realizable value valuation allowance which would result in a material effect on our operating results. As of September 30, 2019 and September 30, 2020, our lower of cost or net realizable value valuation allowance for new and used boat, motor, and trailer inventories was \$2.2 million and \$2.4 million, respectively. If events occur and market conditions change, causing the fair value to fall below carrying value, the lower of cost or net realizable value valuation allowance could increase.

#### ***Goodwill***

We account for goodwill in accordance with FASB Accounting Standards Codification 350, "Intangibles — Goodwill and Other" ("ASC 350"), which provides that the excess of cost over net assets of businesses acquired is recorded as goodwill. In July 2020, we purchased Northrop & Johnson, a leading superyacht brokerage and services company. In March 2020, we purchased Boatyard, a digital platform with an expansive range of on-demand services to streamline the boating experience by qualified service providers from a smartphone. In July 2019, we purchased Fraser Yachts Group, a leading superyacht brokerage and largest luxury yacht services company. In April 2019, we purchased Sail & Ski Center, a privately owned boat dealer located in Texas. Goodwill and other intangible assets increased, due to acquisitions, by \$37.0 million and \$20.2 million, for the fiscal years ended September 30, 2019 and 2020, respectively. These acquisitions have resulted in the recording of goodwill for tax purposes of \$10.5 million and \$16.8 million, for the fiscal years ended September 30, 2019 and 2020, respectively. In total, current and previous acquisitions have resulted in the recording of \$84.3 million in goodwill and other intangible assets as of September 30, 2020. In accordance with ASC 350, we review goodwill for impairment at least annually and whenever events or changes in circumstances indicate that the carrying value may not be recoverable. Our annual impairment test is performed during the fourth fiscal quarter. If the carrying amount of goodwill exceeds its fair value we would recognize an impairment loss in accordance with ASC 350. As of September 30, 2020, and based upon our most recent analysis, we determined through our qualitative assessment that it is not "more likely than not" that the fair values of our reporting units are less than their carrying values. As a result, we were not required to perform a quantitative goodwill impairment test. The qualitative assessment requires us to make judgments and assumptions regarding macroeconomic and industry conditions, our financial performance, and other factors. We do not believe there is a reasonable likelihood that there will be a change in the judgments and assumptions used in our qualitative assessment which would result in a material effect on our operating results.

#### ***Impairment of Long-Lived Assets***

FASB Accounting Standards Codification 360-10-40, "Property, Plant, and Equipment - Impairment or Disposal of Long-Lived Assets" ("ASC 360-10-40"), requires that long-lived assets, such as property and equipment and purchased intangibles subject to amortization, be reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset

may not be recoverable. Recoverability of the asset (or asset group) is measured by comparison of its carrying amount to undiscounted future net cash flows the asset (or asset group) is expected to generate over the remaining life of the asset (or asset group). If such assets are considered to be impaired, the impairment to be recognized is measured as the amount by which the carrying amount of the asset (or asset group) exceeds its fair market value. Estimates of expected future cash flows represent our best estimate based on currently available information and reasonable and supportable assumptions. Our impairment loss calculations contain uncertainties because they require us to make assumptions and to apply judgment in order to estimate expected future cash flows. Any impairment recognized in accordance with ASC 360-10-40 is permanent and may not be restored. Based upon our most recent analysis, we believe no impairment of long-lived assets existed as of September 30, 2020. We do not believe there is a reasonable likelihood that there will be a change in the future estimates or assumptions used to test for recoverability which would result in a material effect on our operating results.

#### ***Stock-Based Compensation***

We account for our stock-based compensation plans following the provisions of FASB Accounting Standards Codification 718, "Compensation — Stock Compensation" ("ASC 718"). In accordance with ASC 718, we use the Black-Scholes valuation model for valuing all stock-based compensation and shares purchased under our Employee Stock Purchase Plan. We measure compensation for restricted stock awards and restricted stock units at fair value on the grant date based on the number of shares expected to vest and the quoted market price of our common stock. We recognize compensation cost for all awards in operations on a straight-line basis over the requisite service period for each separately vesting portion of the award. Our valuation models and generally accepted valuation techniques require us to make assumptions and to apply judgment to determine the fair value of our awards. These assumptions and judgments include estimating the volatility of our stock price, expected dividend yield, employee turnover rates and employee stock option exercise behaviors. We do not believe there is a reasonable likelihood that there will be a change in the future estimates or assumptions we use to calculate our stock-based compensation which would result in a material effect on our operating results.

#### ***Income Taxes***

We account for income taxes in accordance with FASB Accounting Standards Codification 740, "Income Taxes" ("ASC 740"). Under ASC 740, we recognize deferred tax assets and liabilities for the future tax consequences attributable to temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. We measure deferred tax assets and liabilities using enacted tax rates expected to apply to taxable income in the years in which we expect those temporary differences to be recovered or settled. We record valuation allowances to reduce our deferred tax assets to the amount expected to be realized by considering all available positive and negative evidence.

Pursuant to ASC 740, we must consider all positive and negative evidence regarding the realization of deferred tax assets. ASC 740 provides for four possible sources of taxable income to realize deferred tax assets: 1) taxable income in prior carryback years, 2) reversals of existing deferred tax liabilities, 3) tax planning strategies and 4) projected future taxable income. As of September 30, 2020, we have no available taxable income in prior carryback years, limited reversals of existing deferred tax liabilities or prudent and feasible tax planning strategies. Therefore, the recoverability of our deferred tax assets is dependent upon generating future taxable income.

The determination of releasing valuation allowances against deferred tax assets is made, in part, pursuant to our assessment as to whether it is more likely than not that we will generate sufficient future taxable income against which benefits of the deferred tax assets may or may not be realized. Significant judgment is required in making estimates regarding our ability to generate income in future periods.

During the first quarter of fiscal 2018, the Company recorded a reduction of our beginning deferred tax assets of approximately \$889,000 and a corresponding increase in our income tax provision as a result of the Tax Cuts and Jobs Act legislation passed in December 2017, which lowered the federal corporate tax rate from 35% to 21%, among other changes.

In response to the COVID-19 pandemic, the Coronavirus Aid, Relief and Economic Security Act ("CARES Act") was signed into law in March 2020. The CARES Act lifts certain deduction limitations originally imposed by the Tax Cuts and Jobs Act of 2017 ("2017 Tax Act"). Corporate taxpayers may carryback net operating losses ("NOL's") originating during 2018 through 2020 for up to five years, which was not previously allowed under the 2017 Tax Act. The CARES Act also eliminates the 80% of taxable income limitations by allowing corporate entities to fully utilize NOL carryforwards to offset taxable income in 2018, 2019 or 2020.

Taxpayers may generally deduct interest up to the sum of 50% of adjusted taxable income plus business interest income (30% limit under the 2017 Tax Act) for tax years beginning January 1, 2019 and 2020. The CARES Act allows taxpayers with alternative minimum tax credits to claim a refund in 2020 for the entire amount of the credits instead of recovering the credits through refunds over a period of years, as originally enacted by the 2017 Tax Act. The enactment of the CARES Act did not result in any material

adjustments to the Company's income tax provision for the fiscal year ended September 30, 2020, or to its net deferred tax assets as of September 30, 2020.

The application of income tax law is inherently complex. Laws and regulations in this area are voluminous and are often ambiguous. Under ASC 740, the impact of uncertain tax positions taken or expected to be taken on an income tax return must be recognized in the financial statements at the largest amount that is more likely than not to be sustained upon audit by the relevant taxing authority. An uncertain income tax position will not be recognized in the financial statements unless it is more likely than not of being sustained. As such, we are required to make subjective assumptions and judgments regarding our effective tax rate and our income tax exposure. Our effective income tax rate is affected by changes in tax law in the jurisdictions in which we currently operate, tax jurisdictions of new retail locations, our earnings, and the results of tax audits. We believe that the judgments and estimates discussed herein are reasonable.

#### Recent Accounting Pronouncements

See Note 3 of the Notes to the Consolidated Financial Statements.

#### Results of Operations

The following table sets forth certain financial data as a percentage of revenue for the periods indicated:

|  | Fiscal Year Ended September 30, |        |              |        |              |        |
|--|---------------------------------|--------|--------------|--------|--------------|--------|
|  | 2018                            |        | 2019         |        | 2020         |        |
|  | (Amounts in thousands)          |        |              |        |              |        |
| Revenue                                      | \$ 1,177,371                    | 100.0% | \$ 1,237,153 | 100.0% | \$ 1,509,713 | 100.0% |
| Cost of sales                                | 879,138                         | 74.7%  | 914,321      | 73.9%  | 1,111,000    | 73.6%  |
| Gross profit                                 | 298,233                         | 25.3%  | 322,832      | 26.1%  | 398,713      | 26.4%  |
| Selling, general and administrative expenses | 235,050                         | 20.0%  | 262,300      | 21.2%  | 291,998      | 19.3%  |
| Income from operations                       | 63,183                          | 5.3%   | 60,532       | 4.9%   | 106,715      | 7.1%   |
| Interest expense                             | 9,903                           | 0.8%   | 11,579       | 0.9%   | 9,275        | 0.6%   |
| Income before income taxes                   | 53,280                          | 4.5%   | 48,953       | 4.0%   | 97,440       | 6.5%   |
| Income tax provision                         | 13,968                          | 1.2%   | 12,968       | 1.0%   | 22,806       | 1.5%   |
| Net income                                   | \$ 39,312                       | 3.3%   | \$ 35,985    | 3.0%   | \$ 74,634    | 5.0%   |

#### Fiscal Year Ended September 30, 2020, Compared with Fiscal Year Ended September 30, 2019

**Revenue.** Revenue increased \$272.6 million, or 22.0%, to approximately \$1.510 billion for the fiscal year ended September 30, 2020 from \$1.237 billion for the fiscal year ended September 30, 2019. Of this increase, \$291.0 million was attributable to a 25% increase in comparable-store sales and an approximate \$18.4 million net decrease related to stores opened or closed that were not eligible for inclusion in the comparable-store base. The increase in our comparable-store sales was primarily due to incremental increases in new and used boat sales and incremental increases in storage services, finance and insurance products, and brokerage sales. Improving industry conditions in the seasonal summer months contributed to our growth.

**Gross Profit.** Gross profit increased \$75.9 million, or 23.5%, to \$398.7 million for the fiscal year ended September 30, 2020 from \$322.8 million for the fiscal year ended September 30, 2019. Gross profit as a percentage of revenue increased to 26.4% for the fiscal year ended September 30, 2020 from 26.1% for the fiscal year ended September 30, 2019. The increase in gross profit as a percentage of revenue was primarily the result of increases to our higher margins businesses and from the acquisition of the Fraser Yachts Group and Northrop & Johnson because the sales generated by Fraser and Northrop & Johnson relating to their services tend to be of higher margins relative to our overall business. The increase in gross profit dollars was primarily attributable to the increase in our gross margins and increased boat sales.

**Selling, General and Administrative Expenses.** Selling, general and administrative expenses increased \$29.7 million, or 11.3%, to \$292.0 million for the fiscal year ended September 30, 2020 from \$262.3 million for the fiscal year ended September 30, 2019. Selling, general and administrative expenses for the fiscal year ended September 30, 2020, included \$1.7 million of adjustments related to store closings and other related costs. Selling, general and administrative expenses for the fiscal year ended September 30, 2019, included \$3.1 million of adjustments related to store closings and other related costs, partially offset by a \$1.2 million recovery recognized from the Deepwater Horizon Settlement Program for damages suffered as a result of the Deepwater Horizon Oil Spill. Excluding these items and making both years comparable, selling, general and administrative expenses increased \$29.9 million, or 11.5%, to \$290.3 million and as a percentage of revenue decreased to 19.2% for the fiscal year ended September 30, 2020. The



increase in selling, general and administrative expense dollars was primarily attributable to recent acquisitions including the Fraser Yachts Group and Northrop & Johnson and increased sales and brokerage commissions from the growth in revenue.

*Interest Expense.* Interest expense decreased \$2.3 million, or 19.9%, to \$9.3 million for the fiscal year ended September 30, 2020, from \$11.6 million for the fiscal year ended September 30, 2019. Interest expense as a percentage of revenue decreased to 0.6% for the fiscal year ended September 30, 2020, from 0.9% for the fiscal year ended September 30, 2019. The decrease in interest expense was primarily the result of lower interest rates and less overall borrowings.

*Income Taxes.* Income tax expense increased \$9.8 million, or 75.9%, to \$22.8 million for the fiscal year ended September 30, 2020 from \$13.0 million for the fiscal year ended September 30, 2019. Our effective income tax rate decreased to 23.4% for fiscal year ended September 30, 2020, from 26.5% for fiscal year ended September 30, 2019. The decrease in the effective income tax rate was primarily attributed to excess equity compensation for tax purposes.

***Fiscal Year Ended September 30, 2019, Compared with Fiscal Year Ended September 30, 2018***

*Revenue.* Revenue increased \$59.8 million, or 5.1%, to approximately \$1.237 billion for the fiscal year ended September 30, 2019 from \$1.177 billion for the fiscal year ended September 30, 2018. Of this increase, \$15.4 million was attributable to a 1% increase in comparable-store sales and an approximate \$44.4 million net increase related to stores opened or closed that were not eligible for inclusion in the comparable-store base. The increase in our comparable-store sales was primarily due to incremental increases in new and used boat sales and incremental increases in storage services, finance and insurance products, service revenue, and parts revenue. Eroding industry conditions throughout most of fiscal 2019, adversely impacted our comparable-store sales.

*Gross Profit.* Gross profit increased \$24.6 million, or 8.2%, to \$322.8 million for the fiscal year ended September 30, 2019 from \$298.2 million for the fiscal year ended September 30, 2018. Gross profit as a percentage of revenue increased to 26.1% for the fiscal year ended September 30, 2019 from 25.3% for the fiscal year ended September 30, 2018. The increase in gross profit as a percentage of revenue was primarily the result of increases to our higher margins businesses and from the acquisition of the Fraser Yachts Group because the sales generated by Fraser relating to its services tend to be of higher margins relative to our overall business. The increase in gross profit dollars was primarily attributable to the increase in our gross margins and increased boat sales.

*Selling, General and Administrative Expenses.* Selling, general and administrative expenses increased \$27.3 million, or 11.6%, to \$262.3 million for the fiscal year ended September 30, 2019 from \$235.0 million for the fiscal year ended September 30, 2018. Selling, general and administrative expenses for the fiscal year ended September 30, 2019, included \$3.1 million of adjustments related to store closings and other related costs, which reduced expenses, partially offset by a \$1.2 million recovery recognized from the Deepwater Horizon Settlement Program for damages suffered as a result of the Deepwater Horizon Oil Spill. Selling, general and administrative expenses for the fiscal year ended September 30, 2018, included \$1.4 million of adjustments related to contingent consideration obligations, which reduced expenses, partially offset by a \$1.2 million increase in non-recurring unusual costs. Excluding these items and making both years comparable, selling, general and administrative expenses increased \$25.2 million, or 10.6%, to \$260.2 million and as a percentage of revenue increased to 21.1% for the fiscal year ended September 30, 2019. The increase in selling, general and administrative expenses was primarily attributable to recent acquisitions including the Fraser Yachts Group, new store openings, additional marketing expenses to drive sales growth, and the reestablishing of our British Virgin Islands' Charter business as the business restarted operations after Hurricane Irma, which occurred in September 2017.

*Interest Expense.* Interest expense increased \$1.7 million, or 16.9%, to \$11.6 million for the fiscal year ended September 30, 2019, from \$9.9 million for the fiscal year ended September 30, 2018. Interest expense as a percentage of revenue increased to 0.9% for the fiscal year ended September 30, 2019, from 0.8% for the fiscal year ended September 30, 2018. The increase in interest expense was primarily the result of increased borrowings.

*Income Taxes.* Income tax expense decreased \$1.0 million, or 7.2%, to \$13.0 million for the fiscal year ended September 30, 2019 from \$14.0 million for the fiscal year ended September 30, 2018. Our effective income tax rate increased to 26.5% for fiscal year ended September 30, 2019, from 26.2% for fiscal year ended September 30, 2018. The increase in our effective income tax rate was mainly the result of increased tax expense from jurisdictions outside the United States as result of the acquisition of the Fraser Yachts Group in July 2019.

#### Quarterly Data and Seasonality

Our business, as well as the entire recreational boating industry, is highly seasonal, with seasonality varying in different geographic markets. With the exception of Florida, we generally realize significantly lower sales and higher levels of inventories, and related short-term borrowings, in the quarterly periods ending December 31 and March 31. The onset of the public boat and recreation shows in January stimulates boat sales and typically allows us to reduce our inventory levels and related short-term borrowings throughout the remainder of the fiscal year. Our business could become substantially more seasonal if we acquire dealers that operate in colder regions of the United States or close retail locations in warm climates.

Our business is also subject to weather patterns, which may adversely affect our results of operations. For example, prolonged winter conditions, drought conditions (or merely reduced rainfall levels) or excessive rain, may limit access to area boating locations or render boating dangerous or inconvenient, thereby curtailing customer demand for our products and services. In addition, unseasonably cool weather and prolonged winter conditions may lead to a shorter selling season in certain locations. Hurricanes and other storms could result in disruptions of our operations or damage to our boat inventories and facilities, as has been the case when Florida and other markets were affected by hurricanes. Although we believe our geographic diversity is likely to reduce the overall impact to us of adverse weather conditions in any one market area, these conditions will continue to represent potential, material adverse risks to us and our future financial performance.

#### Liquidity and Capital Resources

Our cash needs are primarily for working capital to support operations, including new and used boat and related parts inventories, off-season liquidity, and growth through acquisitions. Acquisitions remain an important strategy for us, and we plan to continue our growth through this strategy if more robust economic conditions return. However, we cannot predict the return of or length of unfavorable economic or financial conditions. We regularly monitor the aging of our inventories and current market trends to evaluate our current and future inventory needs. We also use this evaluation in conjunction with our review of our current and expected operating performance and expected business levels to determine the adequacy of our financing needs.

These cash needs have historically been financed with cash generated from operations and borrowings under the Credit Facility. Our ability to utilize the Credit Facility to fund operations depends upon the collateral levels and compliance with the covenants of the Credit Facility. Turmoil in the credit markets and weakness in the retail markets may interfere with our ability to remain in compliance with the covenants of the Credit Facility and therefore our ability to utilize the Credit Facility to fund operations. As of September 30, 2020, we were in compliance with all covenants under the Credit Facility. We currently depend upon dividends and other payments from our dealerships and the Credit Facility to fund our current operations and meet our cash needs. As 100% owner of each of our dealerships, we determine the amounts of such distributions subject to applicable law, and currently, no agreements exist that restrict this flow of funds from any of our dealerships.

For the fiscal year ended September 30, 2020, cash provided by operating activities was approximately \$304.7 million. For the fiscal year ended September 30, 2019, cash used in operating activities was approximately \$12.4 million. For fiscal years ended September 30, 2018 cash provided by operating activities was approximately \$70.4 million. For the fiscal year ended September 30, 2020, cash provided by operating activities was primarily related to decreases in inventory, accounts receivable, increases in accrued expenses and other liabilities, increases in accounts payable, and our net income adjusted for non-cash expenses and gains such as depreciation and amortization expense, deferred income tax provision, stock-based compensation expense, and insurance proceeds received. For the fiscal year ended September 30, 2019, cash used by operating activities was primarily related to increases in inventory, accounts receivable, and prepaid expenses and other assets, partially offset by our net income adjusted for non-cash expenses and gains such as depreciation and amortization expense, deferred income tax provision, stock-based compensation expense, insurance proceeds received, and increases in accounts payable, contract liabilities, and accrued expenses and other long-term liabilities. For the fiscal year ended September 30, 2018, cash provided by operating activities was primarily related to our net income adjusted for non-cash expenses and gains such as depreciation and amortization expense, deferred income tax provision, stock-based compensation expense, gains on insurance settlements, gain on contingent acquisition consideration, decreases in inventory driven by inventory optimization efforts, insurance proceeds received as a result of Hurricane Irma, and increases in accrued expenses and other long-term liabilities, partially offset by increases in accounts receivable and decreases in accounts payable and contract liabilities.

For the fiscal years ended September 30, 2020, 2019 and 2018, cash used in investing activities was approximately \$30.1 million, \$56.3 million, and \$23.3 million, respectively. For the fiscal year ended September 30, 2020, cash used in investing activities was primarily used to purchase property and equipment associated with improving existing retail facilities and purchase property and equipment and other assets associated with business acquisitions. For the fiscal year ended September 30, 2019, cash used in investing activities was primarily used to purchase property and equipment associated with improving existing retail facilities and purchase property and equipment and other assets associated with business acquisitions. For the fiscal year ended September 30, 2018, cash used in investing activities was primarily used to purchase property and equipment associated with improving existing

retail facilities, purchase property and equipment associated with business acquisitions, and capital improvements as a result of Hurricane Irma.

For the fiscal year ended September 30, 2020, cash used in financing activities was approximately \$158.1 million. For the fiscal year ended September 30, 2019, cash provided by financing activities was approximately \$58.6 million. For the fiscal year ended September 30, 2018, cash used in financing activities was approximately \$40.2 million. For the fiscal year ended September 30, 2020, cash used in financing activities was primarily attributable to a decrease in net short-term borrowings as a result of decreased inventory levels, repurchase of common stock under the share repurchase program, payments on tax withholdings for equity awards, partially offset by proceeds from the issuance of common stock from our stock based compensation plans and proceeds from long-term debt. For the fiscal year ended September 30, 2019, cash provided by financing activities was primarily attributable to net short term borrowings as a result of increased inventory levels and proceeds from the issuance of common stock from our stock based compensation plans, partially offset by the repurchase of common stock under the share repurchase program and payments on tax withholdings for equity awards. For the fiscal year ended September 30, 2018, cash used in financing activities was primarily attributable to a decrease in net short-term borrowings as a result of decreased inventory levels, contingent consideration payments from acquisitions, and repurchase of common stock under the share repurchase program, partially offset by proceeds from the issuance of common stock from our stock based compensation plans.

In May 2020, we entered into the Credit Facility, with Wells Fargo Commercial Distribution Finance LLC (formerly GE Commercial Distribution Finance Corporation), M&T Bank, Bank of the West, and Truist Bank. The Credit Facility has a three-year term and expires in May 2023, and includes two additional one-year extension periods, with lender approval. The Credit Facility provides a floor plan financing commitment of up to \$440.0 million subject to borrowing base availability resulting from the amount and aging of our inventory.

The Credit Facility has certain financial covenants as specified in the agreement. The covenants include provisions that our leverage ratio must not exceed 2.75 to 1.0 and that our current ratio must be greater than 1.2 to 1.0. The interest rate for amounts outstanding under the Credit Facility is 345 basis points above the one-month LIBOR. There is an unused line fee of ten basis points on the unused portion of the Credit Facility.

Advances under the Credit Facility are initiated by the acquisition of eligible new and used inventory or are re-advances against eligible new and used inventory that have been partially paid-off. Advances on new inventory will generally mature 1,080 days from the original invoice date. Advances on used inventory will mature 361 days from the date we acquire the used inventory. Each advance is subject to a curtailment schedule, which requires that we pay down the balance of each advance on a periodic basis starting after six months. The curtailment schedule varies based on the type and value of the inventory. The collateral for the Credit Facility is primarily the Company's inventory that is financed through the Credit Facility and related accounts receivable. None of our real estate has been pledged for collateral for the Credit Facility.

As of September 30, 2020, our indebtedness associated with financing our inventory and working capital needs totaled approximately \$144.4 million. As of September 30, 2019 and 2020, the interest rate on the outstanding short-term borrowings was approximately 5.6% and 4.2%, respectively. As of September 30, 2020, our additional available borrowings under our Credit Facility were approximately \$82.0 million based upon the outstanding borrowing base availability. The aging of our inventory limits our borrowing capacity as defined curtailments reduce the allowable advance rate as our inventory ages.

As of September 30, 2020 we had approximately \$7.4 million under a mortgage facility secured by one of our retail locations. The interest rate for amounts outstanding under the mortgage facility is prime minus 100 basis points with a floor of 2.00%. As of September 30, 2020, the interest rate on amounts outstanding was 2.25%. The mortgage facility requires monthly principal and interest payments with a balloon payment of approximately \$4.0 million due August 2027. Prepayment of the mortgage facility may be made in whole or in part at any time without premium or penalty.

Except as specified in this "Management's Discussion and Analysis of Financial Condition and Results of Operations" and in the attached condensed consolidated financial statements, we have no material commitments for capital for the next 12 months. We believe that our existing capital resources will be sufficient to finance our operations for at least the next 12 months, except for possible significant acquisitions.

## Commitments and Commercial Commitments

The following table sets forth a summary of our material contractual obligations and commercial commitments as of September 30, 2020:

|                           | Payments Due by Period Ending September 30, |                  |                        |           |                   |
|---------------------------|---|------------------|------------------------|-----------|-------------------|
|                           | Total                                       | Less than 1 Year | 1-3 Years              | 3-5 Years | More Than 5 Years |
|                           |   |                  | (Amounts in thousands) |           |                   |
| Short-term Borrowings (1) | \$ 144,393                                  | \$ 144,393       | —                      | —         | —                 |
| Long-term Debt            | 7,850                                       | 507              | 1,445                  | 992       | 4,906             |
| Other Liabilities (2)     | 3,101                                       | 1,663            | 1,438                  | —         | —                 |
| Operating Leases (3)      | 60,241                                      | 9,433            | 14,312                 | 8,728     | 27,768            |
| Total                     | \$ 215,585                                  | \$ 155,996       | \$ 17,195              | \$ 9,720  | \$ 32,674         |

- (1) Estimates of future interest payments for short-term borrowings have been excluded in the tabular presentation. Amounts due are contingent upon the outstanding balances and the variable interest rates. As of September 30, 2020, the interest rate on our short-term borrowings was approximately 4.2%.
- (2) The amounts included in other liabilities consist primarily of our estimated liability for claims on certain workers' compensation insurance policies and estimated future contingent consideration payments.
- (3) Amounts for operating lease commitments do not include certain operating expenses such as maintenance, insurance, and real estate taxes. These amounts are not a material component of operating expenses.

## Off-Balance Sheet Arrangements

We do not have any transactions, arrangements, or other relationships with unconsolidated entities that are reasonably likely to affect our financial condition, liquidity, or capital resources. We have no special purpose or limited purpose entities that provide off-balance sheet financing, liquidity, or market or credit risk support; we do not engage in hedging or research and development services; and we do not have other relationships that expose us to liability that is not reflected in the financial statements.

## Item 7A. Quantitative and Qualitative Disclosures about Market Risk

### Interest Rate Risk

As of September 30, 2020, all of our short-term debt bore interest at a variable rate, tied to LIBOR as a reference rate. Changes in the underlying LIBOR interest rate on our short-term debt could affect our earnings. For example, a hypothetical 100 basis point increase in the interest rate on our short-term debt would result in an increase of approximately \$1.4 million in annual pre-tax interest expense. This estimated increase is based upon the outstanding balance of our short-term debt as of September 30, 2020 and assumes no mitigating changes by us to reduce the outstanding balances and no additional interest assistance that could be received from vendors due to the interest rate increase.

### Foreign Currency Exchange Rate Risk

Products purchased from European-based and Chinese-based manufacturers are transacted in U.S. dollars. Fluctuations in the U.S. dollar exchange rate may impact the retail price at which we can sell foreign products. Accordingly, fluctuations in the value of other currencies compared with the U.S. dollar may impact the price points at which we can profitably sell such foreign products, and such price points may not be competitive with other products in the United States. Thus, such fluctuations in exchange rates ultimately may impact the amount of revenue, cost of goods sold, cash flows and earnings we recognize for such foreign products. We cannot predict the effects of exchange rate fluctuations on our operating results. In certain cases, we may enter into foreign currency cash flow hedges to reduce the variability of cash flows associated with forecasted purchases of boats and yachts from European-based and Chinese-based manufacturers. We are not currently engaged in foreign currency exchange hedging transactions to manage our foreign currency exposure. If and when we do engage in foreign currency exchange hedging transactions, there can be no assurance that our strategies will adequately protect our operating results from the effects of exchange rate fluctuations.

Additionally, the Fraser Yachts Group and Northrop & Johnson have transactions and balances denominated in currencies other than the U.S. dollar. Most of the transactions or balances are denominated in euros. Net revenues recognized whose functional currency was not the U.S. dollar were less than 2% of our total revenues in fiscal 2020.

**Item 8.** *Financial Statements and Supplementary Data*

Reference is made to the financial statements, the notes thereto, and the report thereon, commencing on page F-1 of this report, which financial statements, notes, and report are incorporated herein by reference.

**Item 9.** *Changes in and Disagreements with Accountants on Accounting and Financial Disclosure*

Not applicable.

**Item 9A.** *Controls and Procedures*

**Evaluation of Disclosure Controls and Procedures**

We maintain disclosure controls and procedures that are designed to ensure that material information required to be disclosed by us in Securities Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including the Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

Our Chief Executive Officer and Chief Financial Officer have evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934) as of the end of the period covered by this report. Based on such evaluation, such officers have concluded that, as of the end of the period covered by this report, our disclosure controls and procedures were effective at the reasonable assurance level.

**Changes in Internal Controls**

During the quarter ended September 30, 2020, there were no changes in our internal control over financial reporting that materially affected, or were reasonably likely to materially affect, our internal control over financial reporting.

**Limitations on the Effectiveness of Controls**

Our management, including our Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls and procedures and internal control over financial reporting will prevent all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Although our disclosure controls and procedures are designed to provide reasonable assurance of achieving their objectives, because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the Company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions; over time, a control may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

**CEO and CFO Certifications**

Exhibits 31.1 and 31.2 are the Certifications of the Chief Executive Officer and Chief Financial Officer, respectively. The Certifications are required in accordance with Section 302 of the Sarbanes-Oxley Act of 2002 (the "Section 302 Certifications"). This Item of this report, which you are currently reading is the information concerning the Evaluation referred to in the Section 302 Certifications and this information should be read in conjunction with the Section 302 Certifications for a more complete understanding of the topics presented.

**Management's Report on Internal Control over Financial Reporting**

Management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rule 13a-15(f) of the Securities Exchange Act of 1934. Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of the Company's internal control over financial reporting as of September 30, 2020 as required by the Securities Exchange Act of 1934 Rule 13a-15(c). In making this assessment, we used the criteria set forth by the Committee of Sponsoring Organizations of the

Treadway Commission (“COSO”) in Internal Control — Integrated Framework (2013). Based on its evaluation, our management concluded that its internal control over financial reporting was effective as of September 30, 2020. The Company acquired Northrop & Johnson, during 2020, and management excluded from its assessment of the effectiveness of the Company’s internal control over financial reporting as of September 30, 2020, Northrop & Johnson’s internal control over financial reporting associated with 1% of total assets and 1% of total revenues included in the consolidated financial statements of the Company as of and for the year ended September 30, 2020.

Our internal control over financial reporting as of September 30, 2020, has been audited by KPMG LLP, an independent registered public accounting firm, as stated in their report which appears herein.

## Report of Independent Registered Public Accounting Firm

To the Shareholders and Board of Directors  
MarineMax, Inc.:

### *Opinion on Internal Control Over Financial Reporting*

We have audited MarineMax, Inc.'s and subsidiaries' (the Company) internal control over financial reporting as of September 30, 2020, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of September 30, 2020, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of the Company as of September 30, 2020 and 2019, the related consolidated statements of operations, comprehensive income, shareholders' equity, and cash flows for each of the years in the three-year period ended September 30, 2020, and the related notes (collectively, the consolidated financial statements), and our report dated December 2, 2020 expressed an unqualified opinion on those consolidated financial statements.

The Company acquired Northrop & Johnson during 2020, and management excluded from its assessment of the effectiveness of the Company's internal control over financial reporting as of September 30, 2020, Northrop & Johnson's internal control over financial reporting associated with 1% of total assets and 1% of total revenues included in the consolidated financial statements of the Company as of and for the year ended September 30, 2020. Our audit of internal control over financial reporting of the Company also excluded an evaluation of the internal control over financial reporting of Northrop & Johnson.

### *Basis for Opinion*

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

*Definition and Limitations of Internal Control Over Financial Reporting*

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ KPMG LLP

Tampa, Florida  
December 2, 2020



**Item 9B.** Other Information  
None.

**PART III**

**Item 10.** *Directors, Executive Officers and Corporate Governance*

The information required by this Item relating to our directors and corporate governance is incorporated herein by reference to the definitive Proxy Statement (particularly under the caption “Corporate Governance”) to be filed pursuant to Regulation 14A of the Exchange Act for our 2020 Annual Meeting of Shareholders (the “2021 Proxy Statement”). The information required by this Item relating to our executive officers is included in “Business — Executive Officers.”

We have adopted a code of ethics that applies to our principal executive officer, principal financial officer, and other senior accounting personnel. The “Code of Ethics for the CEO and Senior Financial Officers” is located on our website at [www.MarineMax.com](http://www.MarineMax.com) in the Investor Relations section under Corporate Governance.

We intend to satisfy the disclosure requirement under Item 5.05(c) of Form 8-K regarding any amendment to, or waiver from, a provision of this code of ethics by posting such information on our website, at the address and location specified above.

**Item 11.** *Executive Compensation*

The information required by this Item is incorporated herein by reference to the 2021 Proxy Statement (particularly under the caption “Executive Compensation”).

**Item 12.** *Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters*

The information required by this Item is incorporated herein by reference to the 2021 Proxy Statement (particularly under the caption “Security Ownership of Principal Shareholders, Directors, and Officers”).

**Item 13.** *Certain Relationships and Related Transactions, and Director Independence*

The information required by this Item is incorporated herein by reference to the 2021 Proxy Statement (particularly under the caption “Certain Relationships and Related Transactions”).

**Item 14.** *Principal Accountant Fees and Services*

The information required by this Item is incorporated herein by reference to the 2021 Proxy Statement (particularly under the caption “Ratification of Appointment of Independent Auditor”).

**PART IV**

**Item 15.** *Exhibits, Financial Statement Schedules*

**(a) Financial Statements and Financial Statement Schedules**

(1) **Financial Statements.** Financial Statements are listed in the Index to Consolidated Financial Statements on page F-1 of this report.

(2) **Financial Statement Schedules.** No financial statement schedules are included because such schedules are not applicable, are not required, or because required information is included in the consolidated financial statements or notes thereto.

(3) **Exhibits.** See Item 15(b) below.

**(b) Exhibits**

| <u>Exhibit Number</u> | <u>Exhibit</u>  |
|-----------------------|---|
| 2.1                   | <a href="#">Agreement and Plan of Merger, dated February 25, 2015, by and between MarineMax, Inc. and MarineMax Reincorporation, Inc. (1)</a> |
| 3.1                   | <a href="#">Articles of Incorporation of the Registrant. (2)</a>  |

**Exhibit  
Number**

**Exhibit**

|           |  |
|-----------|--|
| 3.2       | <a href="#">Bylaws of the Registrant. (2)</a>  |
| 4.1       | <a href="#">Specimen of Common Stock Certificate. (2)</a>  |
| 4.2       | <a href="#">Description of Securities.</a>   |
| 10.1*     | <a href="#">Employment Agreement, dated November 29, 2018, between Registrant and William H. McGill Jr., as amended. (3)</a>   |
| 10.1(b)*  | <a href="#">Employment Agreement, dated November 29, 2018, between Registrant and Michael H. McLamb, as amended. (3)</a>   |
| 10.1(c)*  | <a href="#">Employment Agreement, dated November 29, 2018, between Registrant and William Brett McGill. (3)</a>  |
| 10.2*     | <a href="#">Amended 2008 Employee Stock Purchase Plan. (4)</a>   |
| 10.3*     | <a href="#">2011 Stock-Based Compensation Plan. (5)</a>  |
| 10.3(a)*  | <a href="#">Form Stock Option Agreement for 2011 Stock-Based Compensation Plan. (6)</a>  |
| 10.3(b)*  | <a href="#">Form Restricted Stock Unit Award Agreement for 2011 Stock-Based Compensation Plan. (6)</a>   |
| 10.4      | <a href="#">Sales and Service Agreement, dated October 30, 2020, between Registrant and Boston Whaler, Inc.</a>  |
| 10.5      | <a href="#">Sales and Service Agreement, dated October 30, 2020, between Registrant and Sea Ray Division of Brunswick Corporation.</a>   |
| 10.6      | <a href="#">Agreement Relating to Acquisitions between Registrant and Brunswick Corporation, dated December 7, 2005. (7)</a>   |
| 10.6(a)   | <a href="#">Amendment, executed October 17, 2014, to Agreement Relating to Acquisitions between Registrant and Brunswick Corporation, dated December 7, 2005. (8)</a>  |
| 10.6(b)   | <a href="#">Sea Ray Sales and Service Agreement. (7)</a>   |
| 10.6(c)†  | <a href="#">Sea Ray Sales and Service Agreement, executed October 17, 2014, by and between MarineMax East, Inc. and Sea Ray, a Division of Brunswick Corporation. (8)</a>  |
| 10.6(d)†  | <a href="#">Sea Ray Sales and Service Agreement, executed October 17, 2014, by and between MarineMax Northeast, LLC, and Sea Ray, a Division of Brunswick Corporation. (8)</a>   |
| 10.6(e)†  | <a href="#">Sea Ray Sales and Service Agreement, executed October 17, 2014, by and between MarineMax, Inc. and Sea Ray, a Division of Brunswick Corporation. (8)</a>   |
| 10.6(f)†  | <a href="#">Boston Whaler Sales and Service Agreement, executed December 5, 2014, by and between MarineMax East, Inc. and Boston Whaler, a Division of Brunswick Corporation. (9)</a>  |
| 10.6(g)†  | <a href="#">Boston Whaler Sales and Service Agreement, executed December 5, 2014, by and between MarineMax Northeast, LLC, and Boston Whaler, a Division of Brunswick Corporation. (9)</a>   |
| 10.6(h)†  | <a href="#">Boston Whaler Sales and Service Agreement, executed December 5, 2014, by and between MarineMax, Inc. and Boston Whaler, a Division of Brunswick Corporation. (9)</a>   |
| 10.7 †    | <a href="#">Loan and Security Agreement, dated May 20, 2020, by and among MarineMax, Inc. and its subsidiaries, Wells Fargo Commercial Distribution Finance, LLC, M&amp;T Bank, Bank of the West, and Truist Bank. (10)</a>  |
| 10.7(a) † | <a href="#">Sixth Amended and Restated Program Terms Letter, dated May 20, 2020, by and among MarineMax, Inc. and its subsidiaries, as Borrowers, and Wells Fargo Commercial Distribution Finance, LLC. (10)</a>   |
| 10.8      | <a href="#">Director Fee Share Purchase Program. (11)</a>  |
| 10.9*     | <a href="#">Severance Policy for Key Executives. (12)</a>  |
| 10.10†    | <a href="#">Dealership Agreement dated September 1, 2008 by and between MarineMax Northeast, LLC and Azimut Benetti S.p.A. (13)</a>  |
| 10.10(a)  | <a href="#">First Amendment dated June 22, 2010 to Dealership Agreement dated September 1, 2008, by and between MarineMax Northeast, LLC and Azimut Benetti S.p.A. (13)</a>  |
| 10.10(b)  | <a href="#">Second Amendment dated February 29, 2012 to Dealership Agreement dated September 1, 2008, by and between MarineMax Northeast, LLC and Azimut Benetti S.p.A. (13)</a>   |
| 10.10(c)  | <a href="#">Third Amendment dated July 21, 2012 to Dealership Agreement dated September 1, 2008, by and between MarineMax Northeast, LLC and Azimut Benetti S.p.A. (13)</a>  |
| 10.11†    | <a href="#">Dealership Agreement dated September 1, 2008 by and between MarineMax East, LLC and Azimut Benetti S.p.A. (13)</a>   |
| 10.11(a)  | <a href="#">First Amendment dated June 22, 2010 to Dealership Agreement dated September 1, 2008, by and between MarineMax East, Inc. and Azimut Benetti S.p.A. (13)</a>  |
| 10.11(b)  | <a href="#">Second Amendment dated February 29, 2012 to Dealership Agreement dated September 1, 2008, by and between MarineMax East, Inc. and Azimut Benetti S.p.A. (13)</a>   |
| 10.11(c)  | <a href="#">Third Amendment dated July 21, 2012 to Dealership Agreement dated September 1, 2008, by and between MarineMax East, Inc. and Azimut Benetti S.p.A. (13)</a>  |
| 10.11(d)  | <a href="#">Fourth Amendment dated August 21, 2013 to Dealership Agreement dated September 1, 2008, by and between MarineMax East, Inc. and Azimut Benetti S.p.A. (13)</a>   |
| 10.12     | <a href="#">Equity Purchase Agreement dated October 1, 2020, by and among Skipper Marine Holdings, Inc., SSY Holdings, Inc., Michael J. Pretasky, Sr., Michael John Pretasky, Jr. 2014 Trust, Mark Ellerbrock, and Robert Ross Tefft, Jr., Michael J. Pretasky, Jr., and MarineMax, Inc.</a> |
| 21        | <a href="#">List of Subsidiaries.</a>  |
| 23.1      | <a href="#">Consent of KPMG LLP.</a>   |

| Exhibit<br>Number | Exhibit  |
|-------------------|--|
| 31.1              | <a href="#">Certification of Chief Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a), promulgated under the Securities Exchange Act of 1934, as amended.</a> |
| 31.2              | <a href="#">Certification of Chief Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a), promulgated under the Securities Exchange Act of 1934, as amended.</a> |
| 32.1              | <a href="#">Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>                                    |
| 32.2              | <a href="#">Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>                                    |
| 101.INS           | Inline XBRL Instance Document - The instance document does not appear in the interactive data file because its XBRL tags are embedded within the inline XBRL document.     |
| 101.SCH           | Inline XBRL Taxonomy Extension Schema Document.  |
| 101.CAL           | Inline XBRL Taxonomy Extension Calculation Linkbase Document.  |
| 101.DEF           | Inline XBRL Taxonomy Extension Definition Linkbase Document.   |
| 101.LAB           | Inline XBRL Taxonomy Extension Label Linkbase Document.  |
| 101.PRE           | Inline XBRL Taxonomy Extension Presentation Linkbase Document.   |
| 104               | Cover Page Interactive Data File (embedded within the Inline XBRL document).   |

† Certain information in this exhibit has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions where applicable.  
 \* Management contract or compensatory plan or arrangement.

- (1) Incorporated by reference to Registrant's Form 8-K as filed February 26, 2015.
- (2) Incorporated by reference to Registrant's Form 8-K as filed March 20, 2015.
- (3) Incorporated by reference to Registrant's Form 10-K for the year ended September 30, 2019, as filed on November 29, 2018.
- (4) Incorporated by reference to Registrant's Form S-8 (File No. 333-236618) as filed February 25, 2020.
- (5) Incorporated by reference to Registrant's Form S-8 (File No. 333-236617) as filed February 25, 2020.
- (6) Incorporated by reference to Registrant's Form 8-K as filed on January 25, 2011.
- (7) Incorporated by reference to Registrant's Form 8-K as filed on December 9, 2005.
- (8) Incorporated by reference to Registrant's Form 10-K for the year ended September 30, 2014, as filed on December 11, 2014.
- (9) Incorporated by reference to Registrant's Form 10-Q for the quarterly period ended December 31, 2014, as filed on February 5, 2015.
- (10) Incorporated by reference to Registrant's Form 10-Q for the quarterly period ended June 30, 2020, as filed on July 28, 2020.
- (11) Incorporated by reference to Registrant's Form S-8 (File No. 333-141657) as filed March 29, 2007.
- (12) Incorporated by reference to Registrant's Form 8-K as filed on November 27, 2012.
- (13) Incorporated by reference to Registrant's Form 10-K for the year ended September 30, 2013, as filed on December 6, 2013.

(c) **Financial Statements Schedules**

- (1) See Item 15(a) above.

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

**MARINEMAX, INC.**

/s/ W. Brett McGill  
 \_\_\_\_\_  
 W. Brett McGill  
 Chief Executive Officer and President

Date: December 2, 2020

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

| <u>Signature</u>  | <u>Capacity</u>  | <u>Date</u>      |
|---|--|------------------|
| _____<br>/s/ W. Brett McGill<br>W. Brett McGill             | Chief Executive Officer and President<br>(Principal Executive Officer)   | December 2, 2020 |
| _____<br>/s/ Michael H. McLamb<br>Michael H. McLamb         | Executive Vice President, Chief Financial Officer, Secretary and Director<br>(Principal Accounting and<br>Financial Officer) | December 2, 2020 |
| _____<br>/s/ William H. McGill Jr.<br>William H. McGill Jr. | Executive Chairman of the Board,<br>Director   | December 2, 2020 |
| _____<br>/s/ Clint Moore<br>Clint Moore                     | Lead Independent Director  | December 2, 2020 |
| _____<br>/s/ George E. Borst<br>George E. Borst             | Director   | December 2, 2020 |
| _____<br>/s/ Hilliard M. Eure III<br>Hilliard M. Eure III   | Director   | December 2, 2020 |
| _____<br>/s/ Evelyn Follit<br>Evelyn Follit                 | Director   | December 2, 2020 |
| _____<br>/s/ Charles R. Oglesby<br>Charles R. Oglesby       | Director   | December 2, 2020 |
| _____<br>/s/ Joseph A. Watters<br>Joseph A. Watters         | Director   | December 2, 2020 |
| _____<br>/s/ Rebecca White<br>Rebecca White                 | Director   | December 2, 2020 |

MARINEMAX, INC. AND SUBSIDIARIES

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

|   | <u>Page</u> |
|---|-------------|
| CONSOLIDATED FINANCIAL STATEMENTS                                       |             |
| <a href="#">Report of Independent Registered Public Accounting Firm</a> | F-2         |
| <a href="#">Consolidated Balance Sheets</a>                             | F-3         |
| <a href="#">Consolidated Statements of Operations</a>                   | F-4         |
| <a href="#">Consolidated Statements of Comprehensive Income</a>         | F-5         |
| <a href="#">Consolidated Statements of Shareholders' Equity</a>         | F-6         |
| <a href="#">Consolidated Statements of Cash Flows</a>                   | F-7         |
| <a href="#">Notes to Consolidated Financial Statements</a>              | F-8         |

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Report of Independent Registered Public Accounting Firm

To the Shareholders and Board of Directors  
MarineMax, Inc.:

*Opinion on the Consolidated Financial Statements*

We have audited the accompanying consolidated balance sheets of MarineMax, Inc. and subsidiaries (the Company) as of September 30, 2020 and 2019, the related consolidated statements of operations, comprehensive income, shareholders' equity, and cash flows for each of the years in the three-year period ended September 30, 2020, and the related notes (collectively, the consolidated financial statements). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of September 30, 2020 and 2019, and the results of its operations and its cash flows for each of the years in the three-year period ended September 30, 2020, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of September 30, 2020, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission, and our report dated December 2, 2020 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

*Change in Accounting Principles*

As discussed in Note 3 to the consolidated financial statements, the Company has changed its method of accounting for leases as of October 1, 2019 due to the adoption of Accounting Standards Update (ASU) 2016-02, *Leases*, and several related amendments, as issued by the Financial Accounting Standards Board (FASB), and the Company has changed its method of accounting for revenue as of October 1, 2018 due to the adoption of ASU 2014-09, *Revenue from Contracts with Customers*, and several related amendments, as issued by the FASB.

*Basis for Opinion*

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

We have served as the Company's auditor since 2013.

/s/ KPMG LLP

Tampa, Florida  
December 2, 2020

**MARINEMAX, INC. AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**  
(Amounts in thousands except share and per share data)

|  | September 30, 2019 | September 30, 2020 |
|--|--------------------|--------------------|
| <b>ASSETS</b>  |                    |                    |
| <b>CURRENT ASSETS:</b>   |                    |                    |
| Cash and cash equivalents  | \$ 38,511          | \$ 155,493         |
| Accounts receivable, net   | 42,398             | 40,195             |
| Inventories, net   | 477,468            | 298,002            |
| Prepaid expenses and other current assets  | 10,206             | 9,637              |
| <b>Total current assets</b>  | <b>568,583</b>     | <b>503,327</b>     |
| Property and equipment, net  | 144,298            | 141,934            |
| Operating lease right-of-use assets, net   | —                  | 37,991             |
| Goodwill and other intangible assets, net  | 64,077             | 84,293             |
| Other long-term assets   | 7,125              | 7,774              |
| <b>Total assets</b>  | <b>\$ 784,083</b>  | <b>\$ 775,319</b>  |
| <b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>  |                    |                    |
| <b>CURRENT LIABILITIES:</b>  |                    |                    |
| Accounts payable   | \$ 33,674          | \$ 37,343          |
| Contract liabilities (customer deposits)   | 24,305             | 31,821             |
| Accrued expenses   | 42,849             | 52,123             |
| Current operating lease liabilities  | —                  | 6,854              |
| Short-term borrowings  | 312,065            | 144,393            |
| <b>Total current liabilities</b>   | <b>412,893</b>     | <b>272,534</b>     |
| Noncurrent operating lease liabilities   | —                  | 33,473             |
| Deferred tax liabilities, net  | 1,142              | 4,509              |
| Long-term debt, net of current maturities  | —                  | 7,343              |
| Other long-term liabilities  | 1,229              | 2,063              |
| <b>Total liabilities</b>   | <b>415,264</b>     | <b>319,922</b>     |
| <b>COMMITMENTS AND CONTINGENCIES (Note 17)</b>   |                    |                    |
| <b>SHAREHOLDERS' EQUITY:</b>   |                    |                    |
| Preferred stock, \$.001 par value, 1,000,000 shares authorized,<br>none issued or outstanding as of September 30, 2019 and 2020  | —                  | —                  |
| Common stock, \$.001 par value; 40,000,000 shares authorized, 27,508,473<br>and 28,130,312 shares issued and 21,321,688 and 21,863,291 shares<br>outstanding as of September 30, 2019 and 2020, respectively | 28                 | 28                 |
| Additional paid-in capital   | 269,969            | 280,436            |
| Accumulated other comprehensive (loss) income  | (669)              | 829                |
| Retained earnings  | 202,455            | 277,699            |
| Treasury stock, at cost, 6,186,785 and 6,267,021 shares held as of<br>September 30, 2019 and 2020, respectively  | (102,964)          | (103,595)          |
| <b>Total shareholders' equity</b>  | <b>368,819</b>     | <b>455,397</b>     |
| <b>Total liabilities and shareholders' equity</b>  | <b>\$ 784,083</b>  | <b>\$ 775,319</b>  |

See accompanying notes to consolidated financial statements.

## MARINEMAX, INC. AND SUBSIDIARIES

## CONSOLIDATED STATEMENTS OF OPERATIONS

(Amounts in thousands except share and per share data)

|  | For the Year Ended September 30, |              |              |
|--|----------------------------------|--------------|--------------|
|  | 2018                             | 2019         | 2020         |
| Revenue  | \$ 1,177,371                     | \$ 1,237,153 | \$ 1,509,713 |
| Cost of sales  | 879,138                          | 914,321      | 1,111,000    |
| Gross profit   | 298,233                          | 322,832      | 398,713      |
| Selling, general and administrative expenses   | 235,050                          | 262,300      | 291,998      |
| Income from operations   | 63,183                           | 60,532       | 106,715      |
| Interest expense   | 9,903                            | 11,579       | 9,275        |
| Income before income tax provision   | 53,280                           | 48,953       | 97,440       |
| Income tax provision   | 13,968                           | 12,968       | 22,806       |
| Net income   | \$ 39,312                        | \$ 35,985    | \$ 74,634    |
| Basic net income per common share  | \$ 1.77                          | \$ 1.61      | \$ 3.46      |
| Diluted net income per common share  | \$ 1.71                          | \$ 1.57      | \$ 3.37      |
| Weighted average number of common shares used<br>in computing net income per common share: |                                  |              |              |
| Basic  | 22,269,378                       | 22,294,114   | 21,547,665   |
| Diluted  | 23,030,662                       | 22,881,147   | 22,125,338   |

See accompanying notes to consolidated financial statements.



**MARINEMAX, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**  
(Amounts in thousands)

|   | For the Year Ended September 30. |               |      |               |      |               |
|---|----------------------------------|---------------|------|---------------|------|---------------|
|   | 2018                             |               | 2019 |               | 2020 |               |
| Net income  | \$                               | 39,312        | \$   | 35,985        | \$   | 74,634        |
| Other comprehensive (loss) gain, net of tax:      |                                  |               |      |               |      |               |
| Foreign currency translation adjustments          |                                  | -             |      | (669)         |      | 1,498         |
| Total other comprehensive (loss) gain, net of tax |                                  | -             |      | (669)         |      | 1,498         |
| Comprehensive income                              | \$                               | <u>39,312</u> | \$   | <u>35,316</u> | \$   | <u>76,132</u> |

See accompanying notes to consolidated financial statements.

