

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE RECEIVERSHIP OF
CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED,
1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED, 1282648 ONTARIO LTD.,
1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.

**MOTION RECORD OF MARQUIS YACHTS LLC and
NORTHPOINT COMMERCIAL FINANCE LLC**

December 19, 2014

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TAB 1

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IN THE MATTER OF THE RECEIVERSHIP OF
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1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED, 1282648 ONTARIO LTD.,
1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.

NOTICE OF MOTION

MARQUIS YACHTS LLC (“Marquis”) and **NORTHPOINT COMMERCIAL FINANCE LLC (“Northpoint”)** will make a motion before a Judge presiding over the Commercial List on a date to be scheduled at 9:30 a.m. on a date to be fixed on further notice, at 330 University Avenue, Toronto, Ontario.

THE MOTION WILL BE HEARD ORALLY.

THE MOTION IS FOR AN ORDER:

1. declaring that Marquis and/or Northpoint hold a purchase money security interest (“**PMSI**”) in the motor yacht, serial number MQYE5048L314 (the “**Marquis Yacht**”), supplied by Marquis to the bankrupt/debtor, Crate Marine Sales Limited (“**Crate**”);
2. declaring that the Marquis/Northpoint PMSI claim has priority over the interests, if any, of Crate’s trustee in bankruptcy and any creditors of Crate claiming a security interest in the Marquis Yacht, including Crawmet Corp. (“**Crawmet**”);

3. declaring that any court-ordered charge over the Property of Crate securing the costs and disbursements of A. Farber & Partners Inc. ("**Farber**") in its capacity as interim receiver and receiver of the Property of Crate, do not attach to the Marquis Yacht;
4. directing that the the costs of this motion be paid by Farber to Marquis and Northpoint;
5. directing Farber to deliver up the Marquis Yacht to Marquis; and
6. such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

1. Marquis manufactures luxury and sport motor yachts for sale worldwide. For several years Marquis has supplied yachts to Crate on a dealership basis at Crate's marina and boat sales operation in Keswick, Ontario for resale to retail customers.
2. The yachts supplied by Marquis were held in Crate's inventory and offered for sale by Crate in the ordinary course of its marine sales business.
3. Crate's purchase of yachts from Marquis was governed by, among other things, an Inventory Finance and Security Agreement entered into by Crate on May 15, 2012 (the "**Marquis Security Agreement**") pursuant to which Crate granted to Marquis a security interest in yachts supplied by Marquis, including the "Marquis Yacht" referred to below.
4. Marquis registered a financing statement with respect to the Marquis Security Agreement under the Ontario *Personal Property Security Act* ("**PPSA**") on April 12, 2012.
5. Crawmet was Crate's primary operating lender. Crawmet claims that its loans to Crate were secured by, among other things, a general security agreement dated

December 22, 2011 (the "**Crawmet Security**") which purported to create a security interest in all of Crates assets in favour of Crawmet. Crawmet filed a financing statement pursuant to the PPSA with respect to the Crawmet Security on December 22, 2011.

6. By its terms, the Crawmet Security did not attach to new boats consigned to Crate for resale and permitted Crate to create security interests in favour of suppliers of boats for resale to secure the unpaid purchase price thereof.
7. By a written notice dated April 23, 2012 Marquis, through its Ontario lawyers Pallet Valo LLP, sent notifications (the "**PMSI Notice**") to all of Crate's general secured creditors with PPSA registrations, including Crawmet, pursuant to section 33(1)(b) of the PPSA, advising of its expectation to acquire a purchase money security interest in the inventory of Crate.
8. On or about November 22, 2013 Crate agreed to purchase, and Marquis agreed to supply, the Marquis Yacht (defined above) for the purchase price of approximately US\$1.014 million.
9. The Marquis Yacht was delivered to Crate in 2 parts. The Bridge Assembly was shipped by Marquis to Crate's marina premises in Keswick, Ontario on December 19, 2013. Crate itself picked up the hull from Marquis' plant on December 31, 2013.
10. By an assignment and acceptance agreement dated December 13, 2013 (the "**Assignment Agreement**") Marquis assigned its interest in the Marquis Security Agreement to Northpoint.
11. In consideration for the Assignment Agreement Northpoint financed the sale of the Marquis Yacht to Crate by advancing to Marquis the principal amount of US\$862,287.18, representing 85% of the invoiced price of the Marquis Yacht of US\$1,014,455.50. Marquis and its parent company guaranteed repayment of the Northpoint loan, and Marquis retained the balance of the debt owing by Crate

with respect to the Marquis Yacht. Marquis also retained the title documents with respect to the Marquis Yacht.

12. The full purchase price of US\$1,014,455.50, plus interest, remains outstanding from Crate with respect to the Marquis Yacht. Interest owing and accruing due as of December 1, 2014 amounts to US\$9,785.14.
13. As of early November, 2014 Crate had still not found an acceptable retail purchaser for the Marquis Yacht. Around that time Marquis was informed by one of its dealers in Florida that it had a customer interested in purchasing a Marquis 500 yacht for the purchase price of US\$850,000. As Marquis did not have one in stock it approached Crate with a view to returning the Marquis Yacht to Marquis so that it could use it to fill the Florida dealer's order. Crate was to be credited with the net proceeds of the Florida sale if and when completed. Crate agreed and released the Marquis Yacht to Marquis on or about November 13, 2014 at which time it was transported on Marquis' instructions by a trucking company ("**Balsdon**") to its storage yard in Pickering for on-shipping to the United States.
14. On November 14, 2014 Crate, together with 4 related companies, filed notices of intention ("**NOI**") to make proposals to their creditors pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**").
15. On November 21, 2014 Crawmet brought a motion to this court seeking an order terminating the NOI proceedings of Crate and its affiliated companies, appointing Farber as receiver over all of Crate's assets, properties and undertakings, and permitting Crawmet to enforce the security it purports to hold on all of Crate's assets (the "**Receivership Motion**").
16. By order of the Honourable Mr. Justice Penny herein dated November 21, 2014 Crawmet's Receivership Motion was adjourned and Farber was appointed interim receiver over the Property of Crate.

17. Immediately after its appointment as interim receiver Farber contacted Balsdon and demanded that the Marquis Yacht not be moved from its yard without the prior consent of the interim receiver.
18. By an order dated December 8, 2014, the Honourable Mr. Justice Newbould granted Crawmet's Receivership Motion, terminating the period for filing a proposal, and appointing Farber as trustee in bankruptcy and receiver of all of the assets of Crate and its affiliated companies that had issued NOIs.
19. Immediately following the appointment of the interim receiver Marquis informed Farber that it claimed a first priority purchase money security interest in the Marquis Yacht and proposed two separate potential sale transactions intended to maximize the realizable value of the Marquis Yacht, with the net proceeds of any such sale being paid to Farber to be held in trust pending determination of a priority dispute between Marquis and Crawmet over the Marquis Yacht and its proceeds. The parties could not agree on the terms of either of the potential sales and the Marquis Yacht remains at the Balsdon Yard.
20. Marquis claims that as a result of the sending of the PMSI Notice referred to in paragraph 7 above, before Crate took delivery of the Marquis Yacht, Marquis has a valid PMSI in the Marquis Yacht with priority over any interest therein of Crawmet. In addition, and in any event, Marquis claims that any purported security interest of Crawmet based on the Crawmet Security does not attach to the Marquis Yacht.
21. There is no equity in the Marquis Yacht for the bankruptcy or receivership estate. The Marquis Yacht is a depreciating asset. As a major yacht manufacturer, with a large dealership network in North America, Marquis is in the best position to maximize the realizable value of the Marquis Yacht.
22. Section 97 of the Ontario *Courts of Justice Act*.
23. Sections 1, 9, 25, 33 and 67 of the Ontario *Personal Property Security Act*.