## MARINEMAX, INC. AND SUBSIDIARIES

## CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY

(Amounts in thousands except share data)

|   | Common Stock Issued |        | Additional<br>Paid-in<br>Capital | Accumulated<br>Other<br>Comprehensive<br>(loss) income | Retained<br>Earnings | Treasury<br>Stock | Total<br>Shareholders'<br>Equity |
|---|---------------------|--------|----------------------------------|--|----------------------|-------------------|----------------------------------|
|   | Shares              | Amount |                                  |  |                      |                   |                                  |
| BALANCE, September 30, 2017   | 26,314,066          | \$ 26  | \$ 249,974                       | —  | \$ 126,759           | \$ (74,561)       | \$ 302,198                       |
| Net income  | —                   | —      | —                                | —  | 39,312               | —                 | 39,312                           |
| Purchase of treasury stock  | —                   | —      | —                                | —  | —                    | (695)             | (695)                            |
| Shares issued pursuant to employee stock purchase plan                                | 67,187              | —      | 950                              | —  | —                    | —                 | 950                              |
| Shares issued upon vesting of equity awards, net of minimum tax withholding           | 163,350             | —      | (1,643)                          | —  | —                    | —                 | (1,643)                          |
| Shares issued upon exercise of stock options  | 586,531             | 1      | 6,732                            | —  | —                    | —                 | 6,733                            |
| Stock-based compensation  | 10,133              | —      | 6,237                            | —  | —                    | —                 | 6,237                            |
| BALANCE, September 30, 2018   | 27,141,267          | \$ 27  | \$ 262,250                       | —  | \$ 166,071           | \$ (75,256)       | \$ 353,092                       |
| Net income  | —                   | —      | —                                | —  | 35,985               | —                 | 35,985                           |
| Purchase of treasury stock  | —                   | —      | —                                | —  | —                    | (27,708)          | (27,708)                         |
| Shares issued pursuant to employee stock purchase plan                                | 62,287              | —      | 1,022                            | —  | —                    | —                 | 1,022                            |
| Shares issued upon vesting of equity awards, net of minimum tax withholding           | 174,606             | —      | (1,216)                          | —  | —                    | —                 | (1,216)                          |
| Shares issued upon exercise of stock options  | 119,275             | 1      | 1,389                            | —  | —                    | —                 | 1,390                            |
| Stock-based compensation  | 11,038              | —      | 6,524                            | —  | —                    | —                 | 6,524                            |
| Foreign currency translation adjustments, net of tax                                  | —                   | —      | —                                | (669)  | —                    | —                 | (669)                            |
| Cumulative effect of change in accounting principle - revenue recognition, net of tax | —                   | —      | —                                | —  | 399                  | —                 | 399                              |
| BALANCE, September 30, 2019   | 27,508,473          | \$ 28  | \$ 269,969                       | (669)  | \$ 202,455           | \$ (102,964)      | \$ 368,819                       |
| Net income  | —                   | —      | —                                | —  | 74,634               | —                 | 74,634                           |
| Purchase of treasury stock  | —                   | —      | —                                | —  | —                    | (631)             | (631)                            |
| Shares issued pursuant to employee stock purchase plan                                | 94,741              | —      | 1,004                            | —  | —                    | —                 | 1,004                            |
| Shares issued upon vesting of equity awards, net of minimum tax withholding           | 228,304             | —      | (1,659)                          | —  | —                    | —                 | (1,659)                          |
| Shares issued upon exercise of stock options  | 286,702             | —      | 3,625                            | —  | —                    | —                 | 3,625                            |
| Stock-based compensation  | 12,092              | —      | 7,497                            | —  | —                    | —                 | 7,497                            |
| Foreign currency translation adjustments, net of tax                                  | —                   | —      | —                                | 1,498  | —                    | —                 | 1,498                            |
| Cumulative effect of change in accounting principle - leases, net of tax              | —                   | —      | —                                | —  | 610                  | —                 | 610                              |
| BALANCE, September 30, 2020   | 28,130,312          | \$ 28  | \$ 280,436                       | \$ 829   | \$ 277,699           | \$ (103,595)      | \$ 455,397                       |

See accompanying notes to consolidated financial statements.

**MARINEMAX, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(Amounts in thousands)

|  | For the Year Ended September 30, |                  |                   |
|--|----------------------------------|------------------|-------------------|
|  | 2018                             | 2019             | 2020              |
| <b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>   |                                  |                  |                   |
| Net income   | \$ 39,312                        | \$ 35,985        | \$ 74,634         |
| Adjustments to reconcile net income to net cash provided by (used in) operating activities:          |                                  |                  |                   |
| Depreciation and amortization  | 10,673                           | 11,597           | 12,772            |
| Deferred income tax provision  | 5,361                            | 4,384            | 3,157             |
| Loss on sale of property and equipment   | 330                              | 956              | 366               |
| Gain on insurance settlements  | (1,082)                          | —                | —                 |
| Proceeds from insurance settlements  | 2,342                            | 475              | 703               |
| Gain on contingent acquisition consideration   | (1,440)                          | —                | —                 |
| Stock-based compensation expense, net  | 6,237                            | 6,524            | 7,497             |
| (Increase) Decrease in, net of effects of acquisitions—  |                                  |                  |                   |
| Accounts receivable, net   | (11,279)                         | (5,071)          | 2,584             |
| Inventories, net   | 26,773                           | (84,330)         | 179,466           |
| Prepaid expenses and other assets  | (996)                            | (3,182)          | 101               |
| (Decrease) Increase in, net of effects of acquisitions—  |                                  |                  |                   |
| Accounts payable   | (3,325)                          | 8,701            | 2,887             |
| Contract liabilities (customer deposits)   | (4,065)                          | 6,804            | 7,411             |
| Accrued expenses and other liabilities   | 1,573                            | 4,731            | 13,097            |
| Net cash provided by (used in) operating activities  | <u>70,414</u>                    | <u>(12,426)</u>  | <u>304,675</u>    |
| <b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>   |                                  |                  |                   |
| Purchases of property and equipment  | (13,804)                         | (17,061)         | (12,807)          |
| Proceeds from insurance settlements  | 823                              | 461              | —                 |
| Cash used in acquisition of businesses, net of cash acquired   | (10,524)                         | (40,713)         | (19,766)          |
| Proceeds from sale of property and equipment   | 190                              | 979              | 2,464             |
| Net cash used in investing activities  | <u>(23,315)</u>                  | <u>(56,334)</u>  | <u>(30,109)</u>   |
| <b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>   |                                  |                  |                   |
| Net borrowings on short-term borrowings  | (43,383)                         | 85,580           | (167,672)         |
| Proceeds from long-term debt   | —                                | —                | 7,437             |
| Payments for long-term debt  | —                                | —                | (41)              |
| Net proceeds from issuance of common stock under incentive compensation, and employee purchase plans | 7,683                            | 2,412            | 4,629             |
| Contingent acquisition consideration payments  | (3,324)                          | (129)            | (148)             |
| Payments on tax withholdings for equity awards   | (510)                            | (1,525)          | (1,703)           |
| Purchase of treasury stock   | (695)                            | (27,708)         | (631)             |
| Net cash provided (used in) provided by financing activities   | <u>(40,229)</u>                  | <u>58,630</u>    | <u>(158,129)</u>  |
| Effect of exchange rate changes on cash  | —                                | (181)            | 545               |
| <b>NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS:</b>   | <u>6,870</u>                     | <u>(10,311)</u>  | <u>116,982</u>    |
| <b>CASH AND CASH EQUIVALENTS, beginning of year</b>  | <u>41,952</u>                    | <u>48,822</u>    | <u>38,511</u>     |
| <b>CASH AND CASH EQUIVALENTS, end of year</b>  | <u>\$ 48,822</u>                 | <u>\$ 38,511</u> | <u>\$ 155,493</u> |
| <b>Supplemental Disclosures of Cash Flow Information:</b>  |                                  |                  |                   |
| Cash paid for:   |                                  |                  |                   |
| Interest   | \$ 12,021                        | \$ 13,669        | \$ 13,082         |
| Income taxes   | 9,424                            | 9,152            | 18,930            |
| Non-cash items:  |                                  |                  |                   |
| Initial operating lease right-of-use assets for adoption of ASU 2016-02                              | -                                | -                | 42,070            |
| Initial current and noncurrent operating lease liabilities for adoption of ASU 2016-02               | -                                | -                | 43,953            |
| Accrued tax withholdings upon vesting of equity awards   | 1,525                            | 1,198            | 1,153             |
| Contingent consideration liabilities from acquisitions   | -                                | 640              | 2,270             |
| Accrued acquisition of property and equipment  | 129                              | 995              | 491               |

See accompanying notes to consolidated financial statements

**MARINEMAX, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**I. COMPANY BACKGROUND AND BASIS OF PRESENTATION:**

We are the largest recreational boat and yacht retailer in the United States. We engage primarily in the retail sale, brokerage, and service of new and used boats, motors, trailers, marine parts and accessories and offer slip and storage accommodations in certain locations. In addition, we arrange related boat financing, insurance, and extended service contracts. We also offer the charter of power yachts in the British Virgin Islands. As of September 30, 2020, we operated through 57 retail locations in 16 states, consisting of Alabama, Connecticut, Florida, Georgia, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, and Texas. Our MarineMax Vacations operations maintain a facility in Tortola, British Virgin Islands. We also own Fraser Yachts Group and Northrop & Johnson, leading superyacht brokerage and luxury yacht services companies with operations in multiple countries.

We are the nation's largest retailer of Sea Ray and Boston Whaler recreational boats and yachts which are manufactured by Brunswick Corporation ("Brunswick"). Sales of new Brunswick boats accounted for approximately 33% of our revenue in fiscal 2020. Sales of new Sea Ray and Boston Whaler boats, both divisions of Brunswick, accounted for approximately 15% and 16%, respectively, of our revenue in fiscal 2020. Brunswick is a world leading manufacturer of marine products and marine engines.

We have dealership agreements with Sea Ray, Boston Whaler, Harris, and Mercury Marine, all subsidiaries or divisions of Brunswick. We also have dealer agreements with Italy-based Azimut-Benetti Group's product line for Azimut and Benetti yachts and mega yachts. These agreements allow us to purchase, stock, sell, and service these manufacturers' boats and products. These agreements also allow us to use these manufacturers' names, trade symbols, and intellectual properties in our operations. The agreements for Sea Ray and Boston Whaler products appoint us as the exclusive dealer of Sea Ray or Boston Whaler boats in our geographic markets. In addition, we are the exclusive dealer for Azimut Yachts for the entire United States. Sales of new Azimut boats and yachts accounted for approximately 9% of our revenue in fiscal 2020. We believe non-Brunswick brands offer a migration for our existing customer base or fill a void in our product offerings, and accordingly, do not compete with the business generated from our other prominent brands.

Beginning in March 2020, we had temporarily closed certain departments or locations based on guidance from local government or health officials as a result of the COVID-19 global pandemic. We are following guidelines to ensure we are safely operating as recommended. As the COVID-19 pandemic is complex and evolving rapidly with many unknowns, the Company will continue to monitor ongoing developments and respond accordingly. Management expects its business, across all of its geographies, will be impacted to some degree, but the significance of the impact of the COVID-19 pandemic on the Company's business and the duration for which it may have an impact cannot be determined at this time.

As is typical in the industry, we deal with most of our manufacturers, other than Sea Ray, Boston Whaler, and Azimut Yachts, under renewable annual dealer agreements, each of which gives us the right to sell various makes and models of boats within a given geographic region. Any change or termination of these agreements, or the agreements discussed above, for any reason, or changes in competitive, regulatory or marketing practices, including rebate or incentive programs, could adversely affect our results of operations. Although there are a limited number of manufacturers of the type of boats and products that we sell, we believe that adequate alternative sources would be available to replace any manufacturer other than Sea Ray and Azimut as a product source. These alternative sources may not be available at the time of any interruption, and alternative products may not be available at comparable terms, which could affect operating results adversely.

General economic conditions and consumer spending patterns can negatively impact our operating results. Unfavorable local, regional, national, or global economic developments or uncertainties regarding future economic prospects could reduce consumer spending in the markets we serve and adversely affect our business. Economic conditions in areas in which we operate dealerships, particularly Florida in which we generated approximately 51%, 54% and 54% of our revenue during fiscal 2018, 2019, and 2020, respectively, can have a major impact on our operations. Local influences, such as corporate downsizing, military base closings, inclement weather such as Hurricane Sandy in 2012 or Hurricanes Harvey and Irma in 2017, environmental conditions, and specific events, such as the BP oil spill in the Gulf of Mexico in 2010, also could adversely affect, and in certain instances have adversely affected, our operations in certain markets.

In an economic downturn, consumer discretionary spending levels generally decline, at times resulting in disproportionately large reductions in the sale of luxury goods. Consumer spending on luxury goods also may decline as a result of lower consumer confidence levels, even if prevailing economic conditions are favorable. As a result, an economic downturn would likely impact us more than certain of our competitors due to our strategic focus on a higher end of our market. Although we have expanded our operations during periods of stagnant or modestly declining industry trends, the cyclical nature of the recreational boating industry or

**MARINEMAX, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

the lack of industry growth may adversely affect our business, financial condition, and results of operations. Any period of adverse economic conditions or low consumer confidence is likely to have a negative effect on our business.

Historically, in periods of lower consumer spending and depressed economic conditions, we have, among other things, substantially reduced our acquisition program, delayed new store openings, reduced our inventory purchases, engaged in inventory reduction efforts, closed a number of our retail locations, reduced our headcount, and amended and replaced our credit facility. Acquisitions remain an important strategy for us, and, subject to a number of conditions, including macro-economic conditions and finding attractive acquisition targets, we plan to explore opportunities through this strategy.

**2. SIGNIFICANT ACCOUNTING POLICIES:**

**Cash and Cash Equivalents**

We consider all highly liquid investments with an original maturity of three months or less to be cash equivalents. Fraser Yachts Group customer charter management cash accounts are excluded from cash and cash equivalents. These accounts belong to our customers and we provide management assistance at the request of the customer and for the benefit of the customer.

**Vendor Consideration Received**

We account for consideration received from our vendors in accordance with ASU 2014-09, "Revenue from Contracts with Customers (Topic 606)". ASC 606 requires us to classify interest assistance received from manufacturers as a reduction of inventory cost and related cost of sales as opposed to netting the assistance against our interest expense incurred with our lenders. Pursuant to ASC 606, amounts received by us under our co-op assistance programs from our manufacturers are netted against related advertising expenses. Our consideration received from our vendors contains uncertainties because the calculation requires management to make assumptions and to apply judgment regarding a number of factors, including our ability to collect amounts due from vendors and the ability to meet certain criteria stipulated by our vendors. We do not believe there is a reasonable likelihood that there will be a change in the future estimates or assumptions we use to calculate our vendor considerations which would result in a material effect on our operating results.

**Inventories**

Inventory costs consist of the amount paid to acquire inventory, net of vendor consideration and purchase discounts, the cost of equipment added, reconditioning costs, and transportation costs relating to acquiring inventory for sale. We state new and used boat, motor, and trailer inventories at the lower of cost, determined on a specific-identification basis, or net realizable value. We state parts and accessories at the lower of cost, determined on an average cost basis, or net realizable value. We utilize our historical experience, the aging of the inventories, and our consideration of current market trends as the basis for determining lower of cost or net realizable value. We do not believe there is a reasonable likelihood that there will be a change in the future estimates or assumptions we use to calculate our valuation allowance which would result in a material effect on our operating results. As of September 30, 2019 and 2020, our valuation allowance for new and used boat, motor and trailer inventories was \$2.2 million and \$2.4 million, respectively. If events occur and market conditions change, causing the fair value to fall below carrying value, the valuation allowance could increase.

**Property and Equipment**

We record property and equipment at cost, net of accumulated depreciation, and depreciate property and equipment over their estimated useful lives using the straight-line method. We capitalize and amortize leasehold improvements over the lesser of the life of the lease or the estimated useful life of the asset. Useful lives for purposes of computing depreciation are as follows:

|                            | <u>Years</u> |
|----------------------------|--------------|
| Buildings and improvements | 5-40         |
| Machinery and equipment    | 3-10         |
| Furniture and fixtures     | 5-10         |
| Vehicles                   | 3-5          |

**MARINEMAX, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

We remove the cost of property and equipment sold or retired and the related accumulated depreciation from the accounts at the time of disposition and include any resulting gain or loss in the consolidated statements of operations. We charge maintenance, repairs, and minor replacements to operations as incurred, and we capitalize and amortize major replacements and improvements over their useful lives.

**Goodwill**

We account for goodwill in accordance with FASB Accounting Standards Codification 350, "Intangibles — Goodwill and Other" ("ASC 350"), which requires the excess purchase price over the estimated fair value of net assets acquired in a business combination to be recorded as goodwill. In July 2020, we purchased Northrop & Johnson, a leading superyacht brokerage and services company. In March 2020, we purchased Boatyard, a digital platform with an expansive range of on-demand services to streamline the boating experience by qualified service providers from a smartphone. In July 2019, we purchased Fraser Yachts Group, a leading superyacht brokerage and largest luxury yacht services company. In April 2019, we purchased Sail & Ski Center, a privately owned boat dealer located in Texas. Goodwill and other intangible assets increased, due to acquisitions, by \$37.0 million and \$20.2 million, for the fiscal years ended September 30, 2019 and 2020, respectively. These acquisitions have resulted in the recording of goodwill for tax purposes of \$10.5 million and \$16.8 million, for the fiscal years ended September 30, 2019 and 2020, respectively. In total, current and previous acquisitions have resulted in the recording of \$84.3 million in goodwill and other intangible assets as of September 30, 2020. In accordance with ASC 350, we test goodwill for impairment at least annually and whenever events or changes in circumstances indicate that the carrying value may not be recoverable. Our annual impairment test is performed during the fourth fiscal quarter. If the carrying amount of a reporting unit's goodwill exceeds its fair value we recognize an impairment loss in accordance with ASC 350. As of September 30, 2020, and based upon our most recent analysis, we determined through our qualitative assessment that it is not "more likely than not" that the fair values of our reporting units are less than their carrying values. As a result, we were not required to perform a quantitative goodwill impairment.

**Impairment of Long-Lived Assets**

FASB Accounting Standards Codification 360-10-40, "Property, Plant, and Equipment — Impairment or Disposal of Long-Lived Assets" ("ASC 360-10-40"), requires that long-lived assets, such as property and equipment and intangible assets subject to amortization, be reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of the asset is measured by comparison of its carrying amount to undiscounted future cash flows the asset is expected to generate. If such assets are considered to be impaired, the impairment to be recognized is measured as the amount by which the carrying amount of the asset exceeds its fair market value. Estimates of expected future cash flows represent our best estimate based on currently available information and reasonable and supportable assumptions. The analysis is performed at a regional level for indicators of permanent impairment given the geographical interdependencies among our locations. Based upon our most recent analysis, we believe no impairment of long-lived assets existed as of September 30, 2020.

**Insurance**

We retain varying levels of risk relating to the insurance policies we maintain, most significantly, workers' compensation insurance and employee medical benefits. We are responsible for the claims and losses incurred under these programs, limited by per occurrence deductibles and paid claims or losses up to pre-determined maximum exposure limits. Our third-party insurance carriers pay any losses above the pre-determined exposure limits. We estimate our liability for incurred but not reported losses using our historical loss experience, our judgment, and industry information.

**Revenue Recognition**

The majority of our revenue is from contracts with customers for the sale of boats, motors, and trailers. We recognize revenue from boat, motor, and trailer sales upon transfer of control of the boat, motor, or trailer to the customer, which is generally upon acceptance or delivery to the customer. The transaction price is determined with the customer at time of sale. Customers may trade in boats to apply toward the purchase of a new or used boat. The trade-in is a type of noncash consideration measured at fair value, based on external and internal market data and applied as payment to the contract price for the purchased boat. At the time of acceptance or delivery, the customer is able to direct the use of, and obtain substantially all of the benefits of the boat, motor, or trailer at such time. We recognize commissions earned from a brokerage sale when the related brokerage transaction closes upon transfer of control of the boat, motor, or trailer to the customer, which is generally upon acceptance or delivery to the customer.

**MARINEMAX, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

We do not directly finance our customers' boat, motor, or trailer purchases. In many cases, we assist with third-party financing for boat, motor, and trailer sales. We recognize commissions earned by us for placing notes with financial institutions in connection with customer boat financing when we recognize the related boat sales. Pursuant to negotiated agreements with financial institutions, we are charged back for a portion of these fees should the customer terminate or default on the related finance contract before it is outstanding for a stipulated minimum period of time. We base the chargeback allowance, which was not material to the consolidated financial statements taken as a whole as of September 30, 2020, on our experience with repayments or defaults on the related finance contracts. We recognize variable consideration from commissions earned on extended warranty service contracts sold on behalf of third-party insurance companies at generally the later of customer acceptance of the service contract terms as evidenced by contract execution or recognition of the related boat sale. We also recognize variable consideration from marketing fees earned on insurance products sold by third-party insurance companies at the later of customer acceptance of the insurance product as evidenced by contract execution or when the related boat sale is recognized.

We recognize revenue from parts and service operations (boat maintenance and repairs) over time as services are performed. Each boat maintenance and repair service is a single performance obligation that includes both the parts and labor associated with the service. Payment for boat maintenance and repairs is typically due upon the completion of the service, which is generally completed within a short period of time from contract inception. We satisfy our performance obligations, transfer control, and recognize revenue over time for parts and service operations because we are creating a contract asset with no alternative use and we have an enforceable right to payment for performance completed to date. Contract assets primarily relate to our right to consideration for work in process not yet billed at the reporting date associated with maintenance and repair services. We use an input method to recognize revenue and measure progress based on labor hours expended to satisfy the performance obligation at average labor rates. We have determined labor hours expended to be the relevant measure of work performed to complete the maintenance and repair service for the customer. As a practical expedient, because repair and maintenance service contracts have an original duration of one year or less, we do not consider the time value of money, and we do not disclose estimated revenue expected to be recognized in the future for performance obligations that are unsatisfied (or partially unsatisfied) at the end of the reporting period or when we expect to recognize such revenue.

Contract liabilities primarily consist of customer deposits. We recognize contract liabilities (customer deposits) as revenue at the time of delivery or acceptance by the customers. Total contract liabilities of approximately \$24.3 million recorded as of September 30, 2019 were recognized in revenue during the fiscal year ended September 30, 2020. Contract assets, recorded in prepaid expenses and other current assets, totaled approximately \$2.5 million and \$2.6 million as of September 30, 2019 and September 30, 2020, respectively.

We recognize deferred revenue from service operations and slip and storage services over time on a straight-line basis over the term of the contract as our performance obligations are met. We recognize income from the rentals of chartering power and sailing yachts over time on a straight-line basis over the term of the contract as our performance obligations are met.

The following table sets forth percentages on the timing of revenue recognition for the fiscal years ended September 30,

|   | Fiscal Year Ended<br>September 30,<br>2019 | Fiscal Year Ended<br>September 30,<br>2020 |
|---|--|--|
| Goods and services transferred at a point in time | 90.8%                                      | 92.7%                                      |
| Goods and services transferred over time          | 9.2%                                       | 7.3%                                       |
| <b>Total Revenue</b>                              | <b>100.0%</b>                              | <b>100.0%</b>                              |

**MARINEMAX, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

The following table sets forth percentages of our revenue generated by certain products and services, for each of last three fiscal years.

|  | 2018   | 2019   | 2020   |
|--|--------|--------|--------|
| New boat sales                                     | 71.2%  | 70.1%  | 70.2%  |
| Used boat sales                                    | 14.8%  | 14.9%  | 15.1%  |
| Maintenance, repair, storage, and charter services | 6.2%   | 6.9%   | 6.4%   |
| Finance and insurance products                     | 2.4%   | 2.6%   | 2.7%   |
| Parts and accessories                              | 3.6%   | 3.6%   | 3.0%   |
| Brokerage sales                                    | 1.8%   | 1.9%   | 2.6%   |
| Total revenue                                      | 100.0% | 100.0% | 100.0% |

**Stock-Based Compensation**

We account for our stock-based compensation plans following the provisions of FASB Accounting Standards Codification 718, "Compensation — Stock Compensation" ("ASC 718"). In accordance with ASC 718, we use the Black-Scholes valuation model for valuing all stock-based compensation and shares purchased under our Employee Stock Purchase Plan. We measure compensation for restricted stock awards and restricted stock units at fair value on the grant date based on the number of shares expected to vest and the quoted market price of our common stock. We recognize compensation cost for all awards in operations, net of estimated forfeitures, on a straight-line basis over the requisite service period for each separately vesting portion of the award.

**Leases**

We lease numerous facilities relating to our operations. See Note 7 of the Notes to Consolidated Financial Statements for a discussion of our significant accounting policies related to leases.

**Foreign Currency Transactions**

For the Company's foreign subsidiaries that use a currency other than the U.S. dollar as their functional currency, the assets and liabilities are translated at exchange rates in effect at the balance sheet date, and revenues and expenses are translated at the weighted average exchange rate for the period. The effects of these translation adjustments are reported in accumulated other comprehensive income. Gains and losses arising from transactions denominated in a currency other than the functional currency of the entity involved are included in operating income. As of September 30, 2020, our accumulated other comprehensive income, net of tax, was \$0.8 million. As of September 30, 2019, our accumulated other comprehensive loss, net of tax, was \$0.7 million. The change in accumulated other comprehensive income was the result of foreign currency translation adjustments net of taxes. No amounts were reclassified out of accumulated other comprehensive income in fiscal 2020.

**Advertising and Promotional Cost**

We expense advertising and promotional costs as incurred and include them in selling, general and administrative expenses in the accompanying consolidated statements of operations. Pursuant to ASC 606, we net amounts received by us under our co-op assistance programs from our manufacturers against the related advertising expenses. Total advertising and promotional expenses approximated \$16.5 million, \$18.8 million and \$14.0 million, net of related co-op assistance of approximately \$653,000, \$807,000, and \$589,000, for the fiscal years ended September 30, 2018, 2019, and 2020, respectively.

**Income Taxes**

We account for income taxes in accordance with FASB Accounting Standards Codification 740, "Income Taxes" ("ASC 740"). Under ASC 740, we recognize deferred tax assets and liabilities for the future tax consequences attributable to temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis. We measure deferred tax assets and liabilities using enacted tax rates expected to apply to taxable income in the years in which we expect those temporary differences to be recovered or settled. We record valuation allowances to reduce our deferred tax assets to the amount expected to be realized by considering all available positive and negative evidence.



**MARINEMAX, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**Concentrations of Credit Risk**

Financial instruments, which potentially subject us to concentrations of credit risk, consist principally of cash and cash equivalents and accounts receivable. Concentrations of credit risk with respect to our cash and cash equivalents are limited primarily to amounts held with financial institutions. Concentrations of credit risk arising from our receivables are limited primarily to amounts due from manufacturers and financial institutions.

**Fair Value of Financial Instruments**

Our financial instruments include cash and cash equivalents, accounts receivable, accounts payable, other payables and accrued expenses and debt. The carrying values of cash and cash equivalents, accounts receivable, accounts payable, other payables and accrued expenses approximate their fair values due to their short-term nature. The carrying value of debt approximates its fair value due to the debt agreements bearing interest at rates that approximate current market rates for debt agreements with similar maturities and credit quality.

**Use of Estimates and Assumptions**

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting periods. Significant estimates made by us in the accompanying consolidated financial statements relate to valuation allowances, valuation of goodwill and intangible assets, valuation of long-lived assets, valuation of contingent consideration, and valuation of accruals. Actual results could differ materially from those estimates.

**Segment Reporting**

We operate as one reporting segment in accordance with the FASB Accounting Standards Codification 280, "Segment Reporting". The metrics used by our Chief Executive Officer (as the Company's chief operating decision maker or the "CODM") to assess the performance of the Company are focused on viewing the business as a single integrated business.

**3. NEW ACCOUNTING PRONOUNCEMENTS:**

**Revenue Recognition**

In May 2014, the FASB issued Accounting Standards Update No. 2014-09, "Revenue from Contracts with Customers (Topic 606)" ("ASU 2014-09"), a converged standard on revenue recognition. The new pronouncement requires revenue recognition to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. The guidance also specifies the accounting for some costs to obtain or fulfill a contract with a customer, as well as enhanced disclosure requirements. The FASB also subsequently issued several amendments to the standard, including clarification on principal versus agent guidance, identifying performance obligations, and immaterial goods and services in a contract.

The new accounting standard update must be applied using either of the following transition methods: (i) a full retrospective approach reflecting the application of the standard in each prior reporting period with the option to elect certain practical expedients, or (ii) a modified retrospective approach with the cumulative effect of initially adopting the standard recognized at the date of adoption (which requires additional footnote disclosures).

The new accounting standard is effective for reporting periods beginning after December 15, 2017. We adopted the accounting standard effective October 1, 2018, using the modified retrospective approach applied only to contracts not completed as of the date of adoption, with no restatement of comparative periods. Therefore, the comparative information has not been adjusted and continues to be reported under ASC Topic 605. We recognized a net after-tax cumulative effect adjustment to retained earnings of \$399,000 as of the date of adoption. The details and quantitative impacts of the significant changes are described below.

We previously recognized revenue for parts and service operations (boat maintenance and repairs) when the services were completed and recorded amounts due to us as receivables. Under ASC Topic 606, performance obligations associated with parts and service operations are satisfied over time, which results in the acceleration of revenue recognition, and amounts due to us are reflected as a contract asset until the right to such consideration becomes unconditional, at which time amounts due to us are reclassified to receivables.

MARINEMAX, INC. AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

| Consolidated Balance Sheet Line Items     |             |  |                                   |  |
|---|-------------|--|-----------------------------------|--|
|   | As Reported | Impact of changes in accounting policies   |                                   |  |
|   |             | Balances without adoption of ASC Topic 606 | Impact of adoption Higher/(Lower) |  |
| <b>September 30, 2019</b>                 |             |  |                                   |  |
| Inventories, net                          | \$ 477,468  | \$ 477,405                                 | \$ 63                             |  |
| Prepaid expenses and other current assets | 10,206      | 7,681                                      | 2,525                             |  |
| Accounts payable                          | 33,674      | 33,708                                     | (34)                              |  |
| Accrued expenses                          | 42,849      | 40,669                                     | 2,180                             |  |
| Deferred tax liabilities                  | 1,142       | 1,005                                      | 137                               |  |
| Retained earnings                         | \$ 202,455  | \$ 202,150                                 | \$ 305                            |  |

| Consolidated Statements of Operations Line Items |              |  |                                   |  |
|--|--------------|--|-----------------------------------|--|
|  | As Reported  | Impact of changes in accounting policies   |                                   |  |
|  |              | Balances without adoption of ASC Topic 606 | Impact of adoption Higher/(Lower) |  |
| <b>Fiscal Year Ended September 30, 2019</b>      |              |  |                                   |  |
| Revenue  | \$ 1,237,153 | \$ 1,237,899                               | \$ (746)                          |  |
| Cost of sales                                    | 914,321      | 914,939                                    | (618)                             |  |
| Income from operations                           | 60,532       | 60,660                                     | (128)                             |  |
| Income before income tax provision               | 48,953       | 49,081                                     | (128)                             |  |
| Income tax provision                             | 12,968       | 13,002                                     | (34)                              |  |
| Net Income                                       | \$ 35,985    | \$ 36,079                                  | \$ (94)                           |  |

| Consolidated Statements of Cash flows            |             |  |                                   |  |
|--|-------------|--|-----------------------------------|--|
|  | As Reported | Impact of changes in accounting policies   |                                   |  |
|  |             | Balances without adoption of ASC Topic 606 | Impact of adoption Higher/(Lower) |  |
| <b>Fiscal Year Ended September 30, 2019</b>      |             |  |                                   |  |
| Net income                                       | \$ 35,985   | \$ 36,079                                  | \$ (94)                           |  |
| (Increase) decrease in —                         |             |  |                                   |  |
| Inventories, net                                 | (84,330)    | (83,712)                                   | (618)                             |  |
| Prepaid expenses and other assets                | (3,182)     | (1,748)                                    | (1,434)                           |  |
| Increase (decrease) in —                         |             |  |                                   |  |
| Accounts payable                                 | 8,701       | 8,735                                      | (34)                              |  |
| Accrued expenses and other long-term liabilities | \$ 4,731    | \$ 2,551                                   | \$ 2,180                          |  |

**Accounting for Leases**

In February 2016, the FASB issued ASU 2016-02, "Leases (Topic 842)" ("ASU 2016-02"). This update requires organizations to recognize lease assets and lease liabilities on the balance sheet and also disclose key information about leasing arrangements. ASU 2016-02 was effective for annual reporting periods beginning on or after December 15, 2018, and interim periods within those annual periods. Earlier application was permitted for all entities as of the beginning of an interim or annual period. Subsequent amendments to the standard provide an additional and optional transition method that allows entities to initially apply the new standard at the adoption date and recognize a cumulative effect adjustment to the opening balance of retained earnings in the period of adoption. An entity's reporting for the comparative periods presented in the financial statements in which it adopts the new leases standard will continue to be in accordance with current GAAP (ASC Topic 840) if the optional transition method is elected.

**MARINEMAX, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

We adopted ASU 2016-02 effective October 1, 2019 the first day of fiscal 2020. We elected the package of practical expedients available under the transition guidance within the new standard, which among other things, allowed us to carry forward the historical lease classification of our existing leases. Consequently, on adoption, we recognized additional operating lease liabilities of \$44.0 million and right-of-use (“ROU”) assets of \$42.1 million. The new standard also provides practical expedients for an entity’s ongoing accounting. We elected the short-term lease recognition exemption for all leases that qualify. As a result, for those leases that qualify, we will not recognize ROU assets or lease liabilities, and we did not recognize ROU assets or lease liabilities for existing short-term leases of those assets in transition. We also elected the practical expedient to not separate lease and non-lease components. We recognized a net after-tax cumulative effect adjustment to retained earnings of \$0.6 million as of the date of adoption. See Note 7 for additional information on our leases.

**Other New Pronouncements**

In August 2018, the FASB issued ASU 2018-15, Customer’s Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That is a Service Contract, which aligns the accounting for implementation costs incurred in a cloud computing arrangement that is a service contract with the guidance on capitalizing costs associated with developing or obtaining internal-use software. The guidance amends Accounting Standards Codification (ASC) 350 to include in its scope implementation costs of a cloud computing arrangement that is a service contract and clarifies that a customer should apply ASC 350 to determine which implementation costs should be capitalized in such a cloud computing arrangement. This guidance is effective for fiscal years and interim periods within those fiscal years beginning after December 15, 2019. We are currently evaluating the impact that this standard will have on our consolidated financial statements.

In June 2016, the FASB issued ASU 2016-13, Financial Instruments — Credit Losses. ASU 2016-13 requires entities to report “expected” credit losses on financial instruments and other commitments to extend credit rather than the current “incurred loss” model. These expected credit losses for financial assets held at the reporting date are to be based on historical experience, current conditions, and reasonable and supportable forecasts. This ASU will also require enhanced disclosures relating to significant estimates and judgments used in estimating credit losses, as well as the credit quality. This guidance is effective for fiscal years and interim periods within those fiscal years beginning after December 15, 2019. We are currently evaluating the impact that this standard will have on our consolidated financial statements.

**4. ACCOUNTS RECEIVABLE:**

Trade receivables consist primarily of receivables from financial institutions, which provide funding for customer boat financing and amounts due from financial institutions earned from arranging financing with our customers. We normally collect these receivables within 30 days of the sale. Trade receivables also include amounts due from customers on the sale of boats, parts, service, and storage. Amounts due from manufacturers represent receivables for various manufacturer programs and parts and service work performed pursuant to the manufacturers’ warranties.

The allowance for uncollectible receivables, which was not material to the consolidated financial statements as of September 30, 2019 or 2020, was based on our consideration of customer payment practices, past transaction history with customers, and economic conditions. When an account becomes uncollectable, we expense it as a bad debt and we credit payments subsequently received to the bad debt expense account. We review the allowance for uncollectible receivables when an event or other change in circumstances results in a change in the estimate of the ultimate collectability of a specific account.

Accounts receivable, net consisted of the following as of September 30,

|                                | 2019                   | 2020             |
|--------------------------------|------------------------|------------------|
|                                | (Amounts in thousands) |                  |
| Trade receivables, net         | \$ 29,750              | \$ 31,289        |
| Amounts due from manufacturers | 11,245                 | 7,575            |
| Other receivables              | 1,403                  | 1,331            |
|                                | <u>\$ 42,398</u>       | <u>\$ 40,195</u> |

**MARINEMAX, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**5. INVENTORIES:**

Inventories, net, consisted of the following as of September 30,

|                                  | 2019                   | 2020              |
|----------------------------------|------------------------|-------------------|
|                                  | (Amounts in thousands) |                   |
| New boats, motors, and trailers  | \$ 413,335             | \$ 252,605        |
| Used boats, motors, and trailers | 56,363                 | 36,686            |
| Parts, accessories, and other    | 7,770                  | 8,711             |
|                                  | <u>\$ 477,468</u>      | <u>\$ 298,002</u> |

**6. PROPERTY AND EQUIPMENT:**

Property and equipment consisted of the following as of September 30,

|   | 2019                   | 2020              |
|---|------------------------|-------------------|
|   | (Amounts in thousands) |                   |
| Land                                      | \$ 56,549              | \$ 55,549         |
| Buildings and improvements                | 112,892                | 115,394           |
| Machinery and equipment                   | 36,368                 | 39,416            |
| Furniture and fixtures                    | 4,995                  | 5,233             |
| Vehicles                                  | 11,292                 | 12,612            |
|   | <u>222,096</u>         | <u>228,204</u>    |
| Accumulated depreciation and amortization | (77,798)               | (86,270)          |
|   | <u>\$ 144,298</u>      | <u>\$ 141,934</u> |

Depreciation and amortization expense on property and equipment totaled approximately \$10.7 million, \$11.6 million, and \$12.8 million for the fiscal years ended September 30, 2018, 2019, and 2020, respectively.

**7. LEASES:**

The majority of leases that we enter into are real estate leases. We lease numerous facilities relating to our operations, including showrooms, display lots, service facilities, slips, offices, equipment and our corporate headquarters. Leases for real property have terms, including renewal options, ranging from one to in excess of twenty-five years. In addition, we lease certain charter boats for our yacht charter business. As of September 30, 2020, the weighted-average remaining lease term for our leases was approximately 10 years. All of our leases are classified as operating leases, which are included as ROU assets and operating lease liabilities in our consolidated balance sheet. For the fiscal years ended September 30, 2018, 2019, and 2020, operating lease expenses recorded in selling, general, and administrative expenses were approximately \$11.8 million, \$12.8 million, and \$13.9 million, of which approximately \$0.4 million, \$0.4 million, and \$0.5 million, related to variable lease expenses, respectively. Our lease agreements do not contain any material residual value guarantees or material restrictive covenants. We do not have any significant leases that have not yet commenced but that create significant rights and obligations for us. We have elected the practical expedient under ASC 842 to not separate lease and nonlease components for all asset classes.

Our real estate and equipment leases often require that we pay maintenance in addition to rent. Additionally, our real estate leases generally require payment of real estate taxes and insurance. Maintenance, real estate taxes, and insurance payments are generally variable and based on actual costs incurred by the lessor. Therefore, these amounts are not included in the consideration of the contract when determining the ROU asset and lease liability, but are reflected as variable lease expenses.

A majority of our lease agreements include fixed rental payments. Certain of our lease agreements include fixed rental payments that are adjusted periodically by a fixed rate or changes in an index. The fixed payments, including the effects of changes in the fixed rate or amount, and renewal options reasonably certain to be exercised, are included in the measurement of the related lease liability. Most of our real estate leases include one or more options to renew, with renewal terms that can extend the lease term from one to five years or more. The exercise of lease renewal options is at our sole discretion. If it is reasonably certain that we will exercise such options, the periods covered by such options are included in the lease term and are recognized as part of our right of use assets and

**MARINEMAX, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

lease liabilities. The depreciable life of assets and leasehold improvements are limited by the expected lease term, which includes renewal options reasonably certain to be exercised.

For our incremental borrowing rate, we generally use a portfolio approach to determine the discount rate for leases with similar characteristics. We determine discount rates based upon our hypothetical credit rating, taking into consideration our short-term borrowing rates, and then adjusting as necessary for the appropriate lease term. As of September 30, 2020, the weighted-average discount rate used was approximately 7.3%.

As of September 30, 2020, maturities of lease liabilities are summarized as follows:

|                                    | (Amounts in thousands) |          |
|------------------------------------|------------------------|----------|
| 2021                               | \$                     | 9,433    |
| 2022                               |                        | 7,658    |
| 2023                               |                        | 6,654    |
| 2024                               |                        | 5,138    |
| 2025                               |                        | 3,590    |
| Thereafter                         |                        | 27,768   |
| Total lease payments               |                        | 60,241   |
| Less: interest                     |                        | (19,914) |
| Present value of lease liabilities | \$                     | 40,327   |

Under the previous lease accounting prior to the adoption of ASC 842, future minimum annual rental commitments for operating leases as of September 30, 2019 were as follows:

|            | (Amounts in thousands) |        |
|------------|------------------------|--------|
| 2020       |                        | 9,480  |
| 2021       |                        | 8,148  |
| 2022       |                        | 6,906  |
| 2023       |                        | 6,329  |
| 2024       |                        | 5,003  |
| Thereafter |                        | 29,111 |
| Total      | \$                     | 64,977 |

Supplemental cash flow information related to leases was as follows (amounts in thousands):

|   | For the Year Ended<br>September 30,<br>2020 |        |
|---|---|--------|
| Cash paid for amounts included in the measurement of lease liabilities: |   |        |
| Operating cash flows from operating leases                              | \$  | 10,209 |
| Right-of-use assets obtained in exchange for lease obligations:         |   |        |
| Operating leases  | \$  | 3,811  |

The Company reports the amortization of ROU assets and the change in operating lease liabilities on a net basis in accrued expenses and other liabilities in the accompanying Consolidated Statements of Cash Flows.

**MARINEMAX, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**8. GOODWILL, INTANGIBLE ASSETS, AND OTHER LONG-TERM ASSETS:**

In total, current and previous acquisitions have resulted in the recording of \$64.1 million and \$84.3 million in goodwill and other intangible assets as of September 30, 2019 and 2020, respectively. Our previous acquisitions and fiscal 2020 acquisitions have not resulted in recording any significant identifiable intangible assets besides goodwill. See Note 2 of the Notes to Consolidated Financial Statements for more information about our annual impairment tests of goodwill and recent acquisitions. Other long-term assets as of September 30, 2019 and 2020 of \$7.1 million and \$7.8 million, respectively, are primarily long-term deposits and other long-term investments.

**9. SHORT-TERM BORROWINGS AND LONG-TERM DEBT:**

*Short-term Borrowings*

In May 2020, we entered into a Loan and Security Agreement (the "Credit Facility"), with Wells Fargo Commercial Distribution Finance LLC, M&T Bank, Bank of the West, and Truist Bank. The Credit Facility provides the Company a line of credit with asset based borrowing availability of up to \$440 million for working capital and inventory financing, with the amount permissible pursuant to a borrowing base formula. The Credit Facility has a three-year term and expires in May 2023, subject to extension for two one-year periods, with lender approval.

The Credit Facility has certain financial covenants as specified in the agreement. The covenants include provisions that our leverage ratio must not exceed 2.75 to 1.0 and that our current ratio must be greater than 1.2 to 1.0. The interest rate for amounts outstanding under the Credit Facility is 345 basis points plus the greater of 75 basis points or the one-month LIBOR. There is an unused line fee of ten basis points on the unused portion of the Credit Facility.

New inventory borrowing eligibility will generally mature 1,080 days from the original invoice date. Used inventory borrowing eligibility will generally mature 361 days from the date we acquire the used inventory. The collateral for the Credit Facility is all of our personal property with certain limited exceptions. None of our real estate has been pledged for collateral for the Credit Facility.

As of September 30, 2020, our indebtedness associated with financing our inventory and working capital needs totaled approximately \$144.4 million. As of September 30, 2019 and 2020, the interest rate on the outstanding short-term borrowings was approximately 5.6% and 4.2%, respectively. As of September 30, 2020, our additional available borrowings under our Credit Facility were approximately \$82.0 million based upon the outstanding borrowing base availability.

As is common in our industry, we receive interest assistance directly from boat manufacturers, including Brunswick. The interest assistance programs vary by manufacturer, but generally include periods of free financing or reduced interest rate programs. The interest assistance may be paid directly to us or our lender depending on the arrangements the manufacturer has established. We classify interest assistance received from manufacturers as a reduction of inventory cost and related cost of sales as opposed to netting the assistance against our interest expense incurred with our lenders.

The availability and costs of borrowed funds can adversely affect our ability to obtain adequate boat inventory and the holding costs of that inventory as well as the ability and willingness of our customers to finance boat purchases. However, we rely on our Credit Facility to purchase our inventory of boats. The aging of our inventory limits our borrowing capacity as defined curtailments reduce the allowable advance rate as our inventory ages. Our access to funds under our Credit Facility also depends upon the ability of our lenders to meet their funding commitments, particularly if they experience shortages of capital or experience excessive volumes of borrowing requests from others during a short period of time. Unfavorable economic conditions, weak consumer spending, turmoil in the credit markets, and lender difficulties, among other potential reasons, could interfere with our ability to utilize our Credit Facility to fund our operations. Any inability to utilize our Credit Facility could require us to seek other sources of funding to repay amounts outstanding under the credit agreements or replace or supplement our credit agreements, which may not be possible at all or under commercially reasonable terms.

Similarly, decreases in the availability of credit and increases in the cost of credit adversely affect the ability of our customers to purchase boats from us and thereby adversely affect our ability to sell our products and impact the profitability of our finance and insurance activities.

**MARINEMAX, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

*Long-term Debt*

As of September 30, 2020 we had approximately \$7.4 million under a mortgage facility secured by one of our retail locations. The interest rate for amounts outstanding under the mortgage facility is prime minus 100 basis points with a floor of 2.00%. As of September 30, 2020, the interest rate on amounts outstanding was 2.25%. The mortgage facility requires monthly principal and interest payments with a balloon payment of approximately \$4.0 million due August 2027. Prepayment of the mortgage facility may be made in whole or in part at any time without premium or penalty. The current portion of long-term debt of approximately \$507,000 was recorded in accrued expenses as of September 30, 2020.

**10. INCOME TAXES:**

Earnings before income taxes consisted of the following components for the fiscal years ended September 30,

|                              | 2018                   | 2019             | 2020             |
|------------------------------|------------------------|------------------|------------------|
|                              | (Amounts in thousands) |                  |                  |
| Earnings before income taxes |                        |                  |                  |
| United States                | \$ 53,280              | \$ 46,986        | \$ 94,854        |
| Other                        | —                      | 1,967            | 2,586            |
| Total                        | <u>\$ 53,280</u>       | <u>\$ 48,953</u> | <u>\$ 97,440</u> |

The components of our provision from income taxes consisted of the following for the fiscal years ended September 30,

|                            | 2018                   | 2019             | 2020             |
|----------------------------|------------------------|------------------|------------------|
|                            | (Amounts in thousands) |                  |                  |
| Current provision:         |                        |                  |                  |
| Federal                    | \$ 8,055               | \$ 7,933         | \$ 17,654        |
| Foreign                    | —                      | 516              | 654              |
| State                      | 195                    | 135              | 1,365            |
| Total current provision    | <u>\$ 8,250</u>        | <u>\$ 8,584</u>  | <u>\$ 19,673</u> |
| Deferred provision:        |                        |                  |                  |
| Federal                    | 4,205                  | 2,285            | 2,262            |
| Foreign                    | —                      | —                | —                |
| State                      | 1,513                  | 2,099            | 871              |
| Total deferred provision   | <u>5,718</u>           | <u>4,384</u>     | <u>3,133</u>     |
| Total income tax provision | <u>\$ 13,968</u>       | <u>\$ 12,968</u> | <u>\$ 22,806</u> |

On December 22, 2017, the Tax Act was enacted which, among a number of its provisions, lowered the U.S. corporate tax rate from 35% to 21%, effective January 1, 2018. The Company's blended statutory tax rate for fiscal year 2018 was approximately 24.5% as a result of the change in statutory rates. For fiscal year 2018, we recorded a non-cash adjustment to income tax expense of \$805,000 for the remeasurement of deferred taxes on the enactment date.

**MARINEMAX, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

Below is a reconciliation of the statutory federal income tax rate to our effective tax rate for the fiscal years ended September 30,

|                                    | 2018         | 2019         | 2020         |
|------------------------------------|--------------|--------------|--------------|
| Federal tax provision              | 24.5%        | 21.0%        | 21.0%        |
| State taxes, net of federal effect | 4.1%         | 4.1%         | 3.1%         |
| Stock based compensation           | (2.0)%       | —            | (0.5)%       |
| Valuation allowance                | (0.3)%       | (0.1)%       | (0.2)%       |
| Foreign rate differential          | —            | 0.2%         | 0.1%         |
| Effect of Federal Tax Reform       | 1.5%         | —            | —            |
| Other                              | (1.6)%       | 1.3%         | (0.1)%       |
| Effective tax rate                 | <u>26.2%</u> | <u>26.5%</u> | <u>23.4%</u> |

Deferred income taxes reflect the impact of temporary differences between the amount of assets and liabilities recognized for financial reporting purposes and such amounts recognized for income tax purposes. The tax effects of these temporary differences representing the components of deferred tax assets as of September 30,

|  | 2019                   | 2020               |
|--|------------------------|--------------------|
|  | (Amounts in thousands) |                    |
| Deferred tax assets:                     |                        |                    |
| Inventories                              | \$ 774                 | \$ 808             |
| Operating lease right-of-use assets      | -                      | 9,926              |
| Accrued expenses                         | 492                    | 640                |
| Stock based compensation                 | 2,388                  | 2,170              |
| Tax loss carryforwards                   | 2,316                  | 810                |
| Other                                    | 562                    | 268                |
| Valuation allowance                      | (164)                  | -                  |
| Total long-term deferred tax assets      | <u>6,368</u>           | <u>14,622</u>      |
| Deferred tax liabilities:                |                        |                    |
| Depreciation and amortization            | (7,510)                | (9,095)            |
| Operating lease liabilities              | -                      | (10,036)           |
| Total long-term deferred tax liabilities | <u>\$ (7,510)</u>      | <u>\$ (19,131)</u> |
| Net deferred tax liabilities             | <u>\$ (1,142)</u>      | <u>\$ (4,509)</u>  |

Pursuant to ASC 740, we must consider all positive and negative evidence regarding the realization of deferred tax assets. ASC 740 provides four possible sources of taxable income to realize deferred tax assets: 1) taxable income in prior carryback years, 2) reversals of existing deferred tax liabilities, 3) tax planning strategies and 4) projected future taxable income. As of September 30, 2020, we have no available taxable income in prior carryback years, limited reversals of existing deferred tax liabilities or prudent and feasible tax planning strategies. Therefore, the recoverability of our deferred tax assets is dependent upon generating future taxable income.

The Company included a \$164,000 reversal of its outstanding valuation allowance due to the likelihood that the Company would use these deferred tax assets prior to the statute of limitations. The valuation allowance related to net operating loss (NOL) carryforwards in jurisdictions where the Company has expanded operations.

As of September 30, 2017, we no longer had federal NOL carryforwards for federal income tax purposes. As of September 30, 2020, the Company has state NOL carryforwards of approximately \$15.4 million for state income tax purposes, which resulted in a deferred tax asset of \$0.8 million, and expire at various dates from 2029 through 2032.

Significant judgment is required in evaluating our uncertain tax positions. Although we believe our tax return positions are sustainable, we recognize tax benefits from uncertain tax positions in the financial statements only when it is more likely than not that the positions will not be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits and a consideration of the relevant taxing authority's administrative practices and precedents. To the extent that the final tax outcome of these matters is different than the amounts recorded, such differences will impact the provision for income taxes



**MARINEMAX, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

in the period in which such determination is made. The provision for income taxes includes the impact of reserve provisions and changes to reserves that are considered appropriate, as well as the related net interest and penalties.

We are subject to tax by both federal and state taxing authorities. Until the respective statutes of limitations expire, we are subject to income tax audits in the jurisdictions in which we operate. We are no longer subject to U.S. federal tax assessments for fiscal years prior to 2015, we are not subject to assessments prior to the 2014 fiscal year for the majority of the State jurisdictions and we are not subject to assessments prior to the 2014 calendar year for the majority of the foreign jurisdictions.

**11. SHAREHOLDERS' EQUITY:**

In March 2020, our Board of Directors approved a new share repurchase plan allowing the Company to repurchase up to 10 million shares of our common stock through March 2022. Under the plan, we may buy back common stock from time to time in the open market or in privately negotiated blocks, dependent upon various factors, including price and availability of the shares, and general market conditions. Through September 30, 2020 we had purchased an aggregate of 6,267,021 shares of common stock under the current and historical share repurchase plans for an aggregate purchase price of approximately \$103.6 million. As of September 30, 2020, approximately 9.9 million shares remained available for future purchases under the share repurchase program.

**12. STOCK-BASED COMPENSATION:**

We account for our stock-based compensation plans following the provisions of FASB Accounting Standards Codification 718, "Compensation — Stock Compensation" ("ASC 718"). In accordance with ASC 718, we use the Black-Scholes valuation model for valuing all stock-based compensation and shares purchased under our Employee Stock Purchase Plan. We measure compensation for restricted stock awards and restricted stock units at fair value on the grant date based on the number of shares expected to vest and the quoted market price of our common stock. We recognize compensation cost for all awards in operations on a straight-line basis over the requisite service period for each separately vesting portion of the award.

Cash received from option exercises under all share-based compensation arrangements for the fiscal years ended September 30, 2018, 2019 and 2020 was approximately \$7.7 million, \$2.4 million, and \$4.6 million, respectively. We currently expect to satisfy share-based awards with registered shares available to be issued.

**13. THE INCENTIVE STOCK PLANS:**

During February 2020, our shareholders approved a proposal to amend the 2011 Stock-Based Compensation Plan ("2011 Plan") to increase the 3,200,456 share threshold by 1,000,000 shares to 4,200,456 shares. During January 2011, our shareholders approved a proposal to authorize our 2011 Plan, which replaced our 2007 Incentive Compensation Plan ("2007 Plan"). Our 2011 Plan provides for the grant of stock options, stock appreciation rights, restricted stock, stock units, bonus stock, dividend equivalents, other stock related awards, and performance awards (collectively "awards"), that may be settled in cash, stock, or other property. Our 2011 Plan is designed to attract, motivate, retain, and reward our executives, employees, officers, directors, and independent contractors by providing such persons with annual and long-term performance incentives to expend their maximum efforts in the creation of shareholder value. Subsequent to the February 2020 amendment described above, the total number of shares of our common stock that may be subject to awards under the 2011 Plan is equal to 4,000,000 shares, plus: (i) any shares available for issuance and not subject to an award under the 2007 Plan, which was 200,456 shares at the time of approval of the 2011 Plan; (ii) the number of shares with respect to which awards granted under the 2011 Plan and the 2007 Plan terminate without the issuance of the shares or where the shares are forfeited or repurchased; (iii) with respect to awards granted under the 2011 Plan and the 2007 Plan, the number of shares that are not issued as a result of the award being settled for cash or otherwise not issued in connection with the exercise or payment of the award; and (iv) the number of shares that are surrendered or withheld in payment of the exercise price of any award or any tax withholding requirements in connection with any award granted under the 2011 Plan or the 2007 Plan. The 2011 Plan terminates in January 2021, and awards may be granted at any time during the life of the 2011 Plan. The dates on which awards vest are determined by the Board of Directors or the Plan Administrator. The Board of Directors has appointed the Compensation Committee as the Plan Administrator. The exercise prices of options are determined by the Board of Directors or the Plan Administrator and are at least equal to the fair market value of shares of common stock on the date of grant. The term of options under the 2011 Plan may not exceed ten years. The options granted have varying vesting periods. To date, we have not settled or been under any obligation to settle any awards in cash.