24. Rules 1.04 and 1.05 of the Ontario *Rules of Civil Procedure*.
25. such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. the affidavit of Keith Carpenter sworn 18 December 2014 and the exhibits attached thereto; and
2. such further and other material as counsel may advise and this Honourable Court may permit.

December 19, 2014

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TO: SERVICE LIST

TAB 2

Commercial List File No. 14-CV-10798-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE RECEIVERSHIP OF
CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED,
1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED, 1282648 ONTARIO LTD.,
1382415 ONTARIO LTD., and 1382416 ONTARIO LTD.**

**AFFIDAVIT OF KEITH CARPENTER
(Sworn 18 December, 2014)**

I, Keith Carpenter, of the City of Hopkins in the State of Minnesota, in the United States of America, Executive, MAKE OATH AND SAY AS FOLLOWS:

1. I am the vice president and general counsel of Marquis Yachts LLC ("**Marquis**") and as such have knowledge of the matters deposed to below. Where I do not have direct knowledge I have relied on information obtained from other persons whom I believe and who are identified below.

OVERVIEW

2. This affidavit is made in support of a motion by Marquis and Northpoint Commercial Finance LLC ("**Northpoint**") for a declaration that they hold a purchase money security interest ("**PMSI**") in a Marquis 500 motor yacht, serial no. MQYE5048L314 (the "**Marquis Yacht**") supplied by Marquis to the bankrupt, Crate Marine Sales Limited ("**Crate**") that takes priority over Crate's trustee in bankruptcy and

any creditors of Crate, including Crawmet Corp. ("**Crawmet**"), who claim a security interest in the Marquis Yacht. Marquis supplied the Marquis Yacht to Crate on credit, reserved title and took a security interest in the Marquis Yacht that was registered pursuant to the provisions of the Ontario *Personal Property Security Act* ("**PPSA**"). Marquis sent PMSI notices pursuant to section 33 of the *PPSA* to Crawmet, and all other secured creditors with prior filings under the *PPSA*, before Crate took possession of the Marquis Yacht. Marquis then assigned its security interest to Northpoint in return for partial financing of the purchase price of the Marquis Yacht. Marquis and Northpoint therefore claim a first priority PMSI in the Marquis Yacht and its proceeds.

BACKGROUND

3. Marquis is a company incorporated pursuant to the laws of the State of Minnesota, U.S.A. and maintains a production facility in Pulaski, Wisconsin where it manufactures luxury and sport motor yachts for sale worldwide. Marquis distributes its yacht products, under the brand names "Marquis" and "Carver", through yacht dealers located throughout the United States, Canada and elsewhere. For several years Marquis has supplied yachts to Crate for resale on a dealership basis at Crate's marina operation in Keswick, Ontario. Crate and Marquis entered into a written dealership agreement dated as of April 24, 2010 (but signed on March 6, 2013) (the "**Dealership Agreement**") which was in effect during the period when the events described below occurred. A copy of the Dealership Agreement is attached hereto as **Exhibit "A"**.

4. Since the spring of 2012 Marquis supplied yachts to Crate for resale pursuant to the Dealership Agreement financed through the inventory finance program referred to

below. The yachts supplied by Marquis were held in Crate's inventory and offered for sale by Crate in the ordinary course of its marine sales business. The yachts supplied under the program are large and expensive (some worth in excess of US\$1 million). As a result, it is very difficult, if not impossible, for most yacht dealers to carry a significant inventory of such yachts without financing.

5. Crate's purchase of yachts from Marquis was governed by, among other things, an Inventory Finance and Security Agreement entered into by Crate on May 15, 2012 (the "**Marquis Security Agreement**"). A copy of the Marquis Security Agreement is attached hereto as **Exhibit "B"**. The Marquis Security Agreement contains the following material provisions, among others.

- (a) Crate was permitted to purchase new yacht inventory (referred to as "**Purchased Inventory**") from Marquis or its affiliates on credit extended by Marquis for resale by Crate (Article 1).
- (b) Upon the purchase of such inventory Marquis would invoice Crate for the purchase price and the invoice would evidence and constitute a loan deemed to have been advanced upon delivery of the product (Article 1).
- (c) Crate was obligated to repay the loans as and when they became due and payable according to the Marquis plan or plans of financing ("Finance Program" defined below) in effect from time to time, the terms of which were incorporated by reference into the Marquis Security Agreement (Article 2). The details of the applicable Financing Program are referred to in paragraph 6 below.

- (d) As security for the supply of products and the loans Crate granted to Marquis a security interest in all of the Purchased Inventory as well as the proceeds thereof and any accounts related thereto (referred to as the "Collateral") (Article 4).
- (e) Crate acknowledged and agreed that any payments received on the resale of the Collateral were to be held in trust for Marquis (Article 9).
- (f) Marquis retained all legal and beneficial ownership and title to all Purchased Inventory until the full purchase price and all interest and other charges were paid in full (Article 15).
6. On May 17, 2012 Crate executed Marquis' Inventory Finance Program (the "Finance Program") a copy of which is attached hereto as **Exhibit "C"**. The Finance Program provided in part as follows:
- (a) Marquis would advance by way of deemed loans 100% of the invoice value of Purchased Inventory, excluding taxes and other charges;
- (b) Crate would pay monthly interest only on the deemed loans, at 6% per annum, commencing 181 days after delivery of each yacht (i.e. a 6 month interest holiday);
- (c) the full purchase price/loan with respect to each new yacht would be repaid upon the earlier of the sale of the yacht or 24 months; and
- (d) Marquis would hold all title documents to the yachts, including the manufacturer's statement of origin (MSO), pending resale.

7. Marquis registered a financing statement with respect to the Marquis Security Agreement under the *PPSA* on April 12, 2012. Attached hereto as **Exhibits “D”** and **“E”** respectively are copies of the verification statement and *PPSA* enquiry response certificate, with a file currency date of November 12, 2014, evidencing the filing of Marquis’ financing statement under registration number 20120412 1450 1530 2649 and file number 677540457.

8. At the time of the execution of the Marquis Security Agreement in May, 2012 Marquis was aware that there were other secured creditors registered under the *PPSA* claiming a security interest in Crate’s assets. Accordingly, by a written notice dated April 23, 2012 Marquis, through its Ontario lawyers Pallet Valo LLP, sent notifications (the **“PMSI Notice”**) to all of Crate’s general secured creditors with *PPSA* registrations pursuant to section 33(1)(b) of the *PPSA* advising of its expectation to acquire a purchase money security interest in the inventory of Crate. A copy of the notification, together with the registered mail receipt, is attached hereto as **Exhibit “F”**. I am informed by Peggy Gray, a legal administrator with Pallet Valo LLP, that a copy of the PMSI notice was sent by registered mail on April 23, 2012 to Crawmet at the address set forth on the registered mail receipt.

9. Crawmet was Crate’s main operating lender. In the Crate receivership proceedings referred to below Crawmet claimed to have a first priority security interest in all of Crate’s assets, including the Marquis Yacht, pursuant to a general security agreement (the **“Crawmet GSA”**). A copy of the Crawmet GSA is attached hereto as **Exhibit “G”**. The Crawmet GSA contains the following material terms:

- (a) Article 4 ("Attachment") provides in part: "... The security interests, mortgages and charges granted herein shall not attach to any new or used boats or other property consigned for sale by third parties to the Debtor."
- (b) Article 5(b) ("Debtor's Warranties") provides: "No Encumbrances: the Collateral is and shall at all times be kept free and clear of any and all, mortgages, hypothecs, pledges, claims, adverse claims, demands, liens, charges, security interests, encumbrances, agreements, rights and equities of any kind whatsoever other than those given by the Debtor to or in favour of vendors of new boats, business equipment assets or motor vehicles as security for the balance of purchase price payable for said new boats, business equipment assets or motor vehicles."

SALE OF MARQUIS YACHT TO CRATE

10. On or about November 22, 2013 Crate agreed to purchase and Marquis agreed to supply the Marquis Yacht pursuant to the Marquis Finance Program for the purchase price of approximately US\$1.014 million. Marquis issued a pro forma invoice to Crate dated December 12, 2013, a copy of which is attached hereto as **Exhibit "H"**. A promotional photograph of a typical Marquis 500 is attached hereto as **Exhibit "I"**.

11. I am informed by Kelly Drake, Marquis' controller, that the Marquis Yacht was delivered to Crate in 2 parts. The Bridge Assembly was shipped by Marquis to Crate's marina premises in Keswick, Ontario on December 19, 2013. Crate itself picked up the hull from Marquis' plant on December 31, 2013. Attached hereto as **Exhibit "J"** are

copies of the shipping documents from Marquis' records confirming the delivery and pick-up.

12. As provided for in the Finance Program, Marquis retained the title documents to the Marquis Yacht. The title documents consist of 2 documents: the Manufacturer's Statement of Origin (MSO) and the Builder's Certification and First Transfer of Title (together the "**Title Documents**"). In the ordinary course a manufacturer such as Marquis holds the Title Documents until its dealer completes a sale of the yacht to a retail customer. At that time the manufacturer delivers the Title Documents to the dealer in exchange for the net proceeds of the retail sale. The manufacturer may also deliver the documents to the dealer if the latter pays in full for the yacht before a retail sale is effected. In this case Marquis endorsed the Title Documents to Crate but did not deliver them because the Marquis Yacht has still not been sold. Copies of the original Title Documents which are still held by Marquis are attached hereto as **Exhibit "K"**.

13. Around the time of the sale of the Marquis Yacht to Crate Marquis decided to reorganize the financing of its sale of yachts to dealers through financing services provided by a third party. Accordingly, in December, 2013 Marquis entered into an arrangement with Northpoint, a bank involved in, among other things, financing the sale by manufacturers of yachts to dealers. By an assignment and acceptance agreement dated December 13, 2013 (the "**Assignment Agreement**") Marquis assigned its interest in the Marquis Security Agreement with Crate to Northpoint. A copy of the Assignment Agreement is attached hereto as **Exhibit "L"**.

14. In consideration for the Assignment Agreement Northpoint financed the sale of the Marquis Yacht to Crate by advancing to Marquis the principal amount of US\$862,287.18, representing 85% of the invoiced price of the Marquis Yacht of US\$1,014,455.50. (See Exhibit "A" to the Assignment Agreement.)

15. Marquis retained the Title Documents to the Marquis Yacht and Marquis, together with its parent company J&D Acquisitions LLC ("**J&D**"), guaranteed repayment of Northpoint's advances under the Assignment Agreement. Copies of the Marquis and J&D guarantees are attached hereto as **Exhibits "M"** and "**N**" respectively.

16. Under the terms of the Finance Program Crate was not obligated to pay any interest for 6 months following delivery of the Marquis Yacht. Marquis, however, was obligated to pay interest charges to Northpoint for that 6-month period and did so. At the end of the 6-month period in June, 2014 Northpoint began invoicing Crate directly for interest on the outstanding purchase price. Crate paid those interest charges for the months of June to September, 2014 inclusive but has not made any payments since then. Crate has not made any payments on the principal balance outstanding. Attached as **Exhibit "O"** hereto is a statement from Marquis' records showing all payments made by it to Northpoint with respect to the Marquis Yacht. A history obtained from Northpoint, showing all payments made by Crate directly to Northpoint, is attached hereto as **Exhibit "P"**. In summary, the full purchase price of US\$1,014,455.50 remains outstanding. Interest owing and accruing due as of December 1, 2014 amounts to US\$9,785.14.

CURRENT STATUS OF YACHT

17. As of early November, 2014 Crate had still not found an acceptable retail purchaser for the Marquis Yacht. Around that time Marquis was informed by one of its dealers in Florida that it had a customer interested in purchasing a Marquis 500 yacht. As Marquis did not have one in stock it approached Crate with a view to returning the Marquis Yacht to Marquis so that it could use it to fill the Florida dealer's order. Crate would be credited with the net proceeds of the Florida sale if and when completed. Crate agreed.¹

18. The Florida dealer received a written offer to purchase the Marquis Yacht for the total price of US\$850,000 dated November 11, 2014. A copy of the offer is attached hereto as **Exhibit "Q"**.

19. On or about November 13, 2014 Marquis arranged for the yacht transport company M. Balsdon Trucking Ltd. ("**Balsdon**") to pick up the Yacht from Crate's marina premises and transport it to the United States in order to complete the Florida sale transaction. Attached hereto as **Exhibit "R"** are copies of the Balsdon shipping documents.

¹ Crawmet's Receivership Motion was based on an affidavit of Benn-Jay Spiegel, a General Manager of Crawmet, sworn November 20, 2014. In paragraph 56 of that affidavit Mr. Spiegel states that he was informed the previous day, by an unnamed sales manager of Marquis, that Marquis had paid Crate \$200,000 upon the release of the Marquis Yacht. I have made inquiries of Marquis' officers who may have had discussions with Mr. Spiegel, and the only one who spoke to Mr. Spiegel, namely Marquis' President Michael Parmentier, has confirmed that he never made any such statement to Mr. Spiegel. In any event, no payment whatsoever was made by Marquis to Crate. In addition, in his affidavit Mr. Spiegel says that Northpoint was "related to Marquis." That statement is incorrect. Northpoint is an arm's length lender to Marquis.

20. The Marquis Yacht was picked up by Balsdon and transported to its yard in Pickering, Ontario to be prepared for transport to the United States. For reasons set forth below the Yacht remains at the Balsdon yard in Pickering.

21. On November 14, 2014 Crate, together with 4 related companies, filed notices of intention ("**NOI**") to make proposals to their creditors pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**").

22. On November 21, 2014 Crawmet, Crate's primary secured operating lender, brought a motion to this court seeking an order terminating the NOI proceedings of Crate and its affiliated companies, appointing A. Farber & Partners Inc. ("**Farber**") as receiver over all of Crate's assets, properties and undertakings, and permitting Crawmet to enforce the security it purports to hold on all of Crate's assets (the "**Receivership Motion**"). As noted in paragraph 9 above, in its motion Crate claimed to have a first priority security interest in the Marquis Yacht.

23. By an order dated November 21, 2014, the Honourable Mr. Justice Penny adjourned Crawmet's Receivership Motion to December 1, 2014 and appointed Farber as interim receiver until that time. A copy of Justice Penny's November 21, 2014 order is attached hereto as **Exhibit "S"**.

24. Immediately after its appointment as interim receiver Farber contacted Balsdon and demanded that the Marquis Yacht not be moved from its yard without the prior consent of the interim receiver. Attached hereto as **Exhibit "T"** is a copy of Farber's letter of November 23, 2014 to Balsdon in that regard. The Marquis Yacht therefore remained in Balsdon's yard at Marquis' expense.

25. Following Farber's appointment Marquis proposed that Crawmet and the interim receiver agree to permit the completion of Marquis' Florida sale on Marquis' agreement to pay the proceeds of sale, net of the dealer's commission and disbursements, to the interim receiver to be held in trust pending determination of the priority dispute between Marquis and Crawmet. Marquis also offered to guarantee payment to the interim receiver of the amount of the net purchase price (viz. US\$800,000) in the event the Florida sale did not close within 60 days. This proposal was made because the gross purchase price of US\$850,000 was substantially higher than any offer Crate had received for the Marquis Yacht over a period of approximately 1 year and much higher than could be expected on a forced sale by Crate, the interim receiver or any subsequently appointed trustee or receiver.

26. Crawmet and the interim receiver would not agree to Marquis' proposal and refused to permit Marquis to complete the Florida sale unless Marquis paid the full amount of the purchase price of the Florida sale up-front to the interim receiver, or provided other security for the full purchase price. As these conditions were completely one-sided Marquis refused to accept them. Attached hereto as **Exhibit "U"** are copies of the email exchanges (in chronological order) between Marquis' counsel and counsel for Crawmet and Farber with respect to Marquis' proposal. The Marquis Yacht therefore remained with Balsdon.