**MARINEMAX, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

The following table summarizes option activity from September 30, 2019 through September 30, 2020:

|                                      | Shares<br>Available<br>for Grant | Options<br>Outstanding | Aggregate<br>Intrinsic<br>Value<br>(in thousands) | Weighted<br>Average<br>Exercise<br>Price | Weighted<br>Average<br>Remaining<br>Contractual<br>Life |
|--------------------------------------|----------------------------------|------------------------|---|--|---|
| Balance as of September 30, 2019     | 715,590                          | 484,031                | \$ 1,569  | \$ 12.42                                 | 3.7   |
| Shares authorized                    | 1,000,000                        | —                      | —   | —  | —   |
| Options granted                      | —                                | —                      | —   | —  | —   |
| Options cancelled/forfeited/expired  | —                                | —                      | —   | —  | —   |
| Options exercised                    | —                                | (287,702)              | —   | 12.63                                    | —   |
| Restricted stock awards granted      | (477,271)                        | —                      | —   | —  | —   |
| Restricted stock awards forfeited    | 49,188                           | —                      | —   | —  | —   |
| Additional shares of stock issued    | (12,092)                         | —                      | —   | —  | —   |
| Balance as of September 30, 2020     | <u>1,275,415</u>                 | <u>196,329</u>         | <u>\$ 2,636</u>                                   | <u>\$ 12.12</u>                          | <u>2.5</u>  |
| Exercisable as of September 30, 2020 |                                  | <u>196,239</u>         | <u>\$ 2,636</u>                                   | <u>\$ 12.12</u>                          | <u>2.5</u>  |

The weighted-average grant date fair value of options granted during the fiscal year ended September 30, 2018 was \$8.42. No options were granted during the fiscal years ended September 30, 2019 and September 30, 2020. The total intrinsic value of options exercised during the fiscal years ended September 30, 2018, 2019 and 2020 was approximately \$6.3 million, \$1.4 million, and \$3.8 million, respectively. The total fair value of options vested during the fiscal year ended September 30, 2018, was approximately \$1.3 million.

We used the Black-Scholes model to estimate the fair value of options granted. The expected term of options granted is estimated based on historical experience. Volatility is based on the historical volatility of our common stock. The risk-free rate for periods within the contractual term of the options is based on the U.S. Treasury yield curve in effect at the time of grant.

Below are the weighted-average assumptions used for the fiscal year ended September 30, 2018. No options were granted for the fiscal years ended September 30, 2019 or September 30, 2020.

|                         | 2018      | 2019 | 2020 |
|-------------------------|-----------|------|------|
| Dividend yield          | 0.0%      | —    | —    |
| Risk-free interest rate | 2.7%      | —    | —    |
| Volatility              | 45.4%     | —    | —    |
| Expected life           | 5.0 years | —    | —    |

**14. EMPLOYEE STOCK PURCHASE PLAN:**

During February 2019, our shareholders approved a proposal to amend our Amended 2008 Employee Stock Purchase Plan (“Stock Purchase Plan”) to increase the number of shares available under that plan by 500,000 shares. The Stock Purchase Plan as amended provides for up to 1,500,000 shares of common stock to be available for purchase by our regular employees who have completed at least one year of continuous service. In addition, there were 52,837 shares of common stock available under our 1998 Employee Stock Purchase Plan, which have been made available for issuance under our Stock Purchase Plan. The Stock Purchase Plan provides for implementation of annual offerings beginning on the first day of October in each of the years 2008 through 2027, with each offering terminating on September 30 of the following year. Each annual offering may be divided into two six-month offerings. For each offering, the purchase price per share will be the lower of: (i) 85% of the closing price of the common stock on the first day of the offering or (ii) 85% of the closing price of the common stock on the last day of the offering. The purchase price is paid through periodic payroll deductions not to exceed 10% of the participant’s earnings during each offering period. However, no participant may purchase more than \$25,000 worth of common stock annually.

We used the Black-Scholes model to estimate the fair value of options granted to purchase shares issued pursuant to the Stock Purchase Plan. Volatility is based on the historical volatility of our common stock. The risk-free rate for periods within the contractual term of the options is based on the U.S. Treasury yield curve in effect at the time of grant.

**MARINEMAX, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

The following are the weighted-average assumptions used for the fiscal years ended September 30,

|                         | 2018       | 2019       | 2020       |
|-------------------------|------------|------------|------------|
| Dividend yield          | 0.0%       | 0.0%       | 0.0%       |
| Risk-free interest rate | 1.5%       | 2.4%       | 0.8%       |
| Volatility              | 49.9%      | 48.3%      | 69.7%      |
| Expected life           | Six months | Six months | Six months |

As of September 30, 2020, we had issued 1,017,563 shares of common stock under our Stock Purchase Plan.

**15. RESTRICTED STOCK AWARDS:**

We have granted non-vested (restricted) stock awards ("restricted stock") and restricted stock units ("RSUs") to employees, Directors, and Officers pursuant to the 2011 Plan and the 2007 Plan. The restricted stock awards and RSUs have varying vesting periods, but generally become fully vested between two and four years after the grant date, depending on the specific award, performance targets met for performance based awards granted to Officers, and vesting period for time based awards. Officer performance based awards are granted at the target amount of shares that may be earned and the actual amount of the award earned generally could range from 0% to 175% of the target number of shares based on the actual specified performance target met. We accounted for the restricted stock awards granted using the measurement and recognition provisions of ASC 718. Accordingly, the fair value of the restricted stock awards, including performance based awards, is measured on the grant date and recognized in earnings over the requisite service period for each separately vesting portion of the award.

The following table summarizes restricted stock award activity from September 30, 2019 through September 30, 2020:

|   | Shares/<br>Units | Weighted<br>Average<br>Grant Date<br>Fair Value |
|---|------------------|---|
| Non-vested balance as of September 30, 2019 | 779,627          | \$ 18.71  |
| Changes during the period                   |                  |   |
| Awards granted                              | 477,271          | \$ 17.07  |
| Awards vested                               | (305,079)        | \$ 17.78  |
| Awards forfeited                            | (49,188)         | \$ 20.08  |
| Non-vested balance as of September 30, 2020 | 902,631          | \$ 18.08  |

As of September 30, 2020, we had approximately \$8.1 million of total unrecognized compensation cost related to non-vested restricted stock awards. We expect to recognize that cost over a weighted-average period of 2.1 years.

**16. NET INCOME PER SHARE:**

The following is a reconciliation of the shares used in the denominator for calculating basic and diluted net income per share for the fiscal years ended September 30,

|   | 2018       | 2019       | 2020       |
|---|------------|------------|------------|
| Weighted average common shares outstanding used in calculating basic income per share             | 22,269,378 | 22,294,114 | 21,547,665 |
| Effect of dilutive options and non-vested restricted stock awards                                 | 761,284    | 587,033    | 577,673    |
| Weighted average common and common equivalent shares used in calculating diluted income per share | 23,030,662 | 22,881,147 | 22,125,338 |

**MARINEMAX, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

During the fiscal years ended September 30, 2018, 2019, and 2020 there were 1,288, 10,988, and 9,650 weighted average shares of options outstanding, respectively, that were not included in the computation of diluted income per share because the options' exercise prices were greater than the average market price of our common stock, and therefore, their effect would be anti-dilutive.

**17. COMMITMENTS AND CONTINGENCIES:**

We are party to various legal actions arising in the ordinary course of business. We believe that these matters should not have a material adverse effect on our consolidated financial condition, results of operations or cash flows.

During the fiscal years ended September 30, 2018, 2019, and 2020, we incurred costs associated with store closings and lease terminations of approximately \$0, \$3.1 million, and \$1.7 million, respectively. The store closing costs have been included in selling, general, and administrative expenses in the consolidated statements of operations during the fiscal years ended September 30, 2018, 2019, and 2020.

In connection with certain of our workers' compensation insurance policies, we maintain standby letters of credit for our insurance carriers in the amount of \$1.1 million relating primarily to retained risk on our workers compensation claims.

We are subject to federal and state environmental regulations, including rules relating to air and water pollution and the storage and disposal of gasoline, oil, other chemicals and waste. We believe that we are in compliance with such regulations.

**18. EMPLOYEE 401(k) PROFIT SHARING PLANS:**

Employees are eligible to participate in our 401(k) Profit Sharing Plan (the "Plan") following their 90-day introductory period starting either April 1 or October 1, provided that they are 21 years of age. Under the Plan, we matched 50% of participants' contributions, up to a maximum of 5% of each participant's compensation. We contributed, under the Plan, or pursuant to previous similar plans, approximately \$1.9 million, \$2.3 million, and \$2.7 million for the fiscal years ended September 30, 2018, 2019 and 2020, respectively.

**19. SUBSEQUENT EVENTS:**

On October 1, 2020, under the Equity Purchase Agreement, dated October 1, 2020, by and among (a) Skipper Marine Holdings, Inc., SSY Holdings, Inc., Michael J. Pretasky, Sr., Michael John Pretasky, Jr. 2014 Trust, Mark Ellerbrock and Robert Ross Tefft, Jr. (collectively the "Skippers Sellers") and (b) Michael J. Pretasky, Jr., as the representative of the Skippers Sellers, the Company acquired all of the outstanding equity of Skipper Marine Corp., Skipper Marine of Madison, Inc., Skipper Marine of Fox Valley, Inc., Skipper Bud's of Illinois, Inc., Skipper Marine of Chicago-Land, Inc., Skipper Marine of Michigan, Inc., and Skipper Marine of Ohio, LLC, (collectively, the "Skippers Companies") for an aggregate purchase price of \$55,000,000, subject to certain customary closing and post-closing adjustments including certain holdbacks. The Skippers Sellers have the opportunity to earn additional consideration as part of an earnout subject to the achievement of certain pre-tax earnings levels. The Skippers Sellers will be subject to certain customary post-closing covenants and indemnities.

Through the transaction, the Company added 20 locations in Wisconsin, Michigan, Illinois, Ohio, California, Washington and Florida, including 11 marina and storage facilities, expanding the Company's marina portfolio, and adding to its overall geographic reach in the Great Lakes and the West Coast. The Company is retaining the management of the Skippers Companies.

On October 30, 2020, we and the Sea Ray and Boston Whaler Divisions of Brunswick Corporation (each separately "Builder") each entered into a new Sales and Service Agreement relating to the Builder's products effective September 1, 2021 and extending through August 31, 2024, under certain conditions, with automatic renewal for successive three-year extensions, unless the agreements are terminated earlier or either party gives the other written notice not less than 6 months prior to the end of the then current term of the agreement that the agreement will not renew at the end of such term. See our [Form 8-K filed on November 5, 2020](#) for a further summary of the agreements.

**MARINEMAX, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**20. QUARTERLY FINANCIAL DATA (UNAUDITED):**

The following table sets forth certain unaudited quarterly financial data for each of our last eight quarters. The information has been derived from unaudited financial statements that we believe reflect all adjustments, consisting only of normal recurring adjustments, necessary for the fair presentation of such quarterly financial information.

|  | December 31,<br>2018 | March 31,<br>2019 | June 30,<br>2019  | September 30,<br>2019 | December 31,<br>2019 | March 31,<br>2020 | June 30,<br>2020  | September 30,<br>2020 |
|--|----------------------|-------------------|-------------------|-----------------------|----------------------|-------------------|-------------------|-----------------------|
| Revenue  | \$ 241,937           | \$ 303,586        | \$ 383,494        | \$ 308,136            | \$ 304,172           | \$ 308,475        | \$ 498,304        | \$ 398,762            |
| Cost of sales                                      | 178,459              | 229,384           | 285,784           | 220,694               | 224,154              | 229,699           | 374,851           | 282,296               |
| Gross profit                                       | 63,478               | 74,202            | 97,710            | 87,442                | 80,018               | 78,776            | 123,453           | 116,466               |
| Selling, general<br>and administrative<br>expenses | 54,492               | 63,976            | 68,968            | 74,864                | 64,386               | 69,060            | 74,838            | 83,714                |
| Income from<br>operations                          | 8,986                | 10,226            | 28,742            | 12,578                | 15,632               | 9,716             | 48,615            | 32,752                |
| Interest expense                                   | 2,516                | 3,033             | 2,936             | 3,094                 | 3,344                | 3,013             | 2,133             | 785                   |
| Income before income<br>tax provision              | 6,470                | 7,193             | 25,806            | 9,484                 | 12,288               | 6,703             | 46,482            | 31,967                |
| Income tax<br>provision                            | 1,560                | 1,890             | 6,719             | 2,799                 | 3,229                | 1,638             | 11,555            | 6,384                 |
| Net income   | <u>\$ 4,910</u>      | <u>\$ 5,303</u>   | <u>\$ 19,087</u>  | <u>\$ 6,685</u>       | <u>\$ 9,059</u>      | <u>\$ 5,065</u>   | <u>\$ 34,927</u>  | <u>\$ 25,583</u>      |
| Net income<br>per share:                           |                      |                   |                   |                       |                      |                   |                   |                       |
| Diluted  | <u>\$ 0.21</u>       | <u>\$ 0.23</u>    | <u>\$ 0.84</u>    | <u>\$ 0.31</u>        | <u>\$ 0.41</u>       | <u>\$ 0.23</u>    | <u>\$ 1.58</u>    | <u>\$ 1.13</u>        |
| Weighted average<br>number of shares:              |                      |                   |                   |                       |                      |                   |                   |                       |
| Diluted  | <u>23,400,685</u>    | <u>23,417,688</u> | <u>22,821,202</u> | <u>21,896,257</u>     | <u>21,890,065</u>    | <u>21,960,285</u> | <u>22,045,900</u> | <u>22,604,060</u>     |

**DESCRIPTION OF THE COMPANY'S SECURITIES  
REGISTERED PURSUANT TO SECTION 12 OF THE  
SECURITIES EXCHANGE ACT OF 1934**

The following is a brief description of the common stock, par value \$0.001 per share (the "Common Stock") of MarineMax, Inc. (the "Company"), which is the only security of the Company registered pursuant to Section 12 of the Securities Exchange Act of 1934.

**Description of Common Stock**

The following description of the Common Stock, related provisions of the Company's Articles of Incorporation (the "Articles") and Bylaws (the "Bylaws") and applicable Florida law is qualified in its entirety by, and should be read in conjunction with, the Articles, the Bylaws, and applicable Florida law.

**Authorized Capital Stock**

The authorized capital stock of the Company consists of 40,000,000 shares of Common Stock and 1,000,000 shares of preferred stock, par value \$0.001 per share (the "Preferred Stock"). There are no shares of Preferred Stock currently outstanding.

**Common Stock**

***Fully Paid and Nonassessable***

All of the outstanding shares of the Company's Common Stock are fully paid and non-assessable.

***Voting Rights***

Holders of Common Stock are entitled to one vote per share on all matters to be voted upon by the shareholders. Holders of Common Stock are not entitled to cumulate votes for the election of directors.

***Dividends***

Subject to preferences that may be applicable to any outstanding Preferred Stock, the holders of Common Stock are entitled to receive such dividends, if any, as may be declared from time to time by the members of the board of directors of the Company (the "Board") out of funds legally available therefor.

***Right to Receive Distributions Upon Liquidation, Dissolution or Winding Up of the Company***

In the event of the liquidation, dissolution or winding up of the Company, the holders of Common Stock are entitled to share ratably in all assets remaining after payment of liabilities,

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subject to prior distribution rights of any Preferred Stock then outstanding.

***No Preemptive or Similar Rights***

The Common Stock has no preemptive or conversion rights or other subscription rights. There are no redemption or sinking fund provisions applicable to the Common Stock.

***Certain Anti-Takeover Effects***

General

Provisions of the Company's Articles and Bylaws are intended to enhance continuity and stability in our Board and in our policies, but may have the effect of delaying or preventing a change in control or making it more difficult to remove incumbent management, even if such transactions could be beneficial to the interests of shareholders. A summary description of these provisions follows:

Classified Board

Pursuant to the Company's Articles, the Company has a staggered Board. The Company's Articles provide that our Board is divided into three classes. The term of our Class II directors expires at our 2021 annual meeting of shareholders, the term of our Class III directors expires at our 2022 annual meeting of shareholders, and the term of our Class I directors expires at our 2023 annual meeting of shareholders. At each of our annual meetings of shareholders, the successors of the class of directors whose term expires at the meeting of shareholders will be elected for a three-year term, one class being elected each year by our shareholders. We believe that the three-year terms help to ensure the continuity and stability of our management and policies, which we believe are beneficial to shareholders.

Authority to Issue Preferred Stock

Our Board may issue, without shareholder approval, up to 1,000,000 shares of Preferred Stock, and fix the rights and preferences thereof, without a further vote of the shareholders, which may prevent a takeover. The purpose of authorizing the Board to issue preferred stock and determine its powers, rights, privileges and preferences is to eliminate delays associated with a shareholder vote on specific issuances. The issuance of preferred stock provides flexibility in connection with possible acquisitions and other corporate purposes.

Other Provisions of Our Articles and Bylaws

The Articles also provide that directors may only be removed for cause and upon the affirmative vote of 66 2/3% or more of the voting interest of shareholders entitled to vote. The Articles also contain advance notice requirements by shareholders for director nominations and other actions to be taken at annual meetings. The Articles and Bylaws

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also grant our Board, or the affirmative vote of at least 66 2/3% of the voting interest of shareholders, the power to adopt, amend or repeal the Bylaws. The Articles also contain a higher vote threshold for affiliated and control-share acquisitions. Subject to certain limitations stated in the Articles, the affirmative vote of not less than 66 2/3% of the voting shares, excluding those beneficially owned by a Related Person (as defined in the Articles) who is party to the Business Combination (as defined in the Articles), shall be required for the approval or authorization of any Business Combination. In addition, certain of our officers and managers have employment agreements containing certain provisions that call for substantial payments to be made to such employees in certain circumstances upon a change in control.

These provisions of the Articles and the Bylaws could discourage potential acquisition proposals and could delay or prevent a change in control of the Company. These provisions are intended, however, to: (i) enhance the likelihood of continuity and stability in the composition of the Board and in the policies formulated by the Board and to discourage certain types of transactions that may involve an actual or threatened change of control of the Company that may negatively impact shareholder value; (ii) reduce the Company's vulnerability to an unsolicited acquisition proposal and encourage persons seeking to acquire control of us to first negotiate with our Board; and (iii) discourage certain tactics that may be used in proxy fights. However, such provisions could have the effect of discouraging others from making tender offers for our shares and, as a consequence, they also may inhibit fluctuations in the market price of our shares that could result from actual or rumored takeover attempts. Such provisions also may have the effect of preventing changes in our management. We believe that the benefits of increased protection against an unfriendly or unsolicited proposal to acquire or restructure us outweigh the disadvantages of discouraging such proposals. Among other things, enhanced ability to negotiate such proposals could result in an improvement of their terms.

***Transfer Agent***

The transfer agent for the Common Stock is American Stock Transfer & Trust Company, LLC.

***Listing***

The Company's Common Stock is listed on NYSE under the trading symbol "HZO."



NOTE: PORTIONS OF THIS EXHIBIT INDICATED BY “[\*\*\*\*]” HAVE BEEN OMITTED FROM THIS EXHIBIT AS THESE PORTIONS ARE NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM IF PUBLICLY DISCLOSED.

### SALES AND SERVICE AGREEMENT

This Sales and Service Agreement (“*Agreement*”) is entered into between Company and Dealer (as defined below), in consideration of the mutual covenants contained herein, and subject to the Sales and Service Agreement Terms and Conditions attached hereto. Pursuant to this Agreement, Company hereby appoints Dealer through its Dealer Locations identified in Exhibit A, as its dealer for the sale of Products (as defined below) in the Territory identified in such Exhibit.

#### DEFINED TERMS

In this Agreement, the following words and expressions that are not defined elsewhere in this Agreement shall have the following meanings, except where the context requires otherwise:

**COMPANY:** Boston Whaler, Inc.

**COMPANY MAILING ADDRESS:** 26125 N. Riverwoods Blvd., Suite 500,

Mettawa, IL 60045

**DEALER (Complete legal entity name):** MarineMax, Inc.

**PRIMARY MAILING ADDRESS:** 2600 McCormick Drive, Suite 200,

Clearwater, Florida 33759

**DEALER  
LOCATION(S)**

(Full address and zip or postal codes): Each Dealer facility as listed on Exhibit A attached hereto.

**TERRITORY:** Identified for each Dealer Location in attached Exhibit A

**PRODUCT(S)**  
(Includes related parts and accessories)

Full line of Boston Whaler boats.

**TERM:** The Term of this Agreement shall be September 1, 2021 to August 31, 2024. Thereafter, this Agreement shall automatically renew for successive three (3) year terms unless (i) terminated earlier pursuant to the terms of this Agreement or (ii) either party gives the other written notice not less than six (6) months prior to the end of the then current term that this Agreement will not renew at the end of such term.

The Term for Preferred and Standard Locations (as defined below) will be as described in Section 2.2.

**EFFECTIVE DATE AND TERMINATION OF OTHER SALES AND SERVICE AGREEMENTS:** Notwithstanding the date of execution of this Agreement, the terms of this Agreement shall be effective on September 1, 2021 (the “Effective Date”). The terms of the parties’ current Sales and Service Agreements

shall continue to apply until the Effective Date. As further provided in Section 21 below, as of the Effective Date, those Sales and Service Agreements are terminated and replaced with this Agreement.

Company and Dealer acknowledge that the attached Sales and Service Agreement Terms and Conditions and Exhibits are hereby incorporated into and made a part of this Agreement.

IN WITNESS WHEREOF, Company and Dealer have executed this Agreement and the parties and the individual(s) signing for each party, respectively below represent and warrant that the individual(s) signing this Agreement is duly authorized to do so.

Boston Whaler, Inc.  
(Company)

MARINEMAX, INC. (Dealer)

By: \_\_\_\_\_  
(signature)

By: \_\_\_\_\_  
(signature)

Name: \_\_\_\_\_  
(printed name)

Name: \_\_\_\_\_  
(printed name)

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## SALES AND SERVICE AGREEMENT

### TERMS AND CONDITIONS

1. Appointment of Dealer: Company hereby appoints Dealer as a dealer for the retail sale, display, and servicing of the Product(s), as identified in the Defined Terms and subject to Company's policies and programs, from the authorized Dealer Location(s) set forth in the Defined Terms, which Products shall be purchased only from Company or an authorized Company dealer located in the country in which Dealer is located.

Except as provided herein, during the term of this Agreement, Company shall not appoint other dealers to sell Products from a dealer location within the Territory set forth in the Defined Terms; provided, however that (i) Company reserves the right to modify the Territory or appoint other dealers to sell, display and service Product from dealer locations within the Territory at any time if Dealer closes a Dealer Location without prior written notice to Company and prior written approval thereof by Company, which approval shall not be unreasonably withheld upon a review by Company of Dealer's abilities to perform the Agreement obligations in the applicable Territory, and (ii) Company shall have the right to appoint other dealers to sell, display and service Product from dealer locations within the applicable Territory to replace Dealer Locations to which this Agreement no longer applies as a result of the termination of this Agreement as to a specific Dealer Location pursuant to Section 2 or Section 16 hereof. Dealer shall not sell, advertise, solicit for sale or offer for resale Products outside of the Territory except as otherwise provided by Company's Advertising Policy or other applicable policy. However, Dealer may make Product sales to a purchaser located outside the Territory who has entered the Territory, on his/her own, to purchase products. Likewise, other authorized Company dealers may be permitted to make Product sales to a purchaser who is located in the Territory but has, on his/her own, gone outside the Territory to purchase Products. In addition, Company may permit former Company dealers in the Territory to continue to perform warranty work and continue to purchase and sell warranty parts and accessories for Products for a period of time after the expiration or termination of their dealer relationship with Company. Company reserves the right in its sole discretion to monitor or otherwise enforce its policies and procedures and there are no third party beneficiary rights to such policies and procedures or this Agreement.

Company also reserves the right to make sales of Products or provide service in the Territory; provided that Company [\*\*\*\*] in the Territory to individual consumers. Company further reserves the right to appoint other dealers or service providers to sell, display, and/or service Products, from any other location outside the Territory, even if Company or other dealers compete with Dealer for purchasers or service within the Territory.

Company shall have the right to adopt, modify and enforce policies and programs from time to time in its sole discretion and in accordance with its own business judgment which policies and programs apply to all of Company's dealers. Dealer agrees to comply with the material terms of such policies and programs.

#### 2. Brand Concentration and Dealer Locations:

##### 2.1 Applicability and Definitions:

A. Dealer acknowledges that the terms and conditions of this Agreement apply on a location by location basis. Company shall have the right to evaluate Dealer and each Dealer Location on a location by location basis as set forth in this Agreement.

B. Defined Terms:

- a. “BBG Concentration” means that percentage of Dealer’s new boat revenue for [\*\*\*\*]. [\*\*\*\*] derived from the sale of BBG boats as compared to other brands. Such percentage shall be measured annually on the Measurement Date for the twelve (12) months prior to the Measurement Date. For purposes of clarification, the calculation of BBG Concentration will only relate to Dealer Locations where Dealer carries a BBG brand.
- b. “BBG Base Concentration” initially means the BBG Concentration as of the date of execution of this Agreement, [\*\*\*\*]. BBG Base Concentration shall be recalculated at the beginning of any contract year (beginning with the Effective Date) if the number of Dealer Locations with a BBG brand has changed in the prior year.
- c. “Brand Concentration” (measured annually on the Measurement Date) means the percentage of Dealer’s new boat revenue attributable to Company among fiberglass fishing boats [\*\*\*\*]. For purposes of clarification, fiberglass fishing boats shall include those boats included in the following SSI segment references – Salt OB SWF and Open Express 11-45.
- d. “Measurement Date” means the first day of August each year, beginning August 1, 2021.
- e. “Preferred Location” means a Dealer Location that has a Brand Concentration of at least [\*\*\*\*] on a Measurement Date and continues to meet such [\*\*\*\*] concentration level on each Measurement Date.
- f. “Standard Location” means a Dealer Location that does not have at least a [\*\*\*\*] Brand Concentration level on a Measurement Date.

2.2 Term of Agreement applicable to Individual Dealer Locations:

A. Preferred Location Term: The three (3) year term of this Agreement shall apply to a Preferred Location, so long as it maintains Preferred Location status. If a location initially qualifying as a Preferred Location fails to meet the required Brand Concentration level as of a later Measurement Date, the term for such location shall convert to one (1) year beginning September 1st of the year after such location failed to meet the required Brand Concentration level, subject to the terms in Sections 2.2 B. and D. below; provided, however, that if such location achieves the required Brand Concentration level for preferred status as of a later Measurement Date such location returns to preferred status and the term will continue for the third (3rd) year.

B. Standard Location Term: The term of this Agreement for a Standard Location shall be for one (1) year and expire on August 31, 2022. This term shall automatically renew for successive one (1) year terms unless (i) terminated earlier pursuant to the terms of this Agreement or (ii) either party gives the other written notice during the first ninety (90) days of the then current one (1) year term that the term related to a specific location will not renew at the end of such one (1) year term, subject to the provisions of Section 2.2 D. below.

C. Exception to Location Term Provisions: Notwithstanding the above, if Dealer’s BBG Concentration collectively across all Dealer Locations is [\*\*\*\*] the BBG Base Concentration, the term related to all Dealer Locations shall convert to a one (1) year term pursuant to the terms of 2.2 B above. For purposes of clarification, under no circumstances shall the term applicable to any location extend beyond the term of this Agreement.

D. Location Nonrenewal: If Company desires to exercise its right to nonrenew any location at the end of its one (1) year term (either a Standard Location or a Preferred Location that has converted to a one (1) year term), Company shall provide Dealer notice of the same during [\*\*\*\*] of the contract year and Dealer shall then have the opportunity to provide Company with a recovery plan related to such location. If Company approves the recovery plan and determines in its sole discretion based on legitimate business judgement that such plan is successfully completed, the term related to such location shall be renewed for an additional year.

2.3 Partnership Incentive Rebate:

A. Dealer shall qualify for the Partnership Incentive Rebate if Dealer's BBG Concentration collectively across all Dealer Locations is [\*\*\*\*] the BBG Base Concentration.

B. "Partnership Incentive Rebate" means: for Dealer Locations with a Brand Concentration [\*\*\*\*] rebate on wholesale purchases of Company brand products shipped to qualifying locations for the twelve (12) months prior to the Measurement Date; for Dealer Locations with a Brand Concentration [\*\*\*\*] rebate on wholesale purchases of Company brand products shipped to qualifying locations for the twelve (12) months prior to the Measurement Date; and for Dealer Locations with a Brand Concentration of [\*\*\*\*] no additional incentive rebate on purchases of Company brand products for the twelve (12) months prior to the Measurement Date.

C. Company shall pay Dealer the Partnership Incentive Rebate by issuing a credit to Dealer's parts account no later than thirty (30) days after the Measurement Date reports are provided to Company pursuant to Section 2.4.

2.4 Measurement of BBG and Brand Concentration: No later than fifteen (15) days after each annual Measurement Date, Dealer shall (i) submit a report for each Dealer Location for the twelve (12) months prior to the Measurement Date of the applicable Brand Concentration level calculated for each Dealer Location (and reasonably supporting sales information of Company in the aggregate without specific numbers related to other non-Brunswick brands), and (ii) provide the collective BBG Concentration across all Dealer Locations for the twelve (12) months prior to the Measurement Date (and supporting sales information). Upon request by Company, Dealer shall provide additional information necessary to support such reports.

2.5 Review of BBG and Brand Concentration: If Company is unable to supply a material amount of Product forecasted by Dealer as a result of Company production limitations, the parties agree to review in good faith potential modifications to the BBG and Brand Concentration requirements referenced above.

2.6 Acquisition Support: If Dealer is considering an acquisition of a dealer/location that will meet the definition of a Preferred Location, Company will make reasonable efforts to streamline and accelerate the review and approval process related to such acquisition. Company will generally support such acquisitions absent material concerns with respect to the acquisition; provided that Dealer agrees in connection with such acquisition to at least maintain the Brand Concentration level at such dealer/location for the term of this Agreement. The approval process related to proposed acquisitions of a dealer/location that will be a Standard Location will continue to be governed by the terms of the parties' separate Agreements Relating to Acquisitions (for Boston Whaler dated February 3, 2018 and for Sea Ray dated December 6, 2005, as amended effective as of September 1, 2014).

3. Location: Dealer shall sell at retail, display, and service Products only at and from the authorized Dealer Location(s) referenced in Exhibit A, as may be amended from time to time as provided herein. Dealer Location(s) are both sales and service unless otherwise specified in writing. Dealer shall concentrate its sales, display and service efforts within the designated Territory.

Dealer shall not delete, change, or add to the Dealer Location(s) without the prior written consent of Company. Dealer shall not directly or indirectly sell Products for use by or to a purchaser located outside of the country in which the Dealer is located, and shall not sell Products to a third party who Dealer knows or should know will resell the Products outside of the country in which the Dealer is located. Dealer shall not sell to others (including sub-dealers) for the purpose of resale without the prior written consent of Company, which consent shall not be unreasonably withheld. Dealer shall not utilize the services of a broker or similar agent to sell Product, unless such broker is an affiliated third party of Dealer that is located within the Territory, consummates the sale of any Product in concert with Dealer and pursuant to Dealer's standard practices, and otherwise complies with the requirements of this Agreement. Dealer agrees to provide appropriate facilities and to assume full and complete managerial authority and responsibility for the service of the Products at and from those Dealer Location(s) specified

in this Agreement and for the display and retail sale of the Products at and from each Dealer Location. Additionally, Dealer may engage in temporary off-site display and sales activity within the Territory.

4. Responsibilities of the Parties:

4.1. Dealer's Responsibilities:

Dealer agrees to:

A. Devote its best efforts to aggressively (i) promote and advertise Products at each Dealer Location and in the Territory, and (ii) display and sell Products at each Dealer Location, in each case in accordance with the terms of this Agreement and all applicable federal, state and local laws. Dealer shall display and utilize at each Dealer Location signs, graphics and image elements with Company's Identification as defined in this Agreement, subject to approval by Company, that will positively reflect the Company image and promote the retail sale of the Products.

B. Purchase and carry on hand at all times at each Dealer Location a sufficient inventory of current Products to meet the reasonable demand of customers at each Dealer Location, as outlined by the Company.

C. Maintain at each Dealer Location (unless a sales location only, and then service shall be provided at another Dealer Location) a service department that Dealer agrees to staff, train, and equip to promptly and professionally service Products; and to maintain at each Dealer Location parts and supplies to properly service Products on a timely basis.

D. Properly perform any and all necessary Product rigging, installation, and inspection services prior to delivery to the purchaser as required by Company's current written policy and perform post-sale service of all Products originally sold by Dealer or brought to Dealer for service. Dealer will be required to provide or arrange for warranty and service work for Product regardless of the selling dealer of the Product or condition of sale. Dealer will provide appropriate instructions to purchasers on how to obtain warranty and service work from the Dealer. Dealer will secure all Product inventory against weathering and other damage, and maintain inventory in a like new and unused condition.

E. Furnish each Product purchaser with Company's limited warranty on new Products and with information and training as to the safe and proper operation and maintenance of the Product.

F. Warranty register each retail sold Product on Compass upon delivery of Product to the purchaser and with purchaser's consent, provide the purchaser's name, address, email address and phone number for the purpose of assisting Company in performing Product defect and recall campaigns. Further, Dealer agrees to warranty register any Product purchased and used for lease, rental or other commercial purposes on Compass before using the Product. If Dealer fails to register the Product with Company as required, Dealer shall indemnify Company against any liability, loss, or damage which Company may sustain as a result of such failure.

In instances where a retail sold boat has been registered prior to actual delivery to the purchaser, Dealer must enter the actual delivery date into Compass within thirty (30) days of delivery. If Dealer fails to enter the actual delivery date into Compass within thirty (30) days, Dealer shall indemnify Company for any valid warranty claims filed between the warranty expiration date based on the pre-delivery registration and the warranty expiration date based on the actual delivery date.

G. Maintain complete Product sales, warranty and service records, and report to Company on a regular basis the name and address of each Product purchaser subject to applicable law. Dealer further agrees to provide Company with access to its books and records at reasonable times and upon reasonable

prior notice to verify the accuracy of information submitted for participation and eligibility in promotions and other programs.

H. (Intentionally omitted.)

I. Submit to Company upon request any additional information or clarifying information regarding Dealer's financial statements and allow full and open disclosure of financial information concerning Dealer between Company and any financial institution or company which may finance or propose to finance all or part of Dealer's Product inventory.

J. Conduct business in a manner that preserves and enhances the reputation and goodwill of both Company and Dealer for providing quality products and services, and refrain from using any false, misleading or deceptive advertising. Submit truthful and accurate statements, reports and information to Company and any financial institution financing or proposing to finance Dealer's Product inventory or any purchaser of Dealer's Product.

K. Maintain an ability to purchase Product inventory for each Dealer Location via flooring and/or self-financing that is customary to carry on hand and display Company's current Product models as indicated in the Defined Terms of this Agreement.

L. [Intentionally omitted.]

M. Use its best efforts to maintain and improve NPS or CSI rating in compliance with any applicable NPS or CSI standards of Company.

N. Comply with all applicable governmental laws and regulations and with those Dealer obligations that may be imposed or established by Company, applicable to all other Company dealers, including but not limited to those included in the Company's policies and programs.

O. Comply with the requirements established by Company's Advertising Policy, applicable to all other Company dealers.

P. Maintain a financial condition which is adequate to satisfy and perform its obligations under this Agreement.

Q. Provide prior written notice to Company if Dealer desires to make any material change in Dealer's financing of its Product inventory or business and give Company sufficient time to discuss and review with Dealer the effect of the proposed change.

R. Notify Company in writing at least thirty (30) days prior to the addition or deletion of any Dealer Location(s), which notification Dealer agrees shall not be deemed a consent by Company to such a proposed change.

S. Provide Company with prior notice of any proposed appointment of sub-dealers. All appointments of authorized sub-dealers are subject to prior written approval by Company ("Authorized Sub-dealers"). Dealer will set its own resale price to Authorized Sub-dealers and assume all risk of non-payment by the Authorized Sub-dealers. The Authorized Sub-dealers are not parties to any agreement between Company and Dealer and Dealer will ensure that the Authorized Sub-dealers do not take any actions that violate any policies and programs of Company or are inconsistent with the terms of this Agreement. Dealer is responsible for any losses incurred by Company as a result of Authorized Sub-dealer's performance including, but without limitation, Authorized Sub-dealer's failure to pay Company for any Product or to pay any financial institution that finances Products purchased by the Authorized Sub-dealers. Dealer will not enter into any agreement with Authorized Sub-dealers that is inconsistent with the terms and conditions of this Agreement.

T. Notify Company in writing of the applicable brand and boat type (i) at least ten (10) days before Dealer agrees or commits to sell, display or advertise a boat brand currently carried by Dealer in an additional/new location, and (ii) at least thirty (30) days before Dealer agrees or commits to sell, display or advertise a new boat brand not already carried by Dealer.

U. Notify Company in writing if Dealer knowingly is unable to address and resolve a customer's concern or complaint related to a Product after one (1) attempt for a safety issue or two (2) attempts for a non-safety issue, and provide Company with information related to (i) the concern or complaint, (ii) Dealer's prior actions in an effort to address the issue, and (iii) Dealer's plan/proposal to address the customer's unresolved concerns.

V. Provide Company a copy of the applicable Sales Tax Exemption Certificate or Uniform Sales and Use Tax Multi-Jurisdiction Certificate which certifies the Products being purchased from Company are being purchased for the purpose of resale to retail customers.

4.2 Company Responsibilities:

Company agrees to:

A. Sell Products to Dealer in accordance with Company's then-current terms and conditions of sale, limited warranties, and the price list published from time to time by Company, less any applicable discounts allowed by Company's programs applicable to Dealer. Company shall have the right to modify its terms and conditions of sale, limited warranties, price lists and programs from time to time in its sole discretion and in compliance with the terms of this Agreement; provided, however, that Company will provide reasonable prior written notice to Dealer after the beginning of the Model Year of such modifications and that changes in the limited warranty and pricing will apply only to future retail purchases. Company will make available its current policies and programs in electronic format or in a format Company deems appropriate, including a dealer manual. Dealer should contact Company for a copy of the policies and programs if it does not have access to or did not receive a copy.

B. Provide to Dealer reasonable quantities of specification sheets and other advertising, merchandising or promotional material to assist Dealer in the sale of Products as Company deems appropriate.

C. Make available to Dealer in electronic format or otherwise reasonable quantities of parts books, warranty claim forms, order forms or procedures, maintenance and service manuals and other materials of a technical nature as Company deems appropriate.

D. Furnish Dealer with written instructions and/or policies for the use of trademarks, trade names, logos and other trade designations of Company that correspond to the Products as Company deems appropriate.

E. Furnish a Limited Warranty for the Products and provide warranty support and process warranty claims in accordance with Company's warranty policy, which may be modified from time to time by Company in its sole discretion. Company shall notify Dealer of changes to Company's warranty policy and make available current versions of its warranty policy to Dealer.

F. Promote sales of the Products via the Internet and other marine related publications or by other means as Company deems appropriate.

G. Ship parts related to the Products in accordance with Company's policy on shipping parts.

H. Accept payment for Product and credit Dealer's account within a reasonable time.



I. Furnish detailed invoices upon shipment and periodic statements thereafter, provide prompt communication regarding account status upon request, and administer credit policies in an impartial and non-discriminatory manner.

J. Identify Dealer's name and address in listing of authorized dealers on Company's website dealer locator (if available). Company reserves the right to create, update and modify such a website locator from time to time as Company deems appropriate.

K. Provide reasonable technical assistance and procedures for handling of technical questions of Dealer related to the Products as Company deems appropriate.

L. Maintain communication channels in order to receive Dealer feedback from time to time as Company deems appropriate. Company shall have the right to determine how the communication channel is managed and what information shall be released.

M. Provide reasonable consultative assistance to Dealer for operational, sales and customer service support as Company deems appropriate.

N. Provide reasonable supportive informational materials for new models of Products as Company deems appropriate.

O. Provide owner's manual for Products and similar materials for other components or accessories that are made available to Company.

P. Provide Dealer with two (2) seats on Company's concept review teams to consult with Company regarding the Products and, at least annually, conduct a portfolio product review with appropriate Dealer managers.

5. Orders: Dealer agrees to submit orders to Company in a manner and format prescribed by Company, applicable to all domestic Company dealers which orders shall be subject to Company's then current terms and conditions of sale which may be modified by Company at any time for all domestic dealers as deemed reasonably necessary. Any order which does not comply with Company's terms and conditions need not be filled by Company provided, however, that Company shall promptly notify Dealer of such noncompliance. Any additional or different terms submitted by Dealer will be deemed rejected and will also be void and of no effect. Dealer cancellation of orders will be subject to Company's then current cancellation policy applicable to all domestic Company dealers. If third party financing or credit approval cannot be obtained, or is revoked by Dealer and/or Dealer's financial institution, after an order has been accepted and scheduled for production, this will also be considered a Dealer cancellation of an order for purposes of this paragraph. All orders submitted by Dealer are subject to acceptance by Company.

6. Prices: The Products sold to Dealer by Company shall be on the basis of price lists published by Company from time to time, less any applicable discounts allowed by Company's programs applicable to Dealer. Company shall have the right to revise the price lists or applicable discounts or programs at any time. The Product prices charged to Dealer will be the lowest price then charged to other domestic dealers subject to Dealer meeting all the requirements and conditions of Company's applicable programs, and provided that Company may in good faith, charge lesser prices to other dealers to meet existing competitive circumstances, for unusual and limited duration non-ordinary business circumstances, or for limited duration promotional programs. Company shall have no obligation to reimburse Dealer for any loss which Dealer may sustain by reason of any change in prices, programs, or discounts. Terms of payment will be as specified from time to time by Company. Dealer will pay Company the lesser of 1.5% late charges per month or the maximum permitted by applicable law on any past due invoice. Company further reserves the right to seek reimbursement for any discounts, rebates or incentives paid to Dealer that were unearned by Dealer pursuant to the program requirements. Company may refuse shipment for any credit reason, including, without limitation, Dealer's failure to pay for a prior shipment or to pay any financial

institution that finances Dealer's purchases, or for Dealer's failure to protect its Product inventory from weathering or other damage and maintain inventory in a like new and unused condition. Dealer will reimburse Company for all reasonable and necessary costs in collecting past due accounts, including attorney fees and court costs. Dealer hereby grants to Company and Company hereby retains a security interest in all Products sold to Dealer and all proceeds arising out of the sale of the Products until such Products are paid for in full. Dealer agrees to sign, file, authenticate, and authorize the signing, filing and authenticating by Company of such financing statements and other documents and do such other acts, as Company may request to establish and maintain a valid and protected security interest in the Products.

7. Shipments: All shipments of Products shall be made FOB the Company factory designated by Company, and title shall pass to Dealer at the time the Products or parts are tendered to the designated carrier, or Dealer or Dealer's Representative, at the Company factory. Dealer shall pay all applicable shipping, transportation, delivery, and handling charges for Products ordered. If Dealer fails to accept delivery of any Products ordered, other than material non-conforming Products that must be returned to Company for repair, Dealer shall reimburse Company for any costs incurred, including returning such Products to Company. If Company ships Products not ordered by Dealer, Dealer shall have the right to refuse delivery, in which event Company shall pay all costs incurred in returning same to Company. Shipments shall be subject to Company's production schedule and availability of materials or transportation equipment. No liability shall be sustained by Company by reason of its not filling any order due to circumstances beyond its reasonable control such as, but not limited to, labor disputes, natural disasters, accidents to machinery, acts of God, acts of or threatened acts of war or terrorism, material shortages, regulations, demands for goods exceeding Company's available supply or any other cause beyond Company's control. In the event of any delay in delivery, failure to fill orders or other default or damage caused by any of the foregoing, Company may, at its option and without liability, cancel all or any portion of the applicable orders, or any order submitted pursuant to this Agreement, to the extent affected by the event of force majeure and/or extend any date upon which performance is due hereunder.

8. Risk of Loss: Risk of loss for Products ordered by Dealer shall pass to Dealer at the time the Products or parts are tendered to the designated carrier, or Dealer or Dealer's Representative, at the Company factory. Company has instructions to insure Products on behalf of Dealer from the shipping point to the final delivery point unless otherwise agreed by the parties. Dealer will be the loss payee on any claim. Company will assist Dealer in the processing and collection of any claims against the carrier contracted by Company. Notwithstanding the above, upon tender of the Products to Dealer or Dealer's representative at the Company factory, Dealer assumes responsibility to insure the Products.

9. Payment - Claims: Unless otherwise agreed between Company and Dealer in writing, all sales of Products to Dealer shall be paid for in advance by Dealer. After an order has been submitted by Dealer and accepted by Company, payments by Dealer through a financial institution for the Product(s) related to the order shall not be conditioned on Dealer's pre-approval. In the event of an actual delay in shipping Product to Dealer resulting from a Dealer pre-approval, Dealer shall be subject to applicable charges pursuant to Company's policies. All claims for shortage or damages or unacceptable Product shall be made within a reasonable time of arrival of the shipment. The failure of Dealer to give such notification shall constitute a waiver of any such claim. Dealer shall cause to be paid or shall make reimbursement to Company in full for any and all taxes, duties, or other charges imposed by federal, state, municipal, or other governmental authority upon any purchase or sale under this Agreement.

10. Product Modification:

A. Company shall have the right to discontinue the sale of Products or to modify the design, specifications and components of Products at any time in its sole discretion; provided, however, that Company shall notify Dealer, prior to shipment, of any major changes with respect to Products previously ordered by Dealer but not yet delivered, in which event Dealer shall have the right to terminate such order within five (5) days after such notification by providing written notice to Company. The failure by Dealer to provide such timely written notification shall be deemed acceptance by Dealer of such changes.

B. Dealer understands that Company does not provide a warranty or Product protection coverage for replacement or repairs to specific areas of a Product that have been impacted as a result of modifications or alterations without Company authorization. Consequently, Dealer agrees it will notify Company in writing any time Dealer modifies or alters a Product in any manner. In addition, when seeking authorization to perform warranty or Product protection work, Dealer shall notify Company in writing if it appears that the Product on which the warranty or Product protection work is being performed has been modified, altered, or otherwise differs from the stock Product in any way. For the avoidance of doubt, the warranty or Product protection coverage is not affected and remains in full force and effect for all remaining areas of the Product not impacted as a result of modifications or alterations without authorization.

11. Warranties and Limitation of Warranties and Liability:

11.1 Warranties: Dealer agrees to:

A. Sell Products only on the basis of Company's published applicable limited warranty and make no other warranty or representations concerning the limited warranty, express or implied, either verbally or in writing.

B. Display at each Dealer Location that Product warranty information required by applicable law and furnish and make known to the first-use purchaser at the time of delivery the appropriate operations and maintenance manual provided by Company, instructions for the safe use and operation of the Product consistent with the operations and maintenance manual, the Product installation instructions, if any, together with Company's written limited warranty, including all disclaimers and limitations thereto.

C. Subject to the terms of the applicable limited warranty, expressly inform the purchaser in writing that no Company warranty applies if the Product is "used", which includes personal or substantial demonstration use by the Dealer unless Company expressly authorizes such warranty in writing. No Product warranty shall apply if the Product is substantially modified without the express written authorization of Company.

D. Provide timely warranty service on all Product presented to Dealer by purchasers in accordance with Company's then current warranty service program applicable to all domestic Company dealers selling comparable Products. Dealer agrees to make all claims for reimbursement under Company's warranty service program in the manner prescribed by Company. Company may revise its warranty service program from time to time, providing Dealer with written notification of all revisions, and those revisions will supersede all previous programs.

E. Provide Company with documentation which Company may reasonably request to verify the accuracy of the warranty claims submitted to Company by Dealer and the service provided by Dealer with regard to such warranty claims. If Company finds errors in the aggregate greater than 5% of reviewed claims submitted by Dealer and paid by Company, Company may calculate the percentage rate of error; and using that percentage rate of error, extrapolate the amount owed to Company for up to three (3) prior years of all paid claims made by Company to Dealer. Within thirty (30) days of such notice of such amount, Dealer shall either pay the extrapolated amount to Company or pay the cost of a full audit by Company or Company's designee and pay to Company that amount, if any, found to be owing to Company as a result of such audit. Company agrees to honor all legitimate warranty claims on Products when made by purchaser through Dealer in the manner reasonably prescribed by Company. Company shall respond to all proper and legitimate warranty claims submitted by Dealer within the time period described in the then current warranty policy applicable to domestic Company dealers. Company agrees to acknowledge receipt of warranty claims, and pay or credit all accepted and undisputed claims, in accordance with the terms of the warranty policy, applicable to all domestic Company dealers.

11.2 Commercial Use: If a Product is used for lease, rental or other commercial purposes, the terms of Company's warranty related to commercial use will apply.

11.3 Limitation of Warranties and Liability:

EXCEPT AS SPECIFICALLY PROVIDED IN COMPANY'S PUBLISHED APPLICABLE LIMITED WARRANTY, COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO PRODUCTS, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR, NOR SHALL THE MEASURE OF DAMAGES INCLUDE, ANY AMOUNTS FOR LOST PROFITS, LOST SALES, OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR ANY REASON OR UPON ANY CAUSE OF ACTION, WHETHER SOUNDING IN TORT, CONTRACT OR ANY OTHER LEGAL THEORY.

12. Indemnification:

A. In order to obtain preferred boat show space at discounted rates for Dealers, Company may contract with and agree to indemnify boat show sponsors and other related parties. Accordingly, Dealer shall defend, indemnify and hold harmless Company, and any boat show sponsor which Company has agreed to indemnify, from any and all claims, causes of action, and suits, including claims of negligence arising either directly or indirectly out of Dealer's use of boat show space originally obtained by Company.

B. Company agrees to indemnify and hold harmless Dealer for losses, cost and expense (including, but not limited to reasonable attorney's fees) to the extent such losses, cost or expense result from any third party claim related to (1) Company's negligent acts or omissions involving the original design or manufacture of any Product at the time it left Company's possession or control, or the repair of any Product performed by Company, or (2) any breach of this Agreement by Company. Company, through counsel of its own choosing, may defend any litigation that may arise out of any claims covered hereby, and Dealer agrees to cooperate at its own expense and provide Company with any available information as may be reasonably necessary to such defense. In the event Company elects not to defend any litigation that may arise out of any claims covered hereby, Company will be responsible for Dealer's reasonable attorney fees on a pro-rated basis to the extent such losses are subject to indemnification pursuant to this Agreement.

C. Dealer agrees to indemnify and hold harmless Company for losses, cost and expense (including, but not limited to reasonable attorney's fees) to the extent such losses, cost or expense result from any third party claim related to (1) Dealer's negligent acts or omissions involving Dealer's improper preparation, use or repair of the Products, (2) statements or representations not specifically authorized by Company, including warranties inconsistent with Company's standard limited warranty, (3) damages caused by or related to the installation of any aftermarket components or any other modification or alteration affecting a specific area of the Product, or (4) any breach of this Agreement by Dealer. Dealer, through counsel of its own choosing, may defend any litigation that may arise out of any claims covered hereby, and Company agrees to cooperate at its own expense and provide Dealer with any available information as may be reasonably necessary to such defense. In the event Dealer elects not to defend any litigation that may arise out of any claims covered hereby, Dealer will be responsible for Company's reasonable attorney fees on a pro-rated basis to the extent such losses are subject to indemnification pursuant to this Agreement.

D. The provisions in this Section 12 regarding indemnification do not apply to claims by third parties in which there has been a judicial determination that the indemnifying party does not have liability to the third party. The provisions in this Section 12 shall survive the expiration or termination of this Agreement.

13. Repossession or Repurchase of Product by Company: Dealer shall be liable to and reimburse Company for any and all losses or deficiencies on the sale or disposition of any Product purchased by Dealer

pursuant to this Agreement which is repossessed or repurchased by Company for any reason whatsoever, except as contemplated in Section 16. G. Dealer shall also be liable for any and all discounts, volume rebates, or other sales incentives paid to Dealer on Product repurchased, and all reasonable attorney's fees, court costs, and expenses incurred in connection with such repossession or repurchase. Dealer agrees to provide Company, upon request, guarantees or other adequate security to cover any repurchase or financial obligations that Company may assume in connection with Dealer's flooring or financing.

14. Trademarks and Service Marks: Dealer acknowledges that Company or its affiliated companies are the exclusive owners of various trademarks, service marks, trade designations, logos and trade dress (collectively "Identification") which Company uses in connection with Products and its business. Dealer is authorized to use Identification only in the manner prescribed by Company, only in connection with the promotion and sale of Products, and only until the expiration or termination of this Agreement. Dealer shall not register or assist any other party to register any domain name that contains or closely resembles any Company Identification without first obtaining the prior written consent of Company. Dealer shall not use Identification in any unauthorized manner or in any manner that adversely reflects upon the reputation of Company or in relation to any other matter that is a breach of this Agreement. Dealer shall not use Identification or advertise outside of the Territory without Company's express written consent and shall comply with Company's Advertising Policy. Dealer acquires no proprietary rights with respect to Identification, and this authorization shall terminate simultaneously with the termination or expiration of this Agreement. In the event of expiration or termination of this Agreement, Dealer shall immediately discontinue use of Identification in any way whatsoever and shall thereafter not use, either directly or indirectly, any Identification or any confusingly similar Identification in a manner likely to confuse, mislead, or deceive the public. Dealer may continue to use Identification for a reasonable period of time if Company does not repurchase Dealer Product inventory as long as such Identification use remains subject to the terms of this Agreement, Company's Advertising Policy or any other instructions provided by the Company. Dealer agrees that any unauthorized use or continued use of Identification after the period of time allowed by this Paragraph 14 shall constitute irreparable harm entitling Company to equitable relief, including injunction and specific performance, without the necessity of posting bond or proving actual damages, as a remedy for any such breach. Such remedies shall not be deemed to be the exclusive remedies for such a breach by Dealer but shall be in addition to all other remedies available at law or equity to Company.

15. No Agency Created: It is understood and agreed that Dealer is not, nor shall it at any time represent itself to be, the agent, employee, representative, partner, or franchisee of Company for any purpose. Neither party shall enter into any contract or commitment in the name of or on behalf of the other party. Company has no fiduciary duty to Dealer pursuant to this Agreement or the relationship between the parties. Dealer is not required to pay, and shall not pay, to Company any fee for the right to purchase the Products or to otherwise do business with the Company.

16. Term of Agreement - Termination:

A. The term of this Agreement shall be as set forth in the Defined Terms subject, however, to earlier termination in accordance with the terms of this Agreement. Neither party is under any obligation, express or implied, to renew or extend this Agreement or to enter into a new Agreement upon expiration. Company and Dealer acknowledge and agree that if Dealer continues to operate as a dealer for the retail sale, display and servicing of the Product(s) after this Agreement expires without the execution and delivery of a new agreement, there is no tacit, deemed or other renewal or extension of this Agreement, but if Company continues to sell Products to Dealer after termination or expiration of this Agreement, Dealer shall continue to operate as a dealer for the retail sale, display and servicing of the Product(s), from the authorized Dealer Locations(s) on a month-to-month basis, subject to the applicable terms and conditions of this Agreement. In such case, either Company or Dealer may terminate this Agreement following the end of the then current one (1) month term upon at least two (2) months' prior written notice to the other party.

B. Subject to the provisions of Section 16. F. below, Company may terminate this Agreement upon the giving of at least sixty (60) days prior written notice to Dealer if: (1) Dealer does not have an ability to purchase Products via flooring or self-financing, or (2) Dealer fails to meet its financial obligations as they become due to either Company or lender(s) financing Products. Company shall work in good faith with Dealer to try to resolve any differences between them prior to giving such 60-day notice of termination.

C. This Agreement may be terminated at any time by the mutual consent of the parties.

D. Subject to the provisions of Section 16F below, either party may, upon six (6) months prior written notice to the other stating the reasons therefore, terminate this Agreement in the event of the material breach or default of any of the material obligations, covenants, representations, warranties, or duties imposed in this Agreement or in Company's policies or programs applicable to domestic Company dealers; provided that the breach or default has not been cured during the notification period. In such event, the non-breaching party will provide written notice to the breaching party and an opportunity to cure or remedy such breach. The parties shall work together in good faith to resolve any issues.

E. Notwithstanding subparagraph D above or anything in this Agreement to the contrary, this Agreement may be immediately terminated by a party upon sixty (60) days prior written notice to the other party if any of the following occur with regard to the other party: (1) the other party ceases to exist; (2) the other party becomes insolvent, fails to pay debts when due or otherwise takes or fails to take any action which indicates an inability to pay debts when due; or (3) the other party makes a fraudulent misrepresentation that is material to this Agreement. This Agreement may be terminated upon sixty (60) days prior written notice by Company upon the occurrence of: (1a) a prohibited assignment, transfer, delegation or subcontracting without consent as described in Paragraph 18A; (2b) the commission by Dealer of an act of fraud upon Company; (3c) the commission by Dealer (or any of its officers) of a felony or other act of fraud, moral turpitude or dishonesty which is materially detrimental to Company's reputation or business or which materially impairs the Dealer's ability to perform the duties under this Agreement; or (4d) Dealer fails to pay any lender financing Products after the sale of Products by Dealer (out of trust).

F. For the purpose of Section 16D, if a breach or default by Dealer pertains only to one Dealer Location, Company shall have the right to terminate this Agreement related to that particular Dealer Location only. For the purpose of Section 16B or E, if Dealer breaches or defaults as described in such provisions, Company may, in its own discretion, elect either to terminate the entire Agreement (as to all Dealer Locations) or terminate only as to a particular Dealer Location subject to this Agreement. Notwithstanding the foregoing, in the event of any possible termination pursuant to Section 16B or E, a party seeking to terminate shall first provide written notice to the other party stating the potential grounds therefore and both parties shall work together in good faith for a period of no less than sixty (60) days to resolve any concerns between the parties.

G. [\*\*\*\*]

Notwithstanding the above, the Parties agree to work in good faith to sell inventory and manage Dealer's inventory prior to termination in any event of termination or non-renewal or expiration of the Agreement.

H. In the event of termination of this Agreement prior to its expiration date, provided the termination is not for fraud, bad faith, moral turpitude, dishonesty or insolvency of Dealer, Company will nevertheless continue to sell to Dealer warranty parts and accessories for Products on a cash on delivery basis for a period not to exceed twelve (12) months in order that Dealer may continue to provide warranty service on Products which have outstanding warranties subject to Dealer's compliance with the terms and conditions of Company's warranty and parts program applicable to all domestic Company dealers. The performance of any warranty work after termination or expiration of this Agreement shall not be construed as a continuation of this Agreement, the commencement of a new agreement, or a waiver of the termination.

I. Any period of time described in this Agreement shall be modified to such different period of time that may be required by applicable law.

J. In the event of expiration or termination of this Agreement by either party, Company is relieved from any obligation to make any further Product shipments under this Agreement, and may cancel all of Dealer's unshipped orders for Products, irrespective of previous acceptance by Company, except those which are proved to Company's satisfaction to have been the subject of a binding customer order to Dealer prior to the receipt of any notice of termination. The acceptance of orders from Dealer for the continuous sale of Products to Dealer or any other act after termination of this Agreement shall not be construed as a continuation of this Agreement, the commencement of a new agreement, or a waiver of the termination. Upon the termination of this Agreement, all obligations owed by Dealer to Company shall become immediately due and payable on the effective date of the termination, whether otherwise then due or not (without presentment, demand, protest or notice of any kind, all of which are waived by Dealer); and Company may offset or deduct from any and all sums owed to Dealer any and all sums owed by Dealer to Company, or any parent, affiliate or subsidiary of Company, returning to Dealer the excess, if any.

K. In the event of expiration or termination of this Agreement, subject to the terms of Paragraph 14, Dealer must cease use of all Company trademarks, logos, catalogs and other commercial sales material and may no longer hold itself out to the public as an authorized dealer of Company Products. Dealer should also remove all Company signs and other identification marks from its premises at that time.

17. Governing Law: This Agreement shall be governed, interpreted and construed according to the laws of the State of Tennessee, U.S.A., without regard to applicable conflicts of law.

18. Privacy:

A. Compliance with Laws. Company and its affiliates and Dealer undertake, in the context of this Agreement, to comply with their respective obligations under any and all applicable data protection laws and regulations (the "**Data Protection Laws**"). For the purposes of fulfilling the terms of this Agreement, Company and its affiliates shall collect and/or receive from Dealer personal data about Dealer's officers, employees, contractors and customers. Dealer hereby authorizes Company and its affiliates to store, use and process all personal data collected in fulfilling the terms of this Agreement anywhere Company or its affiliates do business. Such personal data may include names, phone numbers, and e-mail/postal addresses ("**Personal Data**"). As a global company, Company and its affiliates may transfer Personal Data to other Brunswick Corporation ("Brunswick") entities and to third-party processors and assignees acting on Brunswick's behalf and under Brunswick's instructions, for uses consistent with this Agreement. Dealer acknowledges that it shall inform its officers, employees, contractors and customers and consumers in accordance with applicable Data Protection Laws, with respect to the disclosure to – and further processing by – Company and its affiliates of their Personal Data for the above-mentioned purposes, before providing any Personal Data to Company and its affiliates.

B. Handling of Personal Data/Data Security: In light of applicable privacy and data protection laws, including the California Consumer Privacy Act ("CCPA"), which can apply to Dealer and to the personal data Dealer collects from Dealer's customers, prospective customers, and even Dealer's employees, to help ensure that Brunswick and its Dealers can meet the requirements of these laws and to ensure sound data privacy practices, Brunswick has adopted a new policy for its Dealers regarding data privacy. This policy may be found by going to Dealer's Compass home page at <https://www.compassbbg.com/home.htm> and clicking on the link to the Policies (Updated) page. Dealer agrees to comply with such policy as amended from time to time.

19. Assignability/Transfer:

A. This appointment and Agreement is made and entered into with the distinct understanding that it is personal with Dealer, and is not, whether by operation of law, change in control or otherwise, assignable or in any part delegable or transferable unless the express written consent of Company is obtained; provided, however, that Dealer may assign the appointment and this Agreement to a subsidiary or affiliate without consent. An assignment by Dealer to any subsidiary or affiliate shall not relieve Dealer from any obligation or responsibility provided for under the terms of this Agreement. Unless first approved by Company in writing, any purported assignment, transfer, delegation or subcontracting of Dealer's rights and obligations under this Agreement by it (other than to a subsidiary or affiliate) may immediately render this Agreement terminated in Company's sole discretion.

B. Company may not assign this Agreement without the prior written consent of Dealer, except that no such consent is necessary with respect to assignment of this Agreement to any Company owned subsidiary or affiliate as of the effective date of this Agreement. An assignment by Company to any owned subsidiary or affiliate shall not relieve Company from any obligation or responsibility provided for under the terms of this Agreement. Upon any sale of the business or the assets of Company to a nonaffiliated third party, and where Dealer does not agree to the assignment, this Agreement shall be terminated and Company shall be released from any further obligations and liabilities to supply Products of Company to Dealer under this Agreement provided however that the provisions of Sections 12 and 16 and all other provisions that are intended to survive termination either expressly or impliedly shall do so in accordance with their terms.

20. Notices, Communications:

A. Any notice to be given pursuant to Paragraph 16 of this Agreement shall be in writing and either hand delivered (by courier or otherwise), or mailed, postage prepaid, by recognized overnight carrier (e.g., UPS or FedEx), return receipt requested, to Company at the address listed in the Defined Terms (to the CEO with a copy to Company's General Counsel), and to Dealer at the address listed in the Defined Terms (to the CEO with a copy to Dealer's General Counsel). Notice pursuant to Paragraph 16 may also be given by e-mail if a copy is also subsequently hand delivered or mailed in the manner described herein. All other notices to be given pursuant to this Agreement shall be in writing and either hand-delivered (by courier or otherwise), mailed, postage prepaid, or sent by e-mail, to Company or Dealer at the address listed in the Defined Terms and to the above referenced contacts. The above notices shall be deemed to be given upon first receipt. A change of address or contact information may be given by any means described in this paragraph.

B. Dealer hereby grants permission and consent to Company, and to those entities that are authorized by Company, to send or transmit communications (including but not limited to faxes, wireless communications, and e-mails) to Dealer and Dealer's officers, directors, employees, subsidiaries and affiliates, and their permitted successors and assigns. Such communications are not limited in content and may include advertisements, and Dealer understands that by providing such consent it may incur costs that are related to the receipt of such communications. Dealer further agrees that such communications may be sent to any telephone number or electronic media address provided by Dealer.

21. Entire Agreement - Non-Waiver: This Agreement, including any attached addenda, contains the entire agreement between the parties with respect to the matters set forth herein, except as otherwise provided in any addendum that may be entered into between the parties, and may not be amended or modified except by a written instrument signed by Company and Dealer that expressly states that the writing constitutes an amendment to this Agreement, provided that Company may in its sole discretion and from time to time make changes to its policies and programs applicable to all domestic Company dealers upon the giving of notice to Dealer. This Agreement terminates and replaces all prior agreements made between the parties regarding the subject matter of this Agreement and there are no other agreements regarding the matters herein. However, the ordinary business accounts between Dealer and Company, including those for warranty work and for Products previously purchased by Dealer,



shall remain due and payable in the ordinary course of business. Any promise or representation allegedly made by either party following execution of this Agreement or any amendment that is not stated in a written amendment shall have no effect and neither party may rely on any such promise or statement. Failure on the part of Company or Dealer to enforce any term of this Agreement shall not constitute a waiver thereof.

22. Severability – Existing Claims: Whenever possible, each paragraph of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any portion of this Agreement is deemed invalid or unenforceable, the remaining sections shall still be enforceable unless removal of that portion so materially alters the risks and benefits to either party that enforcement would be substantially unfair. In such a case, the parties agree to immediately negotiate a substitute clause to restore each party as closely as possible to the risks and benefits originally assumed. Dealer represents to Company that it is not aware of any claims, causes of action, or disputes that it has or may assert against Company that arise out of or have accrued prior to the effective date of this Agreement. Dealer further represents to Company that it has not breached or otherwise violated any term or condition of any previous agreement with Company.

23. Venue: Any action, claim, suit or proceeding between Company and Dealer or any owners of Dealer, whether based on federal, state, statutory, or common law, including but not limited to, any and all disputes relating to, arising out of or in connection with the interpretation, performance or the nonperformance of this Agreement and any and all disputes arising out of or in connection with transactions in any way related to this Agreement (including the expiration or termination of this Agreement) shall be litigated solely and exclusively before the United States District Court for the Eastern District of the State of Tennessee. The parties consent to the in personam jurisdiction of said court for the purposes of any such litigation and waive, fully and completely, any right to dismiss and/or transfer any action pursuant to 28 U.S.C. Section 1404 or 1406 (or any successor statutes) or the doctrine of forum non conveniens. In the event the United States District Court does not have subject matter jurisdiction of said matter, then such matters shall be litigated solely and exclusively before the appropriate state court of competent jurisdiction located in Knox County, Tennessee and the parties consent to the personal jurisdiction of such courts for the purpose of such litigation.

24. [Intentionally omitted.]

25. Jury Waiver: Company and Dealer irrevocably waive trial by jury in any action or proceeding, brought by either party.

26. [Intentionally omitted.]

27. Reservation of Rights: Company grants to Dealer only those rights expressly stated in this Agreement. Except to the extent otherwise expressly provided in this Agreement, Company retains all rights. This Agreement does not concern any other brands or products, except the Company Products identified in the Defined Terms hereof. Company and/or its affiliates reserve the right to own, acquire, manage, sell, display or service other products and other brands in any area (including the Territory), including those that may compete with the Products. Company reserves the right to share information, including information concerning Dealer, with its related entities and affiliates. Company reserves the right to receive incentives, rebates or other payments from third-party suppliers, including without limitation related to purchases by or through Dealer from such third party suppliers.

28. Counterparts and Signatures: This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same Agreement. Any signature delivered by fax or other electronic transmission shall be deemed to be an original signature.

29. Confidentiality: Each party shall maintain as confidential all proprietary business information, trade secrets and all materials containing confidential business information provided to such party by the other party, including but not limited to customers, vendors, price lists, wholesale prices, programs, rebates, discounts, inventions, concepts, designs, structures, formulas, processes, financial information, employees, strategic plans,

acquisition plans or other business affairs of the disclosing party. Dealer acknowledges that subsidiaries, affiliates and other divisions of Brunswick Corporation may be given access or have access to confidential business information received in connection with this Agreement, and such disclosure does not constitute a breach of this paragraph. Each party, on behalf of its directors, officers, employees and agents to whom such information and materials are disclosed, agree that it shall keep such information and materials confidential both during and after the Term of this Agreement for a period of three (3) years provided that if any such information or material is a trade secret, then the obligations under this Section shall survive the termination of this Agreement for the longer of five (5) years or the length of time such information remains a trade secret.

These obligations of confidentiality do not apply to any information which (1) was known to the receiving party prior to receipt from the disclosing party; (2) is independently developed by the receiving party, provided that the burden of proof of such independent development shall be on the receiving party; (3) is or becomes publicly known without the fault of the receiving party; (4) is or becomes rightfully available to the receiving party without confidential restriction from a source not bound by a confidentiality obligation to the disclosing party; (5) is required by law, rule or regulation to be disclosed; (6) is required to be disclosed pursuant to court or government action; provided, the disclosing party is given reasonable prior notice of such disclosure; or (6) is disclosed pursuant to written agreement of the parties.

The terms of this paragraph are in addition to, and in no way a limitation of, the terms of any confidentiality or non-disclosure agreement (or any confidentiality provision in any other agreement) between or involving Company (or its affiliates) and Dealer.

30. Miscellaneous: In case of any dispute relating to the rights and duties imposed by this Agreement, both parties will openly discuss and make reasonable efforts at amicable resolution. Except as expressly described to the contrary in this Agreement, the rights and remedies of each party are not exclusive. Unless otherwise provided, where either party has a right to make a determination or pursue or not pursue a particular course of action under the terms of this Agreement, such as, for example granting consent or approval, such determinations and decisions shall be made by such party in its sole discretion. As defined herein, a domestic Company dealer shall be an authorized Company dealer whose territory is located solely within the continental United States.

EXHIBIT A

Dealer Locations

[\*\*\*\*]

NOTE: PORTIONS OF THIS EXHIBIT INDICATED BY “[\*\*\*\*]” HAVE BEEN OMITTED FROM THIS EXHIBIT AS THESE PORTIONS ARE NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM IF PUBLICLY DISCLOSED.

### SALES AND SERVICE AGREEMENT

This Sales and Service Agreement (“*Agreement*”) is entered into between Company and Dealer (as defined below), in consideration of the mutual covenants contained herein, and subject to the Sales and Service Agreement Terms and Conditions attached hereto. Pursuant to this Agreement, Company hereby appoints Dealer through its Dealer Locations identified in Exhibit A, as its dealer for the sale of Products (as defined below) in the Territory identified in such Exhibit.

#### DEFINED TERMS

In this Agreement, the following words and expressions that are not defined elsewhere in this Agreement shall have the following meanings, except where the context requires otherwise:

**COMPANY:** Sea Ray Division of Brunswick Corporation

**COMPANY MAILING ADDRESS:** 26125 N. Riverwoods Blvd., Suite 500,

Mettawa, IL 60045

**DEALER (Complete legal entity name):** MarineMax, Inc.

**PRIMARY MAILING ADDRESS:** 2600 McCormick Drive, Suite 200,

Clearwater, Florida 33759

**DEALER  
LOCATION(S)**

(Full address and zip or postal codes): Each Dealer facility as listed on Exhibit A attached hereto.

**TERRITORY:** Identified for each Dealer Location in attached Exhibit A

**PRODUCT(S)**  
(Includes related parts and accessories)

Full line of Sea Ray boats.

**TERM:** The Term of this Agreement shall be September 1, 2021 to August 31, 2024. Thereafter, this Agreement shall automatically renew for successive three (3) year terms unless (i) terminated earlier pursuant to the terms of this Agreement or (ii) either party gives the other written notice not less than six (6) months prior to the end of the then current term that this Agreement will not renew at the end of such term.

The Term for Preferred and Standard Locations (as defined below) will be as described in Section 2.2.

**EFFECTIVE DATE AND TERMINATION OF OTHER SALES AND SERVICE AGREEMENTS:** Notwithstanding the date of execution of this Agreement, the terms of this Agreement shall be effective on September 1, 2021 (the “Effective Date”). The terms of the parties’ current Sales and Service Agreements

shall continue to apply until the Effective Date. As further provided in Section 21 below, as of the Effective Date, those Sales and Service Agreements are terminated and replaced with this Agreement.

Company and Dealer acknowledge that the attached Sales and Service Agreement Terms and Conditions and Exhibits are hereby incorporated into and made a part of this Agreement.

IN WITNESS WHEREOF, Company and Dealer have executed this Agreement and the parties and the individual(s) signing for each party, respectively below represent and warrant that the individual(s) signing this Agreement is duly authorized to do so.

Sea Ray Division of Brunswick Corporation MARINEMAX, INC.  
(Company)

(Dealer)

By: \_\_\_\_\_  
(signature)

By: \_\_\_\_\_  
(signature)

Name: \_\_\_\_\_  
(printed name)

Name: \_\_\_\_\_  
(printed name)

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## SALES AND SERVICE AGREEMENT

### TERMS AND CONDITIONS

1. Appointment of Dealer: Company hereby appoints Dealer as a dealer for the retail sale, display, and servicing of the Product(s), as identified in the Defined Terms and subject to Company's policies and programs, from the authorized Dealer Location(s) set forth in the Defined Terms, which Products shall be purchased only from Company or an authorized Company dealer located in the country in which Dealer is located.

Except as provided herein, during the term of this Agreement, Company shall not appoint other dealers to sell Products from a dealer location within the Territory set forth in the Defined Terms; provided, however that (i) Company reserves the right to modify the Territory or appoint other dealers to sell, display and service Product from dealer locations within the Territory at any time if Dealer closes a Dealer Location without prior written notice to Company and prior written approval thereof by Company, which approval shall not be unreasonably withheld upon a review by Company of Dealer's abilities to perform the Agreement obligations in the applicable Territory, and (ii) Company shall have the right to appoint other dealers to sell, display and service Product from dealer locations within the applicable Territory to replace Dealer Locations to which this Agreement no longer applies as a result of the termination of this Agreement as to a specific Dealer Location pursuant to Section 2 or Section 16 hereof. Dealer shall not sell, advertise, solicit for sale or offer for resale Products outside of the Territory except as otherwise provided by Company's Advertising Policy or other applicable policy. However, Dealer may make Product sales to a purchaser located outside the Territory who has entered the Territory, on his/her own, to purchase products. Likewise, other authorized Company dealers may be permitted to make Product sales to a purchaser who is located in the Territory but has, on his/her own, gone outside the Territory to purchase Products. In addition, Company may permit former Company dealers in the Territory to continue to perform warranty work and continue to purchase and sell warranty parts and accessories for Products for a period of time after the expiration or termination of their dealer relationship with Company. Company reserves the right in its sole discretion to monitor or otherwise enforce its policies and procedures and there are no third party beneficiary rights to such policies and procedures or this Agreement.

Company also reserves the right to make sales of Products or provide service in the Territory; provided that Company [\*\*\*\*] in the Territory to individual consumers. Company further reserves the right to appoint other dealers or service providers to sell, display, and/or service Products, from any other location outside the Territory, even if Company or other dealers compete with Dealer for purchasers or service within the Territory.

Company shall have the right to adopt, modify and enforce policies and programs from time to time in its sole discretion and in accordance with its own business judgment which policies and programs apply to all of Company's dealers. Dealer agrees to comply with the material terms of such policies and programs.

#### 2. Brand Concentration and Dealer Locations:

##### 2.1 Applicability and Definitions:

A. Dealer acknowledges that the terms and conditions of this Agreement apply on a location by location basis. Company shall have the right to evaluate Dealer and each Dealer Location on a location by location basis as set forth in this Agreement.

B. Defined Terms:

- a. “BBG Concentration” means that percentage of Dealer’s new boat revenue [\*\*\*\*]. [\*\*\*\*] derived from the sale of BBG boats as compared to other brands. Such percentage shall be measured annually on the Measurement Date for the twelve (12) months prior to the Measurement Date. For purposes of clarification, the calculation of BBG Concentration will only relate to Dealer Locations where Dealer carries a BBG brand.
- b. “BBG Base Concentration” initially means the BBG Concentration as of the date of execution of this Agreement, [\*\*\*\*]. BBG Base Concentration shall be recalculated at the beginning of any contract year (beginning with the Effective Date) if the number of Dealer Locations with a BBG brand has changed in the prior year.
- c. “Brand Concentration” (measured annually on the Measurement Date) means the percentage of Dealer’s new boat revenue attributable to Company among recreational fiberglass boats [\*\*\*\*]. For purposes of clarification, recreational fiberglass boats shall include deck, sport boat, and sport cruiser models and those boats included in the following SSI segment references – Cruisers IO, IB, and OB (all lengths), Deck IO and OB (all lengths), and Runabouts IO and OB (all lengths).
- d. “Measurement Date” means the first day of August each year, beginning August 1, 2021.
- e. “Preferred Location” means a Dealer Location that has a Brand Concentration of at least [\*\*\*\*] on a Measurement Date and continues to meet such [\*\*\*\*] concentration level on each Measurement Date.
- f. “Standard Location” means a Dealer Location that does not have at least a [\*\*\*\*] Brand Concentration level on a Measurement Date.

2.2 Term of Agreement applicable to Individual Dealer Locations:

A. Preferred Location Term: The three (3) year term of this Agreement shall apply to a Preferred Location, so long as it maintains Preferred Location status. If a location initially qualifying as a Preferred Location fails to meet the required Brand Concentration level as of a later Measurement Date, the term for such location shall convert to one (1) year beginning September 1st of the year after such location failed to meet the required Brand Concentration level, subject to the terms in Sections 2.2 B. and D. below; provided, however, that if such location achieves the required Brand Concentration level for preferred status as of a later Measurement Date such location returns to preferred status and the term will continue for the third (3rd) year.

B. Standard Location Term: The term of this Agreement for a Standard Location shall be for one (1) year and expire on August 31, 2022. This term shall automatically renew for successive one (1) year terms unless (i) terminated earlier pursuant to the terms of this Agreement or (ii) either party gives the other written notice during the first ninety (90) days of the then current one (1) year term that the term related to a specific location will not renew at the end of such one (1) year term, subject to the provisions of Section 2.2 D. below.

C. Exception to Location Term Provisions: Notwithstanding the above, if Dealer’s BBG Concentration collectively across all Dealer Locations is [\*\*\*\*] the BBG Base Concentration, the term related to all Dealer Locations shall convert to a one (1) year term pursuant to the terms of 2.2 B above. For purposes of clarification, under no circumstances shall the term applicable to any location extend beyond the term of this Agreement.

D. Location Nonrenewal: If Company desires to exercise its right to nonrenew any location at the end of its one (1) year term (either a Standard Location or a Preferred Location that has converted to a one (1) year term), Company shall provide Dealer notice of the same during [\*\*\*\*] of the contract year and Dealer shall then have the opportunity to provide Company with a recovery plan related to such location. If Company approves the recovery plan and determines in its sole discretion based on legitimate business judgement that such plan is successfully completed, the term related to such location shall be renewed for an additional year.

2.3 Partnership Incentive Rebate:

Base Concentration.

A. Dealer shall qualify for the Partnership Incentive Rebate if Dealer's BBG Concentration collectively across all Dealer Locations is [\*\*\*\*] above the BBG

B. "Partnership Incentive Rebate" means: for Dealer Locations with a Brand Concentration [\*\*\*\*] rebate on wholesale purchases of Company brand products shipped to qualifying locations for the twelve (12) months prior to the Measurement Date; for Dealer Locations with a Brand Concentration [\*\*\*\*] rebate on wholesale purchases of Company brand products shipped to qualifying locations for the twelve (12) months prior to the Measurement Date; and for Dealer Locations with a Brand Concentration of [\*\*\*\*] no additional incentive rebate on purchases of Company brand products for the twelve (12) months prior to the Measurement Date.

C. Company shall pay Dealer the Partnership Incentive Rebate by issuing a credit to Dealer's parts account no later than thirty (30) days after the Measurement Date reports are provided to Company pursuant to Section 2.4.

2.4 Measurement of BBG and Brand Concentration: No later than fifteen (15) days after each annual Measurement Date, Dealer shall (i) submit a report for each Dealer Location for the twelve (12) months prior to the Measurement Date of the applicable Brand Concentration level calculated for each Dealer Location (and reasonably supporting sales information of Company in the aggregate without specific numbers related to other non-Brunswick brands), and (ii) provide the collective BBG Concentration across all Dealer Locations for the twelve (12) months prior to the Measurement Date (and supporting sales information). Upon request by Company, Dealer shall provide additional information necessary to support such reports.

2.5 Review of BBG and Brand Concentration: If Company is unable to supply a material amount of Product forecasted by Dealer as a result of Company production limitations, the parties agree to review in good faith potential modifications to the BBG and Brand Concentration requirements referenced above.

2.6 Acquisition Support: If Dealer is considering an acquisition of a dealer/location that will meet the definition of a Preferred Location, Company will make reasonable efforts to streamline and accelerate the review and approval process related to such acquisition. Company will generally support such acquisitions absent material concerns with respect to the acquisition; provided that Dealer agrees in connection with such acquisition to at least maintain the Brand Concentration level at such dealer/location for the term of this Agreement. The approval process related to proposed acquisitions of a dealer/location that will be a Standard Location will continue to be governed by the terms of the parties' separate Agreements Relating to Acquisitions (for Boston Whaler dated February 3, 2018 and for Sea Ray dated December 6, 2005, as amended effective as of September 1, 2014).

3. Location: Dealer shall sell at retail, display, and service Products only at and from the authorized Dealer Location(s) referenced in Exhibit A, as may be amended from time to time as provided herein. Dealer Location(s) are both sales and service unless otherwise specified in writing. Dealer shall concentrate its sales, display and service efforts within the designated Territory.

Dealer shall not delete, change, or add to the Dealer Location(s) without the prior written consent of Company. Dealer shall not directly or indirectly sell Products for use by or to a purchaser located outside of the country in which the Dealer is located, and shall not sell Products to a third party who Dealer knows or should know will resell the Products outside of the country in which the Dealer is located. Dealer shall not sell to others (including sub-dealers) for the purpose of resale without the prior written consent of Company, which consent shall not be unreasonably withheld. Dealer shall not utilize the services of a broker or similar agent to sell Product, unless such broker is an affiliated third party of Dealer that is located within the Territory, consummates the sale of any Product in concert with Dealer and pursuant to Dealer's standard practices, and otherwise complies with the requirements of this Agreement. Dealer agrees to provide appropriate facilities and to assume full and complete



managerial authority and responsibility for the service of the Products at and from those Dealer Location(s) specified in this Agreement and for the display and retail sale of the Products at and from each Dealer Location. Additionally, Dealer may engage in temporary off-site display and sales activity within the Territory.

4. Responsibilities of the Parties:

4.1. Dealer's Responsibilities:

Dealer agrees to:

A. Devote its best efforts to aggressively (i) promote and advertise Products at each Dealer Location and in the Territory, and (ii) display and sell Products at each Dealer Location, in each case in accordance with the terms of this Agreement and all applicable federal, state and local laws. Dealer shall display and utilize at each Dealer Location signs, graphics and image elements with Company's Identification as defined in this Agreement, subject to approval by Company, that will positively reflect the Company image and promote the retail sale of the Products.

B. Purchase and carry on hand at all times at each Dealer Location a sufficient inventory of current Products to meet the reasonable demand of customers at each Dealer Location, as outlined by the Company.

C. Maintain at each Dealer Location (unless a sales location only, and then service shall be provided at another Dealer Location) a service department that Dealer agrees to staff, train, and equip to promptly and professionally service Products; and to maintain at each Dealer Location parts and supplies to properly service Products on a timely basis.

D. Properly perform any and all necessary Product rigging, installation, and inspection services prior to delivery to the purchaser as required by Company's current written policy and perform post-sale service of all Products originally sold by Dealer or brought to Dealer for service. Dealer will be required to provide or arrange for warranty and service work for Product regardless of the selling dealer of the Product or condition of sale. Dealer will provide appropriate instructions to purchasers on how to obtain warranty and service work from the Dealer. Dealer will secure all Product inventory against weathering and other damage, and maintain inventory in a like new and unused condition.

E. Furnish each Product purchaser with Company's limited warranty on new Products and with information and training as to the safe and proper operation and maintenance of the Product.

F. Warranty register each retail sold Product on Compass upon delivery of Product to the purchaser and with purchaser's consent, provide the purchaser's name, address, email address and phone number for the purpose of assisting Company in performing Product defect and recall campaigns. Further, Dealer agrees to warranty register any Product purchased and used for lease, rental or other commercial purposes on Compass before using the Product. If Dealer fails to register the Product with Company as required, Dealer shall indemnify Company against any liability, loss, or damage which Company may sustain as a result of such failure.

In instances where a retail sold boat has been registered prior to actual delivery to the purchaser, Dealer must enter the actual delivery date into Compass within thirty (30) days of delivery. If Dealer fails to enter the actual delivery date into Compass within thirty (30) days, Dealer shall indemnify Company for any valid warranty claims filed between the warranty expiration date based on the pre-delivery registration and the warranty expiration date based on the actual delivery date.

G. Maintain complete Product sales, warranty and service records, and report to Company on a regular basis the name and address of each Product purchaser subject to applicable law. Dealer

further agrees to provide Company with access to its books and records at reasonable times and upon reasonable prior notice to verify the accuracy of information submitted for participation and eligibility in promotions and other programs.

H. (Intentionally omitted.)

I. Submit to Company upon request any additional information or clarifying information regarding Dealer's financial statements and allow full and open disclosure of financial information concerning Dealer between Company and any financial institution or company which may finance or propose to finance all or part of Dealer's Product inventory.

J. Conduct business in a manner that preserves and enhances the reputation and goodwill of both Company and Dealer for providing quality products and services, and refrain from using any false, misleading or deceptive advertising. Submit truthful and accurate statements, reports and information to Company and any financial institution financing or proposing to finance Dealer's Product inventory or any purchaser of Dealer's Product.

K. Maintain an ability to purchase Product inventory for each Dealer Location via flooring and/or self-financing that is customary to carry on hand and display Company's current Product models as indicated in the Defined Terms of this Agreement.

L. [Intentionally omitted.]

M. Use its best efforts to maintain and improve NPS or CSI rating in compliance with any applicable NPS or CSI standards of Company.

N. Comply with all applicable governmental laws and regulations and with those Dealer obligations that may be imposed or established by Company, applicable to all other Company dealers, including but not limited to those included in the Company's policies and programs.

O. Comply with the requirements established by Company's Advertising Policy, applicable to all other Company dealers.

P. Maintain a financial condition which is adequate to satisfy and perform its obligations under this Agreement.

Q. Provide prior written notice to Company if Dealer desires to make any material change in Dealer's financing of its Product inventory or business and give Company sufficient time to discuss and review with Dealer the effect of the proposed change.

R. Notify Company in writing at least thirty (30) days prior to the addition or deletion of any Dealer Location(s), which notification Dealer agrees shall not be deemed a consent by Company to such a proposed change.

S. Provide Company with prior notice of any proposed appointment of sub-dealers. All appointments of authorized sub-dealers are subject to prior written approval by Company ("Authorized Sub-dealers"). Dealer will set its own resale price to Authorized Sub-dealers and assume all risk of non-payment by the Authorized Sub-dealers. The Authorized Sub-dealers are not parties to any agreement between Company and Dealer and Dealer will ensure that the Authorized Sub-dealers do not take any actions that violate any policies and programs of Company or are inconsistent with the terms of this Agreement. Dealer is responsible for any losses incurred by Company as a result of Authorized Sub-dealer's performance including, but without limitation, Authorized Sub-dealer's failure to pay Company for any Product or to pay any financial institution that finances

Products purchased by the Authorized Sub-dealers. Dealer will not enter into any agreement with Authorized Sub-dealers that is inconsistent with the terms and conditions of this Agreement.

T. Notify Company in writing of the applicable brand and boat type (i) at least ten (10) days before Dealer agrees or commits to sell, display or advertise a boat brand currently carried by Dealer in an additional/new location, and (ii) at least thirty (30) days before Dealer agrees or commits to sell, display or advertise a new boat brand not already carried by Dealer.

U. Notify Company in writing if Dealer knowingly is unable to address and resolve a customer's concern or complaint related to a Product after one (1) attempt for a safety issue or two (2) attempts for a non-safety issue, and provide Company with information related to (i) the concern or complaint, (ii) Dealer's prior actions in an effort to address the issue, and (iii) Dealer's plan/proposal to address the customer's unresolved concerns.

V. Provide Company a copy of the applicable Sales Tax Exemption Certificate or Uniform Sales and Use Tax Multi-Jurisdiction Certificate which certifies the Products being purchased from Company are being purchased for the purpose of resale to retail customers.

4.2 Company Responsibilities:

Company agrees to:

A. Sell Products to Dealer in accordance with Company's then-current terms and conditions of sale, limited warranties, and the price list published from time to time by Company, less any applicable discounts allowed by Company's programs applicable to Dealer. Company shall have the right to modify its terms and conditions of sale, limited warranties, price lists and programs from time to time in its sole discretion and in compliance with the terms of this Agreement; provided, however, that Company will provide reasonable prior written notice to Dealer after the beginning of the Model Year of such modifications and that changes in the limited warranty and pricing will apply only to future retail purchases. Company will make available its current policies and programs in electronic format or in a format Company deems appropriate, including a dealer manual. Dealer should contact Company for a copy of the policies and programs if it does not have access to or did not receive a copy.

B. Provide to Dealer reasonable quantities of specification sheets and other advertising, merchandising or promotional material to assist Dealer in the sale of Products as Company deems appropriate.

C. Make available to Dealer in electronic format or otherwise reasonable quantities of parts books, warranty claim forms, order forms or procedures, maintenance and service manuals and other materials of a technical nature as Company deems appropriate.

D. Furnish Dealer with written instructions and/or policies for the use of trademarks, trade names, logos and other trade designations of Company that correspond to the Products as Company deems appropriate.

E. Furnish a Limited Warranty for the Products and provide warranty support and process warranty claims in accordance with Company's warranty policy, which may be modified from time to time by Company in its sole discretion. Company shall notify Dealer of changes to Company's warranty policy and make available current versions of its warranty policy to Dealer.

F. Promote sales of the Products via the Internet and other marine related publications or by other means as Company deems appropriate.

G. Ship parts related to the Products in accordance with Company's policy on shipping parts.

H. Accept payment for Product and credit Dealer's account within a reasonable time.

I. Furnish detailed invoices upon shipment and periodic statements thereafter, provide prompt communication regarding account status upon request, and administer credit policies in an impartial and non-discriminatory manner.

J. Identify Dealer's name and address in listing of authorized dealers on Company's website dealer locator (if available). Company reserves the right to create, update and modify such a website locator from time to time as Company deems appropriate.

K. Provide reasonable technical assistance and procedures for handling of technical questions of Dealer related to the Products as Company deems appropriate.

L. Maintain communication channels in order to receive Dealer feedback from time to time as Company deems appropriate. Company shall have the right to determine how the communication channel is managed and what information shall be released.

M. Provide reasonable consultative assistance to Dealer for operational, sales and customer service support as Company deems appropriate.

N. Provide reasonable supportive informational materials for new models of Products as Company deems appropriate.

O. Provide owner's manual for Products and similar materials for other components or accessories that are made available to Company.

P. Provide Dealer with two (2) seats on Company's concept review teams to consult with Company regarding the Products and, at least annually, conduct a portfolio product review with appropriate Dealer managers.

5. Orders: Dealer agrees to submit orders to Company in a manner and format prescribed by Company, applicable to all domestic Company dealers which orders shall be subject to Company's then current terms and conditions of sale which may be modified by Company at any time for all domestic dealers as deemed reasonably necessary. Any order which does not comply with Company's terms and conditions need not be filled by Company provided, however, that Company shall promptly notify Dealer of such noncompliance. Any additional or different terms submitted by Dealer will be deemed rejected and will also be void and of no effect. Dealer cancellation of orders will be subject to Company's then current cancellation policy applicable to all domestic Company dealers. If third party financing or credit approval cannot be obtained, or is revoked by Dealer and/or Dealer's financial institution, after an order has been accepted and scheduled for production, this will also be considered a Dealer cancellation of an order for purposes of this paragraph. All orders submitted by Dealer are subject to acceptance by Company.

6. Prices: The Products sold to Dealer by Company shall be on the basis of price lists published by Company from time to time, less any applicable discounts allowed by Company's programs applicable to Dealer. Company shall have the right to revise the price lists or applicable discounts or programs at any time. The Product prices charged to Dealer will be the lowest price then charged to other domestic dealers subject to Dealer meeting all the requirements and conditions of Company's applicable programs, and provided that Company may in good faith, charge lesser prices to other dealers to meet existing competitive circumstances, for unusual and limited duration non-ordinary business circumstances, or for limited duration promotional programs. Company shall have no obligation to reimburse Dealer for any loss which Dealer may sustain by reason of any change in prices, programs, or discounts. Terms of payment will be as specified from time to time by Company. Dealer will pay Company the lesser of 1.5% late charges per month or the maximum permitted by applicable law on any past due invoice. Company further reserves the right to seek reimbursement for any discounts, rebates or incentives paid to

Dealer that were unearned by Dealer pursuant to the program requirements. Company may refuse shipment for any credit reason, including, without limitation, Dealer's failure to pay for a prior shipment or to pay any financial institution that finances Dealer's purchases, or for Dealer's failure to protect its Product inventory from weathering or other damage and maintain inventory in a like new and unused condition. Dealer will reimburse Company for all reasonable and necessary costs in collecting past due accounts, including attorney fees and court costs. Dealer hereby grants to Company and Company hereby retains a security interest in all Products sold to Dealer and all proceeds arising out of the sale of the Products until such Products are paid for in full. Dealer agrees to sign, file, authenticate, and authorize the signing, filing and authenticating by Company of such financing statements and other documents and do such other acts, as Company may request to establish and maintain a valid and protected security interest in the Products.

7. Shipments: All shipments of Products shall be made FOB the Company factory designated by Company, and title shall pass to Dealer at the time the Products or parts are tendered to the designated carrier, or Dealer or Dealer's Representative, at the Company factory. Dealer shall pay all applicable shipping, transportation, delivery, and handling charges for Products ordered. If Dealer fails to accept delivery of any Products ordered, other than material non-conforming Products that must be returned to Company for repair, Dealer shall reimburse Company for any costs incurred, including returning such Products to Company. If Company ships Products not ordered by Dealer, Dealer shall have the right to refuse delivery, in which event Company shall pay all costs incurred in returning same to Company. Shipments shall be subject to Company's production schedule and availability of materials or transportation equipment. No liability shall be sustained by Company by reason of its not filling any order due to circumstances beyond its reasonable control such as, but not limited to, labor disputes, natural disasters, accidents to machinery, acts of God, acts of or threatened acts of war or terrorism, material shortages, regulations, demands for goods exceeding Company's available supply or any other cause beyond Company's control. In the event of any delay in delivery, failure to fill orders or other default or damage caused by any of the foregoing, Company may, at its option and without liability, cancel all or any portion of the applicable orders, or any order submitted pursuant to this Agreement, to the extent affected by the event of force majeure and/or extend any date upon which performance is due hereinunder.

8. Risk of Loss: Risk of loss for Products ordered by Dealer shall pass to Dealer at the time the Products or parts are tendered to the designated carrier, or Dealer or Dealer's Representative, at the Company factory. Company has instructions to insure Products on behalf of Dealer from the shipping point to the final delivery point unless otherwise agreed by the parties. Dealer will be the loss payee on any claim. Company will assist Dealer in the processing and collection of any claims against the carrier contracted by Company. Notwithstanding the above, upon tender of the Products to Dealer or Dealer's representative at the Company factory, Dealer assumes responsibility to insure the Products.

9. Payment - Claims: Unless otherwise agreed between Company and Dealer in writing, all sales of Products to Dealer shall be paid for in advance by Dealer. After an order has been submitted by Dealer and accepted by Company, payments by Dealer through a financial institution for the Product(s) related to the order shall not be conditioned on Dealer's pre-approval. In the event of an actual delay in shipping Product to Dealer resulting from a Dealer pre-approval, Dealer shall be subject to applicable charges pursuant to Company's policies. All claims for shortage or damages or unacceptable Product shall be made within a reasonable time of arrival of the shipment. The failure of Dealer to give such notification shall constitute a waiver of any such claim. Dealer shall cause to be paid or shall make reimbursement to Company in full for any and all taxes, duties, or other charges imposed by federal, state, municipal, or other governmental authority upon any purchase or sale under this Agreement.

10. Product Modification:

A. Company shall have the right to discontinue the sale of Products or to modify the design, specifications and components of Products at any time in its sole discretion; provided, however, that Company shall notify Dealer, prior to shipment, of any major changes with respect to Products previously ordered by Dealer but not yet delivered, in which event Dealer shall have the right to terminate such order within five (5) days after such

notification by providing written notice to Company. The failure by Dealer to provide such timely written notification shall be deemed acceptance by Dealer of such changes.

B. Dealer understands that Company does not provide a warranty or Product protection coverage for replacement or repairs to specific areas of a Product that have been impacted as a result of modifications or alterations without Company authorization. Consequently, Dealer agrees it will notify Company in writing any time Dealer modifies or alters a Product in any manner. In addition, when seeking authorization to perform warranty or Product protection work, Dealer shall notify Company in writing if it appears that the Product on which the warranty or Product protection work is being performed has been modified, altered, or otherwise differs from the stock Product in any way. For the avoidance of doubt, the warranty or Product protection coverage is not affected and remains in full force and effect for all remaining areas of the Product not impacted as a result of modifications or alterations without authorization.

11. Warranties and Limitation of Warranties and Liability:

11.1 Warranties: Dealer agrees to:

A. Sell Products only on the basis of Company's published applicable limited warranty and make no other warranty or representations concerning the limited warranty, express or implied, either verbally or in writing.

B. Display at each Dealer Location that Product warranty information required by applicable law and furnish and make known to the first-use purchaser at the time of delivery the appropriate operations and maintenance manual provided by Company, instructions for the safe use and operation of the Product consistent with the operations and maintenance manual, the Product installation instructions, if any, together with Company's written limited warranty, including all disclaimers and limitations thereto.

C. Subject to the terms of the applicable limited warranty, expressly inform the purchaser in writing that no Company warranty applies if the Product is "used", which includes personal or substantial demonstration use by the Dealer unless Company expressly authorizes such warranty in writing. No Product warranty shall apply if the Product is substantially modified without the express written authorization of Company.

D. Provide timely warranty service on all Product presented to Dealer by purchasers in accordance with Company's then current warranty service program applicable to all domestic Company dealers selling comparable Products. Dealer agrees to make all claims for reimbursement under Company's warranty service program in the manner prescribed by Company. Company may revise its warranty service program from time to time, providing Dealer with written notification of all revisions, and those revisions will supersede all previous programs.

E. Provide Company with documentation which Company may reasonably request to verify the accuracy of the warranty claims submitted to Company by Dealer and the service provided by Dealer with regard to such warranty claims. If Company finds errors in the aggregate greater than 5% of reviewed claims submitted by Dealer and paid by Company, Company may calculate the percentage rate of error; and using that percentage rate of error, extrapolate the amount owed to Company for up to three (3) prior years of all paid claims made by Company to Dealer. Within thirty (30) days of such notice of such amount, Dealer shall either pay the extrapolated amount to Company or pay the cost of a full audit by Company or Company's designee and pay to Company that amount, if any, found to be owing to Company as a result of such audit. Company agrees to honor all legitimate warranty claims on Products when made by purchaser through Dealer in the manner reasonably prescribed by Company. Company shall respond to all proper and legitimate warranty claims submitted by Dealer within the time period described in the then current warranty policy applicable to domestic Company dealers. Company agrees to acknowledge receipt of warranty claims, and pay or credit all accepted and undisputed claims, in accordance with the terms of the warranty policy, applicable to all domestic Company dealers.

11.2 Commercial Use: If a Product is used for lease, rental or other commercial purposes, the terms of Company's warranty related to commercial use will apply.

11.3 Limitation of Warranties and Liability:

EXCEPT AS SPECIFICALLY PROVIDED IN COMPANY'S PUBLISHED APPLICABLE LIMITED WARRANTY, COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO PRODUCTS, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR, NOR SHALL THE MEASURE OF DAMAGES INCLUDE, ANY AMOUNTS FOR LOST PROFITS, LOST SALES, OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR ANY REASON OR UPON ANY CAUSE OF ACTION, WHETHER SOUNDING IN TORT, CONTRACT OR ANY OTHER LEGAL THEORY.

12. Indemnification:

A. In order to obtain preferred boat show space at discounted rates for Dealers, Company may contract with and agree to indemnify boat show sponsors and other related parties. Accordingly, Dealer shall defend, indemnify and hold harmless Company, and any boat show sponsor which Company has agreed to indemnify, from any and all claims, causes of action, and suits, including claims of negligence arising either directly or indirectly out of Dealer's use of boat show space originally obtained by Company.

B. Company agrees to indemnify and hold harmless Dealer for losses, cost and expense (including, but not limited to reasonable attorney's fees) to the extent such losses, cost or expense result from any third party claim related to (1) Company's negligent acts or omissions involving the original design or manufacture of any Product at the time it left Company's possession or control, or the repair of any Product performed by Company, or (2) any breach of this Agreement by Company. Company, through counsel of its own choosing, may defend any litigation that may arise out of any claims covered hereby, and Dealer agrees to cooperate at its own expense and provide Company with any available information as may be reasonably necessary to such defense. In the event Company elects not to defend any litigation that may arise out of any claims covered hereby, Company will be responsible for Dealer's reasonable attorney fees on a pro-rated basis to the extent such losses are subject to indemnification pursuant to this Agreement.

C. Dealer agrees to indemnify and hold harmless Company for losses, cost and expense (including, but not limited to reasonable attorney's fees) to the extent such losses, cost or expense result from any third party claim related to (1) Dealer's negligent acts or omissions involving Dealer's improper preparation, use or repair of the Products, (2) statements or representations not specifically authorized by Company, including warranties inconsistent with Company's standard limited warranty, (3) damages caused by or related to the installation of any aftermarket components or any other modification or alteration affecting a specific area of the Product, or (4) any breach of this Agreement by Dealer. Dealer, through counsel of its own choosing, may defend any litigation that may arise out of any claims covered hereby, and Company agrees to cooperate at its own expense and provide Dealer with any available information as may be reasonably necessary to such defense. In the event Dealer elects not to defend any litigation that may arise out of any claims covered hereby, Dealer will be responsible for Company's reasonable attorney fees on a pro-rated basis to the extent such losses are subject to indemnification pursuant to this Agreement.

D. The provisions in this Section 12 regarding indemnification do not apply to claims by third parties in which there has been a judicial determination that the indemnifying party does not have liability to the third party. The provisions in this Section 12 shall survive the expiration or termination of this Agreement.

13. Repossession or Repurchase of Product by Company: Dealer shall be liable to and reimburse Company for any and all losses or deficiencies on the sale or disposition of any Product purchased by Dealer pursuant to this Agreement which is repossessed or repurchased by Company for any reason whatsoever, except as contemplated in Section 16. G. Dealer shall also be liable for any and all discounts, volume rebates, or other sales incentives paid to Dealer on Product repurchased, and all reasonable attorney's fees, court costs, and expenses incurred in connection with such repossession or repurchase. Dealer agrees to provide Company, upon request, guarantees or other adequate security to cover any repurchase or financial obligations that Company may assume in connection with Dealer's flooring or financing.

14. Trademarks and Service Marks: Dealer acknowledges that Company or its affiliated companies are the exclusive owners of various trademarks, service marks, trade designations, logos and trade dress (collectively "Identification") which Company uses in connection with Products and its business. Dealer is authorized to use Identification only in the manner prescribed by Company, only in connection with the promotion and sale of Products, and only until the expiration or termination of this Agreement. Dealer shall not register or assist any other party to register any domain name that contains or closely resembles any Company Identification without first obtaining the prior written consent of Company. Dealer shall not use Identification in any unauthorized manner or in any manner that adversely reflects upon the reputation of Company or in relation to any other matter that is a breach of this Agreement. Dealer shall not use Identification or advertise outside of the Territory without Company's express written consent and shall comply with Company's Advertising Policy. Dealer acquires no proprietary rights with respect to Identification, and this authorization shall terminate simultaneously with the termination or expiration of this Agreement. In the event of expiration or termination of this Agreement, Dealer shall immediately discontinue use of Identification in any way whatsoever and shall thereafter not use, either directly or indirectly, any Identification or any confusingly similar Identification in a manner likely to confuse, mislead, or deceive the public. Dealer may continue to use Identification for a reasonable period of time if Company does not repurchase Dealer Product inventory as long as such Identification use remains subject to the terms of this Agreement, Company's Advertising Policy or any other instructions provided by the Company. Dealer agrees that any unauthorized use or continued use of Identification after the period of time allowed by this Paragraph 14 shall constitute irreparable harm entitling Company to equitable relief, including injunction and specific performance, without the necessity of posting bond or proving actual damages, as a remedy for any such breach. Such remedies shall not be deemed to be the exclusive remedies for such a breach by Dealer but shall be in addition to all other remedies available at law or equity to Company.

15. No Agency Created: It is understood and agreed that Dealer is not, nor shall it at any time represent itself to be, the agent, employee, representative, partner, or franchisee of Company for any purpose. Neither party shall enter into any contract or commitment in the name of or on behalf of the other party. Company has no fiduciary duty to Dealer pursuant to this Agreement or the relationship between the parties. Dealer is not required to pay, and shall not pay, to Company any fee for the right to purchase the Products or to otherwise do business with the Company.

16. Term of Agreement - Termination:

A. The term of this Agreement shall be as set forth in the Defined Terms subject, however, to earlier termination in accordance with the terms of this Agreement. Neither party is under any obligation, express or implied, to renew or extend this Agreement or to enter into a new Agreement upon expiration. Company and Dealer acknowledge and agree that if Dealer continues to operate as a dealer for the retail sale, display and servicing of the Product(s) after this Agreement expires without the execution and delivery of a new agreement, there is no tacit, deemed or other renewal or extension of this Agreement, but if Company continues to sell Products to Dealer after termination or expiration of this Agreement, Dealer shall continue to operate as a dealer for the retail sale, display and servicing of the Product(s), from the authorized Dealer Locations(s) on a month-to-month basis, subject to the applicable terms and conditions of this Agreement. In such case, either Company or Dealer may terminate this Agreement following the end of the then current one (1) month term upon at least two (2) months' prior written notice to the other party.



B. Subject to the provisions of Section 16. F. below, Company may terminate this Agreement upon the giving of at least sixty (60) days prior written notice to Dealer if: (1) Dealer does not have an ability to purchase Products via flooring or self-financing, or (2) Dealer fails to meet its financial obligations as they become due to either Company or lender(s) financing Products. Company shall work in good faith with Dealer to try to resolve any differences between them prior to giving such 60-day notice of termination.

C. This Agreement may be terminated at any time by the mutual consent of the parties.

D. Subject to the provisions of Section 16F below, either party may, upon six (6) months prior written notice to the other stating the reasons therefore, terminate this Agreement in the event of the material breach or default of any of the material obligations, covenants, representations, warranties, or duties imposed in this Agreement or in Company's policies or programs applicable to domestic Company dealers; provided that the breach or default has not been cured during the notification period. In such event, the non-breaching party will provide written notice to the breaching party and an opportunity to cure or remedy such breach. The parties shall work together in good faith to resolve any issues.