27. As a result of the positions taken by Farber and Crawmet Marquis lost the opportunity to sell the Marquis Yacht to the interested party in Florida at a very favourable price.

RECEIVERSHIP AND BANKRUPTCY PROCEEDINGS

28. On December 1, 2014 Mr. Justice Penny further adjourned Crawmet's Receivership Motion to December 9, 2014 on certain terms, including the continuation of the interim receiver's powers. A copy of Justice Penny's endorsement, together with the interim receiver's unofficial transcription, is attached hereto as **Exhibit "V"**.

29. On December 4, 2014 Crawmet, on notice to all parties, attended before the Honourable Mr. Justice Newbould to request that the hearing of its Receivership Motion be accelerated and heard that day due to concerns it had with matters raised in the Supplementary Report to the Second Report of the interim receiver (unrelated to the Marquis Yacht). The Honourable Mr. Justice Newbould ordered that the Receivership Motion be further adjourned to December 8, 2014.

30. On December 5, 2014 Crate's counsel informed the service list that Crate had determined that it could not make a viable proposal to its creditors and that accordingly it would not be contesting Crawmet's Receivership Motion, although certain of its related companies intended to continue with their NOI proceedings.

31. By an order dated December 8, 2014, the Honourable Mr. Justice Newbould granted Crawmet's Receivership Motion, terminating the period for filing a proposal, and appointing Farber as trustee in bankruptcy and receiver of all of the assets of Crate and its affiliated companies that had issued NOIs. A copy of Justice Newbould's order of December 8, 2014 is attached hereto as **Exhibit "W"**.

TORONTO INTERNATIONAL BOAT SHOW PROPOSAL

32. By an email dated December 10, 2014 Marquis' counsel (Mr. J.D. Marshall of Borden Ladner Gervais LLP) raised another opportunity to sell the Marquis Yacht with counsel for the Receiver and Crawmet. Beginning on January 9, 2015 the annual Toronto International Boat Show will be held. Yacht sales are frequently made at that show. Marquis had arranged exhibiting space at the Show, as it has in the past, and offered to transport the Marquis Yacht to the Show premises at Exhibition Place, at its expense, and exhibit it for sale. The net proceeds of sale would be paid to the Receiver to be held in trust pending the determination of who was entitled to those proceeds. The email informed the Receiver that arrangements for the transportation of the Yacht to the Show would have to be confirmed by December 12, 2014. A copy of that email, together with copies of the email exchanges that followed it, and that are referred to below, are attached hereto as **Exhibit "X"** (in reverse chronological order).

33. The Receiver's counsel (Mr. Rotsztain of Goldman Sloan Nash & Haber LLP) responded by an email dated December 11, 2014. He stated that the Receiver viewed favourably the Marquis proposal but insisted that a number of conditions set forth in the email be agreed upon first. Many of the Receiver's conditions were, in Marquis' view, unreasonable or impracticable. Among other things:

- (i) the Receiver insisted that the Marquis Yacht was not to be sold at the Show without the written consent of the Receiver and Crawmet or an order of the court. Such a term was impracticable and would only serve to discourage potential purchasers;

- (ii) the Receiver insisted that Marquis bear the costs of transporting the Marquis Yacht and completing any sale and not include such costs in calculating the net proceeds to be paid to the Receiver; and
- (iii) the Receiver required Marquis to consent to an order approving the activities and conduct of Farber as both Interim Receiver and Receiver, Marquis is not prepared to do so.

34. Marquis' counsel responded to the Receiver's conditions by an email dated December 12, 2014, advising that the Receiver's conditions were not acceptable and offering alternative conditions upon which Marquis was prepared to transport the Marquis to the Show and attempt to sell it. Among other things, Marquis' counsel noted that it was impracticable to require Marquis or its representative to negotiate a sale of the Yacht at the Show subject to the approval of the Receiver or the court, and suggested that if the Receiver was concerned that Marquis would not negotiate the best price possible then the Receiver should suggest a minimum price below which Marquis could not sell. Marquis' counsel also stressed that if the Yacht was to be sold at the Show arrangements had to be made that day.

35. By an email later the same day (i.e. December 12) the Receiver's counsel accepted some of Marquis' conditions, but proposed additional conditions. Those conditions were highlighted in bold on a copy of Marquis' counsel's email. This counter-proposal in the email from the Receiver's counsel was subject to both Marquis and Crawmet confirming the acceptability of the conditions. Crawmet never confirmed the acceptability of the conditions.

36. Among the new conditions put forward by the Receiver, two were not acceptable to Marquis. First, in item 5 of his December 12 email, the Receiver's counsel required that the net proceeds of sale be paid to the Receiver "prior to the Yacht being transported from the Show." This condition was impracticable as no one would pay upwards of US\$800,000 in cash for a yacht before it was delivered, commissioned and sea-tried. Second, in item 7 of his email, the Receiver's counsel stated that the Yacht shall not be sold at the Show "unless the net proceeds of sale are at least USD\$800,000." Given the fact that the net proceeds represent the gross sale price less all costs related to the sale, including commission, taxes, transportation costs, storage and other fees, the minimum gross sale price would have been even higher than the price of the aborted Florida sale referred to above. The Receiver's figure was therefore simply unrealistic and not worth the cost of transporting the Marquis Yacht to the Show.

37. By an email dated December 15, 2014 Marquis' counsel informed the Receiver's counsel of Marquis' objections to the 2 conditions referred to above, but also pointed out that the issue was then academic because the December 12 deadline had passed and it was too late to make the necessary transportation arrangements.


38. As a result of the interim receiver's actions in preventing Marquis' Florida sale, and of the Receiver's actions in preventing the sale of the Marquis Yacht at the Toronto Boat Show, Marquis has incurred, and continues to incur, transportation, storage and related fees with respect to the Marquis Yacht. Attached hereto as **Exhibit "Y"** is a statement of account from Balsdon showing such fees to be \$6,160 as of December 2, 2014 (which Marquis has paid). As the account indicates, additional storage fees of

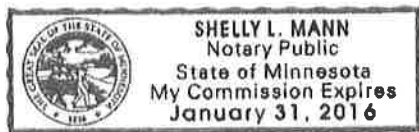
\$100 per day are being incurred from and after that date. In addition, the Marquis Yacht is a depreciating asset. Its value, and therefore the value of Marquis' security, has further deteriorated as a result of the Florida sale not being completed and the Toronto Boat Show opportunity being lost. The full extent of Marquis' loss will not be known until the Marquis Yacht is actually sold.

SWORN before me at the City)
of Hopkins, in the State of)
Minnesota, United States of)
America, this 18th day of)
December, 2014)



KEITH CARPENTER

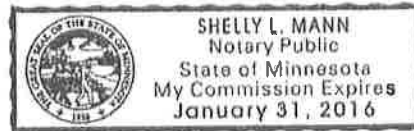

A notary public in and for the
State of Minnesota



This is Exhibit "A" referred to
in the affidavit of Keith Carpenter
sworn before me this 18th day
of December, 2014.

Shelly L Mann

A notary public in and for the
State of Minnesota



Crate Marine Sales, Ltd.



**Crate Marine Sales
Carver Yachts
3 Year Dealer Agreement
2010 – 2013 Model Years**

MARQUIS YACHTS, LLC
Pulaski, Wisconsin 54162
(920) 822-3214

MARQUIS YACHTS, LLC
INTERNATIONAL DEALER AGREEMENT

Form S

THIS AGREEMENT entered into as of the 24 day of April, 2010, by and between MARQUIS YACHTS, LLC, 790 Markham Drive, P.O. Box 1010, Pulaski, WI 54162, U.S.A. (hereinafter called "Manufacturer"), and dealer known as Crates Marine Sales, being (Individual, partnership, corporation) of the Country of Canada (hereinafter referred to as "Dealer").