E. Notwithstanding subparagraph D above or anything in this Agreement to the contrary, this Agreement may be immediately terminated by a party upon sixty (60) days prior written notice to the other party if any of the following occur with regard to the other party: (1) the other party ceases to exist; (2) the other party becomes insolvent, fails to pay debts when due or otherwise takes or fails to take any action which indicates an inability to pay debts when due; or (3) the other party makes a fraudulent misrepresentation that is material to this Agreement. This Agreement may be terminated upon sixty (60) days prior written notice by Company upon the occurrence of: (1a) a prohibited assignment, transfer, delegation or subcontracting without consent as described in Paragraph 18A; (2b) the commission by Dealer of an act of fraud upon Company; (3c) the commission by Dealer (or any of its officers) of a felony or other act of fraud, moral turpitude or dishonesty which is materially detrimental to Company's reputation or business or which materially impairs the Dealer's ability to perform the duties under this Agreement; or (4d) Dealer fails to pay any lender financing Products after the sale of Products by Dealer (out of trust).

F. For the purpose of Section 16D, if a breach or default by Dealer pertains only to one Dealer Location, Company shall have the right to terminate this Agreement related to that particular Dealer Location only. For the purpose of Section 16B or E, if Dealer breaches or defaults as described in such provisions, Company may, in its own discretion, elect either to terminate the entire Agreement (as to all Dealer Locations) or terminate only as to a particular Dealer Location subject to this Agreement. Notwithstanding the foregoing, in the event of any possible termination pursuant to Section 16B or E, a party seeking to terminate shall first provide written notice to the other party stating the potential grounds therefore and both parties shall work together in good faith for a period of no less than sixty (60) days to resolve any concerns between the parties.

G. [\*\*\*\*]

Notwithstanding the above, the Parties agree to work in good faith to sell inventory and manage Dealer's inventory prior to termination in any event of termination or non-renewal or expiration of the Agreement.

H. In the event of termination of this Agreement prior to its expiration date, provided the termination is not for fraud, bad faith, moral turpitude, dishonesty or insolvency of Dealer, Company will nevertheless continue to sell to Dealer warranty parts and accessories for Products on a cash on delivery basis for a period not to exceed twelve (12) months in order that Dealer may continue to provide warranty service on Products which have outstanding warranties subject to Dealer's compliance with the terms and conditions of Company's warranty and parts program applicable to all domestic Company dealers. The performance of any warranty work after termination or expiration of this Agreement shall not be construed as a continuation of this Agreement, the commencement of a new agreement, or a waiver of the termination.

I. Any period of time described in this Agreement shall be modified to such different period of time that may be required by applicable law.

J. In the event of expiration or termination of this Agreement by either party, Company is relieved from any obligation to make any further Product shipments under this Agreement, and may cancel all of Dealer's unshipped orders for Products, irrespective of previous acceptance by Company, except those which are proved to Company's satisfaction to have been the subject of a binding customer order to Dealer prior to the receipt of any notice of termination. The acceptance of orders from Dealer for the continuous sale of Products to Dealer or any other act after termination of this Agreement shall not be construed as a continuation of this Agreement, the commencement of a new agreement, or a waiver of the termination. Upon the termination of this Agreement, all obligations owed by Dealer to Company shall become immediately due and payable on the effective date of the termination, whether otherwise then due or not (without presentment, demand, protest or notice of any kind, all of which are waived by Dealer); and Company may offset or deduct from any and all sums owed to Dealer any and all sums owed by Dealer to Company, or any parent, affiliate or subsidiary of Company, returning to Dealer the excess, if any.

K. In the event of expiration or termination of this Agreement, subject to the terms of Paragraph 14, Dealer must cease use of all Company trademarks, logos, catalogs and other commercial sales material and may no longer hold itself out to the public as an authorized dealer of Company Products. Dealer should also remove all Company signs and other identification marks from its premises at that time.

17. Governing Law: This Agreement shall be governed, interpreted and construed according to the laws of the State of Tennessee, U.S.A., without regard to applicable conflicts of law.

18. Privacy:

A. Compliance with Laws. Company and its affiliates and Dealer undertake, in the context of this Agreement, to comply with their respective obligations under any and all applicable data protection laws and regulations (the "**Data Protection Laws**"). For the purposes of fulfilling the terms of this Agreement, Company and its affiliates shall collect and/or receive from Dealer personal data about Dealer's officers, employees, contractors and customers. Dealer hereby authorizes Company and its affiliates to store, use and process all personal data collected in fulfilling the terms of this Agreement anywhere Company or its affiliates do business. Such personal data may include names, phone numbers, and e-mail/postal addresses ("**Personal Data**"). As a global company, Company and its affiliates may transfer Personal Data to other Brunswick Corporation ("Brunswick") entities and to third-party processors and assignees acting on Brunswick's behalf and under Brunswick's instructions, for uses consistent with this Agreement. Dealer acknowledges that it shall inform its officers, employees, contractors and customers and consumers in accordance with applicable Data Protection Laws, with respect to the disclosure to – and further processing by – Company and its affiliates of their Personal Data for the above-mentioned purposes, before providing any Personal Data to Company and its affiliates.

B. Handling of Personal Data/Data Security: In light of applicable privacy and data protection laws, including the California Consumer Privacy Act ("CCPA"), which can apply to Dealer and to the personal data Dealer collects from Dealer's customers, prospective customers, and even Dealer's employees, to help ensure that Brunswick and its Dealers can meet the requirements of these laws and to ensure sound data privacy practices, Brunswick has adopted a new policy for its Dealers regarding data privacy. This policy may be found by going to Dealer's Compass home page at <https://www.compassbg.com/home.htm> and clicking on the link to the Policies (Updated) page. Dealer agrees to comply with such policy as amended from time to time.

19. Assignability/Transfer:

A. This appointment and Agreement is made and entered into with the distinct understanding that it is personal with Dealer, and is not, whether by operation of law, change in control or otherwise, assignable or in any part delegable or transferable unless the express written consent of Company is obtained; provided, however, that Dealer may assign the appointment and this Agreement to a subsidiary or affiliate without consent. An assignment by Dealer to any subsidiary or affiliate shall not relieve Dealer from any obligation or responsibility provided for under the terms of this Agreement. Unless first approved by Company in writing, any purported assignment, transfer, delegation or subcontracting of Dealer's rights and obligations under this Agreement by it (other than to a subsidiary or affiliate) may immediately render this Agreement terminated in Company's sole discretion.

B. Company may not assign this Agreement without the prior written consent of Dealer, except that no such consent is necessary with respect to assignment of this Agreement to any Company owned subsidiary or affiliate as of the effective date of this Agreement. An assignment by Company to any owned subsidiary or affiliate shall not relieve Company from any obligation or responsibility provided for under the terms of this Agreement. Upon any sale of the business or the assets of Company to a nonaffiliated third party, and where Dealer does not agree to the assignment, this Agreement shall be terminated and Company shall be released from any further obligations and liabilities to supply Products of Company to Dealer under this Agreement provided however that the provisions of Sections 12 and 16 and all other provisions that are intended to survive termination either expressly or impliedly shall do so in accordance with their terms.

20. Notices, Communications:

A. Any notice to be given pursuant to Paragraph 16 of this Agreement shall be in writing and either hand delivered (by courier or otherwise), or mailed, postage prepaid, by recognized overnight carrier (e.g., UPS or FedEx), return receipt requested, to Company at the address listed in the Defined Terms (to the CEO with a copy to Company's General Counsel), and to Dealer at the address listed in the Defined Terms (to the CEO with a copy to Dealer's General Counsel). Notice pursuant to Paragraph 16 may also be given by e-mail if a copy is also subsequently hand delivered or mailed in the manner described herein. All other notices to be given pursuant to this Agreement shall be in writing and either hand-delivered (by courier or otherwise), mailed, postage prepaid, or sent by e-mail, to Company or Dealer at the address listed in the Defined Terms and to the above referenced contacts. The above notices shall be deemed to be given upon first receipt. A change of address or contact information may be given by any means described in this paragraph.

B. Dealer hereby grants permission and consent to Company, and to those entities that are authorized by Company, to send or transmit communications (including but not limited to faxes, wireless communications, and e-mails) to Dealer and Dealer's officers, directors, employees, subsidiaries and affiliates, and their permitted successors and assigns. Such communications are not limited in content and may include advertisements, and Dealer understands that by providing such consent it may incur costs that are related to the receipt of such communications. Dealer further agrees that such communications may be sent to any telephone number or electronic media address provided by Dealer.

21. Entire Agreement - Non-Waiver: This Agreement, including any attached addenda, contains the entire agreement between the parties with respect to the matters set forth herein, except as otherwise provided in any addendum that may be entered into between the parties, and may not be amended or modified except by a written instrument signed by Company and Dealer that expressly states that the writing constitutes an amendment to this Agreement, provided that Company may in its sole discretion and from time to time make changes to its policies and programs applicable to all domestic Company dealers upon the giving of notice to Dealer. This Agreement terminates and replaces all prior agreements made between the parties regarding the subject matter of this Agreement and there are no other agreements regarding the matters herein. However, the ordinary business accounts between Dealer and Company, including those for warranty work and for Products previously purchased by Dealer,

shall remain due and payable in the ordinary course of business. Any promise or representation allegedly made by either party following execution of this Agreement or any amendment that is not stated in a written amendment shall have no effect and neither party may rely on any such promise or statement. Failure on the part of Company or Dealer to enforce any term of this Agreement shall not constitute a waiver thereof.

22. Severability – Existing Claims: Whenever possible, each paragraph of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any portion of this Agreement is deemed invalid or unenforceable, the remaining sections shall still be enforceable unless removal of that portion so materially alters the risks and benefits to either party that enforcement would be substantially unfair. In such a case, the parties agree to immediately negotiate a substitute clause to restore each party as closely as possible to the risks and benefits originally assumed. Dealer represents to Company that it is not aware of any claims, causes of action, or disputes that it has or may assert against Company that arise out of or have accrued prior to the effective date of this Agreement. Dealer further represents to Company that it has not breached or otherwise violated any term or condition of any previous agreement with Company.

23. Venue: Any action, claim, suit or proceeding between Company and Dealer or any owners of Dealer, whether based on federal, state, statutory, or common law, including but not limited to, any and all disputes relating to, arising out of or in connection with the interpretation, performance or the nonperformance of this Agreement and any and all disputes arising out of or in connection with transactions in any way related to this Agreement (including the expiration or termination of this Agreement) shall be litigated solely and exclusively before the United States District Court for the Eastern District of the State of Tennessee. The parties consent to the in personam jurisdiction of said court for the purposes of any such litigation and waive, fully and completely, any right to dismiss and/or transfer any action pursuant to 28 U.S.C. Section 1404 or 1406 (or any successor statutes) or the doctrine of forum non conveniens. In the event the United States District Court does not have subject matter jurisdiction of said matter, then such matters shall be litigated solely and exclusively before the appropriate state court of competent jurisdiction located in Knox County, Tennessee and the parties consent to the personal jurisdiction of such courts for the purpose of such litigation.

24. [Intentionally omitted.]

25. Jury Waiver: Company and Dealer irrevocably waive trial by jury in any action or proceeding, brought by either party.

26. [Intentionally omitted.]

27. Reservation of Rights: Company grants to Dealer only those rights expressly stated in this Agreement. Except to the extent otherwise expressly provided in this Agreement, Company retains all rights. This Agreement does not concern any other brands or products, except the Company Products identified in the Defined Terms hereof. Company and/or its affiliates reserve the right to own, acquire, manage, sell, display or service other products and other brands in any area (including the Territory), including those that may compete with the Products. Company reserves the right to share information, including information concerning Dealer, with its related entities and affiliates. Company reserves the right to receive incentives, rebates or other payments from third-party suppliers, including without limitation related to purchases by or through Dealer from such third party suppliers.

28. Counterparts and Signatures: This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same Agreement. Any signature delivered by fax or other electronic transmission shall be deemed to be an original signature.

29. Confidentiality: Each party shall maintain as confidential all proprietary business information, trade secrets and all materials containing confidential business information provided to such party by the other party, including but not limited to customers, vendors, price lists, wholesale prices, programs, rebates, discounts, inventions, concepts, designs, structures, formulas, processes, financial information, employees, strategic plans,

acquisition plans or other business affairs of the disclosing party. Dealer acknowledges that subsidiaries, affiliates and other divisions of Brunswick Corporation may be given access or have access to confidential business information received in connection with this Agreement, and such disclosure does not constitute a breach of this paragraph. Each party, on behalf of its directors, officers, employees and agents to whom such information and materials are disclosed, agree that it shall keep such information and materials confidential both during and after the Term of this Agreement for a period of three (3) years provided that if any such information or material is a trade secret, then the obligations under this Section shall survive the termination of this Agreement for the longer of five (5) years or the length of time such information remains a trade secret.

These obligations of confidentiality do not apply to any information which (1) was known to the receiving party prior to receipt from the disclosing party; (2) is independently developed by the receiving party, provided that the burden of proof of such independent development shall be on the receiving party; (3) is or becomes publicly known without the fault of the receiving party; (4) is or becomes rightfully available to the receiving party without confidential restriction from a source not bound by a confidentiality obligation to the disclosing party; (5) is required by law, rule or regulation to be disclosed; (6) is required to be disclosed pursuant to court or government action; provided, the disclosing party is given reasonable prior notice of such disclosure; or (6) is disclosed pursuant to written agreement of the parties.

The terms of this paragraph are in addition to, and in no way a limitation of, the terms of any confidentiality or non-disclosure agreement (or any confidentiality provision in any other agreement) between or involving Company (or its affiliates) and Dealer.

30. Miscellaneous: In case of any dispute relating to the rights and duties imposed by this Agreement, both parties will openly discuss and make reasonable efforts at amicable resolution. Except as expressly described to the contrary in this Agreement, the rights and remedies of each party are not exclusive. Unless otherwise provided, where either party has a right to make a determination or pursue or not pursue a particular course of action under the terms of this Agreement, such as, for example granting consent or approval, such determinations and decisions shall be made by such party in its sole discretion. As defined herein, a domestic Company dealer shall be an authorized Company dealer whose territory is located solely within the continental United States.

EXHIBIT A

Dealer Locations  
[\*\*\*]

NOTE: PORTIONS OF THIS EXHIBIT INDICATED BY "[\*\*\*\*]" HAVE BEEN OMITTED FROM THIS EXHIBIT AS THESE PORTIONS ARE NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM IF PUBLICLY DISCLOSED.

**EQUITY PURCHASE AGREEMENT**  
**AMONG**  
**SKIPPER MARINE HOLDINGS, INC.,**  
**SSY HOLDINGS, INC.,**  
**MICHAEL J. PRETASKY, SR.,**  
**MICHAEL JOHN PRETASKY, JR. 2014 TRUST,**  
**MARK ELLERBROCK,**  
**AND**  
**ROBERT ROSS TEFFT, JR.,**  
**AS THE SELLERS,**  
**MICHAEL J. PRETASKY, JR.,**  
**AS THE SELLERS' REPRESENTATIVE,**  
**AND**  
**MARINEMAX, INC.,**  
**AS THE BUYER,**  
**DATED AS OF OCTOBER 1, 2020**

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## TABLE OF CONTENTS

### ARTICLE I DEFINITIONS2

### ARTICLE II PURCHASE AND SALE OF THE EQUITY AND THE TRADEMARKS2

- 2.1 Basic Transaction2
- 2.2 Purchase Price2
- 2.3 The Closing2
- 2.4 Net Working Capital, Cash, Company Expenses and Indebtedness Calculation and Purchase Price Adjustment3
- 2.5 Earnout Payments5
- 2.6 Withholding Rights8
- 2.7 Allocation of Purchase Price9

### ARTICLE III REPRESENTATIONS AND WARRANTIES CONCERNING THE TRANSACTION9

- 3.1 The Sellers' Representations and Warranties9
- 3.2 The Buyer's Representations and Warranties11

### ARTICLE IV REPRESENTATIONS AND WARRANTIES CONCERNING THE COMPANIES11

- 4.1 Organization, Qualification, and Corporate Power12
- 4.2 Capitalization12
- 4.3 Non-contravention12
- 4.4 Brokers' Fees13
- 4.5 Title to Assets13
- 4.6 Subsidiaries13
- 4.7 Financial Statements13
- 4.8 Events Subsequent to Most Recent Fiscal Year End14
- 4.9 Undisclosed Liabilities; Indebtedness15
- 4.10 Legal Compliance15
- 4.11 Tax Matters17
- 4.12 Real Property20
- 4.13 Intellectual Property22
- 4.14 Tangible Assets24
- 4.15 Contracts24



|      |  |    |
|------|--|----|
| 4.16 | Notes and Accounts Receivable            | 26 |
| 4.17 | Powers of Attorney                       | 26 |
| 4.18 | Insurance                                | 26 |
| 4.19 | Litigation                               | 27 |
| 4.20 | Employees                                | 28 |
| 4.21 | Employee Benefits                        | 30 |
| 4.22 | Guaranties                               | 33 |
| 4.23 | Environmental, Health and Safety Matters | 33 |
| 4.24 | [****]                                   | 34 |
| 4.25 | No Other Representations or Warranties   | 34 |

ARTICLE V POST-CLOSING COVENANTS 35

|      |                           |    |
|------|---------------------------|----|
| 5.1  | General                   | 35 |
| 5.2  | Litigation Support        | 35 |
| 5.3  | Transition                | 36 |
| 5.4  | Confidentiality           | 36 |
| 5.5  | Covenant Not to Compete   | 36 |
| 5.6  | Non-Solicitation          | 37 |
| 5.7  | Sellers Release           | 37 |
| 5.8  | Company Books and Records | 38 |
| 5.9  | Personnel                 | 38 |
| 5.10 | [****]                    | 39 |
| 5.11 | SSY Corporate Records     | 39 |

ARTICLE VI CLOSING OBLIGATIONS 39

|     |                         |    |
|-----|-------------------------|----|
| 6.1 | The Seller's Obligation | 39 |
| 6.2 | The Buyer's Obligation  | 40 |

ARTICLE VII REMEDIES FOR BREACHES OF THIS AGREEMENT 41

|     |   |    |
|-----|---|----|
| 7.1 | Survival of Representations and Warranties          | 41 |
| 7.2 | Indemnification Provisions for the Buyer's Benefit  | 42 |
| 7.3 | R&W Insurance                                       | 45 |
| 7.4 | Indemnification Provisions for the Sellers' Benefit | 45 |
| 7.5 | Matters Involving Third Parties                     | 45 |
| 7.6 | Direct Claims                                       | 46 |
| 7.7 | Escrow  | 47 |

- 7.8 [\*\*\*\*] Holdback47
- 7.9 [\*\*\*\*] Holdback47
- 7.10 Environmental Indemnification48

ARTICLE VIII TAX MATTERS48

- 8.1 Tax Returns.48
- 8.2 Payment of Taxes.49
- 8.3 Cooperation on Tax Matters.50
- 8.4 Tax-Sharing Agreements.50
- 8.5 Certain Taxes and Fees.50
- 8.6 Tax Treatment of Transactions.50
- 8.7 Refunds51
- 8.8 Tax Claims51
- 8.9 Prohibited Actions51
- 8.10 Post-Closing Tax Filings51
- 8.11 Transaction Deductions52

ARTICLE IX APPOINTMENT OF SELLERS' REPRESENTATIVES52

- 9.1 Appointment52
- 9.2 Acceptance53
- 9.3 Replacement53
- 9.4 Communications53

ARTICLE X MISCELLANEOUS53

- 10.1 Press Releases and Public Announcements53
- 10.2 No Third-Party Beneficiaries53
- 10.3 Entire Agreement53
- 10.4 Succession and Assignment53
- 10.5 Counterparts54
- 10.6 Headings54
- 10.7 Notices54
- 10.8 Governing Law55
- 10.9 Jurisdiction; Waiver of Jury Trial56
- 10.10 Amendments and Waivers56
- 10.11 Severability56
- 10.12 Expenses56

|       |  |    |
|-------|--|----|
| 10.13 | Construction   | 56 |
| 10.14 | Incorporation of Exhibits, Annexes and Disclosure Schedule | 57 |
| 10.15 | Waiver of Conflicts  | 57 |
| 10.16 | Pre-Closing Privileged Communications                      | 57 |
| 10.17 | Specific Performance                                       | 58 |

|                            |  |  |
|----------------------------|--|--|
| <u>Annex I</u>             | Definitions  |  |
| <u>Annex II</u>            | Net Working Capital Example  |  |
| <u>Annex III</u>           | Key Employees  |  |
| <u>Annex IV</u>            | Required Consents  |  |
| <u>Exhibit A</u>           | Equity of the Sellers  |  |
| <u>Exhibit B</u>           | Trademarks   |  |
| <u>Exhibit C</u>           | Pro Rata Percentages   |  |
| <u>Exhibit D</u>           | Allocation Methodology   |  |
| <u>Exhibit E</u>           | Exceptions to the Sellers' Representations and Warranties Concerning the Transaction |  |
| <u>Exhibit F</u>           | Exceptions to the Buyer's Representations and Warranties Concerning the Transaction  |  |
| <u>Exhibit G</u>           | Form of Trademark Assignment Agreement   |  |
| <u>Exhibit H</u>           | Form of Affiliate Real Property Lease  |  |
| <u>Exhibit I</u>           | Form of Escrow Agreement   |  |
| <u>Exhibit J</u>           | Permitted Liens  |  |
| <u>Disclosure Schedule</u> | Exceptions to Representations and Warranties Concerning the Companies                |  |

## **EQUITY PURCHASE AGREEMENT**

This **EQUITY PURCHASE AGREEMENT** (this "**Agreement**") is entered into on October 1, 2020, by and among: (a) Skipper Marine Holdings, Inc., a Delaware corporation ("**SM Holdings**"), SSY Holdings, Inc., a Delaware corporation ("**SSY Holdings**"), Michael J. Pretasky, Sr. ("**Pretasky**"), Michael John Pretasky, Jr. 2014 Trust ("**MJPJ Trust**"), Mark Ellerbrock ("**Ellerbrock**") and Robert Ross Tefft, Jr. ("**Tefft**") and collectively with Pretasky, MJPJ Trust and Ellerbrock, the "**Individual Sellers**" and together with SM Holdings and SSY, the "**Sellers**"; (b) Michael J. Pretasky, Jr., as the representative of the Sellers (the "**Sellers' Representative**"); and (c) MarineMax, Inc., a Florida corporation (the "**Buyer**"). The Sellers, Sellers' Representative and the Buyer are referred to collectively in this Agreement as the "**Parties**" and each as a "**Party**."

### **BACKGROUND**

Pretasky, MJPJ Trust and Ellerbrock own all of the issued and outstanding equity of SM Holdings.

SM Holdings owns all of the issued and outstanding equity of Skipper Marine Corp., a Wisconsin corporation ("**SMC**"), Skipper Marine of Madison, Inc., a Wisconsin corporation ("**SMMA**"), Skipper Marine of Fox Valley, Inc., a Wisconsin corporation ("**SMFY**"), Skipper Bud's of Illinois, Inc., an Illinois corporation ("**SBI**"), Skipper Marine of Chicago-Land, Inc., an Illinois corporation ("**SMCL**"), Skipper Marine of Michigan, Inc., a Michigan corporation ("**SMMI**"), and Skipper Marine of Ohio, LLC, an Ohio limited liability company ("**SMO**").

Pretasky, MJPJ Trust, Ellerbrock and Tefft own all of the issued and outstanding equity of SSY Holdings.

SSY Holdings owns all of the issued and outstanding equity of Silver Seas Yachts, Inc., an Arizona corporation ("**SSY**"), and collectively with SMC, SMMA, SMFY, SBI, SMCL, SMMI and SMO, the "**Companies**" and each a "**Company**").

The ownership of the equity of the Companies (the "**Equity**") is as set forth on **Exhibit A** to this Agreement.

Additionally, SM Holdings owns the Marks set forth on **Exhibit B** to this Agreement (the "**Trademarks**").

This Agreement contemplates that the Buyer will purchase from the Sellers, and the Sellers will sell to the Buyer, the Equity and the Trademarks in return for the consideration specified in Article II below.

Accordingly, in consideration of the above and the mutual promises made in this Agreement, and in consideration of the representations, warranties, and covenants contained in this Agreement, the Parties agree as follows.

**TERMS**

**ARTICLE I  
DEFINITIONS**

Unless otherwise defined in this Agreement, capitalized terms used in this Agreement have the meanings specified in Annex I to this Agreement.

**ARTICLE II  
PURCHASE AND SALE OF THE EQUITY AND THE TRADEMARKS**

2.1 Basic Transaction

. On and subject to the terms and conditions of this Agreement, the Buyer agrees to purchase from the Sellers, and the Sellers agree to sell to the Buyer all of the Equity and the Trademarks, free and clear of any Liens, for the consideration specified below in this Article II.

2.2 Purchase Price

. In consideration for the sale of the Equity and the Trademarks pursuant to Section 2.1, the Buyer shall pay to the Sellers an aggregate amount equal to: (i) \$55,000,000; plus (ii) the amount of the Estimated Closing Date Cash; plus (iii) the amount of the Estimated Closing Date Net Working Capital; less (iv) the amount of the Estimated Closing Date Indebtedness; and less (v) the Estimated Closing Date Company Expenses (with the results of items (i) through (v) being referred to in this Agreement as the "Preliminary Purchase Price"), less (vi) the Escrow Amount, less (vii) the [\*\*\*\*] Holdback Amount, and less (viii) the [\*\*\*\*] Holdback Amount (with the results of items (i) through (viii) being referred to in this Agreement as the "Closing Date Payment"). The Closing Date Payment shall be allocated among the Sellers in proportion to their respective percentage ownership interests as set forth on Exhibit C (the "Pro Rata Percentages"). The Escrow Amount will be deposited with the Escrow Agent. The Buyer will hold back the [\*\*\*\*] Holdback Amount and the [\*\*\*\*] Holdback Amount. Payments to be made by the Buyer pursuant to Section 2.2 shall be made by wire transfer of immediately available funds to one or more accounts, which account or accounts shall be designated by the Sellers' Representative and Escrow Agent, as applicable, in writing to the Buyer not less than two Business Days prior to the Closing Date.

2.3 The Closing

(a) The closing (the "Closing") of the purchase and sale of the Equity and the Trademarks and the other transactions contemplated by this Agreement (the "Transaction") shall take place by electronic means (in which separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, will be delivered by DocuSign, a .pdf electronic mail exchange, or other electronic transmission of signature pages addressed to each Party's counsel) on the date of this Agreement (the "Closing Date") subject to the satisfaction or waiver of the respective obligations of the Parties under Article VI below. The Closing will be deemed to occur at 12:01 a.m. local time on the Closing Date for tax and accounting purposes.

(b) At the Closing: (i) the Sellers will deliver to the Buyer the various certificates and documents referred to in Section 6.1 below; (ii) the Buyer will deliver to the Sellers the various certificates and documents referred to in Section 6.2 below.

2.4 Net Working Capital, Cash, Company Expenses and Indebtedness Calculation and Purchase Price Adjustment

(a) Estimate of Net Working Capital, Cash, Company Expenses and Indebtedness. At least three Business Days prior to the Closing Date, the Sellers' Representative has, in accordance with the historical principles, practices, methodologies, procedures and policies used by the Companies in connection with the preparation of and reflected and applied in the Financial Statements, prepared and delivered to the Buyer a good faith written estimate (the "Estimated Closing Statement") of the Net Working Capital as of August 31, 2020 and the Cash, the Company Expenses and the Indebtedness of the Companies as of the Closing Date, together with reasonably detailed supporting documentation (with the good faith written estimate of the Net Working Capital, the Cash, the Company Expenses and the Indebtedness of the Companies as of the Closing Date being referred to as the "Estimated Closing Date Net Working Capital," the "Estimated Closing Date Cash," the "Estimated Closing Date Company Expenses," and the "Estimated Closing Date Indebtedness," respectively). The Sellers' Representative consulted with the Buyer regarding the preparation of the Estimated Closing Statement, including any estimates of such amounts.

(b) Closing Statement. Within 90 days after the Closing Date, the Buyer shall, in accordance with the historical principles, practices, methodologies, procedures and policies used by the Companies in connection with the preparation of and reflected and applied in the Financial Statements, prepare and deliver to the Sellers' Representative a calculation of the Net Working Capital, the Cash, the Company Expenses and the Indebtedness of the Companies, in each case as of the Closing Date (determined on a pro forma basis as though the Buyer and the Sellers had not consummated the Transaction), together with reasonably detailed supporting documentation (the "Draft Closing Statement"). Upon reasonable advance notice, the Sellers' Representative shall have full access to all information (including books and records of the Companies and working paper used for the preparation of the Draft Closing Statement) during normal business hours. The Sellers' Representative shall deliver a certificate setting forth their acceptance of, or objections to, the Draft Closing Statement within 60 days of receipt of such Draft Closing Statement. If there are no objections, the Draft Closing Statement shall be deemed accepted by the Sellers. In the event that the Sellers' Representative object to the Draft Closing Statement, the Buyer and the Sellers' Representative shall attempt in good faith to promptly resolve any such objections, and in the event that the Buyer and the Sellers' Representative are unable to resolve such objections within 30 days after the Buyer's receipt of the Sellers' Representative's written objections to the Draft Closing Statement, such dispute shall be governed by Section 2.4(c) below. The Draft Closing Statement, upon its acceptance by the Sellers' Representative or as agreed between the Buyer and the Sellers' Representative or as determined after any disputes have been resolved in accordance with Section 2.4(c) below, shall be referred to as the "Closing Statement," and such statement shall include the Net Working Capital, Cash, the Company Expenses and the Indebtedness of the Companies, in each case as of the Closing Date (the "Closing Date Net Working Capital," "Closing Date Cash," "Closing Date Company Expenses," and "Closing Date Indebtedness," respectively).

(c) Resolutions of Objections. If the Buyer and the Sellers' Representative are unable to resolve any objections to any statement prepared pursuant to this Section 2.4, either the Buyer or the Sellers' Representative may refer the issue(s) to [\*\*\*\*] (the "Independent Accountant") (unless another Independent Accountant is agreed to in writing) to resolve any such remaining objections acting as independent expert. The determination of any Independent Accountant so selected will be set forth in writing and will be conclusive and binding upon the Buyer and the Sellers. When making such determinations, the Independent Accountant shall (i) use only the historical principles, practices, methodologies, procedures and policies used by the Companies in connection with the preparation of and reflected and applied in the Financial Statements, (ii) not assign to an item in dispute a value that is (A) greater than the greatest value for such item assigned by the Buyer, on the one hand, or the Sellers' Representative, on the other hand, (B) less than the smallest value for such item assigned by the Buyer, on the one hand, or the Sellers' Representative, on the other hand, (iii) make its determination(s) based on this Agreement and the written submissions of the Buyer and the Sellers' Representatives (which will be in accordance with the guidelines and procedures set forth in this Agreement) (i.e. and not an independent review by the Independent Accountant) and (iv) not allow a party or its respective representatives to have any *ex parte* conferences, conversations, testimony, depositions, discovery or communications with the Independent Accountant. Each Party shall be permitted to submit such data, documents and information to the Independent Accountant as such Party deems appropriate. In the event the Buyer or the Sellers' Representative submit any unresolved objections to an Independent Accountant for resolution as provided in this Section 2.4(c), the Buyer and the Sellers will share responsibility for the fees and expenses of the Independent Accountant as follows:

(i) if the Independent Accountant resolves all of the remaining objections in favor of the Buyer, the Sellers will be responsible for all of the fees and expenses of the Independent Accountant;

(ii) if the Independent Accountant resolves all of the remaining objections in favor of the Sellers, the Buyer will be responsible for all of the fees and expenses of the Independent Accountant; and

(iii) if the Independent Accountant resolves some of the remaining objections in favor of the Buyer and the rest of the remaining objections in favor of the Sellers, the Sellers will be responsible for the fees and expenses of the Independent Accountant associated with any objections resolved in favor of the Buyer and the Buyer will be responsible for the fees and expenses of the Independent Accountant associated with any objection resolved in favor of the Sellers. Purely by way of illustration, if the items in dispute were to amount to \$1,000 and the Independent Accountant was to award \$600 in favor of the Sellers' position, 60% of the cost of its review would be borne by the Buyer and 40% of the cost of its review would be borne by the Sellers.

(d) Adjustment Payment. The Preliminary Purchase Price will be adjusted as follows:

(i) The "Final Purchase Price" means: (a) \$55,000,000, plus (b) the amount of the Closing Date Cash of the Companies, plus (c) the amount of the Closing Date Net

Working Capital of the Companies, less (d) the amount of the Closing Date Indebtedness of the Companies, and less (e) the Closing Date Company Expenses.

(ii) If the Final Purchase Price exceeds the Preliminary Purchase Price, then the Buyer shall, within three Business Days after the date on which the Final Purchase Price is finally determined pursuant to this Section 2.4, pay to the Sellers the amounts of such excess by wire transfer or delivery of immediately available funds to one or more accounts designated by the Sellers' Representative for distribution to the Sellers in accordance with the Pro Rata Percentages.

(iii) If the Final Purchase Price is less than the Preliminary Purchase Price, then the Sellers shall, within three Business Days after the date on which the Final Purchase Price is finally determined pursuant to this Section 2.4, pay to the Buyer the amount of such difference by wire transfer or delivery of immediately available funds to an account designated by the Buyer based on their Pro Rata Percentages.

## 2.5 Earnout Payments

(a) As additional consideration for the Equity, at such times as provided in this Section 2.5(a), the Buyer shall pay to the Sellers (if any, the "Earnout Payments"):

(i) \$1,500,000, if the Pre-Tax Earnings for the First Calculation Period is equal to or greater than [\*\*\*\*], plus 150% of the amount by which the Pre-Tax Earnings for the First Calculation Period exceeds [\*\*\*\*]; provided, however, that in no event will such Earnout Payment for the First Calculation Period exceed \$3,000,000;

(ii) \$1,500,000, if the Pre-Tax Earnings for the Second Calculation Period is equal to or greater than [\*\*\*\*], plus 150% of the amount by which the Pre-Tax Earnings for the Second Calculation Period exceeds [\*\*\*\*]; provided, however, that in no event will such Earnout Payment for the Second Calculation Period exceed \$4,000,000;

(iii) \$1,500,000, if the Pre-Tax Earnings for the Third Calculation Period is equal to or greater than [\*\*\*\*], plus 150% of the amount by which the Pre-Tax Earnings for the Third Calculation Period exceeds [\*\*\*\*];

(iv) \$1,500,000, if the Pre-Tax Earnings for the Fourth Calculation Period is equal to or greater than [\*\*\*\*], plus 150% of the amount by which the Pre-Tax Earnings for the Fourth Calculation Period exceeds [\*\*\*\*]; and

(v) \$1,500,000, if the Pre-Tax Earnings for the Fifth Calculation Period is equal to or greater than [\*\*\*\*], plus 150% of the amount by which the Pre-Tax Earnings for the Fifth Calculation Period exceeds [\*\*\*\*].

In the event that the Earnout Payment is capped for the First Calculation Period or the Second Calculation Period, the excess Pre-Tax Earnings that caused the Earnout Payment to be capped will be carried over to the Third Calculation Period. However, in no event shall the Buyer be obligated to pay the Sellers more than \$9,250,000 in the aggregate for all Calculation Periods (the "Cumulative Maximum Earnout Payment"). For the avoidance of doubt, except as otherwise provided in this Agreement no Earnout Payment will be made if the targets described above are



not met. For example, if in the First Calculation Period Pre-Tax Earnings does not equal or exceed [\*\*\*\*], no payment shall be made.

(b) Procedures Applicable to Determination of the Earnout Payments.

(i) On or before the date which is 60 days after the last day of each Calculation Period, the Buyer shall prepare and deliver to the Sellers' Representative a written statement (in each case, an "Earnout Payment Notice") setting forth in reasonable detail its determination of Pre-Tax Earnings for the applicable Calculation Period and its calculation of the resulting Earnout Payment.

(ii) The Sellers' Representative shall have 20 days after receipt of the Earnout Payment Calculation Notice for each Calculation Period (in each case, the "Review Period") to review the Earnout Payment Notice. During the Review Period, the Sellers' Representative shall have the right to inspect the Buyer's books and records during normal business hours at the Buyer's offices, upon reasonable prior notice and solely for purposes reasonably related to the determinations of Pre-Tax Earnings and the resulting Earnout Payment. Prior to the expiration of the Review Period, the Sellers' Representative may object to the Earnout Payment calculation set forth in the Earnout Payment Notice for the applicable Calculation Period by delivering a written notice of objection to the Buyer. Any objection shall specify the items in the applicable Earnout Payment disputed by the Sellers' Representative and shall describe in reasonable detail the Basis for such objection, as well as the amount in dispute. If the Sellers' Representative fail to deliver an objection to the Buyer prior to the expiration of the Review Period, then the Earnout Payment set forth in the Earnout Payment Notice shall be final and binding on the Parties. If the Sellers' Representative timely deliver an objection, the Buyer and the Sellers' Representative shall negotiate in good faith to resolve the disputed items and agree upon the resulting amount of the Pre-Tax Earnings and the Earnout Payment for the applicable Calculation Period. If the Buyer and the Sellers' Representative are unable to reach agreement within 30 days after such an objection has been given, such dispute shall be governed in accordance with the procedures set forth in Section 2.4(c), as applied to a dispute regarding the Earnout Payment Notice.

(c) Independence of Earnout Payments. The Buyer's obligation to pay each of the Earnout Payments to the Sellers in accordance with Section 2.5(a) is an independent obligation of the Buyer and is not otherwise conditioned or contingent upon the satisfaction of any conditions precedent to any preceding or subsequent Earnout Payment and the obligation to pay an Earnout Payment to the Sellers shall not obligate the Buyer to pay any preceding or subsequent Earnout Payment.

(d) Timing of Payment of Earnout Payments. Subject to Section 2.5(f), any Earnout Payment that the Buyer is required to pay pursuant to Section 2.5(a) shall be paid in full no later than five Business Days following the date upon which the determination of Pre-Tax Earnings for the applicable Calculation Period becomes final and binding upon the Parties as provided in Section 2.5(b)(ii) (including any final resolution of any dispute raised by the Sellers' Representative in an objection to an Earnout Payment Notice). The Buyer shall pay to the Sellers' Representative for distribution to the Sellers the applicable Earnout Payment in cash by wire transfer of immediately available funds to one or more bank accounts designated by the Sellers'

Representative at least three Business Days prior to the date of payment in accordance with the Pro Rata Percentages.

(e) Acceleration upon the Buyer's Election. At any time after the Closing Date, the Buyer may, in its sole discretion, elect to make a payment to Sellers in the amount equal to (i) the Cumulative Maximum Earnout Payment less (ii) the aggregate sum of all Earnout Payments made prior to such date which, upon payment thereof, shall fully release and discharge the Buyer, its successors and assigns from any further liability or obligation pursuant to this Section 2.5.

(f) Post-Closing Operation of the Companies.

(i) Subject to the terms of this Agreement, subsequent to the Closing, the management of the Companies during the Calculation Periods will be consistent with the Buyer's and its Affiliates policies and procedures as applied across all of the Buyer's and its Affiliates businesses, including, but not limited to, those relating to internal controls, cash management, corporate governance, audit, legal and regulatory matters. Subject to the above and during the Calculation Periods, the Buyer agrees to allow Michael J. Pretasky, Jr. ("MJPJ") to directly oversee and operate the Companies on a day-to-day basis consistent with and subject to the terms of his employment offer from the Buyer, including terms regarding his employment (which the Buyer agrees that during the Calculation Periods, [\*\*\*\*]) and during his employment with the Buyer, MJPJ [\*\*\*\*] set forth on Annex III (the "[\*\*\*\*]") that he determines are critical to the ongoing success of the Companies. In no event shall MJPJ act in a manner that disadvantages the long-term growth of the Companies and their Affiliates in favor of short-term earnings or achieving thresholds for earning an Earnout Payment. In no event shall the Buyer or its Affiliates take, or fail to take, any action primarily intended to interfere with the calculation of, or negatively impact, the Earnout Payments or the Sellers' ability to achieve any Earnout Payment or to distort unfairly and/or adversely affect the financial results of the Companies (including, changing accounting methods or practices, ceasing carrying on the business of the Companies in whole or in part, selling, liquidating or winding down the business of the Companies, shifting any Pre-Tax Earnings to any other Person during the Calculation Periods, shifting costs or expenses of any Affiliate of the Buyer to any of the Companies, bundling or transferring pricing, discounting, or implementing purchasing or supplying programs, or closing any of the locations currently used by the Sellers in the operation of the Companies, unless agreed to by the Parties); it being understood that any action required by Applicable Law shall not be deemed to have been primarily intended to interfere with any Earnout Payments. If after the Closing, the Buyer and MJPJ mutually agree that MJPJ should take on management responsibility for any location other than those historically operated by the Companies, the Buyer and MJPJ will mutually agree on fair compensation for the additional responsibilities, separate and apart from the Earnout Payments.

(ii) The Buyer will at all times during the Calculation Periods record, retain and maintain all records, data and other information reasonably necessary to calculate Pre-Tax Earnings in accordance with the Buyer's accounting principles, practices, methodologies, procedures and policies used by the Buyer, and maintain separately identifiable financial results and books and records for the Companies for purposes of determining Earnout Payments due and owing (or that may become due and owing). The Parties agree that if the Buyer combines the business operations of [\*\*\*\*] with the Buyer's similar business operations in [\*\*\*\*] ([\*\*\*\*]): (A) any negative pre-tax earnings resulting from the Buyer's [\*\*\*\*] operations will not be included

in the determination of the Pre-Tax Earnings of [\*\*\*\*] for purposes of calculating the Earnout Payments; (B) any positive pre-tax earnings resulting from the Buyer's [\*\*\*\*] Operations shall be included in the determination of the Pre-Tax Earnings of [\*\*\*\*] for purposes of calculating the Earnout Payments; and (C) the pre-tax earnings (whether positive or negative) of [\*\*\*\*] shall be included in the determination of the Pre-Tax Earnings of [\*\*\*\*] for the purposes of calculating the Earnout Payments.

(iii) Subject to inventory availability (provided that the Companies' allocation is consistent with the Buyer's company-wide inventory practices) and compliance with the Buyer's standard pricing structure, Buyer will allow the Companies to sell all of Buyer's boat lines that Buyer is able to provide access to based upon its agreements with manufacturers, [\*\*\*\*], and the net profit from such sales (as calculated in accordance with the Buyer's accounting principles, practices, methodologies, procedures and policies) shall be included for purposes of determining Pre-Tax Earnings and calculating Earnout Payments.

(iv) The Buyer will at all times during the Calculation Periods supply the Companies with adequate working capital to fund operations commensurate with the Buyer's historical practices with respect to its other boat lines.

(v) This Agreement is not intended to, and does not, create or impose any fiduciary duty on any of the Parties or their respective Affiliates. Further, each Party waives any fiduciary duties that, absent such waiver, may be implied by Applicable Law, and in doing so, recognizes, acknowledges and agrees that the duties and obligations of the Parties to each other are only as expressly set forth in this Agreement. Notwithstanding anything to the contrary set forth in this Agreement, the Sellers acknowledge and agree that: (A) there is no assurance that it will receive any Earnout Payments under this Agreement or otherwise, and (B) neither the Buyer nor any of its Affiliates have promised or projected any amounts to be received by the Sellers under this Agreement as Earnout Payments or otherwise.

(g) Right of Set-off. The Buyer shall have the right to withhold and set off against any amount otherwise due to be paid pursuant to this Section 2.5 the amount of any amounts to which any Buyer Indemnitee may be entitled under Section 7.2 of the Agreement.

(h) No Security. The Parties understand and agree that: (i) the contingent rights to receive any Earnout Payment shall not be represented by any form of certificate or other instrument, are not transferable, except by operation of Applicable Laws relating to descent and distribution, divorce and community property, and do not constitute an equity or ownership interest in the Companies, the Buyer or any of its Affiliates; (ii) the Sellers shall not have any rights as a securityholder of the Companies, the Buyer or any of its Affiliates as a result of the Sellers' contingent right to receive any Earnout Payment under this Agreement; and (iii) no interest is payable with respect to any Earnout Payment.

## 2.6 Withholding Rights

. The Buyer and any other applicable withholding agent shall be entitled to deduct and withhold from the consideration otherwise payable to or for the benefit of any Person pursuant to this Agreement such amounts as it is required to deduct and withhold with respect to the making of such payment under any provision of Tax law. Any amounts

withheld in accordance with this Section 2.6 shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

### 2.7 Allocation of Purchase Price

. The Sellers' Representative, the Sellers and the Buyer agree that: (a) the Preliminary Purchase Price, the Final Purchase Price, the Liabilities of the Companies (plus other relevant items treated as consideration for income tax purposes), the Earnout Payments and all adjustments to the preceding made pursuant to the terms of this Agreement shall be allocated for all Tax purposes among the assets deemed to be sold by each of SM Holdings and SSY Holdings and (b) this allocation shall be in accordance with the allocation methodology attached as Exhibit D attached to this Agreement (the "Allocation Methodology"). Within thirty (30) days after the determination of the Final Purchase Price and any Earnout Payments (or any subsequent adjustments thereto), the Sellers' Representative shall prepare a purchase price allocation in accordance with the methodology set forth on Exhibit D for review and approval by the Buyer. Following receipt thereof, Buyer shall have a period of ten (10) days to provide Seller's Representative with a statement of any disputed items with respect to such allocation. In the event Buyer provides such statement and Buyer and Sellers' Representative are unable to reach agreement with respect to any disputed items within a period of ten days after Seller's Representative's receipt of such statement, all such disputed items shall be submitted to the Independent Accountant for final resolution. The allocation ultimately agreed upon by Buyer and Sellers' Representative under this Section 2.7 shall be referred to herein as the "Purchase Price Allocation". Neither the Sellers' Representative, the Sellers nor the Buyer shall take any position (whether in audits, Tax Returns or otherwise) that is inconsistent with such Purchase Price Allocation (or amended Purchase Price Allocation, if applicable) unless required to do so by Applicable Law. The Buyer and the Companies shall report the allocation of the total consideration among the Companies assets in a manner consistent with the final Purchase Price Allocation and act in accordance with the final Purchase Price Allocation in the preparation and timely filing of all Tax Returns (including filing IRS Form 8594 with their respective federal income Tax Returns for the taxable year that includes the Closing Date). The Buyer and the Sellers' Representative agree to promptly provide the other parties with any reasonable additional information with respect to the Buyer or the Sellers, as the case may be, and reasonable assistance required to complete IRS Form 8594 or to compute Taxes arising in connection with (or otherwise affected by) the transactions contemplated by this Agreement. Each Party will promptly inform the others of any challenge by any Governmental Authority to any allocation made pursuant to this Section 2.7 and the Buyer and the Sellers' Representative agree to consult with one another and to keep each other fully informed with respect to the status of, and any discussion, proposal or submission with respect to, such challenge and, provided further, in no event will the Buyer or the Companies settle or otherwise resolve any such challenge without the prior written consent of the Sellers' Representative, such consent not to be unreasonably withheld or delayed.

## ARTICLE III **REPRESENTATIONS AND WARRANTIES CONCERNING THE TRANSACTION**

### 3.1 The Sellers' Representations and Warranties

. Each of the Sellers, jointly and severally, represents and warrants to the Buyer that the statements contained in this Section 3.1 are correct and complete as of the Closing Date with respect to itself, himself or herself, except as set forth in Exhibit E attached to this Agreement.

(a) Organization of the Sellers. SM Holdings is duly organized, validly existing, and in good standing or has active status (or the equivalent) under the laws of the jurisdiction of its incorporation or other formation. SSY Holdings is duly organized, validly existing, and in good standing or has active status (or the equivalent) under the laws of the jurisdiction of its incorporation or other formation.

(b) Authorization of Transaction. Each of the Sellers has full power and authority (including full corporate or other entity power and authority) to execute and deliver this Agreement and to perform its or his obligations under this Agreement. This Agreement constitutes the valid and legally binding obligation of each of the Sellers, enforceable in accordance with its terms and conditions. None of the Sellers need to give any notice to, make any filing with, or obtain any Governmental Authorization of any Governmental Authority in Order to consummate the Transaction. The execution, delivery, and performance of this Agreement and all other agreements contemplated by this Agreement have been duly authorized by each of the Sellers.

(c) Non-contravention. Neither the execution and delivery of this Agreement, nor the consummation of the Transaction, will: (i) violate any constitution, statute, regulation, rule, injunction, judgment, Order, decree, ruling, charge, or other restriction of any Governmental Authority to which any of the Sellers is subject or any provision of its Organizational Documents; (ii) except as set for in Section 4.3 of the Disclosure Schedule, conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which the Seller is a party or by which it is bound or to which any of its assets are subject; or (iii) result in the imposition or creation of a Lien upon or with respect to the Equity or the Trademarks.

(d) Brokers' Fees. None of the Sellers has any Liability to pay any fees or commissions to any broker, finder, or agent with respect to the Transaction.

(e) The Equity. The Sellers hold of record and own beneficially all of the Equity, all free and clear of any restrictions on transfer (other than any restrictions under the Organizational Documents of the Companies, the Securities Act and state securities laws), Taxes, Liens, options, warrants, purchase rights, contracts, commitments, equities, claims, and demands. No Seller is a party to any option, warrant, purchase right, or other contract or commitment (directly or indirectly, other than this Agreement) that could require such Seller to sell, transfer, or otherwise dispose of any Equity of any of the Companies. No Seller is a party to any voting trust, proxy, or other agreement or understanding (directly or indirectly) with respect to the voting of any Equity of any of the Companies. Following the Closing Date, the Buyer will own all of the Equity of the Companies free and clear of any restrictions on transfer (other than any restrictions under the Organizational Documents of the Companies, the Securities Act and state securities laws), Taxes, Liens, options, warrants, purchase rights, contracts, commitments, equities, claims, and demands.

(f) The Trademarks. SM Holdings owns, free and clear of all Liens, the Trademarks. None of the Trademarks is invalid or unenforceable in whole or in part and SM Holdings has taken all action necessary, performed all customary acts and paid all fees and Taxes (to the extent applicable) required to protect and maintain in full force and effect the Trademarks.

The Trademarks do not infringe, misappropriate or otherwise violate the Intellectual Property of any Person. There have been no claims or demands asserted in writing (or to the Knowledge of SM Holdings, otherwise) by any other Person pertaining to any of the Trademarks; and no Proceeding has been instituted, or is pending or threatened, which challenges the validity or enforceability of, or SM Holdings' rights in or ownership of, or alleges any infringement in respect of, the Trademarks.

3.2 The Buyer's Representations and Warranties

The Buyer represents and warrants to the Sellers that the statements contained in this Section 3.2 are correct and complete as of the Closing Date, except as set forth in Exhibit F.

- (a) Organization of the Buyer. The Buyer is duly organized, validly existing, and has active status under the laws of the State of Florida.
- (b) Authorization of Transaction. The Buyer has full power and authority (including full corporate or other entity power and authority) to execute and deliver this Agreement and to perform its obligations under this Agreement. This Agreement constitutes the valid and legally binding obligation of the Buyer, enforceable in accordance with its terms and conditions. The Buyer need not give any notice to, make any filing with, or obtain any Governmental Authorization of any Governmental Authority in order to consummate the Transaction. The execution, delivery, and performance of this Agreement and all other agreements contemplated by this Agreement have been duly authorized by the Buyer.
- (c) Non-contravention. Neither the execution and delivery of this Agreement, nor the consummation of the Transaction, will: (i) violate any constitution, statute, regulation, rule, injunction, judgment, Order, decree, ruling, charge, or other restriction of any government, Governmental Authority, or court to which the Buyer is subject or any provision of its Organizational Documents; or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which the Buyer is a party or by which it is bound or to which any of its assets are subject.
- (d) Brokers' Fees. The Buyer has no Liability to pay any fees or commissions to any broker, finder, or agent with respect to the Transaction.
- (e) Investment. The Buyer is not acquiring the Equity with a view to or for sale in connection with any distribution of the Equity.

**ARTICLE IV**  
**REPRESENTATIONS AND WARRANTIES CONCERNING THE COMPANIES**

Each of the Sellers, jointly and severally, represents and warrants to the Buyer that the statements contained in this Article IV are correct and complete as of the Closing Date, except as otherwise stated in this Agreement or set forth in the disclosure schedule delivered by the Sellers to the Buyer on the Closing Date (the "Disclosure Schedule"). The Disclosure Schedule shall be arranged in paragraphs corresponding to the lettered and numbered paragraphs contained in this Article IV and where a particular representation and warranty has subparts or subsections, noting

which specific subpart or subsection is being excepted. The schedules and information set forth in the Disclosure Schedules refer to the paragraph of this Agreement to which such schedule and information is responsive, and each such schedule and information shall be deemed to have been disclosed with respect to all other paragraphs of this Agreement to the extent the same is reasonably apparent on its face without any further inquiry. All capitalized terms used in the Disclosure Schedules and not otherwise defined therein shall have the same meanings as are ascribed to such terms in this Agreement.

#### 4.1 Organization, Qualification, and Corporate Power

. Each of the Companies is a corporation duly organized, validly existing, and is in good standing or has active status (or the equivalent) under the laws of the jurisdiction of its incorporation. Each of the Companies is duly authorized to conduct business and is in good standing or has active status (or the equivalent) under the laws of each jurisdiction where such qualification is required. Each of the Companies has full corporate power and authority and all licenses and Governmental Authorizations necessary to carry on the businesses in which it is engaged and to own and use the properties currently owned and used by it. Section 4.1 of the Disclosure Schedule lists the directors, managers and officers (or their equivalents) of each of the Companies. The Sellers have delivered to the Buyer correct and complete copies of the Organizational Documents for each of the Companies (as amended to date). The minute books (containing the records of meetings of the stockholders, members, board of directors, any committees of the board of directors, and managers, as applicable), the stock or membership interest certificate books, and the stock or membership interest record books of each of the Companies (as applicable for each Company under the relevant jurisdiction) are correct and complete in all material respects. None of the Companies is in default under or in violation of any provision of its Organizational Documents.