WITNESSETH:

In consideration of the mutual covenants hereinafter set forth, Manufacturer and Dealer AGREE:

1. Appointment: Manufacturer grants to Dealer the non-exclusive and non-transferable right to promote, handle, distribute and sell Manufacturer's yachts (Carver Brand), parts and accessories as described from time to time in Manufacturer's product literature (the "Products") and provide pre- and post-sale service on same, within the marketing territory (the "Territory") described as:

Canadian Province of Ontario

Dealer hereby accepts such appointment. Manufacturer enters into this Agreement relying upon the presence of the existing management and ownership of Dealer.

Dealer agrees to concentrate Dealer's sales efforts within the Territory to provide pre-sale, point of sale and post-sale service to Dealer's customers. Dealer hereby agrees that, Dealer will not (i) direct any advertising to customers located outside the Territory (whether in the form of billboards, radio advertisements, flyers, catalogs, electronic media or other media that encourage consumers outside of the Territory to purchase from Dealer), (ii) use a toll-free number to solicit customers outside of the Territory, (iii) provide quick quotes by way of FAX machine, and/or (iv) advertise or promote in any form on on-line electronic computer media, including, but not limited to, the Internet, World Wide Web, or any other on-line electronic media or electronic mail (e-mail); provided, however, that Dealer may elect, upon paying any required fee to Manufacturer and subject to such rules as Manufacturer may establish, to have information specific to Dealer displayed as part of the Internet page maintained by Manufacturer. Notwithstanding the foregoing, if Dealer regularly maintains an Internet Web Page and is in good standing as a dealer with Manufacturer, Dealer may identify Dealer's dealership as being an authorized dealer of Manufacturer and may display Manufacturer's logo but only along with information regarding Products, provided that no type of pricing information is displayed and that no method to receive a quick quote is described.

Dealer is authorized to offer for sale Products only into the Territory shown above, only from the locations listed in Addendum 1, and Dealer agrees not to offer for sale or otherwise deal in Products from other locations without the prior written consent of Manufacturer.

Dealer agrees that this Agreement does not constitute the grant of a franchise or franchise rights, nor does it confer an exclusive territory upon Dealer. Dealer acknowledges that it has not been required to, nor has it paid, any franchise fee in connection with the execution of this Agreement. Manufacturer may, in its sole and absolute discretion, advertise or market, or allow any other dealer to advertise or market the Products or any other products in the Territory. Manufacturer may, in its sole and absolute discretion, appoint or grant another dealer the right to promote, market, distribute and/or sell products at any location in the Territory.

Dealer acknowledges that, prior to the execution of the Agreement, the Products already had an established market and goodwill that have been procured throughout the United States and internationally, including the Territory, by the sales of the Products and advertising and promotion efforts by Manufacturer, and that the goodwill of the Products is also based on the Products' trademarks and logos, which are owned solely by Manufacturer.

2. **Duration:** The term of this Agreement shall commence on the date first shown above and shall expire as set forth on Addendum 1 ("Initial Term") unless otherwise terminated by either party pursuant to the provisions herein. Following termination of the Initial Term, the Agreement may be renewed on a yearly basis (individually, "Renewal Term"), the first such Renewal Term to commence at the expiration of the Initial Term and each successive Renewal Term to commence at the expiration of the immediately preceding Renewal Term. In order to renew the Agreement, Dealer must notify Manufacturer thereof in writing not later than ninety (90) days prior to expiration of the Initial Term or then current Renewal Term whereupon the parties shall commence, within a reasonable time thereafter, good faith negotiations regarding the extension of the Agreement and the establishment of revised sales goals; provided, that if Dealer fails to give such notice or if the parties fail to reach an agreement by the expiration of the Initial Term or then current Renewal Term, there shall be no further obligation to negotiate, and this Agreement shall terminate at the expiration of such Initial Term or then current Renewal Term (unless sooner terminated in accordance with paragraph 13 herein). Notwithstanding any prior agreements or course of conduct between the parties, this Agreement shall not be automatically renewed. If Manufacturer shall sell Products to Dealer after expiration or termination of this Agreement, such sale shall not be deemed a renewal or extension of this Agreement.

3. **Dealer Responsibilities:** (i) Dealer agrees to identify itself as a dealer of Products by use of such identification and advertising material as may be made available to Dealer and to display, advertise, sell and promote retail sales of Products. Dealer agrees to purchase and carry on hand, at all times, an inventory of Manufacturer's current models as per published annual sales program and related parts and accessories to adequately represent Manufacturer's Product line. Dealer agrees that it will not sell Products to any person, firm, corporation or other entity whom Dealer knows or has reason to know will sell or offer for sale the Products outside the Territory. Dealer agrees to maintain a staff of personnel who are properly trained to sell and service Products. Dealer agrees to render prompt and courteous service with respect to Products including initial outfitting, commissioning and delivery of Products sold by Dealer as well as post-sale service of all Products brought to Dealer for service. Dealer agrees to perform and complete the pre-delivery checklist as provided by Manufacturer and return the same to Manufacturer within ten (10) days of each sale and delivery to retail customers. Dealer agrees that the "International Dealer Manual" and "Dealer Service Policy and Procedures," is incorporated herein by reference and that any breach of the Dealer Service Policy and Procedures is a material breach of this Dealership Agreement.

(ii) Dealer agrees to provide Manufacturer reasonable financial information concerning the Dealership when requested by Manufacturer or at mutually agreeable intervals. Dealer consents to disclosure of such information by Manufacturer to any financial institution or company which finances Dealer's inventory of Products. Dealer agrees to conduct business in a manner that preserves and enhances the reputation of both Manufacturer and Dealer for providing quality products and services.

4. **Orders:** Dealer shall submit all orders to Manufacturer in writing and in a manner prescribed by Manufacturer. All orders submitted are subject to Manufacturer's written acceptance, and Manufacturer may reject any order or portion thereof upon written notice. Such acceptance shall be returned by Manufacturer to Dealer and Dealer must sign and return to Manufacturer the accompanying acknowledgement prior to Manufacturer filling the order. All terms and conditions proposed by Dealer in connection with a purchase order are expressly rejected unless specifically accepted by Manufacturer in writing. Manufacturer's terms and conditions shall prevail and Manufacturer's acceptance of an order from Dealer excludes any terms and conditions proposed by Dealer except to the extent expressly accepted in writing signed by Manufacturer. The filling of any order, in whole or in part, is subject to Manufacturer's inability to perform caused by labor disputes, fires, floods, accidents to machinery,

material shortages or regulations or any cause beyond the control of Manufacturer, it being the intention that no liability shall be sustained by Manufacturer by reason of its not filling any orders thereof by such occurrences.

5. **Prices and Terms:** (i) Dealer may purchase Products at published Dealer prices, less applicable discounts, in effect from time to time during the term hereof. Manufacturer reserves the right to revise prices at any time by providing new price schedules to Dealer which shall supersede previous schedules. Manufacturer shall have no obligation to reimburse Dealer for any loss sustained by reason of any price change.

(ii) Dealer shall pay for each purchase in U.S. Dollars (\$) and in strict accordance with such terms and conditions as stated in Manufacturer's invoice. All payments shall be deemed made only when received by Manufacturer. Dealer shall pay to Manufacturer interest on all amounts not paid when due, computed at 1-1/2% per month or the maximum amount allowable under applicable law, whichever is less, as well as all of Manufacturer's costs and expenses of collection, including reasonable attorneys' fees and disbursements and court costs. Upon Dealer's failure to pay when due any indebtedness to Manufacturer or to any company affiliated with Manufacturer, and without prejudice to any other remedies that Manufacturer may have at law or in equity, Manufacturer, at its sole election, may declare immediately due and payable any and all amounts owing from Dealer to Manufacturer. Manufacturer may refuse shipment for any credit reason, including refusal to pay for a prior shipment. In case of dispute, both parties agree to openly discuss and make reasonable efforts to amicably resolve such dispute.