#### 4.2 Capitalization

(a) Section 4.2(a) of the Disclosure Schedule sets forth the authorized shares of capital stock or membership interest, the outstanding issued shares (where applicable) of capital stock or membership interests, and the record owners of such outstanding shares (where applicable) of capital stock or membership interests of each of the Companies. All of the issued and outstanding equity (where applicable) of the Companies have been duly authorized and are validly issued, fully paid, and non-assessable.

(b) Except as provided in Section 4.2(b) of the Disclosure Schedule, (i) there are no outstanding or authorized options, warrants, purchase rights, subscription rights, conversion rights, exchange rights, or other contracts or commitments that could require any of the Companies to issue, sell, or otherwise cause to become outstanding any of its equity; (ii) there are no outstanding or authorized stock or membership interest appreciation, phantom stock, profit participation, or similar rights with respect to any of the Companies; and (iii) there are no voting trusts, proxies, or other agreements or understandings with respect to the voting of the equity of any of the Companies.

#### 4.3 Non-contravention

. Except as set forth in Section 4.3 of the Disclosure Schedule, neither the execution, delivery or performance of this Agreement, nor the consummation of the Transaction, will: (i) violate any constitution, statute, regulation, rule, injunction, judgment, Order, decree, ruling, charge, or other restriction of any government, Governmental Authority, or court

to which any of the Companies is subject or any provision of the Organizational Documents of any of the Companies; or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any Material Contract to which any of the Companies is a party or by which it is bound or to which any of its assets is subject (or result in the imposition of any Lien upon any of its assets). Except as set forth in Section 4.3 of the Disclosure Schedule: (i) none of the Companies needs to give any notice to, make any filing with, or obtain any authorization, consent, or approval or any third party in connection with the consummation of the Transaction; or (ii) require the Companies to give any notice to, make any filing with, or obtain any authorization of any Governmental Authority; in each case, in order for the Parties to consummate the Transaction.

#### 4.4 Brokers' Fees

. None of the Companies has any Liability to pay any fees or commissions to any broker, finder, or agent with respect to the Transaction.

#### 4.5 Title to Assets

. Except as set forth on Section 4.5 of the Disclosure Schedule, each of the Companies has good and marketable title to, or a valid leasehold interest in, or other valid right to use the properties and assets used by it in connection with its businesses, including, but not limited to, the properties and assets located on the Real Property, or shown on the Most Recent Balance Sheet or acquired after the Most Recent Fiscal Year End, free and clear of all Liens, other than Permitted Liens, and except for properties and assets disposed of in the Ordinary Course of Business since the date of the Most Recent Balance Sheet. Such assets (including Intellectual Property) and properties are sufficient for each of the Companies to operate their businesses as currently conducted. Except as set forth on Section 4.5 of the Disclosure Schedule, none of the assets used in the business of each relevant Company will, as of the Closing Date, be owned by, or in any way will be licensed or leased from, the Sellers or any Affiliate of the Sellers (other than the Companies).

#### 4.6 Subsidiaries

. Except as set forth on Section 4.6 of the Disclosure Schedule: (i) there are no Subsidiaries of the Companies; (ii) none of the Companies controls, directly or indirectly, or has any direct or indirect equity participation in any corporation, partnership, trust, or other business association that is not a Subsidiary of the respective Company; and (iii) none of the Companies owns or has any right to acquire, directly or indirectly, any outstanding capital stock of, or other equity interests in, any Person.

#### 4.7 Financial Statements

(a) Attached to Section 4.7(a) of the Disclosure Schedule are the following financial statements for each of the Companies (collectively the "Financial Statements"): (i) balance sheets as of and for the fiscal year ended December 31, 2019, prepared for the purposes of the Transaction (the "Most Recent Fiscal Year End"); and (ii) balance sheets (the "Most Recent Financial Statements") as of and for the eight (8) months ended August 31, 2020 (the "Most Recent Fiscal Month End").

(b) Except as set forth in Section 4.7(b) of the Disclosure Schedule, the Financial Statements (including the notes to the Financial Statements) have been prepared in accordance with GAAP applied on a consistent basis throughout the periods covered, present fairly



the financial condition of the Companies as of such dates and the results of operations of the Companies for such periods in all material respects, are correct and complete, and are consistent with the books and records of the Companies (which books and records are correct and complete in all material respects), subject in the case of the Most Recent Financial Statements to the absence of footnotes and normal year-end adjustments. No financial statements of any other Person are required by GAAP to be included or reflected in the Financial Statements.

(c) The Companies make and keep books, records and accounts which: (i) accurately and fairly reflect in all material respects the transactions and dispositions of their assets; (ii) have been maintained in accordance with GAAP and good business practices on a Basis consistent with prior years; (iii) are stated in reasonable detail and reflect the transactions of the Companies; (iv) constitute the Basis for the Financial Statements; and (v) accurately and fairly reflect the assets and liabilities of the Companies. The Companies maintain systems of accounting procedures sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit the preparation of financial statements and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the actual levels at reasonable intervals and appropriate action is taken with respect to any differences.

4.8 Events Subsequent to Most Recent Fiscal Year End

. Except as set forth in Section 4.8 of the Disclosure Schedule, since the Most Recent Fiscal Year End:

- (a) there has not been any event, occurrence or development that has caused, or would reasonably be expected to cause, individually or in the aggregate, a Material Adverse Change;
- (b) none of the Companies has sold, leased, transferred, or assigned any of its assets, tangible or intangible, other than for a fair consideration in the Ordinary Course of Business;
- (c) none of the Companies has imposed any Liens upon any of its assets, other than Permitted Liens, tangible or intangible;
- (d) none of the Companies has made any capital expenditure (or series of related capital expenditures) either involving more than \$50,000 each or outside the Ordinary Course of Business;
- (e) none of the Companies has issued any note, bond, or other debt security or created, incurred, assumed, or guaranteed any Indebtedness either involving more than \$50,000 singly or \$100,000 in the aggregate;
- (f) there has been no change made or authorized in the Organizational Documents of any of the Companies;
- (g) none of the Companies has issued, sold, or otherwise disposed of any of its equity interests, or granted any options, warrants, or other rights to purchase or obtain (including upon conversion, exchange, or exercise) any of its equity interests;

(h) none of the Companies has declared, set aside, or paid any dividend or made any distribution with respect to its equity interests (whether in cash or in kind) or redeemed, purchased, or otherwise acquired any of its equity interests;

(i) none of the Companies has adopted, amended, modified, or terminated any bonus, profit sharing, incentive, severance, or other material plan, contract, or commitment for the benefit of any of its directors, officers, and employees (or taken any such action with respect to any other Employee Benefit Plan);

(j) neither SM Holdings, SSY Holdings nor any of the Companies has: (A) made any change in its Tax reporting or accounting principles; (B) settled or compromised any Tax Liability; (C) made, changed or rescinded any Tax election; (D) surrendered any right in respect of Taxes (including any right to claim a Tax abatement, reduction, exemption, credit or refund); (E) filed any amended Tax Return; or (F) consented to any extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes; and

(k) none of the Companies has committed to any of the above.

4.9 Undisclosed Liabilities; Indebtedness

(a) None of the Companies has any material Liability, except for: (i) Liabilities set forth on Section 4.9(a) of the Disclosure Schedule, (ii) Liabilities set forth on the face of the Most Recent Balance Sheet; (iii) Liabilities that have arisen after the Most Recent Fiscal Month End in the Ordinary Course of Business (none of which results from, arises out of, relates to, is in the nature of, or was caused by any breach of contract, breach of warranty, tort, infringement, or violation of law) (iv) executory Contracts not yet fully performed, and as to which the Company is not in breach or violation; and (v) Liabilities with a value not exceeding \$100,000 in the aggregate.

(b) Section 4.9(b) of the Disclosure Schedule sets forth a detailed and complete list of all of the outstanding Indebtedness of the Companies as of the Closing Date.

4.10 Legal Compliance

. Except for Environmental, Health and Safety Matters which are addressed in Section 4.23:

(a) (i) Each of the Companies and their respective Predecessors and Affiliates has within the past five years complied in all material respects with all Applicable Laws, and there is no charge, Proceeding or investigation by any Governmental Authority with respect to a violation or alleged violation of any Applicable Law that is now pending or has been asserted or threatened with respect to any of the Companies and none of the Companies has made any voluntary disclosure with respect to a possible violation of any Applicable Law; (ii) no Proceeding has been filed or commenced against any of the Companies or their respective Predecessors within the past five years alleging any failure to so comply; (iii) none of the Companies, nor, to the Knowledge of the Sellers, any officers, directors, employees or agents of the Companies (or members, distributors, representatives or other Persons acting on the express, implied or apparent authority of the Companies) has offered, paid, promised to pay or authorized the payment, directly or indirectly through any other Person, of anything of value to any Person acting on behalf of any Governmental Authority (including employees of state-owned entities) or political party or

candidate for public office, for the purpose of influencing any act or decision of such Person or of the Governmental Authority to obtain or retain business; and (iv) there is no charge, Proceeding or investigation by any Governmental Authority with respect to a violation or alleged violation of any anti-corruption law that is now pending or has been asserted or threatened with respect to any of the Companies and none of the Companies has made any voluntary disclosure with respect to a possible violation of any anti-corruption law. Notwithstanding the above, the Sellers are in compliance in all material respects with all COVID-19 Measures enacted in response to the COVID-19 pandemic, and have used reasonable commercial efforts to implement health and safety protocols at all worksites under the control of Seller, consistent with guidance issued by applicable United States federal, state and local health authorities.

(b) Section 4.10(b) of the Disclosure Schedule lists each material Governmental Authorization that is held by each of the Companies or that otherwise relates to the business of, or to any assets owned or used by, the Companies. Each Governmental Authorization listed in Section 4.10(b) of the Disclosure Schedule is valid and in full force and effect. No Company is in breach of or default with the terms of any Governmental Authorization listed in Section 4.10(b) of the Disclosure Schedule. Within the past five years, none of the Companies has received any notice or other communication from any Governmental Authority or other Person regarding: (i) any actual, alleged, or potential violation of, or failure to comply, with any Governmental Authorization or (ii) any actual, proposed, or potential revocation, suspension, cancellation, termination, or modification of any Governmental Authorization. All fees and charges due and payable with respect to such Governmental Authorizations listed in Section 4.10(b) of the Disclosure Schedule have been paid in full. All applications required to have been filed for the renewal or reissuance of the Governmental Authorizations listed in Section 4.10(b) of the Disclosure Schedule have been duly filed on a timely basis with the appropriate Governmental Authorities and all other filings required to have been made with respect to such Governmental Authorizations have been duly made on a timely basis with the appropriate Governmental Authorities. The Governmental Authorizations listed in Section 4.10(b) of the Disclosure Schedule constitute all material Governmental Authorizations necessary or advisable to permit each of the Companies lawfully to continue to conduct their business in the manner in which it currently conducts such business, and to own and use its assets in the manner in which it currently owns and uses such assets.

(a) Except as set forth on Section 4.11(a) of the Disclosure Schedule: (i) each of SM Holdings, SSY Holdings and the Companies has complied in all material respects with all Applicable Laws related to Taxes; (ii) each of SM Holdings, SSY Holdings and the Companies has filed on a timely basis all Tax Returns that it was required to file under Applicable Laws; (iii) all such Tax Returns were correct and complete in all material respects and were prepared in compliance with all Applicable Laws; (iv) all Taxes due and owed by each of SM Holdings, SSY Holdings and the Companies (whether or not shown or required to be shown on any Tax Return) have been paid (or adequately reserved for if such Taxes are not yet due and payable); (v) neither SM Holdings, SSY Holdings nor any of the Companies currently is the beneficiary of any extension of time within which to file any Tax Return; (vi) no written claim has ever been made by an authority in a jurisdiction where SM Holdings, SSY Holdings or any of the Companies does not file Tax Returns that SM Holdings, SSY Holdings or any of the Companies is or may be subject to taxation by that jurisdiction; and (vii) there are no Liens for Taxes (other than Taxes not yet due and payable) upon any of the assets of SM Holdings, SSY Holdings or the Companies.

(b) Except as set forth on Section 4.11(b) of the Disclosure Schedule, each of the Companies has withheld from its employees, independent contractors, creditors, shareholders, members and third parties and timely paid to the appropriate Governmental Authority proper and accurate amounts in all material respects required to have been withheld or paid over for all periods ending on or before the Closing Date in compliance with all Tax withholding and remitting provisions of Applicable Laws and has complied in all material respects with all Tax information reporting provisions of all Applicable Laws. None of the Companies has received any written or oral notice that it is in violation (or with notice will be in violation) of any Applicable Law relating to the payment or withholding of Taxes.

(c) No Company expects any Governmental Authority to assess any additional Taxes for any period with respect to which Tax Returns have been filed. No tax audits or administrative or judicial Tax Proceedings are pending or being conducted with respect to SM Holdings, SSY Holdings or the Companies. Except as set forth on Section 4.11(c) of the Disclosure Schedule, neither SM Holdings, SSY Holdings nor any of the Companies has received from any Taxing Authority (including jurisdictions where the Companies have not filed Tax Returns) any: (i) notice indicating an intent to open an audit or other review; (ii) request for information related to Tax matters; or (iii) notice of deficiency or proposed adjustment for any amount of Tax proposed, asserted, or assessed by any Taxing Authority against any of SM Holdings, SSY Holdings or the Companies. Section 4.11(c) of the Disclosure Schedule lists all Tax Returns filed with respect to SM Holdings, SSY Holdings and any of the Companies for taxable periods ended on or after December 31, 2014, indicates those Tax Returns that have been audited, and indicates those Tax Returns that currently are the subject of audit.

(d) Neither SM Holdings, SSY Holdings nor any of the Companies has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency that currently is in effect, and no power of attorney with respect to any Taxes has been executed or filed with any Governmental Authority that currently is in effect.

(e) No amount paid or payable in connection with the transactions contemplated in this Agreement could result in: (i) any “excess parachute payment” within the meaning of Code Section 280G (or any corresponding provision of state, local or non-U.S. Tax law); or (ii) any amount that will not be fully deductible as a result of Code Section 162(m) (or any corresponding provision of state, local or non-U.S. Tax law). Each of the Companies has disclosed on its federal income Tax Returns all positions taken that could give rise to a substantial understatement of federal income Tax within the meaning of Code Section 6662 (or any corresponding provision of state, local or non-U.S. Tax law). Neither SM Holdings, SSY Holdings nor any of the Companies is a party to or bound by any Tax allocation or sharing agreement (other than pursuant to any contract the primary purpose of which is not the allocation or payment of Tax Liability and in which such provisions regarding Tax Liability are typical of such contracts such as leases where the obligation to pay certain Taxes is passed through to the tenant). Neither SM Holdings, SSY Holdings nor any of the Companies: (A) has ever been a member of an Affiliated Group filing a consolidated federal, state or non-U.S. income Tax Return; (B) has ever been a party to any tax sharing, indemnification or allocation agreement; or (C) has any Liability for the Taxes of any Person under Treasury Regulations Section 1.1502-6 (or any corresponding provision of state, local or non-U.S. Applicable Law), as a transferee or successor or by contract or agreement (other than pursuant to any contract the primary purpose of which is not the allocation or payment of Tax Liability and in which such provisions regarding Tax Liability are typical of such contracts such as leases where the obligation to pay certain Taxes is passed through to the tenant).

(f) The unpaid Taxes of the Companies: (i) did not, as of the Most Recent Fiscal Month End, exceed the reserve for Tax Liability (rather than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the Most Recent Balance Sheet (rather than in any notes to the Most Recent Balance Sheet); and (ii) do not exceed that reserve as adjusted for the passage of time through the Closing Date in accordance with the past custom and practice of the Companies in filing their Tax Returns. Since the date of the Most Recent Balance Sheet, none of the Companies has incurred any Liability for Taxes arising from extraordinary gains or losses, as that term is used in GAAP, outside the Ordinary Course of Business consistent with past custom and practice. The Companies do not have any Liability (whether Tax Liability or otherwise), nor is there any Basis for any Liability, with respect to the Companies’ LIFO reserves.

(g) None of the Companies will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion of such period) ending after the Closing Date as a result of the [\*\*\*\*] or any:

- (i) change in method of accounting for a taxable period ending on or prior to the Closing Date;
- (ii) use of an improper method of accounting for a taxable period ending on or prior to the Closing Date;
- (iii) agreement with any Governmental Authority executed on or prior to the Closing Date;

- (iv) installment sale or open transaction disposition made on or prior to the Closing Date;
- (v) prepaid amount received on or prior to the Closing Date; or
- (vi) election under Code Section 108(i) (or any corresponding provision of state or local Tax law).

(h) Neither SM Holdings, SSY Holdings nor any of the Companies is or has been a party to any "reportable transaction," as defined in Code Section 6707A(c) (1) and Reg. Section 1.6011-4(b) (or any corresponding provisions of state, local or non-U.S. Tax law).

(i) The Sellers have made available to the Buyer for inspection: (A) complete and correct copies of all income and other material Tax Returns of SM Holdings, SSY Holdings and each of the Companies; and (B) complete and correct copies of all private letter rulings, revenue agent reports, material information document requests, notices of proposed deficiencies, deficiency notices, protests, petitions, closing agreements, settlement agreements, pending ruling requests, gain recognition agreements and any similar documents, submitted by, received by or agreed to by or on behalf of SM Holdings, SSY Holdings or the Companies, in each case relating to Taxes for all taxable periods since December 31, 2014.

(j) None of the Companies has participated in an international boycott within the meaning of Section 999 of the Code (or any corresponding provision of state, local or non-U.S. Tax law).

(k) None of the Companies has in effect any tax elections for federal income tax purposes under Sections 108, 168, 338 (other than respect to SSY, as set forth in this Agreement), 441, 471, 1017, 1033, 1502 and 4977 of the Code (or any corresponding provisions of state, local or non-U.S. Tax law).

(l) During the previous two years none of the Companies has engaged in any exchange under which the gain realized on such exchange was not recognized due to Section 1031 of the Code (or any corresponding provision of state, local or non-U.S. Tax law).

(m) None of the Companies has any Indebtedness that (i) was "corporate acquisition indebtedness" as defined in Section 279 of the Code (or any corresponding provision of state, local or non-U.S. Tax law); (ii) bore interest any portion of which was "disqualified interest" as defined in Section 163(j)(3) of the Code (or any corresponding provision of state, local or non-U.S. Tax law), or (iii) was an "applicable high yield discount obligation" as defined in Section 168(i)(1) of the Code (or any corresponding provision of state, local or non-U.S. Tax law).

(n) All related party transactions involving SM Holdings, SSY Holdings or any of the Companies have been at arm's length in compliance with Applicable Law. Each of SM Holdings, SSY Holdings and the Companies has maintained documentation (including any applicable transfer pricing studies) in connection with such related party transactions in accordance with Applicable Law. No Taxing Authority is asserting in writing, nor to the Knowledge of the Sellers, threatening to assert a claim against any of the Companies under or as a result of the alleged failure to maintain arm's length treatment with respect to related party transactions.

(o) To the Knowledge of the Sellers, none of the Companies has taken any action not in accordance with past practice that would have the effect of deferring a measure of Tax from a period (or portion of such period) ending on or before the Closing Date to a period (or portion of such period) beginning after the Closing Date.

(p) Each of SM Holdings, SSY Holdings and the Companies is materially in compliance with the terms and conditions of any applicable Tax exemptions, Tax agreements or Tax orders of any Governmental Authority to which it may be subject or which it may have claimed, and the Transaction will not have any significant adverse effect on such compliance.

(q) None of the Companies is a party to any joint venture, partnership or other agreement or arrangement which is treated or required to be treated as an entity for income Tax purposes.

(r) Each of the Companies has made all required estimated Tax payments sufficient to avoid any underpayment penalties with respect to Taxes required to be paid by it.

(s) Section 4.11(s) of the Disclosure Schedule lists the (i) income Tax characterization of each of SM Holdings, SSY Holdings and the Companies, including any changes in characterization in the past ten (10) years (i.e., S corporation, C corporation, qualified subchapter S subsidiary, partnership or disregarded entity); and (ii) all entity classification elections under Treasury Regulations Section 301.7701-3 (or any corresponding provision of state, local or non-U.S. Applicable Law) which have been made by any of the Companies, and the effective date of each such election, and the characterization of each of SM Holdings, SSY Holdings and the Companies shall remain the same through the end of the Closing Date.

(t) None of the Companies will be liable for any Tax under Section 1374 of the Code in connection with the deemed sale of the Companies' assets pursuant to the terms of this Agreement.

(u) None of the Companies will be liable for any payroll Taxes relating to any Pre-Closing Tax Period that was deferred under the CARES Act or by executive order of a Governmental Authority.

(v) The entrance into this Agreement by the Sellers, including the agreement by the Sellers as to the Pro Rata Percentages, did not have a principal purpose of circumventing the one class of stock requirement of Section 1361(b)(1)(D) of the Code and Treasury Regulations Section 1.1361-1(e)(2)(i) with respect to either SM Holdings or SSY Holdings.

#### 4.12 Real Property

. Except for Environmental, Health and Safety Matters which are addressed in Section 4.23:

(a) None of the Companies has any Owned Real Property. Section 4.12(a) of the Disclosure Schedule sets forth the address of each parcel of Affiliate Real Property. With respect to the Affiliate Real Property, the applicable Affiliate has good and marketable fee simple title, free and clear of all Liens, other than Permitted Liens. Except as set forth on Section 4.12(a) of the Disclosure Schedule, the applicable Affiliate has not leased or otherwise granted to any Person other than the applicable Company the right to use or occupy such Affiliate Real Property

or any portion thereof, and there are no outstanding options, rights of first offer or rights of first refusal to purchase such Affiliate Real Property or any portion of the Affiliate Real Property or interest in the Affiliate Real Property.

(b) Section 4.12(b) of the Disclosure Schedule sets forth the address of each parcel of Leased Real Property, and a true and complete list of all Leases for each such Leased Real Property (including the date and name of the parties to such Lease document). The Sellers have delivered to the Buyer a true and complete copy of each such Lease document. Except as set forth in Section 4.12(b) of the Disclosure Schedule, with respect to each of the Leases:

(i) such Lease is legal, valid, binding, enforceable and in full force and effect;

(ii) the Companies' possession and quiet enjoyment of the Leased Real Property under such Lease is not being disturbed as of the Closing Date and, to the Knowledge of the Sellers, there is no Basis for any such disturbance, and there are no disputes with respect to such Lease as of the Closing Date;

(iii) no security deposit or portion of such securities deposit with respect to such Lease has been applied in respect of a breach of or default under such Lease that has not been redeposited in full;

(iv) none of the Companies owes, or will owe in the future, any brokerage commissions or finder's fees with respect to such Lease;

(v) none of the Companies has subleased, licensed or otherwise granted any Person the right to use or occupy the Leased Real Property or any portion of the Leased Real Property; and

(vi) none of the Companies has collaterally assigned or granted any other Lien in such Lease or any interest in such Lease.

(c) The Real Property identified in Section 4.12(a) and Section 4.12(b) of the Disclosure Schedule, comprises all of the Real Property currently used or intended to be used in, or otherwise related to, the business of the Companies; and none of the Companies is a party to any agreement or option to purchase any real property or interest in any real property.

(d) Except as set forth on Section 4.12(d) of the Disclosure Schedule, all buildings, structures, fixtures, building systems and equipment, and all components included in the Real Property (the "Improvements") are in a condition sufficient for the operation of the Companies' businesses as currently conducted on such property. To the Knowledge of the Sellers, there are no facts or conditions affecting any of the Improvements that would, individually or in the aggregate, interfere with the use or occupancy of the Improvements or any portion of the Improvements in the operation of the Companies' businesses as currently conducted on such property.

(e) None of the Companies has received any written notice of violation of any applicable building, zoning, subdivision, health and safety and other land use laws, and all



insurance requirements affecting the Real Property (collectively, the “Real Property Laws”) and, to the Knowledge of the Sellers, there is no Basis for the issuance of any such notice or the taking of any action for such violation.

(f) Except as set forth on Section 4.12(f) of the Disclosure Schedule, the classification of each parcel of Real Property under applicable Real Property Laws permits the use and occupancy of such parcel and the operation of the Companies’ businesses as currently conducted thereon, and permits the Improvements located on such property as currently constructed, used and occupied. To the Knowledge of the Sellers, the Companies’ use or occupancy of the Real Property or any portion of the Real Property or the operation of the Companies’ businesses as currently conducted on the Real Property is not dependent on a “permitted non-conforming use” or “permitted non-conforming structure” or similar variance, exemption, or approval from any Governmental Authority.

(g) None of the Improvements encroaches on any land that is not included in the Real Property or on any easement affecting such Real Property, or violates any building lines or set back lines, and there are no encroachments onto the Real Property, or any portion of the Real Property, that would materially and adversely interfere with the use or occupancy of such Real Property or the continued operation of the Companies’ businesses as currently conducted on such property.

(h) There is no condemnation, expropriation or other Proceeding in eminent domain, pending or, to the Knowledge of the Sellers, threatened, affecting any parcel of Real Property or any portion thereof or interest therein. There is no injunction, decree, Order, writ or judgment outstanding, or any claim, Litigation, administrative action or similar Proceeding, pending or, to the Knowledge of the Sellers, threatened, that would interfere with the ownership, lease, use or occupancy of the Real Property or any portion thereof by the Companies, or the operation of the Companies’ businesses as currently conducted on such property.

(i) The current use and occupancy of the Real Property and the operation of the Companies’ businesses as currently conducted thereon do not violate any easement, covenant, condition, restriction, or similar provision in any instrument of record, or in any other unrecorded instrument or agreement of which the Sellers have Knowledge, affecting such Real Property (the “Encumbrance Documents”). None of the Companies’ has received any written notice of violation of any Encumbrance Documents and, to the Knowledge of the Sellers, and there is no Basis for the issuance of any such notice or the taking of any action for such violation.

#### 4.13 Intellectual Property

(a) Section 4.13(a) of the Disclosure Schedule sets forth a true and complete list of all: (i) patented or registered Company-Owned Intellectual Property; and (ii) pending patent applications and applications for other registrations of Intellectual Property filed by or on behalf of the Companies (indicating for each of (i) and (ii) the applicable jurisdiction, registration number or application number and date issued or, if not issued, date filed).

(b) Section 4.13(b)(i) of the Disclosure Schedule sets forth a true and complete list of all Intellectual Property licensed to the Companies (excluding generally commercially

available, off the shelf software programs licensed pursuant to shrink-wrap or “click to accept” agreements with a replacement cost and/or annual license fee of less than \$25,000) and any license or other agreement relating to such Intellectual Property (each, an “Inbound IP License”). Section 4.13(b)(ii) of the Disclosure Schedule sets forth a true and complete list of all Intellectual Property licensed by any of the Companies to any third Person and any license or other agreement relating to such Intellectual Property (each, an “Outbound IP License”).

(c) Each of the Companies has good and marketable title to, or Inbound IP Licenses to, the Intellectual Property used by it in connection with its businesses. The Companies own, free and clear of all Liens, other than Permitted Liens, all Company-Owned Intellectual Property, and have valid and enforceable licenses as set forth on Section 4.13(b)(i) of the Disclosure Schedule to use, free and clear of all Liens, other than Permitted Liens, all Company Non-Owned Intellectual Property. None of the Company-Owned Intellectual Property is invalid or unenforceable in whole or in part and the Companies have taken all action necessary, performed all customary acts and paid all fees and Taxes (to the extent applicable) required to protect and maintain in full force and effect the Company Intellectual Property. There have been no claims or demands asserted in writing (or to the Knowledge of the Sellers, otherwise) by any other Person pertaining to any Company Intellectual Property (including any cease-and-desist letters or demands or offers to license any Intellectual Property from any other Person); and no Proceeding has been instituted, or is pending or threatened, which challenges the validity or enforceability of, or the Companies’ rights in or ownership of, or alleges any infringement in respect of, the Company Intellectual Property.

(d) The Companies and their respective businesses have not infringed, misappropriated or violated any Intellectual Property of any other Person and, to the Knowledge of the Sellers, no other Person has infringed, misappropriated or violated any Company Intellectual Property.

(e) Except as set forth in Section 4.13(e) of the Disclosure Schedule, all Company-Owned Intellectual Property which the Companies purport to own was developed by employees, agents, consultants, contractors or other Persons who have executed appropriate, valid, enforceable and irrevocable instruments of assignment in favor of the Companies as assignee that have conveyed to the Companies ownership of all Intellectual Property rights in the Company-Owned Intellectual Property. No current or former shareholder, member, officer, director, manager, employee, agent, consultant, or contractor has any claim, right (whether or not currently exercisable), or interest to or in any Company-Owned Intellectual Property. To the extent that any Company Intellectual Property has been developed or created by a third party for the Companies, the Companies have a written agreement with such third party with respect to such Company Intellectual Property and the Companies either: (i) have obtained ownership of and are the exclusive owner of or (ii) have obtained a license (sufficient for the conduct of its business as currently conducted) to, all of such third party’s Intellectual Property rights in such work, material or invention by operation of law or by valid assignment.

(f) Except as set forth in Section 4.13(f) of the Disclosure Schedule, (i) all of the computer systems, including software, hardware and networks, used by the Companies in connection with the operation of the Companies’ businesses (the “Systems”) are maintained and operated exclusively by the Companies and are not wholly or partly dependent on any facilities or

means (including any electronic, mechanical or photographic process, computerized or otherwise) which are not under the exclusive ownership and control of the Companies and (ii) the Systems are sufficient for the current needs of the Companies and their respective businesses, including as to capacity and ability to process current peak volumes in a timely manner, and in the past twelve (12) months, there have been no bugs in, or failures, breakdowns, or continued substandard performance of, any Systems that has caused the substantial disruption or interruption in or to the use of such Systems.

(g) Except as set forth in Section 4.13(g) of the Disclosure Schedule, each of the Companies maintains policies or procedures regarding data security, privacy, and Personal Information that are commercially reasonable for such Company and, in any event, comply in all material respects with all obligations to its customers or to other Data Subjects and all Applicable Privacy Laws. The use and dissemination of any and all Personal Information by each of the Companies is in compliance with all applicable publicly-posted privacy policies and terms of use, any customer agreements involving the process of Personal Information and all Applicable Privacy Laws. The Transaction will not violate any publicly-posted privacy policy or terms of use, or any customer agreements involving the processing of Personal Information or any Applicable Privacy Law relating to the use, dissemination or transfer of any Personal Information. Within the last five years, there has been no security breach relating to and there has been no unauthorized disclosure or acquisition by a third party of, any Personal Information or Company Intellectual Property stored by or on behalf of any of the Companies. Each Company has used commercially reasonable information security controls, system and data backup practices, and disaster recovery and business-continuity practices that comply with all Applicable Privacy Laws. Each Company has: (i) conducted commercially reasonable reviews or audits of its IT Infrastructure and information security controls (collectively, "Information Security Reviews"); (ii) corrected any exceptions or vulnerabilities identified in such Information Security Reviews; and (iii) installed software security patches and other fixes to identified technical information security vulnerabilities.

#### 4.14 Tangible Assets

. Each of the Companies own or leases all tangible assets necessary for the conduct of their business as presently conducted and as presently proposed to be conducted. Each such tangible asset is free from material defects (patent and latent), has been maintained in accordance with normal industry practice, is in good operating condition and repair (subject to normal wear and tear), and is suitable for the purposes for which it presently is used.

#### 4.15 Contracts

. Section 4.15 of the Disclosure Schedule lists the following Contracts and other agreements to which any of the Companies is a party (collectively, the "Material Contracts"):

(a) any Contract (or group of related Contracts), other than contracts with brokers, employment contracts with employees, directors or officers, contracts with public utilities for energy, water or similar services, voice and data traffic services and cleaning, that represents an aggregate future Liability in excess of \$50,000 in one fiscal year;

(b) any Contract (or group of related Contracts) that relates to capital expenditures and involves future payments in excess of \$50,000 in one fiscal year;

- (c) any Contract (or group of related Contracts) that is a Lease or similar contract;
- (d) any Contract concerning a partnership, joint venture or limited liability company involving the sharing of profits, losses, costs, Taxes or other Liabilities by any of the Companies with any other Person;
- (e) any Contract containing covenants that in any way purport to restrict the right or freedom of any of the Companies or any other Person for the benefit of the Companies to: (A) engage in any business activity; (B) engage in any line of business or compete with any Person; or (C) solicit any Person to enter into a business or employment relationship, or enter into such a relationship with any Person;
- (f) any Contract (or group of related Contracts) under which it has created, incurred, assumed, or guaranteed any Indebtedness, in excess of \$25,000 or under which it has imposed a Lien on any of its assets, tangible or intangible;
- (g) any Contract concerning confidentiality or non-disparagement;
- (h) any profit sharing, equity option, equity purchase, equity appreciation, deferred compensation, change of control, severance, or other plan or arrangement for the benefit of its current or former directors, officers, employees, and consultants;
- (i) any Contract containing or providing for an express undertaking by any of the Companies to be responsible for consequential, special, or liquidated damages or penalties or to indemnify any other Person;
- (j) any collective bargaining agreement or any Contract with any labor union or other employee representative of a group of employees of any of the Companies;
- (k) any Contract for the employment of any individual on a full-time, part-time, consulting, or other Basis providing annual compensation in excess of \$50,000 or providing severance or change of control benefits;
- (l) any Contract under which a leasing, staffing or temporary services company provides workers to any of the Companies;
- (m) any Contract under which it has advanced or loaned any amount to any of its directors, officers, and employees outside the Ordinary Course of Business;
- (n) any Contract under which any of the Companies has advanced or loaned any other Person amounts in the aggregate exceeding \$10,000;
- (o) any Contract under which the consequences of a default or termination could reasonably be expected to have a Material Adverse Effect;
- (p) any Contract with any Governmental Authority;

- (q) any Contract concerning Company Intellectual Property;
- (r) any Inbound IP License;
- (s) any Outbound IP License; or
- (t) any agreement under which compliance with regulatory reporting obligations has been outsourced to a third party.

No Material Contract is an oral Contract. The Sellers have made available to the Buyer a correct and complete copy of each written Material Contract (as amended to date) listed in Section 4.15 of the Disclosure Schedule. With respect to each such Material Contract: (i) the Material Contract is legal, valid, binding, enforceable, and in full force and effect against the Company that is a party to such Material Contract, and to the Knowledge of the Sellers, the other parties thereto; (ii) the Material Contract will be, as of immediately following the consummation of the Transaction, legal, valid, binding, enforceable, and in full force and effect against the Company that is a party to such Material Contract on identical terms (save for any termination by the other party which is not a consequence of a breach of the relevant terms by the Companies), and to the Knowledge of the Sellers, the other parties thereto; (iii) neither any Company nor, to the Knowledge of the Sellers, any other party is in breach or default, and no event has occurred that with notice or lapse of time would constitute a breach or default which would permit termination, modification, or acceleration, under such Material Contract; and (iv) no Company has received written notice alleging a breach on the part of the Company of a Material Contract or which indicates an intention to cancel, terminate, breach or attempt to alter the terms of any such Material Contract, or to exercise or not exercise any option to renew thereunder.

4.16 Notes and Accounts Receivable

. All notes and Receivables of each of the Companies are reflected properly on their books and records and in the Financial Statements, represent valid obligations arising from sales actually made or services actually performed in the Ordinary Course of Business, are valid Receivables subject to no setoffs, expenses, counterclaims, or other reduction, are current and collectible and will be collected in accordance with their terms at their recorded amounts, subject only to the reserve for bad debts (which reserve is adequate and calculated consistent with past practice in the preparation of the Financial Statements) set forth on the face of the Most Recent Balance Sheet as adjusted for the passage of time through the Closing Date in accordance with the past custom and practice of the Companies.

4.17 Powers of Attorney

. Except as set forth in Section 4.17 of the Disclosure Schedule, there are no outstanding powers of attorney executed on behalf of any of the Companies.

4.18 Insurance

(a) The Seller has made available to the Buyer accurate and complete copies of all insurance policies maintained by the Companies. Section 4.18 of the Disclosure Schedule sets forth the following information with respect to each insurance policy (including policies providing property, casualty, liability, and workers' compensation coverage and bond and surety arrangements) to which any of the Companies has been a party, a named insured, or otherwise the beneficiary of coverage at any time within the past five years or that provides coverage to any director, officer or manager of the Companies in such capacity: (i) the name of the insurer, the

name of the policyholder, and the name of each covered insured; (ii) the policy number and the period of coverage; (iii) the scope (including an indication of whether the coverage was on a claims made, occurrence, or other Basis) and amount (including a description of how deductibles and ceilings are calculated and operate) of coverage; (iv) a summary of the loss experience; (v) a statement describing each claim for an amount in excess of \$50,000, which set forth the name of the claimant, a description of the applicably policy, and the amount and a brief description of the claim; and (vi) a description of any retroactive premium adjustments or other loss-sharing arrangements.

(b) With respect to each such insurance policy: (i) the policy is legal, valid, binding, enforceable, and in full force and effect; (ii) the policy will be, as of immediately following the consummation of the Transaction, legal, valid, binding, enforceable, and in full force and effect on identical terms (save for any termination by the insurance companies which is not a consequence of a breach of the terms of the policy by the Companies); (iii) none of the Companies nor any other party to the policy is in breach or default (including with respect to the payment of premiums or the giving of notices), and no event has occurred that, with notice or the lapse of time, would constitute such a breach or default, or permit termination, modification, or acceleration, under the policy; and (iv) no party to the policy has repudiated any provision of such policy. Each of the Companies have been covered during the past five years by insurance in scope and amount customary and reasonable for the businesses in which they have engaged during the aforementioned period. Section 4.18 of the Disclosure Schedule describes any self-insurance arrangements affecting the Companies. Each of the Companies have paid all premiums due, and has otherwise performed their obligations, under each policy of insurance to which it is a party or that provides coverage to it or to any of its directors, officers, or managers, in their capacity as such. Each of the Companies has given notice to the insurer of all insured claims. None of the Companies has received any notice of any, and there are no, planned or proposed increases in the premiums or any other adverse change in the terms of any policy of insurance covering the Companies, or any officer, director, or manager of the Companies in his or her capacity as such. None of the Companies has provided any information to any insurer in connection with any application for insurance that could reasonably be expected to result in (x) cancellation of any insurance policy or bond for the benefit of the Companies or (y) denial of coverage for a risk otherwise covered by any such insurance policy or bond.

#### 4.19 Litigation

. Section 4.19 of the Disclosure Schedule sets forth each instance in which any of the Companies: (i) is subject to any outstanding Order; or (ii) is a party or is threatened to be made a party to any Proceeding of, in, or before (or that could come before) any Governmental Authority or court or quasi-judicial or administrative agency of any jurisdiction or before (or that could come before) any arbitrator ((i) and (ii) collectively, the "Litigation"). None of Litigation set forth in Section 4.19 of the Disclosure Schedule could reasonably be expected to result in any Material Adverse Change. None of the Sellers and the directors and officers (and employees with responsibility for litigation matters) of the Companies has any reason to believe that, except for the Litigation set forth in Section 4.19 of the Disclosure Schedule, any Order or Proceeding may be brought or threatened against any of the Companies or that there is any Basis for the above. Except as set forth in Section 4.19 of the Disclosure Schedule: (i) each of the Companies has at all times been in compliance with each Order to which it, or any assets owned or used by it, is or has been subject, in each case during the past five years; (ii) no event has occurred or circumstance exists that could constitute or result in (with or without notice or lapse

of time) a violation of, or failure to comply with, any Order to which any of the Companies, or any assets owned or used by any of the Companies, is subject; and (iii) none of the Companies has within the past five years received any notice or other communication (whether oral or written) from any Governmental Authority or any other Person regarding any actual, alleged, or potential violation of, or failure to comply with, any Order to which any of the Companies or any assets owned or used by any of the Companies is subject.

4.20 Employees

(a) Section 4.20(a) of the Disclosure Schedule lists the following information for each current employee of the Companies: name, job title, date of hiring, date of commencement of employment, whether the employee is classified as exempt or non-exempt, details of leave of absence or layoff, rate of compensation, bonus arrangement, vacation, sick time, and personal leave accrued as of the Most Recent Fiscal Month End, leave of absence or layoff status, and service credited for purposes of vesting and eligibility to participate under any Employee Benefit Plan. All persons who are required to be classified as employees of the Companies under Applicable Laws are so classified in the payroll records and other records and books of account of the Companies.

(b) Except as set forth on Section 4.20(b) of the Disclosure Schedules, to the Knowledge of the Sellers, no officer, or other key employee of the Companies intends to end such Person's employment with the Companies.

(c) Section 4.20(c) of the Disclosure Schedule states the number of employees terminated or laid off by the Companies since January 1, 2018, and contains a list of the following information for each employee of the Companies who has been terminated or laid off, or whose hours of work have been reduced by more than 50% by the Companies, in the twelve (12) months prior to the Closing Date: (i) the date of such termination, layoff, or reduction in hours; (ii) the reason for such termination, layoff, or reduction in hours; and (iii) the location to which the employee was assigned.

(d) Each of the Companies has within the past five years complied in all material respects with all Applicable Laws relating to employment practices, terms, and conditions of employment, equal employment opportunity, nondiscrimination, sexual harassment, immigration, wages (including the payment of overtime wages), hours (including the provision of all lunch and rest breaks required by Applicable Laws) payment of overtime wages, classification of workers as "employees" or "contractors," the payment of social security and similar Taxes, and occupational safety and health (including the provision of all personal protective equipment required by Applicable Laws). None of the Companies is liable for the payment of any Taxes, fines, penalties, or other amounts, however designated, for failure to comply with any of the above Applicable Laws within the past five years. The Companies have taken reasonable steps to properly classify and treat all of their employees and independent contractors as such, and have taken reasonable steps to properly classify and treat their employees as "exempt" or "nonexempt" from overtime requirements under Applicable Laws. The Companies are not delinquent in payments to any of their employees or consultants for any wages, salaries, overtime pay, commissions, bonuses, accrued and unused vacation, or other compensation, if any, for any services or otherwise arising under any policy, practice, Contract or Applicable Law. None of the

Companies' employment policies or practices is currently being audited or to the Knowledge of the Sellers investigated by any Governmental Authority. The Companies have complied within the past five years with all Applicable Laws and has not been charged with, received any notice of or to the Knowledge of the Sellers been under investigation with respect to, any alleged default under, violation of or nonconformity with any Applicable Laws concerning unemployment compensation, worker's compensation, wages and hours, discrimination in employment, or unfair labor practices under the National Labor Relations Act, and the employment of workers under the Immigration Reform and Control Act of 1986, and all state and local immigration Applicable Laws.

(e) Except as set forth in Section 4.20(e) of the Disclosure Schedule, with respect to the business of the Companies:

(i) currently there is no collective bargaining agreement or similar agreement or relationship with any labor organization;

(ii) to the Knowledge of the Sellers, no officer or other key employee of any of the Companies is currently a party to any confidentiality, non-competition, proprietary rights or other such agreement between such employee and any Person besides the Companies that would be material to the performance of such employee's employment duties, or the ability of such entity or the Buyer to conduct the business of such entity;

(iii) no labor organization or group of employees has filed any representation petition or made any written or oral demand for recognition within the past five years;

(iv) no union organizing or decertification efforts are currently underway or to the Knowledge of the Sellers threatened and no other question concerning representation exists;

(v) no labor strike, work stoppage, picketing, slowdown, employee grievance process, or other material labor dispute has occurred within the past five years, and to the Knowledge of the Sellers none is underway or threatened;

(vi) there is no current workmen's compensation liability, experience or matter outside the Ordinary Course of Business;

(vii) there is no current employment-related charge, complaint, grievance, investigation or inquiry, that is pending or to the Knowledge of the Sellers is threatened in any forum, relating to an alleged violation or breach by any of the Companies, (or its or their officers or directors) of any Applicable Laws, regulations or contracts; and

(viii) to the Knowledge of the Sellers, no employee or agent of any of the Companies has within the past five years committed any act or omission giving rise to material Liability for any violation or breach of the Applicable Laws identified in subsection (v) above.

(f) Section 4.20(f) of the Disclosure Schedule sets forth a list of all: (i) employment contracts or severance or change of control agreements that (A) are with any



employees of the Companies employed within the past five years or (B) under which the Companies have or may have any outstanding obligations; and (ii) written personnel policies, rules, or procedures currently applicable to employees of the Companies. True and complete copies of all such policies, rules or procedures have been made available to the Buyer prior to the Closing Date.

(g) With respect to this Transaction, any notice required under any law or collective bargaining agreement has been given, and all bargaining obligations with any employee representative have been satisfied.

(h) Within the past five years, none of the Companies have implemented any layoffs, plant closings, reductions in force, or terminations of employees that, in the aggregate, would trigger the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq. (the "WARN Act") or any other similar law, rule, or regulation of any Governmental Authority.

#### 4.21 Employee Benefits

(a) Section 4.21(a) of the Disclosure Schedule lists each Employee Benefit Plan that the Companies maintain, to which any of the Companies contributes or has any obligation to contribute, or with respect to which any of the Companies has any Liability. None of the Companies intends, or has committed, to establish or enter into any new Employee Benefit Plan, practice, policy, agreement or arrangement or to modify any Employee Benefit Plan, except to conform such Employee Benefit Plan to any Applicable Law.

(i) Each such Employee Benefit Plan (and each related trust or fund) has been established, maintained, funded and administered in accordance with the terms of such Employee Benefit Plan and the terms of any applicable collective bargaining agreement and complies in form and in operation in all respects with the applicable requirements of Applicable Laws. None of the Companies has received any notice within the last six years from any Governmental Authority questioning or challenging any Employee Benefit Plan's compliance with Applicable Laws. There are no audits, investigations or examinations pending or, to the Knowledge of the Sellers, threatened by any Governmental Authority with respect to any Employee Benefit Plan. There is no Basis for any such audit, investigation or examination. With respect to each Employee Benefit Plan, (A) no actions, suits, or claims (other than routine claims for benefits in the ordinary course) are pending or, to the Knowledge of the Sellers, threatened; (B) no facts or circumstances exist that could give rise to any such actions, suits, or claims; (C) no "prohibited transaction" has occurred within the meaning of the applicable provisions of ERISA or the Code; and (D) no reportable event (within the meaning of Section 4043 of ERISA) has occurred, other than one for which the thirty (30) day notice requirement has been waived.

(ii) All contributions (including all employer contributions and employee salary reduction contributions) that are due have been made within the time periods prescribed by Applicable Law to each such Employee Benefit Plan that is an Employee Pension Benefit Plan and all contributions for any period ending on or before the Closing Date that are not yet due have been made to each such Employee Pension Benefit Plan or accrued in accordance with the past custom and practice of the Companies. All premiums or other payments for all periods ending on or before the Closing Date have been paid with respect to each such Employee

Benefit Plan that is an Employee Welfare Benefit Plan. All contributions to any social security benefit, social fund, or other state-sponsored or state-mandated benefit plan or program have been timely made. Each Employee Benefit Plan that is a group health plan is in compliance in all material respects with the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act (collectively, the “Healthcare Reform Law”), to the extent applicable, and the operation of each Employee Benefit Plan will not result in the incurrence of any penalty to the Companies pursuant to the Healthcare Reform Law.

(iii) The Companies have complied in all respects with the notice and continuation coverage requirements, and all other requirements, of Section 4980B of the Code and Parts 6 and 7 of Title I of ERISA, and the regulations thereunder, and any other Applicable Law with respect to each Employee Benefit Plan that is a group health plan within the meaning of Section 5000(b)(1) of the Code.

(iv) For any Employee Benefit Plan in the United States, each such Employee Benefit Plan that is intended to meet the requirements of a “qualified plan” under Code Section 401(a) has received a determination from the Internal Revenue Service, or is the subject of an opinion letter from the Internal Revenue Service, that such Employee Benefit Plan is so qualified, and, to the Knowledge of the Sellers, nothing has occurred since the date of such determination or opinion letter that could adversely affect the qualified status of any such Employee Benefit Plan and no circumstance exists that could result in revocation of any such favorable determination letter or opinion letter.

(v) No Proceeding with respect to the administration or the investment of the assets of any Employee Benefit Plan (other than routine claims for benefits) is pending or, to the Knowledge of the Sellers, threatened.

(vi) For each Employee Benefit Plan currently maintained by the Companies, the Sellers have delivered to the Buyer correct and complete current copies of: (A) the plan documents and all amendments to the plan documents (or in the case of such an Employee Benefit Plan that is unwritten, a written summary of the plan); (B) the summary plan descriptions together with the summaries of material modifications to the plan; (C) if applicable, the most recent determination letter, advisory letter or opinion letter received from the applicable Governmental Authority relating to the qualified status of the Employee Benefit Plan; (D), as applicable, the annual reports for the three most recently completed plan years; (E) all related trust agreements, insurance contracts, and other funding arrangements that implement each such Employee Benefit Plan; (F) all written contracts relating to such Employee Benefit Plan, including administrative agreements and contracts with service providers; (G) all material correspondence or notices to or from any Governmental Authority relating to such Employee Benefit Plan; (H) all discrimination tests performed during the three most recently completed plan years; and (I) any filings under any amnesty, voluntary compliance or similar program sponsored by any Governmental Authority.

(vii) No current or former independent contractor of any of the Companies could reasonably be deemed to be a misclassified employee. Except as set forth in Section 4.21(a)(vii), no independent contractor of any of the Companies is eligible to participate in any Employee Benefit Plan. None of the Companies has ever excluded from participation in any Employee Benefit Plan, or failed to treat and account for as an employee, any temporary or

leased employees that were eligible to participate in such Employee Benefit Plan, or were legally required to be treated and accounted for as employees.

(b) None of the Companies, nor any member of any Company's "Controlled Group", (defined as any organization which is a member of the Company's controlled group of organizations within the meaning of Sections 414(b), (c), (m) or (o) of the Code) has ever contributed to, has ever had any obligation to contribute to, or has ever had any Liability under or with respect to any Employee Pension Benefit Plan that is a Multiemployer Plan or is subject to Section 412 of the Code or Title IV of ERISA. No assets of any of the Companies are subject to any Lien under Title IV of ERISA.

(c) None of the Companies maintains, contributes to or has an obligation to contribute to, or has any Liability with respect to, any Employee Welfare Benefit Plan or other arrangement providing health or life insurance or other welfare-type benefits for current or future retired or terminated directors, officers or employees (or any spouse or other dependent) of the Companies, except as required to avoid an excise tax under Section 4980B of the Code or as may be required pursuant to any other Applicable Law. No Employee Benefit Plan in the United States is intended to meet the requirements of Section 501(c)(9) of the Code.

(d) Except as set forth in Section 4.21(d) of the Disclosure Schedule, neither execution, delivery nor performance of this Agreement nor consummation of the Transaction will either alone or in combination with any other event: (i) result in any payment (including severance, change in control payment, "stay pay," transaction bonus, retention bonus, or otherwise) becoming due to any employee, director or consultant of any of the Companies; (ii) increase any compensation or benefits otherwise payable by any of the Companies under any Employee Benefit Plan; (iii) accelerate the time of the payment or vesting of, or increase the amount of, or result in the forfeiture of compensation or benefits under, any Employee Benefit Plan nor will they, directly or indirectly (with or without notice or lapse of time), result in an amendment, modification, or termination of any Employee Benefit Plan; or (iv) limit or restrict the right of the Companies to merge, amend, or terminate any Employee Benefit Plan. No amount paid or payable in connection with the transactions contemplated in this Agreement could be characterized as an "excess parachute payment" within the meaning of Section 280G of the Code (or any corresponding provisions of state, local or non-U.S. tax law). None of the Companies has any indemnity or gross-up obligation for any Taxes imposed under Code Sections 4999 or 280G (or any corresponding provision of state, local or non-U.S. Tax law).

(e) Each Employee Benefit Plan subject to Section 409A of the Code (or any corresponding provision of state, local or non-U.S. Tax law) complies with the requirements of Code Section 409A(a)(2), (3), and (4) and any Internal Revenue Service guidance issued under such Sections (or any corresponding provision of state, local or non-U.S. Tax law) and no amounts under any such Employee Benefit Plan is or has been subject to the interest and additional tax set forth under Code Section 409A(a)(1)(B) (or any corresponding provision of state, local or non-U.S. Tax law). None of the Companies has any actual or potential obligation to reimburse or otherwise "gross-up" any Person for the interest or additional tax set forth under Code Section 409A(a)(1)(B) (or any corresponding provision of state, local or non-U.S. Tax law). None of the Companies has been required to report to any Governmental Authority any corrections made or

Taxes due as a result of a failure to comply with Code Section 409A (or any corresponding provision of state, local or non-U.S. Tax law).

(f) No Employee Benefit Plan provides benefits to any individual who is not a current or former employee of the Company, or the dependents or other beneficiaries of any such current or former employee. No Employee Benefit Plan is subject to the laws of, or provides benefits for any employee providing services in, any jurisdiction outside of the United States.

4.22 Guaranties

. None of the Companies is a guarantor, surety or otherwise is liable for any Liability (including Indebtedness) of any other Person.

4.23 Environmental, Health and Safety Matters

. Except as set forth on Schedule 4.23 of the Disclosure Schedule:

(a) Each of the Companies and their respective Predecessors and Affiliates have for the past five years complied in all material respects and are currently in compliance in all material respects with all Environmental, Health, and Safety Requirements.

(b) Without limiting the generality of the above, each of the Companies and their respective Predecessors and Affiliates have obtained and for the past five years complied with in all material respects, and are currently in compliance with in all material respects, all Permits, Orders, and Governmental Authorizations that are required pursuant to Environmental, Health, and Safety Requirements for the occupation of the Real Property and the operation of their business. A list of all such Permits is set forth on Section 4.23(b) of the Disclosure Schedule.

(c) In the past ten years, none of the Companies nor their respective Affiliates has received any: (i) order, written or oral notice, or report regarding any actual or alleged violation of Environmental, Health, and Safety Requirements from any Governmental Authority; or (ii) any Liabilities, including any investigatory, remedial or corrective obligations, relating to any of them or their business arising under Environmental, Health, and Safety Requirements; which remains outstanding or unresolved.

(d) No facts, events, or conditions relating to the past or present facilities, properties, or operations of the Companies or their respective Affiliates will prevent in a material way continued material compliance with Environmental, Health, and Safety Requirements, give rise to any material investigatory, remedial, or corrective obligations pursuant to Environmental, Health, and Safety Requirements, or give rise to any material Liabilities pursuant to Environmental, Health, and Safety Requirements.