(iii) All taxes, duties or other charges of any kind, character or description which may be levied, imposed or assumed on any of the Product sold or on any aspect of performance of this Agreement shall be solely a Dealer expense.

6. **Shipments:** All shipments shall be FOB Manufacturer's factories and are subject to Manufacturer's then current terms and conditions of sale. Dealer shall pay all applicable shipping, delivery and handling charges from Manufacturer's factories. If Dealer fails to accept or refuses delivery of any Products ordered, Dealer agrees to reimburse Manufacturer for all costs incurred in returning the Products to Manufacturer. Manufacturer warrants not to ship to Dealer any Products not first ordered by Dealer, and in the event unorderd Products are shipped and refused by Dealer, Manufacturer shall pay all costs incurred in returning said Products to Manufacturer. All shipments are subject to Manufacturer's production schedules. Manufacturer will make all reasonable efforts to fill Dealer orders in a timely fashion, but shall not be liable for any delay in the fulfillment of Dealer orders. Notwithstanding the above, Products may not be returned to Manufacturer without written instructions from Manufacturer and in each case and in all instances transportation shall be prepaid by Dealer. Any Products returned by Dealer in any other manner shall be at the sole risk of Dealer and subject to disposal, without credit, by Manufacturer.

7. **Title and Risk of Loss:** In all instances and notwithstanding the provisions of any other draft, bill of lading or other document, title and risk of loss to Products shall pass to Dealer upon delivery to carrier at Manufacturer's factories. In the event Dealer contracts for or provides its own equipment for shipping from Manufacturer's location, Dealer and/or its carrier shall comply with all applicable, local, state and federal laws and regulations, and all applicable international laws, regulations, and orders of the government(s) of the Territory or any instrumentality thereof, related to such shipments and the transportation thereof and the Dealer shall release, defend, indemnify and hold harmless the Manufacturer from all obligations, costs and claims related to said shipments or transportation.

8. **Product Modification:** Manufacturer reserves the right to discontinue models and/or revise, change or modify the design and construction of its Products without being obligated to make such changes in Products manufactured previously. If change or modification significantly alters the Products already ordered by Dealer but not yet shipped to Dealer, Manufacturer agrees to notify Dealer of the modifications prior to shipment, and Dealer shall have the option of canceling the order or shipment within

five (5) days of receiving such notice. Modifications of Products by Manufacturer or cancellation of orders by Dealer shall not constitute a breach of this Agreement or a cause for damages.

9. **Claims:** (i) Dealer agrees to make all claims for shortages, damaged and/or unacceptable Products in writing within thirty (30) days after receipt of shipment. Failure of Dealer to make said notification shall constitute a waiver of any such claim.

(ii) Dealer agrees to file all claims for reimbursement of, but not limited to, such items as interest reimbursement, co-op advertising funds and similar items owed to Dealer by Manufacturer on forms and/or in a manner prescribed by Manufacturer. Claims not filed within the time period prescribed by Manufacturer are void. Manufacturer agrees to approve and satisfy all such claims, except any which may be in dispute, within forty-five (45) days of receipt of properly filed claims from Dealer.

10. **Dealer Performance; Affiliate Broker:** (i) Manufacturer and Dealer agree to mutually establish fair and reasonable performance standards and sales goals for the Dealership. Dealer shall employ its best efforts to promote and sell Products in an aggressive and diligent manner. Manufacturer shall on a regular basis give to Dealer all leads that come to Manufacturer for retail prospects for the Products in the Territory. Dealer agrees to purchase from Manufacturer during the term hereof an aggregate amount of Products at least equal to the Annual Sales Goal as set forth in Addendum 1 and made a part hereof. Manufacturer has entered into this Agreement relying upon Dealer's representations that it will make aggregate sales of Products as set forth in Addendum 1 under Annual Sales Goal, attached hereto and made a part hereof. Dealer hereby acknowledges that such sales goal is reasonable for the Territory and is the essence of this Agreement. Failure to meet such sales goal constitutes a material breach of this Agreement. It is further acknowledged that such sales goal reflects the agreement between Dealer and Manufacturer with respect to population and sales potential within the Territory, previous annual sales statistics, and area annual new boat registration statistics as well as economic conditions, competition and past market penetration for specific Products. Any revision of the sales goal must be by mutual consent and in writing, and may be made at any time.

(ii) Dealer shall at all times qualify and maintain Dealer's status as an Authorized Yacht Dealer, as specified in Manufacturer's International Dealer Buying Program. If Dealer fails at anytime to qualify or maintain such status, regardless of whether such failure is later cured, Manufacturer may, by providing notice to Dealer, change Dealer's status from an authorized dealer of Products to an affiliate broker of Products (a "Change of Status"). Immediately following a Change of Status, (a) Dealer shall cease identifying itself as a dealer of Products, and (b) Manufacturer's obligation under paragraph 10(i) hereof to provide Dealer leads shall cease. Except as provided in the immediately preceding sentence, all terms and provisions of this Agreement shall remain in full force and effect following a Change of Status, subject to paragraph 13 hereof.

11. **Product Warranty:** (i) Manufacturer will furnish through Dealer to the first-use purchaser of a Product its standard written limited warranty in effect at the time of delivery of Products to Dealer. Dealer shall have no authority to and shall not make any representation relating to Manufacturer's warranty other than those made by Manufacturer in its written warranty. Dealer agrees to make Manufacturer's warranty known to the purchaser, including all disclaimers and limitations at or prior to retail sale. In the event Dealer fails to make Manufacturer's warranty known to the Purchaser at or prior to retail sale, Dealer agrees to indemnify Manufacturer against any liability, loss or damage, which it may sustain as a result of any successful claim against Manufacturer for breach of warranty. Dealer agrees to obtain the first-use purchaser's signature on the warranty registration card provided by Manufacturer and to mail the appropriate portion of said card directly to Manufacturer within thirty (30) days after delivery of each Product to each first-use purchaser. Alternatively, Dealer agrees to provide electronic registration of the first-use purchaser in accordance with procedures established by Manufacturer.

(ii) Dealer agrees to provide timely warranty service on all Manufacturer's products presented to Dealer by purchasers in accordance with the Dealer Service Policy and Procedures in effect from time to time during the term of this Agreement. Dealer agrees to make all claims for reimbursement under the Dealer Service Policy and Procedures in the manner prescribed by Manufacturer. Manufacturer may

revise its Dealer Service Policy and Procedures from time to time providing Dealer with written notification of all revisions and said revisions will supersede all previous programs and be made a part hereof. MANUFACTURER'S STANDARD WRITTEN WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING SPECIFICALLY ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

12. **Service:** Dealer agrees to establish and maintain a service department staffed, trained and equipped to provide service to purchasers of Products. Dealer agrees to inventory sufficient parts and supplies to provide prompt service to purchasers of Products. Dealer agrees to maintain complete service records.

13. **Termination/Cancellation:** (i) This Agreement may be terminated at any time by the mutual written consent of the parties.

(ii) Either party may, upon thirty (30) days' written notice to the other stating the reasons therefor, terminate this Agreement due to a material breach hereof and provided the breach has not been remedied during this period.

(iii) Manufacturer may terminate this Agreement at anytime upon or following a Change of Status by providing notice thereof to Dealer.

(iv) This Agreement may be terminated by either party for any reason upon ninety (90) days' written notice to the other.