(e) The Sellers and the Companies have furnished to the Buyer: (i) all material written environmental regulatory compliance audits, environmental site assessments, investigations, monitoring reports, risk assessment reports, corrective action reports, and other material environmental documents, including, but not limited to any Phase I and Phase II environmental assessments, relating to its properties, facilities, or operations; and (ii) all material correspondence and other material documents relating to communications to or from any Governmental Authority or any third party regarding notification of any material actual or alleged violations of any Environmental, Health, and Safety Requirements or of any conditions that are reasonably likely to give rise to material Liability or responsibility under the Environmental,

Health, and Safety Requirements in connection with the Companies' businesses, in Sellers' possession within the last ten years.

(f) Except as disclosed in Section 4.23(f) of the Disclosure Schedule (and in the case of clauses (ii) and (viii), to the Knowledge of the Sellers), none of the following is present at the Real Property: (i) underground storage tanks or septic systems; (ii) asbestos-containing material in any form or condition; (iii) materials or equipment containing polychlorinated biphenyls in any form or condition; (iv) hazardous waste, surface impoundments, or disposal areas; (v) groundwater monitoring wells, drinking water wells, or production water wells; (vi) above-ground storage tanks of any capacity containing or which at one time contained any quantity of Hazardous material; (vii) Environmental Contamination; or (viii) materials or equipment containing lead-based paint in any form or condition.

The representations and warranties set forth in this Section 4.23 are the sole and exclusive representations and warranties pertaining to environmental, health and safety matters.

4.24 [\*\*\*\*]

(a) Section 4.24 of the Disclosure Schedule provides the following information regarding the loan provided to the Companies pursuant to the [\*\*\*\*] (the "[\*\*\*\*]") and, as it relates to the [\*\*\*\*]: (i) the lender; (ii) the date the Companies applied for the [\*\*\*\*]; (iii) the date the [\*\*\*\*] was approved by the lender; (iv) the [\*\*\*\*]; (v) the aggregate original principal amount of the [\*\*\*\*]; (vi) the date of receipt of the [\*\*\*\*]; (vii) the date the Companies applied for forgiveness for the [\*\*\*\*] and relevant details, including details regarding the Companies' use of [\*\*\*\*]; and (viii) the total amount of [\*\*\*\*] expended as of the Closing Date. The [\*\*\*\*] was obtained in compliance with all rules, regulations and requirements set forth in the [\*\*\*\*] application and all certifications made to obtain the [\*\*\*\*], including but not limited to certifications with respect to the Sellers' and the Companies' eligibility for the [\*\*\*\*], current and anticipated need for the [\*\*\*\*], and appropriate use of the [\*\*\*\*], were made in good faith.

(b) The Companies have used the [\*\*\*\*] in accordance with the [\*\*\*\*] rules solely to cover payroll costs and mortgage interest, rent and utility costs that allow the Companies to be eligible for loan forgiveness under the terms of the [\*\*\*\*] as of the Closing Date. The Sellers have caused the Companies to use the [\*\*\*\*] solely for purposes to maximize the prospects of loan forgiveness and minimize the potential liabilities related to ineligible uses of such funds. The Sellers have not caused the Companies to take any actions or make any communications, or fail to take any necessary actions or make any necessary communications, that materially increased the likelihood of increased scrutiny or liability with respect to the [\*\*\*\*].

(c) The Companies have each deposited (the "[\*\*\*\*]") a sum equal to the amount of the [\*\*\*\*] to each Company with First Midwest Bank, the lender of the [\*\*\*\*], in accordance with the terms of the [\*\*\*\*], and such deposit is reflected as restricted cash on the books and records of the Companies.

4.25 No Other Representations or Warranties

EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN ARTICLE III AND ARTICLE IV, NONE OF THE SELLERS MAKE ANY OTHER EXPRESS OR IMPLIED

REPRESENTATION OR WARRANTY WITH RESPECT TO THE COMPANIES (INCLUDING THEIR RESPECTIVE ASSETS, FINANCIAL CONDITION OR BUSINESS) OR WITH RESPECT TO ANY OTHER INFORMATION PROVIDED TO THE BUYER (INCLUDING BY USE OF A "DATA ROOM" OR IN ANY EXECUTIVE SUMMARY), AND THE SELLERS HEREBY DISCLAIM ANY OTHER REPRESENTATIONS OR WARRANTIES. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, THE SELLERS MAKE NO REPRESENTATION OR WARRANTY WHATSOEVER WITH RESPECT TO ANY PROJECTIONS AND OTHER FORECASTS (INCLUDING THE REASONABLENESS OF THE ASSUMPTIONS UNDERLYING SUCH PROJECTIONS AND OTHER FORECASTS). THE BUYER ACKNOWLEDGES AND AGREES THAT THE BUYER HAS NOT RELIED, AND IS NOT RELYING, AND WILL NOT ASSERT THAT IT IS RELYING, UPON ANY STATEMENT, WARRANTY OR REPRESENTATION (WHETHER WRITTEN OR ORAL) NOT EXPRESSLY MADE IN THIS AGREEMENT (AS QUALIFIED BY THE DISCLOSURE SCHEDULES).

**ARTICLE V**  
**POST-CLOSING COVENANTS**

The Parties agree as follows with respect to the period following the Closing:

5.1 General

. In case at any time after the Closing any further actions are necessary or desirable to carry out the purposes of this Agreement, including any notifications to Governmental Authorities of the Transaction contemplated by this Agreement (or any actions requiring the furnishing of information required under the Hart-Scott-Rodino Antitrust Improvement Act, if deemed necessary), each of the Parties will take such further actions (including the execution and delivery of such further instruments and documents) as any other Party may reasonably request, all at the sole cost and expense of the requesting Party (unless the requesting Party is entitled to indemnification for such action under Article VII below). Promptly following the Closing, the Sellers shall assist the Buyer and the Companies in their efforts to obtain each of the consents required under Section 4.3 and listed in Section 4.3 of the Disclosure Schedule. Each of the Sellers acknowledges and agrees that from and after the Closing, the Buyer will be entitled to possession of all documents, books, records (including Tax records), agreements, and financial data of any sort relating to the Companies.

5.2 Litigation Support

(a) In the event and for so long as any Party actively is contesting or defending against any Litigation in connection with: (i) any transaction contemplated under this Agreement or (ii) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction on or prior to the Closing Date involving any of the Companies, including, but not limited to any of the above as it may relate to a [\*\*\*\*] forgiveness application or an audit related to the [\*\*\*\*], each of the other Parties will cooperate with it and its counsel in the contest or defense, make available its personnel, and provide such testimony and access to its books and records as shall be advisable in the opinion of the defending Party required by the Party in connection with the contest or defense, all at the sole cost and expense of the contesting or defending Party (unless the contesting or defending Party is entitled to indemnification under Article VII below).

(b) Notwithstanding the above, and except as set forth in Article VII below, after the Closing: (i) the Buyer shall have sole control of the Litigation and any Proceedings or negotiations with any Governmental Authority in connection with the Litigation, including, but not limited to, all aspects of the prosecution and defense of claims in such Litigation and/or Proceeding and the settlement of such Litigation and/or Proceeding and (ii) the Sellers shall have no right to assume any role related to the Litigation.

5.3 Transition

. The Sellers shall cooperate with the Buyer after the Closing to ensure the orderly transition of the ownership and control of the Companies to the Buyer and to minimize any disruption to the business of the Companies that might result from the transactions contemplated hereby. Each of the Sellers will refer all customer inquiries relating to the business of the Companies to the Buyer from and for a period of five years after the Closing.

5.4 Confidentiality

. For a period of five years from and after the Closing Date, each of the Sellers will treat and hold as such all of the Confidential Information, refrain from using any of the Confidential Information except in connection with this Agreement, and deliver promptly to the Buyer or destroy, at the request and option of the Buyer, all tangible embodiments (and all copies) of the Confidential Information that are its possession. In the event that any of the Sellers is requested or required pursuant to written or oral question or request for information or documents in any Proceeding, interrogatory, subpoena, civil investigative demand, or similar process to disclose any Confidential Information, the Sellers will notify the Buyer promptly of the request or requirement so that the Buyer may seek an appropriate protective order or waive compliance with the provisions of this Section 5.4. If, in the absence of a protective order or the receipt of a waiver under this Agreement, any of the Sellers is compelled to disclose any Confidential Information to any court or tribunal or else stand liable for contempt, the Sellers may disclose the Confidential Information to the court or tribunal; provided, however, that the Sellers shall use reasonable commercial efforts to obtain, at the reasonable request and expense of the Buyer, an order or other assurance that confidential treatment will be accorded to such portion of the Confidential Information required to be disclosed as the Buyer shall designate.

5.5 Covenant Not to Compete

. For a period of five years from and after the Closing Date, none of the Sellers nor any of their Affiliates shall engage directly or indirectly in the United States and Canada in any business that any of the Companies or the Buyer conducts as of the Closing Date; provided, however, that (a) no owner of less than 5% of the outstanding stock of any publicly traded corporation shall be deemed to engage solely by reason of such ownership in its business, and (b) Pretasky, MJPJ Trust, MJPJ and Ellerbrock may own, lease and operate any real estate (including a marina) that is currently owned by the Sellers or any of their Affiliates that is not subject after the Closing to a valid, continuing lease to the Buyer, so long as Pretasky, MJPJ Trust, MJPJ and Ellerbrock do not own or operate a business at such real estate that sells, brokers, services, or offers financial services for new or used boats, trailers or related parts or accessories for a period of five years from and after the Closing Date; provided, that if an Affiliate Real Property Lease is terminated as a result of a default on the part of the Buyer under such Affiliate Real Property Lease, then Pretasky, MJPJ Trust, MJPJ and Ellerbrock may lease such Affiliate Real Property to an unrelated third party that sells, brokers, services, or offers financial services for new or used boats, trailers or related parts or accessories so long as Pretasky, MJPJ Trust, MJPJ and Ellerbrock do not hold any ownership interests in such unrelated third party and are not engaged in the management of such unrelated third party. Notwithstanding the above, if the final

judgment of a court of competent jurisdiction or an arbitration panel declares that any term or provision of this Section 5.5 is invalid or unenforceable, the Parties agree that the court or arbitration panel making the determination of invalidity or unenforceability shall have the power to reduce the scope, duration, or area of the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified after the expiration of the time within which the judgment may be appealed.

#### 5.6 Non-Solicitation

. For a period of five years from and after the Closing Date, none of the Sellers nor any of their Affiliates will directly or indirectly, hire any employee, agent, broker or independent contractor of the Companies. For a period of five years from and after the Closing Date, none of the Sellers nor any of their Affiliates will, directly or indirectly: (i) solicit, induce, or encourage any employee, agent, or independent contractor retained by any of the Companies and/or their Affiliates to cease rendering services to the Companies and/or their Affiliates (it being understood that a general advertisement seeking employees which is not specifically directed at the Companies' business or their employees shall not be deemed a solicitation pursuant to this clause); (ii) solicit, induce, or encourage any employee of any of the Companies and/or their Affiliates to render services to any business that is similar to any business conducted by any of the Companies; (iii) solicit, induce, or encourage any supplier or prospective supplier of services or products to cease to supply such services or products to any of the Companies or their Affiliates or to alter the terms pursuant to which such services or products were supplied to any of the Companies and/or their Affiliates immediately prior to the Closing Date; or (iv) solicit, induce or encourage any customer or prospective customer of any of the Companies to cease being a customer of the Companies or their Affiliates or to alter the terms pursuant to which any of the Companies and/or their Affiliates provided products and services to such customer or prospective customer immediately prior to the Closing Date.

#### 5.7 Sellers Release

. Effective as of the Closing Date and to the extent permitted by Applicable Law, each of the Sellers does for itself, himself or herself, and for its or his Affiliates, partners, members, heirs, beneficiaries, successors and assigns, if any (each a "Releasing Party"), release and absolutely forever discharge the Companies and the Buyer, and their respective Subsidiaries, Affiliates, including, in each case, their respective officers, directors, managers, members, Affiliates, employee and agents (each a "Released Party") from and against all Released Matters. "Released Matters" means any and all claims, demands, damages, debts, Liabilities, obligations, costs, expenses (including attorneys' and accountants' fees and expenses), actions, and causes of action of any nature, arising on or prior to the Closing Date, whether now known or unknown, suspected or unsuspected, that such Releasing Party now has, or at any time previously had, or shall or may have in the future, as a stockholder, equity holder, principal, officer, director, contractor, consultant or employee of any of the Companies (including, without limitation, any claims pursuant to any statutory or other indemnity obligations of the Companies to the Sellers as directors or officers of the Companies), arising by virtue of or in any manner related to any actions or inactions with respect to any of the Companies or their respective affairs on or before the Closing Date; provided that Released Matters shall not include any rights or obligations arising under this Agreement, all other agreements contemplated by this Agreement or the transactions contemplated by this Agreement or any rights or obligations under earned but unpaid compensation and benefits provided under the Employee Benefit Plans in accordance with their



terms or rights under any director's and officer's liability insurance policies relating to the period prior to the Closing Date or pursuant to any tail policy relating thereto purchased by the Sellers. It is the intention of the Releasing Parties in executing this release, and in giving and receiving the consideration called for under this Agreement, that the release contained in this Section 5.7 shall be effective as a full and final accord and satisfaction and general release of and from all Released Matters and the final resolution by such Releasing Parties and the Released Parties of all Released Matters. Notwithstanding anything in this Agreement or otherwise to the contrary, the release contained in this Section 5.7 will not be effective so as to benefit a particular Released Party in connection with any matter or event that would otherwise constitute a Released Matter, but involved fraud or the breach of any Applicable Law on the part of such Released Party. The invalidity or unenforceability of any part of this Section 5.7 shall not affect the validity or enforceability of the remainder of this Section 5.7, which shall remain in full force and effect. Each Releasing Party represents and warrants that it, he or she, as applicable, has not knowingly assigned or transferred or purported to assign or transfer to any Person any Released Matters.

#### 5.8 Company Books and Records

. Each of the Sellers shall deliver to the Buyer within fourteen days after the Closing each of the relevant Companies' Organizational Documents, the original minute book (containing the records of meetings of the stockholders, members, board of directors, managers and any committees of the board of directors (or their equivalents)), the stock certificate or membership interest book, and the stock or membership interest record book of each of the Companies. The Sellers may, after the Closing, retain copies of any books and records of the Companies, including books and records stored on computer disks or any other storage medium, as the Sellers are reasonably likely to need to meet accounting, auditing and Tax requirements. Upon reasonable notice and request by any of the Sellers, the Buyer, during normal business hours, shall: (i) make the employees of the Companies available to the Sellers at such employees' normal business location(s) and during such employees' normal business hours and (ii) permit the Sellers to examine, copy and make extracts from all book and records of the Companies, all without cost, surcharge or expense to the Sellers other than reasonable copy charges, in each case as is reasonably necessary in connection with any accounting, auditing or Tax requirements.

#### 5.9 Personnel

. Following the Closing Date, the Buyer will, or will cause one of its Affiliates to, continue to provide the employees who are employed by the Companies (or one of their Affiliates) in the business of the Companies as of immediately prior to the Closing and who remain employed by the Companies in the business of the Companies after the Closing (who, for the avoidance of doubt, will be employed at-will) with (i) total cash compensation, including base salary or wages and bonus opportunity, that is no less favorable in than total cash compensation opportunity immediately prior to the Closing Date and (ii) employee benefits that are consistent with employee benefits offered by the Buyer at its other locations. With respect to any employee benefit plan sponsored by the Buyer or any other Affiliate of the Buyer, the Buyer will, and will cause its Affiliates to: (A) allow immediate participation by all employees of the Companies as long as such employees have met the minimum tenures (as stated in the Buyer's and its Affiliates' plan documents) with the Companies as of the Closing Date, (B) waive all pre-existing condition exclusions or limitations and waiting periods with respect to participation and coverage requirements, (C) to the extent feasible, provide credit for any co-payments, co-insurance and deductibles paid by such employees with respect to any Employee Benefit Plan prior to becoming eligible to participate in any such analogous employee benefit plan in satisfying any applicable

deductible or out-of-pocket maximum requirements under such analogous employee benefit plan during the plan year in which such participation begins, and (D) recognize all continuous service with the Company and its Predecessors for all purposes (except to the extent such service recognition would result in a duplication of benefits). Notwithstanding the above, nothing in this Section 5.9 will, after the Closing Date, impose on Buyer any obligation to retain any employee in its employment for any amount of time.

5.10 [\*\*\*\*]

. In the event that any of the [\*\*\*\*] for the Companies is forgiven by the [\*\*\*\*] and First Midwest Bank does not return the [\*\*\*\*] directly to the Sellers, the Buyer agrees to promptly remit such amounts of the [\*\*\*\*] actually received from First Midwest Bank to SM Holdings (but in any event, within five Business Days of the receipt of such funds).

5.11 SSY Corporate Records

. Promptly following the Closing, the Sellers shall complete the necessary and appropriate clean-up of the corporate records of SSY to the reasonable satisfaction of the Buyer.

## **ARTICLE VI CLOSING OBLIGATIONS**

6.1 The Seller's Obligation

§. Simultaneously with the execution of this Agreement and the Closing, the Sellers shall deliver to the Buyer:

- (a) the stock or membership interest certificates representing all of the Equity of the Companies, endorsed in blank or accompanied by a duly executed assignment document;
- (b) a trademark assignment agreement (the "Trademark Assignment Agreement") transferring the Trademarks from SM Holdings to the Buyer, substantially in the form of Exhibit G attached to this Agreement;
- (c) the necessary authorizations, consents, and/or approvals set forth on Annex IV attached to this Agreement;
- (d) payoff letters from the holders of Indebtedness identified on Section 4.9 of the Disclosure Schedules (other than the [\*\*\*\*] referenced therein) and evidence of having made customary arrangements for such holders of such Indebtedness to deliver all related Lien releases to the Buyer as soon as practicable after the Closing;
- (e) acceptance in writing by each of Pretasky and MJPJ of the Buyer's offers of employment or consulting;
- (f) the resignations, effective immediately, of each director and officer of the Companies of his, her or its directorship and officership (but not his, her or its employment);
- (g) two copies of a USB or similar electronic storage containing all of the information uploaded to the Data Room and made available to the Buyer by the Sellers and the Companies prior to the Closing Date;

- (h) the Affiliate Real Property Leases executed by each Affiliate Real Property Owner for the corresponding Affiliate Real Property;
- (i) the Escrow Agreement, duly executed by the Sellers;
- (j) a (i) copy of the Organizational Documents of each of the Companies certified by the Secretary of State of the state of incorporation or formation of each of the Companies and (ii) certificate of good standing, active status (or the equivalent) for each of the Companies issued by the relevant Secretary of State (or the equivalent) of the state of incorporation or formation of each of the Companies and of the states in which each Company is qualified to do business, in each case, dated within ten days prior to the Closing Date;
- (k) a certificate signed by the secretary or manager of each of the Companies certifying as to the Organizational Documents of such Company and that such Organizational Documents have not been rescinded or modified and remain in full force and effect as of the Closing Date;
- (l) a certificate signed by the secretary or manager of such Seller certifying: (i) the resolutions of the board of directors, managers or other authorizing body (or a duly authorized committee of such authorizing body) of such Seller authorizing the execution, delivery, and performance of this Agreement and the transactions contemplated by this Agreement and that such resolutions have not been rescinded or modified and remain in full force and effect as of the Closing Date; and (ii) incumbency and signatures of the officers of such Seller executing this Agreement or any other agreement contemplated by this Agreement; and
- (m) (i) a properly completed IRS Form W-9; (ii) a Certificate of Non-Foreign Status in accordance with Treasury Regulations Section 1.1445-2(b)(2) executed on behalf of each Seller; and (iii) such other Tax forms as reasonably requested by the Buyer.

6.2 The Buyer's Obligation

s. Simultaneously with the execution of this Agreement and the Closing, the Buyer shall deliver to the Sellers:

- (a) the Trademark Assignment Agreement, duly executed by the Buyer;
- (b) a copy of the finalized and bound R&W Insurance Policy;
- (c) the Affiliate Real Property Leases executed by the Companies for the corresponding Affiliate Real Property; and
- (d) the Escrow Agreement, duly executed by the Buyer and the Escrow Agent.

**ARTICLE VII**  
**REMEDIES FOR BREACHES OF THIS AGREEMENT**

7.1 Survival of Representations and Warranties

- (a) All of the representations and warranties of the Parties contained in Article III and Article IV of this Agreement shall survive the Closing under this Agreement (even if the damaged

Party knew or had reason to know of any misrepresentation or breach of warranty at the time of Closing) and continue in full force and effect for a period of eighteen (18) months, other than: (i) the representations and warranties of the Sellers contained in Section 3.1 (the "Sellers' Representations and Warranties" representation), the representations and warranties of the Buyer contained in Section 3.2 (the "Buyer's Representations and Warranties" representation), Section 4.1 (the "Organization, Qualification and Corporate Power" representation), Section 4.2 (the "Capitalization" representation), Section 4.4 (the "Brokers' Fees" representation), Section 4.9 (the "Undisclosed Liabilities; Indebtedness" representation), Section 4.11 (the "Tax Matters" representation) Section 4.21 (the "Employee Benefits" representation), and 4.23 (the "Environmental, Health and Safety Matters" representation) above (such representations and warranties described in clause (i), collectively referred to in this Agreement as the "Specified Representations") which shall survive the Closing (even if the damaged Party knew or had reason to know of any misrepresentation or breach of warranty at the time of Closing) and continue in full force and effect for a period of six (6) years; and (ii) fraud and criminal misconduct which shall survive the Closing (even if the damaged Party knew or had reason to know of any misrepresentation or breach of warranty at the time of the Closing) without limitation. The covenants and agreements contained in this Agreement, outside of Article III and Article IV above, to be performed or complied with on or after the Closing will survive until the expiration of any applicable statutes of limitations (after giving effect to any extensions or waivers). All of the covenants contained in Article V shall survive the Closing under this Agreement and continue in full force and effect for five (5) years. No Indemnified Party shall be indemnified under this Article VII for any liability for breach of a representation, warranty or covenants unless the Sellers or the Buyer, as applicable, is given written notice from such Buyer Indemnitee or Seller Indemnitee asserting a claim on or before the expiration date of the survival period for a representation, warranty and covenant.

(b) Notwithstanding anything in this Agreement to the contrary, (i) if written notice of any claim for indemnification under this Agreement has been delivered in accordance with this Agreement prior to the expiration of time between the Closing Date and the survival period date, as set forth in this Section 7.1 for such representation, warranty or covenant upon which such claim is based, the relevant representation, warranty or covenant shall not expire with respect to such claim, and such claim may be pursued, until the final resolution of such claim in accordance with the provisions of this Article VII, (ii) in no case shall the expiration of the applicable survival period for any representations, warranties and/or covenants affect or apply to any claim based on fraud; and (iii) the survival periods set forth in this Section 7.1 shall not affect or otherwise limit any claim made or available under the R&W Insurance Policy. For purposes of this Article VII, "fraud" means actual fraud committed in the making of the representations, warranties and covenants of this Agreement.

#### 7.2 Indemnification Provisions for the Buyer's Benefit

(a) The Sellers shall be obligated, severally and not jointly (based on their Pro Rata Percentages), to indemnify the Buyer and/or its officers, directors, shareholders, members, employees, representatives, advisors, Affiliates (including the Companies) and/or agents (each a "Buyer Indemnitee") from and against the entirety of any Adverse Consequences the Buyer Indemnitee incurs, whether or not arising out of a third-party claim, through and after the date of the claim for indemnification (including any Adverse Consequences any Buyer Indemnitee may

suffer after the end of any applicable survival period; provided, that an indemnification claim with respect to such matter is made pursuant to Section 7.1 prior to the end of any applicable survival period) resulting from, arising out of, relating to, in the nature of, or caused by: (i) any breach (in the event any third party alleges facts that, if true, would be because the Sellers have breached or the alleged breach) by any of the Sellers of any of its representations and warranties contained in this Agreement, or made any misrepresentation or inaccuracy in its representations and warranties; provided, however, that in the event the Buyer elects to consummate the transactions contemplated herein notwithstanding that one or more of the consents required under Section 4.3 and listed in Section 4.3 of the Disclosure Schedule has not been obtained as of the Closing, the Buyer shall not be entitled to indemnification from the Sellers under this Section 7.2(a)(i) for a breach of any representation or warranty in Section 3.1(c) or Section 4.3 to the extent related to not obtaining such consent prior to Closing; or (ii) any breach by any of the Sellers of any of its covenants or agreements contained in this Agreement, including without limitation, the Sellers' obligation to make payments of certain Taxes pursuant to Section 8.2.

(b) The Sellers shall be obligated, severally and not jointly (based on their Pro Rata Percentages), to indemnify each Buyer Indemnitee from and against the entirety of any Adverse Consequences Buyer Indemnitee may suffer resulting from, arising out of, incurred with respect to, relating to, in the nature of, or caused by: (i) any Indebtedness of any of the Companies that is outstanding as of immediately prior to the Closing and is not paid on or before the Closing; (ii) the Sellers' application for the [\*\*\*\*], application for forgiveness of the [\*\*\*\*] and use of the [\*\*\*\*], including, but not limited to, any costs, expenses, Proceedings, criminal or civil liabilities and/or penalties that may result; (iii) any Company Expenses that are not taken into account in the determination of the Final Purchase Price; and (iv) any claims, damages and costs arising from any non-compliance with Applicable Privacy Laws that is disclosed in Section 4.13(g) of the Disclosure Schedule as of the Closing Date, including, without limitation, costs associated with achieving compliance, as well as any third party claims and regulatory investigations, including any associated damages or amounts paid in settlement (including court costs and reasonable attorneys' fees) that arise from or relate to the disclosures in Section 4.13(g) of the Disclosure Schedule (and for the avoidance of doubt, notwithstanding any provision in this Agreement to the contrary, to the extent there exists any non-compliance with Applicable Privacy Laws that is disclosed to the Buyer in the Disclosure Schedule (and therefore excluded from coverage under the R&W Insurance Policy by its terms), the Buyer shall not be required to pursue recovery from the R&W Policy before proceeding against the Sellers).

(c) Each Buyer Indemnitee's right to indemnity shall in no way be limited by (i) any inspection, survey, audit and access to the books and records of the Companies that the Buyer may directly or through its representatives have conducted prior to the Closing Date; or (ii) the knowledge of the Buyer as of the Closing Date of the existence of facts, events, omissions or documents which may be in breach of any representations and warranties or covenants and agreements or in any event give rise to an indemnification commitment of the Sellers.

(d) Notwithstanding anything provided in this Agreement to the contrary, the indemnification obligations of the Sellers pursuant to this Section 7.2 shall be limited as follows:

(i) no Adverse Consequences shall be payable under Section 7.2(a)(i) until the total of such Adverse Consequences exceeds an amount equal to the Seller Deductible,

and then only Adverse Consequences in excess of the Seller Deductible shall be payable; provided, however, that the above limitation shall not apply in the case of fraud or any breach of any of the Specified Representations;

(ii) the Sellers' aggregate Liability for all indemnification under Section 7.2(a)(i) shall be limited to, and shall not exceed, an amount equal to the Seller Cap; provided, however, that the above limitation shall not apply in the case of fraud or any breach of any of the Specified Representations; and

(iii) notwithstanding the above, in no event will the Sellers be liable for Adverse Consequences exceeding the proceeds received by the Sellers under this Agreement; and

(iv) subject to the other limitations, conditions and restrictions of this Article VII, the sole recourse and exclusive remedy of the Buyer Indemnitees with respect to claims for indemnification for Adverse Consequences pursuant to Section 7.2(a)(i) shall be (A) first, during the period during which the Escrow Agreement remains in effect, be satisfied from the Escrow Amount (if and to the extent funds are available) pursuant to the terms and conditions of the Escrow Agreement, and (B) then second, to the extent that any such obligation is not able to be satisfied in full from the Escrow Amount, be satisfied, without duplication, from the R&W Insurance Policy; provided however, that if and to the extent Adverse Consequences arising pursuant to Section 7.2(a)(i) are the result of (a) fraud or criminal misconduct by the Sellers in the making of the representations and warranties contained in Section 3.1 or Article IV or (b) a breach of the Specified Representations, then, subject to the other limitations, conditions and restrictions set forth in this Article VII, (x) (1) in respect of fraud or criminal misconduct in the making of representation and warranties contained in Article IV and (2) in respect of a breach of the Specified Representations (other than Sections 3.1(a)-(e)), the Sellers may be responsible, severally and not jointly (based on their Pro Rata Percentages), for the amount of such Adverse Consequences that are less than the retention under the Representation and Warranty Policy then in effect (e.g. subject to reduction of such retention following any "drop-down date") and the amount of such Adverse Consequences that exceed the then-existing coverage under the R&W Insurance Policy (if any), and (y) (1) in respect of fraud or criminal misconduct in the making of representation and warranties by any Seller in Section 3.1 and (2) in respect of a breach of the Specified Representations in Sections 3.1(a)-(e), the applicable Seller (and no other Seller(s)) may be responsible for the amount of such Adverse Consequences that are less than the retention under the R&W Insurance Policy then in effect (e.g. subject to reduction of such retention following any "drop-down date") and the amount of such Adverse Consequences that exceed the then-existing coverage under the R&W Insurance Policy (if any).

(e) The provisions in Section 7.2(c) above are not applicable to, and shall not in any way limit, claims under the R&W Insurance Policy, except as and to the extent expressly set forth in the R&W Insurance Policy.

(f) With respect to any matter covered by this Article VII, any indemnification claim shall be net of any insurance proceeds actually received by the Indemnified Party (net of any deductible amounts and reasonable costs of collection and any increase in premiums in connection therewith), and, to the extent that insurance proceeds are collected by the Indemnified Party after an indemnification claim has been settled or finally determined, the Indemnified Party shall

reimburse the Indemnifying Party for any and all Adverse Consequences paid by the Indemnifying Party to the Indemnified Party pursuant to this Agreement to the extent such amount is subsequently paid to the Indemnified Party by any Person other than the Indemnifying Party.

(g) Notwithstanding anything contained in this Agreement to the contrary, (a) the Buyer Indemnitees may not recover duplicative Adverse Consequences in respect of a single set of facts or circumstances under more than one warranty, representation or covenant in this Agreement whether such facts or circumstances would give rise to a breach of more than one warranty, representation or covenant in this Agreement, and (b) the Buyer Indemnitees may not assert any claim under Article VII for any Adverse Consequences to the extent such item was actually included in the Net Working Capital, the Indebtedness or the Company Expenses, in each case, in the calculation of the Final Purchase Price, as determined pursuant to Section 2.4. In no event may a Buyer Indemnified Party have a “double recovery” from both the Sellers and the R&W Insurance Policy with respect to the same Adverse Consequences.

(h) The Indemnified Party shall use commercially reasonable efforts within its control to mitigate any Adverse Consequences or potential Adverse Consequences after any event which would reasonably be expected to give rise to any Adverse Consequence.

(i) The Buyer’s and the Sellers’ sole remedy for any and all claims with respect to the transactions contemplated by this Agreement (other than with respect to fraud, criminal misconduct, Sections 5.4, 5.5 and 5.6 and Article VIII) shall be the indemnity set forth in this Article VII, and none of the Buyer Indemnitees or the Seller Indemnitees shall have any other entitlement, remedy or recourse, whether in contract, tort or otherwise, against the other party with respect to the transactions contemplated by this Agreement, all of such remedies, entitlements and recourse being expressly waived by the parties hereto to the fullest extent permitted by Applicable Law. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall affect the ability of the Buyer to make any claim under the R&W Insurance Policy.

(j) For purposes of determining the amount of Adverse Consequences resulting from any misrepresentation or breach of a representation or warranty and for purposes of determining whether there has been any misrepresentation or breach of a representation or warranty, all representations and warranties set forth in this Agreement, that are qualified by reference to “material,” “materially,” “Material Adverse Effect or Change” or any similar term shall be deemed to have been made without giving effect to such materiality qualifiers.

(k) The Sellers shall not have any right of contribution against any Company with respect to any breach by the Sellers of any of their respective representations, warranties, covenants or agreements.

(l) Pretasky and MJPJ shall be obligated, jointly and severally, to indemnify each Buyer Indemnitee from and against the entirety of any Adverse Consequences the Buyer Indemnitee may suffer resulting from, arising out of, relating to any claim made by any former owner (other than the Sellers) of membership interests or other equity securities of SSY or SSY’s Predecessor, Criterion Holdings, LLC, relating to any purchase or sale or other transfer of such membership interests or other equity securities, allocation of profits and losses in connection with

such membership interests or other equity interests or any distribution made or to have been made with respect to such membership interests or other equity securities.

7.3 R&W Insurance

The Sellers shall use reasonable commercial efforts to assist and fully cooperate with the Buyer in connection with any claim by the Buyer under, or recovery by the Buyer with respect to, the R&W Insurance Policy. Following the Closing, the Buyer shall not modify or amend the R&W Insurance Policy's subrogation or third-party beneficiary provisions to the extent benefitting the Sellers.

7.4 Indemnification Provisions for the Sellers' Benefit

The Buyer shall be obligated to indemnify the Sellers and/or their respective officers, directors, employees, representatives, advisors, Affiliates and/or agents (each a "Seller Indemnitee") from and against the entirety of any Adverse Consequences that such Seller Indemnitee suffered through and after the date of the claim for indemnification (including any Adverse Consequences that such Seller Indemnitee suffered after the end of any applicable survival period) resulting from, arising out of, relating to, in the nature of, or caused by: (i) any breach (in the event any third party alleges facts that, if true, would be because the Buyer had breached or the alleged breach) by the Buyer of any of its representations and warranties contained in this Agreement, or made any misrepresentation or inaccuracy in its representations and warranties; or (ii) any breach by the Buyer of any of its covenants or agreements contained in this Agreement.

7.5 Matters Involving Third Parties

(a) If any third party notifies any Party (the "Indemnified Party") with respect to any matter (a "Third-Party Claim") that may give rise to a claim for indemnification against any other Party (the "Indemnifying Party") under this Article VII, then the Indemnified Party shall promptly notify each Indemnifying Party of the Third-Party Claim in writing; provided, however, that no delay on the part of the Indemnified Party in notifying the Indemnifying Party shall relieve the Indemnifying Party from any obligation under this Agreement unless (and then solely to the extent) the Indemnifying Party is actually and materially prejudiced by such delay.

(b) Any Indemnifying Party will have the right to defend the Indemnified Party against the Third-Party Claim with counsel of its choice satisfactory to the Indemnified Party so long as: (A) the Indemnifying Party notifies the Indemnified Party in writing within 15 days after the Indemnified Party has given notice of the Third-Party Claim that the Indemnifying Party will indemnify the Indemnified Party from and against the Adverse Consequences, subject to the limitations (if any) under this Article VII, the Indemnified Party may suffer resulting from, arising out of, relating to, in the nature of, or caused by the Third-Party Claim; (B) the Indemnifying Party provides the Indemnified Party with evidence reasonably acceptable to the Indemnified Party that the Indemnifying Party has and will have the financial resources to defend against the Third-Party Claim and fulfill its indemnification obligations under this Agreement; (C) the Third-Party Claim involves only money damages and does not seek an injunction or other equitable relief; (D) settlement of, or an adverse judgment with respect to, the Third-Party Claim is not, in the good faith judgment of the Indemnified Party, likely to be adverse to the continuing business interests or the reputation of the Indemnified Party; (E) the Third-Party Claim does not relate to or arise in connection with any Proceeding (other than any non-criminal Tax Proceeding with respect to a Pre-Closing Tax Period that is not a Straddle Period); (F) the Indemnifying Party conducts the



defense of the Third-Party Claim actively and diligently; (G) the assumption of the defense by the Indemnifying Party is not reasonably likely to cause a Buyer Indemnitee to lose coverage under the R&W Insurance Policy; (H) a Buyer Indemnitee or the insurer is not required to assume the defense of such Third-Party Claim pursuant to the R&W Insurance Policy; or (I) the insurer of the R&W Insurance Policy and the Buyer have not confirmed in writing that the applicable Adverse Consequences will be fully covered other than by the Sellers.

(c) So long as the Indemnifying Party is conducting the defense of the Third-Party Claim in accordance with Section 7.5(b) above: (A) the Indemnified Party may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third-Party Claim; (B) the Indemnified Party will not consent to the entry of any judgment on or enter into any settlement with respect to the Third-Party Claim without the prior written consent of the Indemnifying Party (not to be unreasonably withheld) and the consent of the insurer under the R&W Insurance Policy; and (C) the Indemnifying Party will not consent to the entry of any judgment on or enter into any settlement with respect to the Third-Party Claim without the prior written consent of the Indemnified Party (not to be unreasonably withheld; provided that the Indemnified Party may withhold consent if such consent would require the Indemnified Party to admit fraud, intentional wrongdoing or a violation of Applicable Law or impose any restriction on the business of the Indemnified Party).

(d) In the event any of the conditions in Section 7.5(b) above is or becomes unsatisfied, however: (A) the Indemnified Party may defend against, and consent to the entry of any judgment on or enter into any settlement with respect to, the Third-Party Claim if it acts reasonably and in good faith upon fifteen (15) days' prior written notice (if possible) to the Indemnifying Party (and the Indemnified Party need not consult with, or obtain any consent from, any Indemnifying Party); (B) the Indemnifying Parties will reimburse the Indemnified Party promptly and periodically for the reasonable costs of defending against the Third-Party Claim (including attorneys' fees and expenses at all levels of Proceedings); and (C) the Indemnifying Parties will remain responsible for any Adverse Consequences the Indemnified Party may suffer resulting from, arising out of, incurred with respect to, relating to, in the nature of, or caused by the Third-Party Claim to the fullest extent provided in this Article VII.

(e) Notwithstanding anything to the contrary in this Section 7.5, the control of the defense of any Third-Party Claim for which a Buyer Indemnitee may seek recovery under the R&W Insurance Policy shall be subject to the provisions of the R&W Insurance Policy.

7.6 Direct Claims

An Indemnified Party shall, as promptly as is reasonably practicable after becoming aware of any Adverse Consequences, obligations, or facts, in each case, with respect to any matter which has or could reasonably be expected to give rise to a claim for indemnification under this Article VII and not involving a Third-Party Claim, provide prompt written notice to the Indemnifying Party under this Agreement describing the subject matter of such claim or demand; provided, however, that no delay on the part of such Indemnified Party in notifying an Indemnifying Party shall relieve the Indemnifying Party from any obligation under this Agreement unless (and then solely to the extent) the Indemnifying Party is actually prejudiced by such delay.

7.7 Escrow

(a) On the Closing Date, the Buyer shall pay to the Escrow Agent the Escrow Amount to be held pursuant to the terms of the Escrow Agreement.

(b) On the date that is eighteen (18) months after the Closing Date (the "Escrow Release Date"), the remaining portion of the Escrow Amount less the aggregate amount claimed by any Buyer Indemnitee pursuant to claims made against such funds in accordance with this Agreement and not fully resolved prior to such date shall be released to the Sellers' Representative, to be distributed to each Seller in accordance with its Pro Rata Percentage. At any time following the Escrow Release Date, to the extent the available portion of the Escrow Amount exceeds the aggregate amount claimed by any Buyer Indemnitee pursuant to claims for indemnification under this Agreement and not fully resolved prior to the time of determination, such excess shall be promptly released to the Sellers.

(c) The Buyer and the Sellers' Representative shall deliver joint written instructions to the Escrow Agent instructing the Escrow Agent to make any distributions from the Escrow Account provided for in this Agreement.

7.8 [\*\*\*\*]

. On the Closing Date, the Buyer shall retain the [\*\*\*\*] Amount. The Parties agree that if, within ninety (90) days after the Closing, [\*\*\*\*], a division of [\*\*\*\*], fails to consent to the change of control contemplated by this Agreement or terminates any of the dealer agreements with the Companies listed on Schedule 7.8(a) (the "[\*\*\*\*]") for any geographic regions set forth on Schedule 7.8(b) (the "Regions") for any reason other than any action or inaction by the Buyer (excluding the Transaction), the [\*\*\*\*] Amount per Region (up to the full [\*\*\*\*] Amount). If, after ninety (90) days after the Closing, [\*\*\*\*] has consented to the change of control contemplated by this Agreement and has not terminated any of the [\*\*\*\*] Dealer Agreements for the Regions, the Buyer shall release the [\*\*\*\*] Amount (less any amounts retained by the Buyer pursuant to this Section 7.8) to the Sellers in accordance with the Pro Rata Percentages.

7.9 [\*\*\*\*]

. On the Closing Date, the Buyer shall retain the [\*\*\*\*] Amount. The Parties agree that if the [\*\*\*\*] n/k/a [\*\*\*\*] ("[\*\*\*\*]") consents to a sublease between Skipper Real Estate Holdings, Inc., a Wisconsin corporation ("SREH"), and SBI pursuant to the [\*\*\*\*] Leases for the premises located at [\*\*\*\*], [\*\*\*\*] and [\*\*\*\*] ([\*\*\*\*]) or otherwise agrees in writing to allow SBI to continue to operate in substantially the same manner as the Sellers' operation of the Companies and upon substantially the same terms as the [\*\*\*\*] Leases, including, without limitation, the amount of the lease payments (the "[\*\*\*\*]"), the Buyer shall release the [\*\*\*\*] to the Sellers promptly after receipt of the [\*\*\*\*] Consent in accordance with the Pro Rata Percentages. The Buyer may keep the [\*\*\*\*] Holdback Amount if the [\*\*\*\*] has issued a final, non-appealable Order that (i) requires SBI to vacate the [\*\*\*\*] or (ii) prevents SBI from continuing to operate in substantially the same manner as the Sellers' operation of the Companies. All pre-tax earnings of SBI from the [\*\*\*\*] shall be included in the determination of Pre-Tax Earnings of the Companies for purposes of calculating the Earnout Payments pursuant to Section 2.5.

7.10 Environmental Indemnification

(a) The Sellers shall be obligated, severally and not jointly (based on their Pro Rata Percentages), to indemnify each Buyer Indemnitee from and against the entirety of any Adverse

Consequences Buyer Indemnitee may suffer resulting from, arising out of, incurred with respect to, relating to, in the nature of, or caused by any Pre-existing Environmental Condition and any violation of Environmental, Health and Safety Law at the Real Property immediately prior to the Closing Date, whether discovered pre- or post-Closing, except to the extent caused solely by the Buyer after the Closing; provided, however, that if such liability emanates from the Buyer's operation of the Companies in substantially the same manner as the Sellers' operation of the Companies and is discovered within 180 days following the Closing, the Sellers shall be solely liable for such liability and the Sellers shall promptly take all commercially reasonable actions at their sole expense as required by any Environmental, Health and Safety Law which regulates such Pre-existing Environmental Condition or violation; provided, however, that if such Pre-existing Environmental Condition and any violation of Environmental, Health and Safety Law at the Real Property is also a breach of a representation or warranty under Article IV, the Buyer shall first be required to pursue recovery for such Adverse Consequences under the R&W Insurance Policy in the manner described under Section 7.2(d)(iv) above, unless such Pre-existing Environmental Condition is disclosed to the Buyer in the Disclosure Schedule (and therefore excluded from coverage under the R&W Insurance Policy by its terms).

(b) Notwithstanding any provision in an Affiliate Real Property Lease, the Sellers covenant not initiate a formal legal action in court or with a Governmental Authority against the Buyer alleging that the Buyer caused Environmental Contamination on the Affiliate Real Property without first providing to Buyer a written opinion under seal from a licensed professional engineer (not an employee of any Seller) that the post-Closing operation of the Real Property appears to have caused or contributed to a release of Hazardous Materials in violation of Environmental, Health and Safety Laws and/or which likely resulted in Environmental Contamination. In the event Sellers have reason to believe that a violation of Environmental, Health and Safety Laws has occurred or that Environmental Contamination may be present on, in, or under or about the Real Property, Buyer shall cooperate fully in any investigation or evaluation by Sellers, including, without limitation, providing full and timely access to the Real Property and any relevant or potentially relevant books, papers, records, equipment, and/or interviews of employees of Buyer.

#### **ARTICLE VIII** **TAX MATTERS**

The following provisions shall govern the allocation of responsibility as between the Buyer and the Sellers for certain tax matters following the Closing Date:

8.1 Tax Returns.

(a) The Sellers' Representative shall have the exclusive authority and obligation to prepare, or cause to be prepared, all Tax Returns for the Companies for all periods ending on or before the Closing Date, and the appropriate officer of each relevant Company shall sign and timely file the same; provided, however, that (i) the Sellers' Representative shall provide the Buyer with draft Tax Returns for the relevant Company required to be prepared after the Closing Date by the Sellers' Representative pursuant to this Section 8.1(a) at least thirty (30) days prior to the due date (or extended due date) for the filing of such Tax Returns, (ii) at least fifteen (15) days prior to the due date for the filing of such Tax Returns, the Buyer shall notify the Sellers' Representative of the existence of any objections the Buyer may have to any items set forth on

such draft Tax Returns, and (iii) if, after consulting in good faith, the Buyer and the Sellers' Representative are unable to resolve such objection(s), such objection(s) shall be referred to the Independent Accountant for resolution on a basis consistent with the past practices of the relevant Company with respect to such items. The cost of the Independent Accountant pursuant to this Section 8.1(a) shall be borne 50% by the Sellers and 50% by the Buyer.

(b) Except as provided in Section 8.1(a) above, the Buyer shall have the exclusive authority and obligation to prepare and timely file, or cause to be prepared and timely filed, all Tax Returns of the relevant Company for tax periods ending after the Closing Date; provided, however, that (i) the Buyer shall provide the Sellers' Representative with draft Tax Returns for the relevant Company required to be prepared by the Buyer pursuant to this Section 8.1(b) for a Straddle Period at least thirty (30) days prior to the due date (or extended due date) for filing such Tax Returns, (ii) at least fifteen (15) days prior to the due date for the filing of such Tax Returns, the Sellers' Representative shall notify the Buyer of the existence of any objection the Sellers' Representative may have to any items set forth on such draft Tax Returns, and (iii) if, after consulting in good faith, the Buyer and the Sellers' Representative are unable to resolve such objection(s), such objection(s) shall be referred to the Independent Accountant for resolution on a basis consistent with the past practices of the relevant Company with respect to such items. The cost of the Independent Accountant pursuant to this Section 8.1(b) shall be borne fifty percent by the Sellers and fifty percent by the Buyer. The Buyer shall prepare all Tax Returns for Straddle Periods on a basis consistent with past practices of the relevant Company, except to the extent otherwise required by Applicable Law.

8.2 Payment of Taxes.

(a) Each Seller shall be responsible and liable for the timely payment of its pro rata share of any and all Taxes for any Pre-Closing Tax Period with respect to the properties, income and operations of the Companies. The Sellers shall not be liable for Taxes that are Excluded Taxes. Each Seller shall pay to the Buyer its pro rata share of the amount of any Taxes allocated to the Sellers pursuant to this Section 8.2(a) or Section 8.2(b) below (to the extent not already paid by the Sellers on or prior to five (5) Business Days prior to the due date of such Taxes).

(b) All Taxes (other than Excluded Taxes) with respect to the income, property or operations of the Company that relate to a Straddle Period shall be apportioned between the Sellers and the Buyer as follows: (i) in the case of Taxes other than income, sales and use and withholding Taxes, on a per diem basis, based on the number of days in the Pre-Closing Tax Period and (ii) in the case of income, sales and use and withholding Taxes, as determined from the books and records of the relevant Company as though the taxable year of the relevant Company terminated at 11:59 p.m. local time on the Closing Date.

8.3 Cooperation on Tax Matters.

(a) The Buyer and the Sellers shall cooperate fully, as and to the extent reasonably requested by the other Party, in connection with the filing of Tax Returns pursuant to this Article VIII and any Proceeding with respect to Taxes. Such cooperation shall include the retention and (upon the other Party's request) the provision of records and information that are

reasonably relevant to any such Proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided under this Agreement. The Buyer and the Sellers agree: (A) to retain all books and records with respect to Tax matters pertinent to the Companies relating to any taxable period beginning on or before the Closing Date until the expiration of the statute of limitations (and, to the extent notified by the Buyer or the Sellers, any extensions) of the respective taxable periods, and to abide by all record retention agreements entered into with any Taxing Authority; and (B) to give the other Party reasonable written notice prior to transferring, destroying or discarding any such books and records and, if the other Party so requests, the Buyer or the Sellers, as the case may be, shall allow the other Party to take possession of such books and records.

(b) The Buyer and the Sellers further agree, upon request, to use their reasonable commercial efforts to obtain any certificate or other document from any Governmental Authority or any other Person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed (including, but not limited to, with respect to the Transaction).

(c) The Buyer and the Sellers further agree, upon request, to provide the other Party with all information that either Party may be required to report pursuant to Code Section 6043 (or any corresponding provision of state, local or non-U.S. Tax law), or Code Section 6043A (or any corresponding provision of state, local or non-U.S. Tax law), or Treasury Regulations promulgated under such Sections (or any corresponding provision of state, local or non-U.S. Applicable Law).

8.4 Tax-Sharing Agreements.

All tax-sharing agreements or similar agreements with respect to or involving the Companies shall be terminated as of the Closing Date and, after the Closing Date, the Companies shall not be bound by such agreements or have any Liability under such agreements.

8.5 Certain Taxes and Fees.

All transfer, documentary, sales, use, stamp, registration and other such Taxes, and all conveyance fees, recording charges and other fees and charges (including any penalties and interest) incurred in connection with consummation of the Transaction (collectively, the "Transfer Taxes") shall be paid 50% by the Buyer and 50% by the Sellers when due, and the Buyer will, at its own expense, file all necessary Tax Returns and other documentation with respect to all such Taxes, fees and charges, and, if required by Applicable Law, the Sellers will join in the execution of any such Tax Returns and other documentation. Any such Transfer Taxes that were taken into account as Company Expenses in determining the Final Purchase Price shall be treated as having been paid by the Sellers for purposes of this Section 8.5.

8.6 Tax Treatment of Transactions.

The Parties agree that the purchase by the Buyer of all of the issued and outstanding equity interests of a qualified subchapter S subsidiary or a limited liability company that is a disregarded entity for income Tax purposes shall be treated as a purchase of assets by the Buyer for income Tax purposes.

8.7 Refunds

The Sellers shall be entitled to receive any refunds of Taxes for any Pre-Closing Tax Period, whether received by the Buyer, the Companies, or any of their respective Affiliates, and whether received in the form of a refund, offset, credit, receipt of payment, or otherwise, along with any interest paid with respect thereto by the relevant Governmental

Authority (a “Tax Refund”), unless such Tax Refund was specifically reflected as an asset within Net Working Capital or is with respect to a Tax paid by the Buyer, the Companies or their respective Affiliates after the Closing and was not an Excluded Tax. The Buyer, the Companies, and their respective Affiliates shall cause any Tax Refunds to be paid promptly to the appropriate Sellers. In the case of any Straddle Period, the amount of Tax Refunds to which the appropriate Sellers are entitled shall be determined in the same manner as Taxes are allocated to the Sellers with respect to such Straddle Period under Section 8.2(b). The Buyer, the Companies, and their respective Affiliates shall promptly execute such documents, take commercially reasonable additional actions, and otherwise reasonably cooperate as may be necessary to perfect their rights in and obtain all Tax Refunds. Neither the Buyer, the Companies, nor any of their respective Affiliates shall forfeit, fail to collect, or otherwise minimize or delay any Tax Refund. The Buyer, the Companies, and their respective Affiliates shall provide the Sellers with such assistance or access to records or information as may be reasonably requested in connection with the review of any Tax Return, including the filing of any claim for refund, for purposes of determining the Tax Refunds payable pursuant to this Section 8.7. The amount of any Tax liabilities included in the Net Working Capital that are not actually paid to the relevant Governmental Authority shall be treated as a Tax Refund to which this Section 8.7 applies. The amount of a Tax Refund shall be reduced by the expenses incurred by the Buyer, the Companies or their respective Affiliates, including any Tax resulting from the receipt of the Tax Refund.

8.8 Tax Claims

. Section 7.5 shall apply to any Tax-related matters that are Third-Party Claims. For the avoidance of doubt, subject to the qualifications and limitations set forth above in this Section 7.5, the Indemnifying Party will have the right to defend the Indemnified Party against any Third-Party Claim that is a Tax Proceeding.

8.9 Prohibited Actions

. Unless otherwise required by Applicable Law (in which case, the Buyer shall give the Sellers 30 days’ notice), without first obtaining the prior written consent of the Sellers’ Representative (such consent not to be unreasonably withheld or delayed), after the Closing, neither the Buyer, the Companies, nor their respective Affiliates shall (i) file, re-file, supplement, or amend any Tax Return of any Company for any Pre-Closing Tax Period; (ii) file any voluntary disclosure agreement, participate in any arrangement similar to a voluntary disclosure agreement, or voluntarily approach any taxing authority regarding any Taxes or Tax Returns of any Company for any Pre-Closing Tax Period; or (iii) take any other action relating to Taxes that could reasonably be expected to create a Tax liability for the Sellers with respect to a Pre-Closing Tax Period.

8.10 Post-Closing Tax Filings

. Except as otherwise provided in Section 8.1(a) with respect to Straddle Periods, the Buyer acknowledges and agrees that it is responsible for making its own determinations with respect to Tax filings after Closing and it shall not rely on the pre-Closing practices of any Seller (and/or any Affiliate thereof) or any Company with respect to such filings, nor shall it be bound by such pre-Closing practices of any Seller.

8.11 Transaction Deductions

. The Buyer and the Sellers shall each be allocated the income Tax deduction attributable to any transaction expense for which each party bears the economic detriment, except to the extent otherwise required by Applicable Law.