(v) In addition, either party may immediately terminate this Agreement upon written notice to the other at any time upon the happening of any of the following occurrences or acts: (a) If a party is a corporation and such corporation ceases to exist or goes under voluntary liquidation; (b) If either party shall become insolvent or take or fail to take any action which constitutes an admission of inability to pay debts as they mature; (c) If either party makes a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of assets to the extent that termination of this Agreement on the circumstances described under this subsection (c) is not prohibited under the bankruptcy laws of Dealer's jurisdiction; (d) If either party applies to a court for the appointment of a receiver for any assets or properties to the extent that termination of this Agreement on the circumstances described under this subsection (d) is not prohibited under the bankruptcy laws of Dealer's jurisdiction; (e) Fraudulent misrepresentation that is material to this Agreement; (f) Failure of Dealer to pay for and take delivery of any new boat from Manufacturer for any period of four (4) calendar months, and Dealer's failure to cure this breach within sixty (60) days of notice; (g) Failure of Dealer to pay: (A) when due, any amount owed to Manufacturer or any of its affiliates, and such failure continues more than five (5) days after notice thereof; or, (B) Manufacturer (or any of its affiliates) or any lienholder, lender or vendor any amounts due them for Products immediately, upon the transfer, sale or surrendering possession thereof (commonly referred to as "selling out of trust"), and failure to cure within two (2) days of said transfer of sale or surrender, without notice or demand; (h) Dealer being in default under any lease, mortgage, or deed of trust pertaining to the Dealership for a period in excess of thirty (30) days; (i) Conviction of Dealer or any officer, director or substantial shareholder or principal of Dealer in any court for any offense related to Dealer's business or an act of moral turpitude; (j) Dealer or any officer, director or substantial equity owner of principal of Dealer acts in a manner that impairs Manufacturer's goodwill or the goodwill associated with the Products; (k) Dealer fails to meet the Annual Sales Goals set forth in Addendum 1; (l) If control of Dealer shall pass from the present shareholders, owners, managers or to other persons whom Manufacturer, in its sole discretion, regards as unsuitable; (m) Dealer being in breach of any other agreement with Manufacturer or an affiliate of Manufacturer and such breach is not cured within thirty (30) days of notice; (n) Dealer offers for sale or otherwise deals in any Products from a location other than the Dealership without the prior written consent of Manufacturer; or (o) Dealer enters into a new agreement to represent a product line competitive with Seller's without first obtaining Seller's written consent, it being acknowledged that such competitive lines dilute the Dealer's resources away from the Products and decreases the marketability of the Products.

(vi) Neither party shall be under any obligation, expressed or implied, to enter into a new Agreement upon expiration or in the event of termination, as provided, of this Agreement. In the event Manufacturer does not renew, extend or enter into a new Agreement with Dealer, or this Agreement is terminated as provided, Manufacturer shall have no obligation to fill or ship any orders for Products previously placed by Dealer, nor shall Dealer have any obligation to accept any Products previously ordered. In the event of any termination or non-renewal of this Agreement neither party shall have any further liability or obligation to the other, and neither party shall have any recourse for the damages against the other which it may suffer by reason of termination or non-renewal of this Agreement. The provisions of paragraphs 5(ii), 5(iii), 9, 13(iii), 14, 16, 20, 21 and 24 shall survive the expiration or termination of this Agreement.

(vii) Promptly upon termination, expiration or non-renewal of this Agreement, Dealer shall remove from its property and immediately discontinue all use, directly or indirectly, of trademarks, designs, and markings owned and controlled, now or hereafter, by Manufacturer, or of any word, title, expression, trademark, design, or marking that, in the opinion of Manufacturer, is confusingly similar thereto. Dealer shall further certify in writing to Manufacturer that Dealer has completely terminated its use of any and all trademarks, designs, or markings, or any other word, title, or expression similar thereto that appeared in or on any devices or other materials used in conjunction with Dealer's business.

(viii) If Dealer defaults on its floor plan financing, Manufacturer shall be entitled to recover from the Dealer and Dealer shall be required to pay to Manufacturer, all costs, expenses and fees, including, but not limited to, payments to floor plan financier for Products, incurred by Manufacturer in connection with or relating to the default.

14. Repurchase: Manufacturer shall not be obligated to purchase from Dealer any boats, inventory, tools, equipment or furnishings upon termination, expiration or non-renewal of this Agreement, but Manufacturer may purchase any or all of such items, at its option, for the lower of (i) the fair wholesale market value of such items, and (ii) the price paid by Dealer, less allowance for depreciation or obsolescence.

15. Agreement Transfer: This Agreement may not be assigned or transferred by Dealer without prior written consent of Manufacturer. Any assignment of this Agreement without such consent, any change in majority ownership of stock of Dealer (if corporation) or any change in majority ownership of partnership (if partnership) shall automatically terminate this Agreement. This Agreement may be assigned by Manufacturer to an affiliate of Manufacturer without Dealer's consent.

16. Arbitration: Except as otherwise specifically set forth herein or agreed to in writing by the parties, any action, whether sounding in contract, tort or otherwise ("Dispute" or "Disputes"), shall be resolved by arbitration as set forth below and shall include all Disputes arising out of or in connection with (1) this Agreement and all transactions arising from it, (2) all past, present and future agreements involving the parties to this Agreement and related hereto, (3) any transaction contemplated hereby, and all past and future transactions involving the parties related to this Agreement, (4) any aspect of the past, present or future relationships of the parties related to this Agreement. Such disputes shall be resolved by binding arbitration in accordance with Title 9 of the U.S. Code and the Commercial Arbitration Rules of the American Arbitration Association (AAA). In the event of any inconsistency between such Rules and these arbitration provisions, these provisions shall supersede such Rules. Every decision rendered by arbitration shall be made in accordance with applicable substantive law. Any arbitration brought pursuant to this clause shall be conducted in English.

Judgment upon the award rendered by arbitration may be entered in any court having jurisdiction. For the purposes of any dispute resolution proceedings arising out of this Agreement, including proceedings incidental to or in aid of this Agreement to arbitrate, Dealer hereby consents to the jurisdiction, personal and otherwise, of any court of general jurisdiction of the State of Minnesota, U.S.A., and Dealer further agrees that mailing to its last known address by registered mail of any process shall constitute lawful and valid process in any such proceeding. Any arbitration or court proceeding commenced by either party arising from their dealership relationship shall only be brought in County of Hennepin, State of Minnesota, U.S.A.

If either party, notwithstanding the foregoing, should attempt to resolve any dispute in connection with this Agreement in a court of law or equity or to forestall, preempt, or prevent arbitration of any such dispute by resort to the process of a court of law or equity, and such dispute is ultimately determined to be arbitrable by such court of law or equity, or by the arbitrator, the arbitrator shall include in his award an amount in favor of the other party equal to all of that other party's costs, including reasonable attorneys' fees, incurred in connection with such arbitrability determination.

Notwithstanding the foregoing, Manufacturer reserves the right to bring suit against Dealer for monies due Manufacturer in the courts of Dealer's jurisdiction or where Dealer has assets.

In the event that any controversy or dispute arising out of this Agreement is deemed to be non-arbitrable, Dealer knowingly, voluntarily and intentionally waives its right to a jury trial in any suit, action, proceeding or counterclaim. Dealer acknowledges that any such suit, action, proceeding or counterclaim shall be tried before a court and not a jury. The provisions of this paragraph shall survive the termination or expiration of this Agreement and shall bind the corporate officers and directors of Dealer if Dealer is a corporation.

17. Governmental Regulation and Compliance: Dealer acknowledges that Manufacturer is subject to the laws and regulations of the United States governing the export of United States products and technology. There shall be no liability on the part of Manufacturer for failure to accept, fill or deliver orders of Dealer where such actions could violate those laws and regulations. Furthermore, Dealer agrees to assist Manufacturer in complying with the U.S. Export Administration Regulations that, among other matters, prohibit the exportation of the Products to certain countries such as Cuba and thus, in the event Dealer has knowledge of facts that reasonably support a belief that its customers or prospective customers intend to re-export the Products to another territory for resale, Dealer shall promptly inform Manufacturer, and Dealer shall not promote or assist, directly or indirectly such re-export or resale. Dealer specifically agrees to assist Manufacturer in complying with the Foreign Corrupt Practice Act ("FCPA"), a copy of which Dealer acknowledges having received, by representing that (i) no person employed by it is an official or employee of any government or any department, agency or instrumentality thereof, and (ii) no payment or offer to pay or the giving or offering to give anything of value to an official or employee of any department, agency or instrumentality thereof, or to any political party or any candidate for political office, shall be made with the purpose of influencing decisions favorable to Manufacturer in contravention of the FCPA or the laws of the Territory. Dealer agrees that in performing its obligations hereunder, it shall comply at all times with all applicable laws, regulations and orders of the government of the United States and the Territory.