**ARTICLE IX**  
**APPOINTMENT OF SELLERS' REPRESENTATIVE**

9.1 Appointment

. By virtue of the execution of this Agreement, each Seller (a) appoints, as of the Closing Date, the Sellers' Representative, as his, her or its true and lawful agent and attorney-in-fact to: (i) direct the Escrow Agent regarding how to distribute any amounts released from the Escrow Account; (ii) give and receive notices and communications to or from the Buyer and/or the Escrow Agent relating to this Agreement, the Escrow Agreement or any of the transactions and other matters contemplated by this Agreement or the Escrow Agreement; (iii) authorize deliveries to the Buyer of cash and/or cash equivalents from the Escrow Amount in satisfaction of claims asserted by Buyer (including by not objecting to claims); (iv) object to any claims by the Buyer in respect of payment from the Escrow Amount; (v) consent or agree to, negotiate, enter into settlements and compromises of, and agree to arbitration and comply with orders of courts and awards of arbitrators with respect to such claims; (vi) assert, negotiate, enter into settlements and compromises of, and agree to arbitration and comply with orders of courts and awards of arbitrators with respect to any other claim by the Buyer against any such Seller or by any such Seller against the Buyer or any dispute between the Buyer and any such Seller, in each case relating to this Agreement, the Escrow Agreement, or the transactions contemplated by this Agreement or the Escrow Agreement;; and (vii) take all other actions necessary or appropriate in the judgment of the Sellers' Representative in connection with any transaction contemplated under this Agreement or for the accomplishment of the above, in each case without having to seek or obtain the consent of any Person under any circumstance (clauses (i) through (vii), collectively, the "Sellers' Representative Actions") and (b) consents to the removal and replacement of the Sellers' Representative pursuant to Section 9.3 below. The appointment of the Sellers' Representative shall be deemed coupled with an interest and shall be irrevocable, and any other Person, including the Buyer and its Affiliates, may conclusively and absolutely rely, without inquiry, upon any action of the Sellers' Representative as the act of each Seller in all matters referred to in this Agreement, and any such Person shall have no liability for any action taken (or not taken) in reliance upon any action or instruction of the Sellers' Representative. Without limiting the generality or effect of the above, any claims or disputes between or among the Buyer, the Sellers' Representative and/or any one or more Sellers relating to this Agreement or the Escrow Agreement or the transactions contemplated by this Agreement or the Escrow Agreement shall, in the case of any claim or dispute asserted by or against or involving any such Seller (other than any claim against or dispute with the Sellers' Representative), be asserted or otherwise addressed solely by the Sellers' Representative on behalf of such Seller (and not by such Seller acting on its own behalf). The Sellers' Representative shall have no liability to the Sellers or their respective Affiliates for any actions or omissions taken or suffered in good faith in his capacity as the Sellers' Representative. The Sellers shall reimburse the Sellers' Representative for all Adverse Consequences, including out-of-pocket expenses, incurred in connection with his duties and obligations as the Sellers' Representative hereunder, including, without limitation, all Adverse Consequences incurred in connection with the duties and obligations set forth in this Article IX.

9.2 Acceptance

. Michael J. Pretasky, Jr. accepts his appointment as the Sellers' Representative.

9.3 Replacement

. The Person serving as the Sellers' Representative may be replaced from time to time by Sellers upon not less than ten days' prior written notice to the Buyer.

9.4 Communications

. Any notice or communication given or received by, and any decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction of, the Sellers' Representative shall constitute a notice or communication to or by, or a decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction of, all of the Sellers and shall be final, binding and conclusive upon each such Seller; and the Buyer and the Escrow Agent shall be entitled to rely upon any such notice, communication, decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction as being a notice or communication to or by, or a decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction of, each and every such Seller. The Buyer and the Escrow Agent are relieved from any Liability to any Person for any acts done by them in accordance with any such notice, communication, decision, action, failure to act within a designated period of time, agreement, consent or instruction of the Sellers' Representative.

**ARTICLE X**  
**MISCELLANEOUS**

10.1 Press Releases and Public Announcements

. No Party shall issue any press release or make any public announcement relating to the subject matter of this Agreement without the prior written approval of the Buyer and the Sellers; provided, however, the Buyer may make any public disclosure it believes in good faith is required by Applicable Law or any listing or trading agreement concerning its publicly traded securities (in which case the Buyer will use its reasonable commercial efforts to advise the other Parties prior to making the disclosure).

10.2 No Third-Party Beneficiaries

. This Agreement shall not confer any rights or remedies upon any Person (including the employees of the Company) other than the Parties, the Buyer Indemnitees, the Seller Indemnitees and their respective successors and permitted assigns.

10.3 Entire Agreement

. This Agreement (including the documents referred to in this Agreement) constitutes the entire agreement among the Parties and supersedes any prior understandings, agreements, or representations by or among the Parties, written or oral, to the extent they relate in any way to the subject matter of this Agreement.

10.4 Succession and Assignment

. This Agreement shall be binding upon and inure to the benefit of the Parties named in this Agreement and their respective successors and permitted assigns. No Party may assign or delegate either this Agreement or any of his, her or its rights, interests, or obligations under this Agreement without the prior written approval of the Buyer and the Sellers; provided, however, that the Buyer may: (a) assign any or all of its rights and interests under this Agreement to one or more of its Affiliates and (b) designate one or more of its Affiliates to perform its obligations under this Agreement (in any or all of which cases the Buyer shall remain responsible for the performance of all of its obligations under this Agreement). Any attempted assignment or delegation of this Agreement or any rights, interests or obligations under this Agreement not in accordance with the terms of this Section 10.4 shall be void.



10.5 Counterparts

. This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement. The exchange of a fully executed Agreement (in counterparts or otherwise) by electronic transmission in .PDF format or by facsimile shall be sufficient to bind the Parties to the terms and conditions of this Agreement.

10.6 Headings

. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

10.7 Notices

. All notices, requests, demands, claims, and other communications under this Agreement shall be in writing. Any notice, request, demand, claim, or other communication under this Agreement shall be deemed duly given: (i) when delivered personally to the recipient; (ii) two Business Days after being sent to the recipient by reputable international overnight courier service (charges prepaid); or (iii) one Business Day after being sent to the recipient by facsimile transmission or electronic mail, addressed to the intended recipient as set forth below:

If to the Sellers:

c/o Michael J. Pretasky, Jr.  
S38W33768 County Road D  
Dousman, WI 53118  
Telephone: 414-870-2848  
Email: mpretaskyjr@skipperbuds.com

With copies to:

Godfrey & Kahn, S.C.  
833 East Michigan Street  
Suite 1800  
Milwaukee, Wisconsin 53202  
USA

Attention:  
Telephone: +1 414 287 9218  
Facsimile: +1 414 273 5198  
Email:

Paul Griepentrog

pgriepentrog@gklaw.com

If to the Sellers' Representative:

Michael J. Pretasky, Jr.  
S38W33768 County Road D  
Dousman, WI 53118  
Telephone: 414-870-2848  
Email: mpretaskyjr@skipperbuds.com

With copies to:

Godfrey & Kahn, S.C.  
833 East Michigan Street  
Suite 1800  
Milwaukee, Wisconsin 53202  
USA  
Attention:  
Telephone: +1 414 287 9218  
Facsimile: +1 414 273 5198  
Email:

Paul Griepentrog  
pgriepentrog@gklaw.com

If to the Buyer:

MarineMax, Inc.  
2600 McCormick Drive  
Suite 200  
Clearwater, Florida 33759  
USA  
Attention: Mike McLamb  
Manny Alvare  
Telephone: +1 727 531 1700  
Facsimile: +1 727 532 8367  
Email: mike.mclamb@marinemax.com  
manny.alvare@marinemax.com

With copies to:

Holland & Knight, LLP  
100 North Tampa Street, Suite 4100  
Tampa, Florida 33602  
USA  
Attention: Robert J. Grammig  
Telephone: +1 813 227 6515  
Facsimile: +1 813 229 0134  
Email: robert.grammig@hklaw.com

Any Party may change the address to which notices, requests, demands, claims, and other communications under this Agreement are to be delivered by giving the other Party notice in the manner set forth in this Agreement.

10.8 Governing Law

. This Agreement shall be governed by and construed in accordance with the domestic laws of Wisconsin without giving effect to any choice or conflict of law provision or rule (whether of Wisconsin or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than Wisconsin.

10.9 Jurisdiction; Waiver of Jury Trial

. All issues and questions concerning the construction, validity, interpretation and enforceability of this Agreement and its exhibits and schedules, and all related claims and disputes arising, whether in contract or tort, or at law or in equity, shall be governed by, and construed in accordance with, the laws of the State of Wisconsin, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Wisconsin or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Wisconsin. The Parties irrevocably agree and consent to be subject to the exclusive jurisdiction of the United States District Court for the Eastern District of the State of Wisconsin, and waive the right to assert the lack of personal or subject matter jurisdiction or improper venue in connection with any such suit, action or other Proceeding. In furtherance of the above, each of the Parties (a) waives the defense of inconvenient forum, (b) agrees not to commence any suit, action or other Proceeding arising out of this Agreement or any transactions contemplated hereby other than in any such court, and (c) agrees that a final judgment in any such suit, action or other Proceeding shall be conclusive and may be enforced in other jurisdictions by suit or judgment or in any other manner provided by law. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY LITIGATION, ACTION, PROCEEDING, CROSS-CLAIM, OR COUNTERCLAIM IN ANY COURT (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF, RELATING TO OR IN CONNECTION WITH (i) THIS AGREEMENT OR THE VALIDITY, PERFORMANCE, INTERPRETATION, COLLECTION OR ENFORCEMENT HEREOF OR (ii) THE ACTIONS OF SUCH PARTY IN THE NEGOTIATION, AUTHORIZATION, EXECUTION, DELIVERY, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

10.10 Amendments and Waivers

. No amendment of any provision of this Agreement shall be valid unless in writing and signed by the Buyer and the Sellers. No waiver by any Party of any provision of this Agreement or any default, misrepresentation, or breach of warranty or covenant under this Agreement, whether intentional or not, shall be valid unless in writing and signed by the Party making such waiver. Any such waiver shall not be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant under this Agreement or affect in any way any rights arising by virtue of any prior or subsequent such default, misrepresentation, or breach of warranty or covenant.

10.11 Severability

. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

10.12 Expenses

. Except as otherwise specifically set forth in this Agreement, each Party shall bear its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the Transaction. Notwithstanding the above, the Buyer, on one hand, and the Sellers, on the other hand, each agree to pay 50% of all fees and expenses related to the R&W Insurance Policy, including the total premium, underwriting costs, brokerage commissions, surplus line taxes and other fees and expenses of such policy.

10.13 Construction

. The Parties have participated jointly in the negotiation and drafting of this Agreement. The Parties hereto agree that they have been represented by counsel during the

negotiation, preparation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any statute or law shall be deemed also to refer to all rules and regulations promulgated under such laws, unless the context requires otherwise. Any accounting term used in this Agreement shall have, unless otherwise specifically provided in this Agreement, the meaning customarily given such term in accordance with GAAP and all financial computations under this Agreement will be computed, unless otherwise specifically provided in this Agreement, in accordance with GAAP consistently applied. The word "including" shall mean including without limitation. The word "indemnify" means "indemnify" means indemnify, defend, reimburse and hold harmless. The Parties intend that each representation, warranty, and covenant contained in this Agreement shall have independent significance. If any Party has breached or violated, or if there is an inaccuracy in, any representation, warranty, or covenant contained in this Agreement in any respect, the fact that there exists another representation, warranty, or covenant relating to the same subject matter (regardless of the relative levels of specificity) that the Party has not breached or violated, or in respect of which there is not an inaccuracy, shall not detract from or mitigate the fact that the Party is in breach of the first representation, warranty, or covenant.

10.14 Incorporation of Exhibits, Annexes and Disclosure Schedule

. The Exhibits, Annexes and Disclosure Schedule identified in this Agreement are incorporated in this Agreement by reference and made a part of this Agreement.

10.15 Waiver of Conflicts

. Recognizing that Godfrey & Kahn, S.C. has acted as legal counsel to the Sellers and the Companies prior to the Closing, and that Godfrey & Kahn, S.C. intends to act as legal counsel to the Sellers (which will no longer include the Company) after the Closing, the Buyer hereby waives, on its own behalf and agrees to cause its Affiliates to waive (including, after the Closing, the Companies), any conflicts that may arise in connection with Godfrey & Kahn, S.C. representing any Sellers after the Closing as such representation may relate to the Buyer, the Companies and/or the transactions contemplated by this Agreement.

10.16 Pre-Closing Privileged Communications

. The parties acknowledge that Godfrey & Kahn, S.C. has represented the Sellers and the Companies (collectively, the "Pre-Closing Represented Persons") in connection with the transactions contemplated by and/or relating to this Agreement prior to the Closing ("Pre-Closing Representation"). Any privilege attaching as a result of Godfrey & Kahn, S.C.'s representation of such Pre-Closing Represented Persons in connection with the Pre-Closing Representation shall survive the Closing and shall remain in effect; provided that such privilege from and after the Closing shall be assigned to and belong to and controlled by, as applicable, the Sellers (collectively, the "Pre-Closing Represented Seller Persons"). For clarity, such privilege (i) may be waived only by the applicable Pre-Closing Represented Seller Person(s), and not by the Buyer, the Companies or any of their respective Affiliates, and (ii) shall not pass to or be claimed or used by Buyer, the Companies or any of their respective Affiliates. As to any privileged attorney-client communications between counsel and any Pre-Closing Represented Person(s) prior to Closing (collectively, the "Privileged Communications"), the Buyer agrees, on its own behalf and on behalf of its Affiliates (including, after the Closing, the Companies) and

their respective successors and/or assigns, that none of the Buyer, any of its Affiliates (including, after the Closing, the Companies) or any of their respective successors or assigns, may use or rely on any of the Privileged Communications in any action or claim against or involving any of the parties to this Agreement after the Closing. Further, the parties to this Agreement understand and agree that any failure to segregate and/or restrict the Buyer's access to any Privileged Communications shall not be considered a waiver of the privilege. None of the Buyer or any of its Affiliates (including, after the Closing, the Companies) shall have access to any Privileged Communications or to the files of Godfrey & Kahn, S.C. relating to the Pre-Closing Representation after the Closing. Without limiting the generality of the foregoing, from and after the Closing (a) the Pre-Closing Represented Seller Person(s) (as applicable) and their respective Affiliates (and not the Companies) shall be the sole holders of the attorney-client privilege with respect to the Pre-Closing Representation, (b) to the extent that files of Godfrey & Kahn, S.C. in respect of the Pre-Closing Representation constitute property of the client, only the Pre-Closing Represented Seller Person(s) (as applicable) and their respective Affiliates (and not the Company) shall hold such property rights, and (c) Godfrey & Kahn, S.C. shall have no duty whatsoever to reveal or disclose any Privileged Communications or files to the Buyer, the Companies or any of their respective Affiliates by reason of any attorney-client relationship between Godfrey & Kahn, S.C. and the Pre-Closing Represented Persons.

Notwithstanding the foregoing, in the event a dispute arises between Buyer and/or the Companies, on the one hand, and a third party (other than a party to this Agreement or any of their respective Affiliates) after the Closing, the Companies (to the extent applicable) may assert the attorney-client privilege to prevent disclosure of confidential communications with Godfrey & Kahn, S.C. to such third party; provided that, in such instance, neither the Buyer nor the Companies may intentionally waive such privilege without the prior written consent of the Sellers' Representative.

For the avoidance of doubt, this Section 10.16 shall only be applicable to the Pre-Closing Representation and shall not be applicable to any other engagement of Godfrey & Kahn, S.C. by any of the Companies.

10.17 Specific Performance

. Each Party acknowledges and agrees that the other Parties may be damaged irreparably in the event any provision of this Agreement is not performed in accordance with its specific terms or otherwise is breached, so that a Party shall be entitled to injunctive relief to prevent breaches of this Agreement and to enforce specifically this Agreement and the terms and provisions of this Agreement in addition to any other remedy to which such Party may be entitled, at law or in equity. In particular, the Parties acknowledge that the business of the Companies is unique and recognize and affirm that in the event any of the Sellers breaches this Agreement, money damages may be inadequate and the Buyer may have no adequate remedy at law, so that the Buyer shall have the right, in addition to any other rights and remedies existing in its favor, to enforce its rights and the Sellers' obligations under this Agreement not only by action for damages but also by action for specific performance, injunctive, and/or other equitable relief. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement or any document in connection with the Transaction contemplated by this Agreement shall affect the ability of the Buyer to make any claim under the R&W Insurance Policy.

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IN WITNESS WHEREOF, the Parties to this Agreement have executed this Agreement as of the date first above written.

**SELLERS:**

**SKIPPER MARINE HOLDINGS, INC.**

By: /s/ Michael J. Pretasky, Sr.  
Name: Michael J. Pretasky, Sr.  
Title: Chairman of the Board

**SSY HOLDINGS, INC.**

By: /s/ Michael J. Pretasky, Jr.  
Name: Michael J. Pretasky, Jr.  
Title: Chief Executive Officer

/s/ Michael J. Pretasky, Sr.  
Michael J. Pretasky, Sr.

/s/ Michael J. Pretasky, Jr.  
Michael John Pretasky, Jr. 2014 Trust,  
by Michael J. Pretasky, as co-trustee

/s/ Peter M. Sommerhauser  
Michael John Pretasky, Jr. 2014 Trust,  
by Peter M. Sommerhauser, as co-trustee

/s/ Mark Ellerbrock  
Mark Ellerbrock

/s/ Robert Ross Tefft, Jr.  
Robert Ross Tefft, Jr.

**SELLERS' REPRESENTATIVE:**

/s/ Michael J. Pretasky, Jr.  
Michael J. Pretasky, Jr.

**BUYER:**

**MARINEMAX, INC.**

By: /s/ Michael McLamb

Name: Michael McLamb

Title: Executive Vice President, Chief Financial Officer and Secretary

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[Signature Page to Equity Purchase Agreement]

**ANNEX I**  
**DEFINITIONS**

“Adverse Consequences” means any and all actions, suits, Proceedings, hearings, investigations, charges, complaints, claims, causes of action, (of every nature, arising from contract, tort, statute, regulation or otherwise), demands, injunctions, judgments, Orders, decrees, rulings, damages of any nature including any deficiency, dues, penalties, fines, charges, awards, assessments, costs, amounts paid in settlement, Liabilities, obligations, Taxes, Liens, controversies, losses, expenses, and fees (including costs of investigation, court costs and reasonable attorneys’ fees and expenses); provided, that Adverse Consequences shall not include any punitive damages, except in the case of fraud or to the extent actually awarded to a Governmental Authority or other third party.

“Affiliate” means a Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the first-mentioned Person. For purposes of this definition, “control” of a Person shall mean the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether by ownership of voting stock, by contract or otherwise.

“Affiliate Real Property” means all land, buildings, structures, Improvements, fixtures, or other interest in real property that is owned by an Affiliate Real Property Owner and that is occupied or used by any of the Companies to operate their businesses as currently conducted, as set forth on Section 4.12(a) of the Disclosure Schedule.

“Affiliate Real Property Lease” means the Lease, in substantially the form attached as Exhibit H, for each Affiliate Real Property that will be entered into at the Closing between the corresponding Affiliate Real Property Owner and the applicable Company.

“Affiliate Real Property Owner” means any Affiliate of any of the Companies or any of the Sellers that owns any Affiliate Real Property.

“Applicable Law” means, with respect to any Person, any constitution, statute, law, ordinance, rule, principle of common law, code, administrative interpretation, regulation, act, treaty, Order, writ, injunction, directive, judgment, decree or other requirement of any Governmental Authority applicable to such Person or any of its Affiliates or any of their respective properties, assets, officers, directors, employees, consultants or agents.

“Applicable Privacy Laws” means the Applicable Laws (as amended and enacted from time to time) that relate to Personal Information, privacy, data protection or data transfer issues, including all implementing laws, rules and regulations, all applicable state privacy, security, data protection and destruction, and data breach notification laws, including without limitation the European Union General Data Protection Regulation and applicable implementing laws, the California Consumer Privacy Act, as well as applicable industry standards such as the Payment Card Industry Data Security Standard (PCI-DSS).

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“Basis” means any past or present fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction that forms or could form the basis for any specified consequence.

“Business Day” means any day other than a Saturday, Sunday or a national bank holiday in Florida or Wisconsin.

“Calculation Periods” means: (a) the period beginning on the Closing Date and ending on the day prior to the first anniversary of the Closing Date (the “First Calculation Period”); (b) the period beginning on the second anniversary of the Closing Date and ending on the day prior to the third anniversary of the Closing Date (the “Second Calculation Period”), (c) the period beginning on the third anniversary of the Closing Date and ending on the day prior to the fourth anniversary of the Closing Date (the “Third Calculation Period”), (d) the period beginning on the fourth anniversary of the Closing Date and ending on the day prior to the fifth anniversary of the Closing Date (the “Fourth Calculation Period”), and (e) the period beginning on the fifth anniversary of the Closing Date and ending on the day prior to the sixth anniversary of the Closing Date (the “Fifth Calculation Period”).

“CARES Act” means the Coronavirus Aid, Relief and Economic Security Act.

“Cash” means unrestricted cash and cash equivalents of the Companies, taken together, as determined in accordance with GAAP.

“[\*\*\*\*]” [\*\*\*\*]

“Cleanup” means all actions to clean up, treat, decontaminate, remove, remediate, or in any other way address the presence, or Release of any Hazardous Material whether or not any expense incurred in connection with such action constitutes a capital expenditure.

“COBRA” means the requirements of Part 6 of Subtitle B of Title I of ERISA and Code Section 4980B and of any similar local, state or non U.S. law.

“Code” means the United States Internal Revenue Code of 1986, as amended.

“Company Expenses” means, without duplication, the collective amount due and payable by the Companies, as of the Closing Date for all fees, costs and expenses incurred in connection with the Transaction, including: (a) the fees and expenses of each of the Companies’ advisors; (b) any stay bonuses or severance, termination, change in control, retention or similar payments or benefits payable to any employee of the Companies in connection with the Transaction and any associated payroll Taxes, in each case to the extent incurred on or prior to the Closing Date (including as a result of the Closing and including any retention arrangements agreed upon by the Buyer and the Sellers prior to the Closing); (c) all fees, costs and expenses set forth in Section 3.1(d) above and Section 4.4 above; provided, however, that if such fees, costs and expenses are paid by the Companies prior to the Closing Date and have been otherwise reflected in the Closing Statement, such fees, costs and expenses will not be considered Company Expenses; (d) one-half of the fees and expenses due to the Escrow Agent; (e) one-half of the fees and expenses due to the insurer under the R&W Insurance Policy; (f) one-half of all Transfer Taxes.

“Company Intellectual Property” means Company-Owned Intellectual Property and Company Non-Owned Intellectual Property.

“Company Non-Owned Intellectual Property” means all non-owned Intellectual Property that is used or under development by, or licensed to, any of the Companies or necessary for the operation of any of the Companies’ businesses as presently conducted and proposed to be conducted.

“Company-Owned Intellectual Property” means all Intellectual Property that is owned by any of the Companies.

“Confidential Information” means any information concerning the businesses and affairs of any of the Companies that is not already generally available to the public.

“Contract” means any agreement, contract, Lease, consensual obligation, promise, commitment, or undertaking (whether written or oral and whether express or implied).

“Copyright” means any moral rights and any copyright: (i) licensed from any third party; or (ii) assigned, registered or applied for, and all applications, registrations and renewals in connection therewith.

“COVID-19” means SARS-CoV-2 (severe acute respiratory syndrome coronavirus 2), coronavirus disease or COVID-19.

“COVID-19 Measures” means any quarantine, “shelter in place”, “stay at home”, workforce reduction, social distancing, shut down, closure, sequester in connection with COVID-19 or any other Applicable Law, Order, directive, guidelines or recommendations by any Governmental Authority in connection with or in response to COVID-19, including, but not limited to, the CARES Act.

“Data Room” means the online data room established by the Sellers and the Companies for purposes of this Transaction prior to 12:00 p.m. noon Eastern Time on September 30, 2020.

“Deed Restriction” means an institutional control, restriction or use limitation to run with the land.

“Employee Benefit Plan” means collectively, each pension, retirement, supplemental retirement, profit-sharing, deferred compensation, stock option, employee stock ownership, dividend reinvestment, severance pay, vacation, change in control, retention, bonus or other performance or other incentive plan, medical, vision, dental or other health plan, any life insurance plan, and any other written or unwritten employee benefit plan, program, arrangement, agreement or understanding, whether arrived at through collective bargaining or otherwise, currently or previously adopted, maintained by, sponsored in whole or in part by, or contributed to by any of the Companies, or under which any of the Companies has any Liability, for the benefit of employees, retirees, dependents, spouses, directors, independent contractors or other beneficiaries and under which employees, retirees, dependents, spouses, directors, independent contractors or other beneficiaries are eligible to participate.

“Employee Pension Benefit Plan” means any employee pension and post-retirement benefit plan, program or arrangement under Section 3(2) of ERISA.

“Employee Welfare Benefit Plan” has the employee welfare benefit plan, program or arrangement under Section 3(1) of ERISA.

“Environment” means soil, land surface and subsurface strata, surface waters (including navigable and non-navigable inland and ocean waters), groundwaters, drinking water supply, stream sediments, ambient air (including indoor and outdoor air), and plant and animal life.

“Environmental Contamination” means the presence of free product, Hazardous Materials, or any form of contaminant in the Environment in violation of Environmental, Health and Safety Requirements or in such concentrations or quantities that exceed the applicable limits or standards and requires investigation, remediation, removal or other response action under Environmental, Health and Safety Requirements.

“Environmental, Health and Safety Requirements” means all applicable federal, state, local and foreign statutes, regulations, and ordinances concerning public health and safety, worker health and safety, and pollution or protection of the Environment, including all those relating to the generation, handling, transportation, treatment, storage, disposal, distribution, labeling, discharge, release, control, or Cleanup of any Hazardous Materials, substances or wastes, as such of the above are enacted and in effect on or prior to the Closing Date.

“ERISA” means the United States Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means any entity that would, within the past six years, have been considered a single employer with the Companies under Section 4001(b) of ERISA or part of the same “controlled group” as the Companies for purposes of Section 302(d) of ERISA.

“Escrow Account” means an escrow account to be established and maintained by the Escrow Agent.

“Escrow Agent” means TMI Trust Company, or its successor, in its capacity as such pursuant to the Escrow Agreement.

“Escrow Agreement” means the Escrow Agreement by and among the Sellers, the Buyer and the Escrow Agent executed as of the Closing Date, substantially in the form attached as Exhibit I.

“Escrow Amount” means \$275,000 deposited with the Escrow Agent to serve as a source of funds to satisfy the indemnification obligations of the Sellers under Section 7.2(a).

“Excluded Taxes” means any Taxes taken into account in the calculation of Closing Date Net Working Capital.

“GAAP” means the United States generally accepted accounting principles, consistently applied, used in the preparation of the Company Financial Statements.

“Governmental Authority” means any applicable foreign or domestic federal, territorial, state or local governmental authority, quasi-governmental authority or non-governmental regulatory authority, instrumentality, court, government or self-regulatory organization, commission, tribunal or organization or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the above validly exercising its authority.

“Governmental Authorization” means any: (a) consent, license, registration, approval, authorization, permit, Order, certificate, franchise, or variance issued, granted, given, or otherwise made available by or under the authority of any Governmental Authority or pursuant to any Applicable Law; or (b) right under any Contract with any Governmental Authority.

“Hazardous Material” means any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or man-made, that is hazardous, acutely hazardous, or toxic, or otherwise regulated under Environmental, Health and Safety Requirements.

“Indebtedness” means, as of any time with respect to any Person, without duplication, the outstanding principal amount of, accrued and unpaid interest on, and other payment obligations (including any prepayment or other fees, expenses, breakage or other costs, commitment fees, penalties, make-whole premiums or other similar fees or premiums payable as a result of the transactions) arising under, any Liabilities or obligations of any of the Companies consisting of: (a) indebtedness for borrowed money or indebtedness issued or incurred in substitution or exchange for indebtedness for borrowed money or for the deferred or contingent purchase price of property, including, without limitation, floor plan inventory purchases; (b) indebtedness evidenced by any note, bond, debenture or other debt security, in each case, as of such date; (c) obligations in respect of any financial hedging arrangements or similar agreements; (d) all obligations, including reimbursement obligations, arising under lines of credit, letters of credit, bankers’ acceptances, bank guaranties, surety bonds and similar instruments; (e) obligations as lessee or lessees under leases that may be treated as capital leases in accordance with GAAP; (f) all unfunded obligations for defined benefit pension arrangements in accordance with GAAP; (g) all other financial debt-like obligations; and (h) all guarantees in respect of clauses (a) through (f). For the avoidance of doubt, Indebtedness does not include the [\*\*\*\*].

“Intellectual Property” means any: (i) Patents; (ii) Marks; (iii) Copyrights; (iv) Confidential Information and trade secrets, including confidential research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, methods, schematics, technology, technical data, designs, drawings, flowcharts, block diagrams, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals, all inventions (whether patentable or not), invention disclosures, databases and data collections, and all documentation relating to any of the above; (v) software or computer programs, internet uniform resource locators, domain names, databases, subroutines, user interfaces, techniques, URLs, web sites and data collections and all rights in such software; (vi) all moral and economic rights of authors and inventors, however denominated; (vii) all unregistered rights in copyright to print or electronic publications and content; (viii) all other forms of technology (whether or not embodied in any tangible form and including all tangible embodiments of the above such as instruction manuals, prototypes, samples, studies, and

summaries); (ix) any similar or equivalent rights to any of the above; and (x) licenses and agreements pursuant to which a Person has acquired rights in or to any of the above or licenses or agreements pursuant to which a Person has licensed or transferred the right to use any of the above.

“Internal Revenue Service” or “IRS” means the Internal Revenue Service of the United States Department of the Treasury.

“IT Infrastructure” means information technology resources and services used for operations of the Companies, including: (i) applications, operating system, network, supply chain, enterprise resource management and other software; (ii) network, routing, wireless, telecommunications and other hardware; (iii) servers, workstations, personal computers and mobile devices; and (iv) hosting, cloud, data center, disaster recovery and managed services.

“Knowledge” means, as to the Sellers, the actual knowledge of Michael J. Pretasky, Sr., Michael J. Pretasky, Jr., Mark Ellerbrock, Robert Ross Tefft, Jr., and Anthony E. Donarski, in each case after reasonable inquiry of the Company’s employees with primary responsibility for the subject matter.

“Leased Real Property” means all leasehold or subleasehold estates and other rights to use or occupy any land, buildings, structures, Improvements, fixtures, or other interest in real property held by any of the Companies, as set forth on Section 4.12(b) of the Disclosure Schedule.

“Leases” means all leases, subleases, licenses, concessions and other agreements (written or oral), including all amendments, extensions, renewals, guaranties, and other agreements with respect to such Leases, pursuant to which any of the Companies holds any Leased Real Property, including the right to all security deposits and other amounts and instruments deposited by or on behalf of any of the Companies under such agreements.

“Liability” means any Indebtedness, liability, claim, cause of action, loss, damage, deficiency, responsibility or obligation of whatever kind or nature (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether secured or unsecured, whether disputed or undisputed, whether incurred or consequential, whether liquidated or unliquidated, whether due or to become due, whether joint or several, whether vested or unvested, whether choate or inchoate), including any liability for Taxes, other governmental charges or lawsuits brought, whether or not of a kind required by GAAP to be set forth in financial statement and regardless of whether such Indebtedness, duty or liability, is immediately due and payable, and including all related costs and expenses.

“Lien” means any charge, claim, community or other marital property interest, condition, equitable interest, lien, option, pledge, charge, security interest, mortgage, right of way, easement, encroachment, servitude, right of first option, right of first refusal, or similar restriction, including any restriction on use, voting, transfer, receipt of income, or exercise of any other attribute of ownership.

“Mark” means any trademark, trade name, trade dress, service mark, domain name, logos, brand names, slogans, product names, designs, and any registrations and applications for any of the above.

“Material Adverse Effect” or “Material Adverse Change” means any change, event or effect that has a materially adverse effect on the business, assets, Liabilities, or results of operations of any of the Companies, taken as a whole, except to the extent resulting from: (a) changes in general local, domestic, foreign, or international economic conditions; (b) changes affecting generally the industries or markets in which the Company operates; (c) acts of war, sabotage or terrorism, military actions; (d) any changes in Applicable Laws or accounting rules or principles, including changes in GAAP; (e) the announcement of any of the Transaction; or (f) any outbreak, epidemic, pandemic, health crisis or public health event (including with respect to COVID-19 or any variation, adaption or mutation thereof), and any worsening thereof on or after the date hereof.

“Most Recent Balance Sheet” means the balance sheet contained within the Most Recent Financial Statements.

“Multiemployer Plan” means any multiemployer pension plan, program or arrangement contemplated under Section 3(37) of ERISA.

“Net Working Capital” means, on a consolidated basis, an amount equal to: (a) the sum of (i) trade accounts receivable, plus (ii) inventory, plus (iii) cash deposits and prepaid costs and prepaid expenses; minus (b) the sum of (i) trade accounts payable and customer deposits, plus (ii) checks in transit, plus (iii) accrued expenses and other accrued Liabilities (other than the Closing Date Indebtedness), plus (iv) unearned revenue. For the avoidance of doubt, the calculation of Net Working Capital shall not take into account any Cash, Closing Date Indebtedness or Closing Date Company Expenses. Net Working Capital shall be calculated in accordance with the historical principles, practices, methodologies, procedures and policies used by the Companies in connection with the preparation of and reflected and applied in the Financial Statements, subject to the following:

- (A) accounts receivable will be valued at book value net of bad debt reserves;
- (B) cash deposits, prepaid costs and prepaid expenses will be valued at book value;
- (C) Global Insurance rebates related to the Companies’ retail insurance policies payable to the Companies for any pre-Closing period will be included;
- (D) 2020 and 2021 new boat inventory will be valued at normal net invoice value, plus hard rigging costs, less any “backside” incentives paid to and received by the Companies in respect of inventory that remains in stock as of the Closing Date;
- (E) 2019 new boat inventory will be valued at normal net invoice value, plus hard rigging costs, less a 10% discount, and less any “backside” incentives paid to and received by the Companies in respect of inventory that remains in stock as of the Closing Date;
- (F) used boat inventory will be valued as agreed by the Parties;
- (G) parts and accessories will be valued at cost, provided that parts and accessories more than two (2) years old will have a value of \$0;

(H) trailers will be valued at (i) 100% of invoice value if current, (ii) 66% of invoice value if one year old on model year, (iii) 33% of invoice value if two (2) years old on model year, and (iv) \$0 if three (3) years old or older on model year; and

(I) sales contracts not closed and delivered by the Closing will become the Buyer's transactions.

An example of the Working Capital of the Companies is attached to this Agreement as Annex II.

"[\*\*\*\*] Holdback Amount" means a sum equal to \$4,500,000.

"[\*\*\*\*] Leases" [\*\*\*\*].

"Ordinary Course of Business" means the ordinary course of business consistent with past custom and practice (including with respect to quantity and frequency).

"Organizational Documents" means: (a) the articles or certificate of incorporation and the bylaws of a corporation; (b) the certificate of formation and limited liability company agreement, operating agreement, or similar agreement of a limited liability company; (c) the partnership agreement and any statement of partnership of a general partnership; (d) the limited partnership agreement and the certificate of limited partnership of a limited partnership; (e) any charter or agreement or similar document adopted or filed in connection with the creation, formation, or organization of a Person; and (f) any amendment to or restatement of any of the above.

"Order" means any award, assessment, decision, decree, injunction, judgment, order, ruling, subpoena, writ, verdict arbitration award, charge or similar requirement entered, issued, made or rendered by any Governmental Authority.

"Owned Real Property" means all land, together with all buildings, structures, Improvements, and fixtures located thereon, that is owned by a Company.

"Patent" means any patent, any application for a patent, or any continuation, continuation-in-part, division, renewal, extension (including any supplemental protection certificate), reexamination or reissue of such items.

"Permits" means all Governmental Authorizations and applications for any Governmental Authorization that are necessary, or required by Applicable Law, to own, lease and/or operate the Company and its business or to operate, occupy, or use the Real Property substantially as it is currently operated, occupied, and used.

"Permitted Liens" means (i) liens for Taxes, assessments or other governmental charges or levies not yet due and payable as of the Closing and for which appropriate reserves have been established in accordance with GAAP, (ii) mechanics', workmen's, repairmen's, warehousemen's, carriers' or other like liens arising or incurred in the ordinary course of business if the underlying obligations are not yet due and payable as of the Closing, (iii) any interest or title of a lessor under an operating lease or capitalized lease or of any licensor or licensee under a non-exclusive license, (iv) liens of lessors under Real Property leases, (v) easements, rights of way, zoning ordinances

and other similar encumbrances affecting the Leased Real Property which are not violated by the current use or occupancy of such Leased Real Property and are not, individually or in the aggregate, material to the business of the Companies, and (vi) those liens set forth on Exhibit J to this Agreement.

“Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, any other business entity, or a Governmental Authority (or any department, agency, or political subdivision of a Governmental Authority).

“Personal Information” means information that identifies a natural person (a “Data Subject”), including name, mailing address, email address, social security number, license number, financial account information, credit/debit cardholder information, and information that permits or facilitates identity theft.

“[\*\*\*\*]” means the [\*\*\*\*].

“[\*\*\*\*]” means the Cash proceeds of the [\*\*\*\*].

“Pre-Closing Tax Period” means any taxable period ending on or before the Closing Date and the portion of a Straddle Period deemed to end on the Closing Date.

“Pre-existing Environmental Condition” means Environmental Contamination existing as of the Closing Date, whether known or unknown at the time of Closing.

“Pre-Tax Earnings” means, with respect to any Calculation Period, as determined in accordance with GAAP on a consolidated basis, and without duplication, the pre-tax earnings of the Companies, which shall be calculated in accordance with the historical principles, practices, methodologies, procedures and policies used by the Buyer, and which, for the avoidance of doubt, excludes any debt forgiveness income associated with the [\*\*\*\*].

“Predecessor” means (i) any Person that has ever merged with or into a Company, consolidated with the Company, engaged in a share exchange with the Company or effected a similar transaction, (ii) any Person a majority of whose capital stock (or similar outstanding ownership interests) or equity interests has ever been acquired by a Company, (iii) any Person all or substantially all of whose assets has ever been acquired by a Company, (iv) any spin-offs or other dispositions, and (v) any prior names of a Company or any Person described in clauses (i) through (iv) of this definition.

“Proceeding” means any present or future, threatened or pending, civil, administrative, investigative, criminal, labor, Tax, judicial or other type of demand, claim, complaint, litigation, suit, action, demand, hearing, proceeding, assessment, audit, charge, grievance, indictment, allegation, investigation, interrogatory, subpoena, inquiry, discussion, notice, alternative dispute resolution mechanism (including, without limitation, any shareholder or derivative action or mediation or arbitration proceeding), and any appeals, whether by a Governmental Authority or otherwise.



“R&W Insurance Policy” means the buy-side representations and warranties insurance policy underwritten by Dual Transactional Risk, a division of Dual Commercial LLC, and provided to the Buyer (as it may be amended, modified or otherwise supplemented from time to time).

“Real Property” means the Owned Real Property, the Affiliate Real Property, and the Leased Real Property.

“Receivables” means all trade accounts receivable and other rights to payment from customers of any of the Companies in respect of goods shipped or products sold or services rendered on behalf of the Companies’ businesses, and any related claim, remedy or other right.

“Release” means any release, spill, emission, leaking, pumping, pouring, dumping, emptying, escaping, seeping, injection, deposit, disposal, discharge, dispersal, leaching, or migration on or into the Environment, or into, onto, under, above, about, within or out of any property.

“SBA” means the U.S. Small Business Administration.

“Securities Act” means the United States Securities Act of 1933, as amended.

“Seller Cap” means \$275,000.

“Seller Deductible” means \$275,000.

“Straddle Period” means any taxable period beginning on or before the Closing Date and ending after the Closing Date.

“Subsidiary” means, with respect to any Person, another Person (i) of which 50% or more of any class of capital stock or other equity interest is owned or controlled, directly or indirectly, by such first Person, or (ii) of which such first Person is a general partner.

“Tax” or “Taxes” means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, social security (or similar), estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, value added, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever imposed by a Governmental Authority, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties, whether disputed or not and including any obligations to indemnify or otherwise assume or succeed to the Tax Liability of any other Person.

“Tax Return” means any return, report, statement, schedule, notice, form, listing, declaration, claim for refund, or information return or other document or information relating to Taxes, including any schedule or attachment to such Tax Return, and including any amendment of such Tax Return.

“Taxing Authority” means any Governmental Authority exercising any authority to impose, collect, enforce, regulate or administer the imposition of Taxes.

“[\*\*\*\*] Amount” means a sum equal to \$2,000,000.

“United States” or “U.S.” means the United States of America, including its territories and possessions.

ANNEX II

NET WORKING CAPITAL EXAMPLE

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**ANNEX III**

**KEY EMPLOYEES**

Tony Donarski

Todd Riepe

Trevis Burbach

Tory Windorski

Eric Norberg

Ross Tefft

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ANNEX IV

CONSENTS REQUIRED TO CLOSE

None.

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**EXHIBIT A**  
**EQUITY OF THE SELLERS**

| <b>Company</b>                       | <b>Authorized Shares</b>                       | <b>Outstanding Shares</b>                     | <b>Record Owners</b>          |
|--------------------------------------|--|---|-------------------------------|
| Skipper Marine Corp.                 | 2,800 shares of no par value Common Stock      | 1,000 shares of no par value Common Stock     | Skipper Marine Holdings, Inc. |
| Skipper Marine of Madison, Inc.      | 2,800 shares of no par value Common Stock      | 500 shares of no par value Common Stock       | Skipper Marine Holdings, Inc. |
| Skipper Marine of Fox Valley, Inc.   | 2,800 shares of no par value Common Stock      | 1,000 shares of no par value Common Stock     | Skipper Marine Holdings, Inc. |
| Skipper Bud's of Illinois, Inc.      | 20,000 shares of no par value Common Stock     | 4,004 shares of no par value Common Stock     | Skipper Marine Holdings, Inc. |
| Skipper Marine of Chicago-Land, Inc. | 10,000 shares of \$0.01 par value Common Stock | 1,000 shares of \$0.01 par value Common Stock | Skipper Marine Holdings, Inc. |
| Skipper Marine of Michigan, Inc.     | 60,000 shares of no par value Common Stock     | 100 shares of no par value Common Stock       | Skipper Marine Holdings, Inc. |
| Skipper Marine of Ohio, LLC          | N/A  | 100% of the membership interests              | Skipper Marine Holdings, Inc. |
| Silver Seas Yachts, Inc.             | 1,000 shares of no par value Common Stock      | 1,000 shares of no par value Common Stock     | SSY Holdings, Inc.            |

**EXHIBIT B**  
**TRADEMARKS**

| MARK                 | APPLICATION NO. | FILING DATE | REG. NO. | REG. DATE  | OWNER                         |
|----------------------|-----------------|-------------|----------|------------|-------------------------------|
| SKIPPERBUD'S         | 88108806        | 09/07/2018  | 5797910  | 07/09/2019 | Skipper Marine Holdings, Inc. |
| <b>Skipper Bud's</b> | 73689880        | 10/13/1987  | 1591327  | 04/10/1990 | Skipper Marine Holdings, Inc. |

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**EXHIBIT C**  
**PRO RATA PERCENTAGES**

As it relates to SM Holdings and SSY Holdings:

|              |     |
|--------------|-----|
| SM Holdings  | 90% |
| SSY Holdings | 10% |

As it relates to Individual Sellers:

|  |        |
|--|--------|
| Michael J. Pretasky, Sr.<br>(854 shares of SM Holdings, 77 shares of SSY Holdings)                 | 14.70% |
| Michael John Pretasky, Jr. 2014 Trust<br>(4,110 shares of SM Holdings, 373 shares of SSY Holdings) | 70.79% |
| Mark Ellerbrock<br>(552 shares of SM Holdings, 50 shares of SSY Holdings)                          | 9.51%  |
| Robert Ross Tefft, Jr.<br>(500 shares of SSY Holdings)   | 5.00%  |

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**EXHIBIT D**

**ALLOCATION METHODOLOGY**

**Purchase Price Allocation Methodology**

| <b>Asset Class</b>  | <b>Purchase Price Allocation Methodology</b>                       |
|---|--|
| 1. Class I Assets (cash, demand deposits and similar accounts in financial institutions)  | Amount taken into account for the Closing Date Net Working Capital |
| 2. Class II Assets (certificates of deposit, U.S. Government securities, readily marketable stock or securities (other than stock of affiliates) and foreign currency)  | Amount taken into account for the Closing Date Net Working Capital |
| 3. Class III Assets (debt instruments including accounts receivable)  | Amount taken into account for the Closing Date Net Working Capital |
| 4. Class IV Assets (inventory)  | Amount taken into account for the Closing Date Net Working Capital |
| 5. Class V Assets (all assets that are not Class I, II, III, IV, VI or VII assets)  | Fair Market Value*   |
| 6. Class VI Assets (all Code Section 197 intangibles other than goodwill and going concern value, including designs, patterns, know-how, formulas, customer-based intangibles, supplier-based intangibles, franchises, trademarks, and trade names) | Fair Market Value*   |
| 7. Class VII Assets (goodwill and going concern value)  | Residual   |

\* The Buyer shall pay to the Sellers the amount of any additional Tax cost at an agreed upon 20% effective rate to the Individual Sellers attributable to the allocation of over \$4,300,000 in the aggregate to Class V Assets and Class VI Assets.

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**EXHIBIT E**

**EXCEPTIONS TO THE SELLERS' REPRESENTATIONS AND WARRANTIES CONCERNING THE TRANSACTION**

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**EXHIBIT F**

**EXCEPTIONS TO THE BUYER'S REPRESENTATIONS AND WARRANTIES CONCERNING THE TRANSACTION**

[\*\*\*]

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**EXHIBIT G**

**FORM OF TRADEMARK ASSIGNMENT AGREEMENT**

[\*\*\*]

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**EXHIBIT H**

**FORM OF AFFILIATE REAL PROPERTY LEASE**

[\*\*\*]

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**EXHIBIT I**  
**FORM OF ESCROW AGREEMENT**

[\*\*\*]

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**EXHIBIT J**

**PERMITTED LIENS**

1. Liens have been imposed on certain inventory assets of the Companies related to the Companies' floor plan financing:
    - a. The following entities have liens on specific inventory assets of Skipper Marine Corp. related to its floor plan financing:
      - i. Wells Fargo Commercial Distribution Finance Corporation;
      - ii. Brunswick Acceptance Company, LLC; and
      - iii. Yamaha Motor Finance Corporation.
    - b. Wells Fargo Commercial Distribution Finance, LLC has a lien on specific inventory assets of Silver Seas Yachts, Inc. related to its floor plan financing.
    - c. The following entities have liens on the assets of Skipper Marine of Ohio, LLC related to third-party customer lending agreements:
      - i. GE Commercial Distribution Finance LLC; and
      - ii. Brunswick Acceptance Company, LLC.
    - d. The following entities have liens on specific inventory assets of Skipper Marine of Madison, Inc. related to floor plan financing:
      - i. Wells Fargo Commercial Distribution Finance Corporation; and
      - ii. Brunswick Acceptance Company, LLC.
    - e. The following entities have liens on specific inventory assets of Skipper Marine of Fox Valley, Inc. related to floor plan financing:
      - i. GE Commercial Distribution Finance Corporation; and
      - ii. Brunswick Acceptance Company, LLC.
      - iii. Wells Fargo Commercial Distribution Finance, LLC
    - f. The following entities have liens on specific inventory assets of Skipper Bud's of Illinois, Inc. related to floor plan financing:
      - i. Wells Fargo Commercial Distribution Finance Corporation; and
-

- ii. Brunswick Acceptance Company, LLC.
- g. The following entities have liens on specific inventory assets of Skipper Marine of Chicago-Land, Inc. related to floor plan financing:
  - i. Wells Fargo Commercial Distribution Finance Corporation; and
  - ii. Brunswick Acceptance Company, LLC.
- h. The following entities have liens on specific inventory assets of Skipper Marine of Michigan, Inc. related to floor plan financing:
  - i. Wells Fargo Commercial Distribution Finance Corporation; and
  - ii. Brunswick Acceptance Company, LLC.



DISCLOSURE SCHEDULE

[\*\*\*]

**LIST OF SUBSIDIARIES**

| Name   | State or Jurisdiction of<br>Incorporation or Organization         |
|--|---|
| MarineMax East, Inc. (1)                         | Delaware  |
| MarineMax Services, Inc. (2)                     | Delaware  |
| MarineMax Northeast, LLC (2)                     | Delaware  |
| Boating Gear Center, LLC (2)                     | Delaware  |
| US Liquidators, LLC (1)                          | Delaware  |
| Newcoast Financial Services, LLC (2)             | Delaware  |
| My Web Services, LLC (1)                         | Delaware  |
| MarineMax Charter Services, LLC (2)              | Delaware  |
| MarineMax Vacations, LTD (2)                     | British Virgin Islands  |
| Gulfport Marina, LLC (2)                         | Delaware  |
| FWW, LLC (2)                                     | Florida   |
| FWW, UK Limited (3)                              | United Kingdom  |
| Fraser Yachts Florida, Inc.(3)                   | Florida   |
| TCN Antibes S.A.R.L.(4)                          | France  |
| Fraser Yachts Limited (4)                        | United Kingdom  |
| Fraser Worldwide S.A.M. (4)                      | Monaco  |
| Fraser Yachts Group S.R.L. (4)                   | Italy   |
| Fraser Yachts Spain SLU (5)                      | Spain   |
| Fraser Yachts California, Inc.(5)                | California  |
| Northrop & Johnson Holding, LLC, (1) .....       | Florida   |
| N&J Private Insurance Services, LLC (1).....     | Florida   |
| Northrop & Johnson France E.U.R.L. (6) .....     | France  |
| Northrop & Johnson S.A.M. (7) .....              | Monaco  |
| Skipper Marine of Madison, LLC (1).....          | Wisconsin   |
| Skipper Marine of Chicago-Land, LLC (1).....     | Illinois  |
| Skipper Marine of Michigan, LLC (1).....         | Michigan  |
| Silver Seas Yachts, LLC (1).....                 | Arizona   |
| Silver Seas Yachts of California, Inc. (8) ..... | California  |
| Skipper Marine, LLC (1).....                     | Wisconsin   |
| Skipper Marine of Fox Valley, LLC (1) .....      | Wisconsin   |
| Skipper Marine of Ohio, LLC (1) .....            | Ohio  |
| Skipper Bud's of Illinois (1).....               | Illinois  |
| <hr/>  |   |
| (1)  | Wholly owned subsidiary of MarineMax, Inc.                        |
| (2)  | Wholly owned subsidiary of MarineMax East, Inc.                   |
| (3)  | Wholly owned subsidiary of FWW, LLC.                              |
| (4)  | Wholly owned subsidiary of FWW UK Limited.                        |
| (5)  | Wholly owned subsidiary of Fraser Yachts Florida, Inc.            |
| (6)  | Wholly owned subsidiary of TCN Antibes S.A.R.L.                   |
| (7)  | Wholly owned subsidiary of Fraser Worldwide S.A.M.                |
| (8)  | Wholly owned subsidiary of Silver Seas Yachts of California, Inc. |

**Consent of Independent Registered Public Accounting Firm**

The Board of Directors  
MarineMax, Inc.:

We consent to the incorporation by reference in the registration statements (No. 333-236617, 333-236618, 333-141657, 333-83332, 333-63307, 333-156358, 333-177019, 333-218563, 333-140366 and 333-218566) on Form S-8 of MarineMax, Inc. and subsidiaries of our reports dated December 2, 2020, with respect to the consolidated balance sheets of MarineMax, Inc. as of September 30, 2020 and 2019, the related consolidated statements of operations, comprehensive income, shareholders' equity, and cash flows for each of the years in the three-year period ended September 30, 2020, and the related notes, and the effectiveness of internal control over financial reporting as of September 30, 2020, which reports appear in the September 30, 2020 annual report on Form 10-K of MarineMax, Inc.

Our report dated December 2, 2020, on the consolidated financial statements as of September 30, 2020 and 2019 and for each of the years in the three-year period ended September 30, 2020, contains an explanatory paragraph that states that the Company has changed its method of accounting for leases as of October 1, 2019 due to the adoption of Accounting Standards Update (ASU) 2016-02, *Leases*, and several related amendments, as issued by the Financial Accounting Standards Board (FASB), and the Company has changed its method of accounting for revenue as of October 1, 2018 due to the adoption of ASU 2014-09, *Revenue from Contracts with Customers*, and several related amendments, as issued by the FASB.

Our report dated December 2, 2020, on the effectiveness of internal control over financial reporting as of September 30, 2020, contains an explanatory paragraph that states management excluded from its assessment of the effectiveness of the Company's internal control over financial reporting as of September 30, 2020, Northrop & Johnson's internal control over financial reporting associated with 1% of total assets and 1% of total revenues included in the consolidated financial statements of the Company as of and for the year ended September 30, 2020. Our audit of internal control over financial reporting of the Company also excluded an evaluation of the internal control over financial reporting of Northrop & Johnson.

/s/ KPMG LLP

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Tampa, Florida  
December 2, 2020

## CERTIFICATION

I, W. Brett McGill, certify that:

1. I have reviewed this report on Form 10-K of MarineMax, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations, and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize, and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ W. BRETT MCGILL  
W. Brett McGill  
Chief Executive Officer and President  
(Principal Executive Officer)

Date: December 2, 2020

## CERTIFICATION

I, Michael H. McLamb, certify that:

1. I have reviewed this report on Form 10-K of MarineMax, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations, and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize, and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ MICHAEL H. McLAMB

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Michael H. McLamb  
Chief Financial Officer  
(Principal Financial Officer)

Date: December 2, 2020

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of MarineMax, Inc. (the "Company") for the year ended September 30, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, W. Brett McGill, Chief Executive Officer of the Company, certify, to my best knowledge and belief, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)); and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ W. BRETT MCGILL

W. Brett McGill  
Chief Executive Officer

Date: December 2, 2020

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of MarineMax, Inc. (the "Company") for the year ended September 30, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Michael H. McLamb, Chief Financial Officer of the Company, certify, to my best knowledge and belief, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)); and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ MICHAEL H. McLAMB  
Michael H. McLamb  
Chief Financial Officer

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Date: December 2, 2020