Dealer agrees to obtain, at its own expense, any import license, foreign exchange permit or approval it may need for performance of its obligations under this Agreement and to comply at its own expense with all applicable laws, regulations and orders of the government(s) of the Territory or any instrumentality thereof. Dealer shall notify Manufacturer of the existence and content of any mandatory provision of law in the Territory or any other applicable law that conflicts with any provision of this Agreement at the time of its execution or thereafter. Dealer agrees to advise Manufacturer fully with respect to all health, safety, environmental, and other standards, specifications, and other requirements imposed by law, regulation, or order in the Territory and applicable to the Products under laws, regulations, or practices in the Territory. Manufacturer shall be entitled to increase the prices charged to Dealer immediately by the amount of any increase in Manufacturer's cost of manufacturing attributable to compliance with any such standards, specifications, labels or other requirements.

18. No Agency Created: Nothing contained herein shall be deemed to authorize or empower Dealer to act as an agent or legal representative of Manufacturer for any purpose whatsoever.

19. Trademarks: Dealer acknowledges the exclusive right, title and interest of Manufacturer and its affiliates in and to all trademarks, trade names, logos and service marks which Manufacturer and/or its affiliates may at anytime have adopted, used, or registered in any country, including but not limited to the Territory (hereinafter jointly referred to as the "Trademarks") and will not at any time do or cause to be

done any act or thing contesting or in any way impairing or tending to impair any right, title and interest in connection with any reference to the Trademarks. Dealer shall not in any manner represent that it has any ownership interest in the Trademarks or registration(s) thereof, nor shall it attempt to use any of such Trademarks as part of its corporate or business name or as part of an Internet or World Wide Web domain name, nor shall it use or register any word or symbol or combination thereof, which is identical or similar to any of the Trademarks, and Dealer acknowledges that no action by it or on its behalf shall create in Dealer's favor any right, title or interest in or to the Trademarks.

Dealer agrees that before distributing or publishing any advertising, descriptive, or promotional materials, Dealer shall provide Manufacturer with an opportunity to inspect and approve such materials. In addition, Dealer undertakes that when referring to the Trademarks, it will diligently comply with all laws pertaining to Trademarks at any time in force in the Territory.

Dealer shall promptly notify Manufacturer of any and all infringements, imitations, illegal use, or misuse of the Trademarks which come to Dealer's attention. Dealer further agrees that it shall not take any legal or other action with respect to the infringement, imitation, illegal use, or misuse of the Trademarks, it being clearly understood that such action may be commenced only by the owner of the Trademarks.

If requested by Manufacturer, Dealer undertakes fully and without any reservation whatsoever to render all assistance in connection with any matter pertaining to the protection of the Trademarks in the Territory whether in the courts or otherwise and shall provide all of Dealer's files, records, and other information pertaining to the advertising promotion, distribution and sale of the Products. Dealer shall be reimbursed for actual expenses incurred by it in connection with rendering the requested assistance.

Dealer agrees that it will not alter, deface, remove, cover-up or mutilate in any manner whatsoever any Trademarks, serial or model number, brand or name which Manufacturer or any of its subsidiaries may attach or affix to the Products.

20. Confidential Information: Dealer hereby acknowledges that it will have access to Manufacturer's confidential information, including trade secrets and other proprietary information, and further acknowledges that Manufacturer, and its subsidiaries and affiliates own such confidential information. Dealer shall not use or disclose to third parties any such confidential information concerning the business, affairs, or the products of Manufacturer, and its subsidiaries. Dealer shall take necessary precautions to prevent any such disclosure by any of its employees or officers.

21. Force Majeure: Dealer and Manufacturer shall not be responsible for any delay or interruption in complying with their respective obligations (other than payment obligations) under this Agreement if such non-compliance is caused by war, hostilities, blockage, civil commotion, riot, fire, strike, lockouts, other industrial action, government prohibition or restriction or any accident or act of God or any other cause whatsoever beyond the control of such party; PROVIDED ALWAYS that the parties shall use their respective reasonable endeavors to mitigate or avoid the effects thereof but if such delay or interruption shall exceed a continuous period of six (6) months, Manufacturer or Dealer shall have the right to terminate this Agreement by one (1) month's notice in writing to the other. If any event of force majeure as herein provided occurs, the non-compliant party agrees to notify in writing the other party of the nature of the force majeure, when the event started and an expected date to begin compliance. The non-compliant party agrees to keep the other party informed if the expected date to begin compliance needs to be extended.

22. Subdealer: Dealer represents that it shall only purchase Products for sale to retail customers and shall not knowingly sell Products to a broker, wholesaler or subdealer without the written consent of Manufacturer and only if such party executes an agreement under the same terms and conditions as this Agreement.

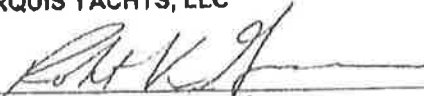
23. Exclusion of Liability: Manufacturer shall have no liability to Dealer for indirect, consequential or incidental loss or damage under this Agreement or connected in any way with the Products or any use made of them by Dealer or any third party, whether such liability arises in contract or in tort.


24. Severability; Waiver; Governing Law; Entire Agreement: If any provision of this Agreement is deemed to be invalid or unenforceable or is prohibited by the laws of the state or place where it is to be performed, this Agreement shall be considered divisible as to such provision and such provision shall be inoperative in such state or place and shall not be a part of the consideration moving from either party to the other. The remaining provisions of this Agreement, however, shall be valid and binding and of like effect as though such provision was not included herein. Failure by Manufacturer to enforce any provision of the Agreement does not constitute a waiver of its right to enforce that, or any other, clause of the Agreement. This Agreement shall be construed and interpreted in accordance with the laws of the State of Minnesota (excluding choice of law principles). The parties agree to exclude and waive application of the United Nations Convention on Contracts for the International Sale of Goods. This Agreement, including the Addendums referred to herein, contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings, oral or written, with respect to such matters. This Agreement may be amended or modified only by written instrument signed by both parties.

25. Notice: All notices permitted or required hereunder may be given to the other party in writing by FAX transmission, mail, or commercial courier services addressed or directed at the address given above. All notices shall be deemed to have been given upon confirmation of receipt of the relevant FAX transmission or three business days after confirmation of delivery of mail or courier service at the recipient's address. Rejection or other refusal to accept, or the inability to deliver because of change of address of which no notice was given, shall not adversely impact the effectiveness of such notice. Either party may change, at any time and at its discretion, the address given above, provided however that any such change shall be effective only, if made by written notice given to the other party in accordance with this clause. All notices or other communications required by this Agreement shall be in English.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date set forth in the preamble in the manner appropriate to each.

MARQUIS YACHTS, LLC

By: 
 Title: President
 Date: March 6, 2013

By: 
 Title: _____
 Date: March 06, 2013
 corporation proprietorship partnership other

ADDENDUM 1: DEALER INFORMATION

The information contained below is an integral part of the Agreement attached and is required prior to the effectiveness of the relationship:

1. Dealer's Complete Legal Name _____

2. Dealer's d/b/a Name _____

3. Dealer's Legal Address _____

Tel. _____

Fax _____

E-mail _____

4. Other Authorized Locations _____

Tel. _____

Fax _____

E-mail _____

Tel. _____

Fax _____

E-mail _____

Tel. _____

Fax _____

E-mail _____

