

# MARINEMAX INC

## FORM 10-K (Annual Report)

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Address	18167 US 19 N SUITE 499 CLEARWATER, Florida 33764
Telephone	813-531-1700
CIK	0001057060
Industry	Retail (Specialty)
Sector	Services
Fiscal Year	09/30



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SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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**Form 10-K**

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

For fiscal year ended September 30, 2001

Commission File Number 1-14173

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**MarineMax, Inc.**

*(Exact Name of Registrant as Specified in Its Charter)*

**Delaware**  
*(State of Incorporation)*

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

**18167 U.S. Highway North  
Suite 499  
Clearwater, Florida 33764  
(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 Exchange Act:**

**Title of Each Class**

**Name of Each Exchange on Which Registered**

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Common Stock, par value \$.001 per share  
Rights to Purchase Series A Junior Participating Preferred Stock

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New York Stock Exchange

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

**None**

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 if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

The aggregate market value of Common Stock held by nonaffiliates of the registrant (15,221,378 shares) based on the closing price of the registrant's Common Stock as reported on the New York Stock Exchange on December 13, 2001, was \$60,952,489. For purposes of this computation, all officers, directors, and 10% beneficial owners of the registrant are deemed to be affiliates. Such determination should not be deemed to be an admission that such officers, directors, or 10% beneficial owners are, in fact, affiliates of the registrant.

As of December 13, 2001, there were outstanding 15,221,378 shares of registrant's Common Stock, par value \$.001 per share.

**Documents Incorporated by Reference**

Portions of the registrant's definitive Proxy Statement for the 2002 Annual Meeting of Stockholders are incorporated by reference into Part III of this Report.

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MARINEMAX, INC.

ANNUAL REPORT ON FORM 10-K  
Fiscal Year Ended September 30, 2001

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**PART I**

**Item 1. Business**

**Introduction**

**Our Company**

We are the largest recreational boat dealer in the United States. Through 53 retail locations in Arizona, California, Delaware, Florida, Georgia, Minnesota, Nevada, New Jersey, North Carolina, Ohio, South Carolina, Texas, and Utah, we sell new and used recreational boats, including pleasure boats (such as sport boats, sport cruisers, sport yachts, and yachts), ski boats, 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 arrange related boat financing, insurance, and extended service contracts; provide repair and maintenance services; and offer boat and yacht brokerage services.

We are the nation's largest retailer of Sea Ray and Boston Whaler recreational boats and Hatteras Yachts. Sales of new Brunswick boats accounted for 58% of our revenue in fiscal 2001, which we believe represented in excess of 30% of all new Sea Ray boat sales and approximately 9% of all Brunswick marine product sales during the period. Brunswick Corporation is the world's largest manufacturer of recreational boats and engines, including Sea Ray, Boston Whaler, and Mercury. Sales of new Hatteras Yachts accounted for 12% of our revenue in fiscal 2001. In November 2001, Brunswick completed the acquisition of Hatteras Yachts from Genmar Industries, Inc. Each of our principal operating subsidiaries is a party to a ten-year dealer agreement with Brunswick covering Sea Ray products and is the exclusive dealer of Sea Ray boats in its geographic market. We also have had the right to sell Hatteras Yachts throughout the state of Florida (excluding the Florida Panhandle) and the U.S. distribution rights for Hatteras products over 82 feet since October 1998 and the right to sell Hatteras Yachts in the state of Texas since October 2001.

We commenced operations as a combined company as a result of the March 1, 1998 acquisition of five previously independent recreational boat dealers and have acquired 11 additional previously independent recreational boat dealers, two boat brokerage operations, and a full-service yacht repair operation since that time. We are capitalizing on the experience and success of each of the acquired companies in order to establish a new national standard of customer service and responsiveness in the highly fragmented retail boating industry. While we believe the average new boat retailer generates less than \$3.0 million in annual sales, our retail locations, which operated at least 12 months, averaged \$12 million in annual sales in fiscal 2001. As a result of our emphasis on premium brand boats, our average selling price for a new boat in fiscal 2001 was approximately \$87,000 compared to the estimated industry average selling price of approximately \$21,000. For the fiscal year ended September 30, 2001, we had revenue of approximately \$504 million, operating income of approximately \$27.4 million, and net income of approximately \$15.3 million. Our same-store sales increased an average of 15% for the last five years, including a decline of 9% in fiscal 2001.

We are adopting the best practices of our acquired dealers as appropriate to 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. We believe that our full range of services, one year of scheduled maintenance on many models, which we call "MarineMax Care," MarineMax Value-Price sales approach, prime retail locations, extensive facilities, strong management and sales teams, and emphasis on customer service and satisfaction before and after a boat sale are competitive advantages that enable us to be more responsive to the needs of existing and prospective customers.

The recreational boating industry generated approximately \$25.6 billion in retail sales in calendar 2000, including 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 boats, engines, and trailers, and accessories accounted for approximately \$11.2 billion of these sales in 2000. We estimate that the boat retailing industry includes more than 5,000 boat retailers, most of which are small retailers that operate in a single market and provide varying degrees of merchandising, professional management, and customer service. We believe that many dealers are finding it increasingly difficult to make

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the managerial and capital commitments necessary to achieve higher customer service levels and upgrade systems and facilities as required by boat manufacturers, particularly during a period of stagnant industry growth. We also believe that many dealers lack an exit strategy for their owners.

We maintain our executive offices at 18167 U.S. 19 North, Suite 499, Clearwater, Florida 33764, and our telephone number is (727) 531-1700. We were incorporated in the state of Delaware in January 1998. Unless the context otherwise requires, all references to “MarineMax” mean MarineMax, Inc. prior to its acquisition of five previously independent recreational boat dealers in March 1998 (including their related real estate companies) and all references to the “Company,” “we,” “us,” and “our” mean, as a combined company, MarineMax, Inc. and the 16 recreational boat dealers, two boat brokerage operations, and one full-service yacht repair operation acquired to date (the “acquired dealers,” and together with the brokerage and repair operations, “operating subsidiaries” or the “acquired companies”).

### Strategy

Our goal is to enhance our position as the nation’s leading retailer of recreational boats. Key elements of our operating and growth strategies include the following:

- emphasizing customer satisfaction and loyalty by creating an overall enjoyable boating experience beginning with the negotiation-free purchase process, one year of scheduled maintenance on many models, superior service, and premier facilities;
- implementing the “best practices” of each of our acquired dealers as appropriate throughout our dealerships;
- achieving operating efficiencies and synergies among our dealerships to enhance internal growth and profitability;
- emphasizing employee training and development;
- opening additional retail facilities in our existing and new territories;
- offering additional product lines and services;
- pursuing strategic acquisitions to capitalize upon the significant 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;
- expanding our Internet retail operations and marketing;
- promoting national brand name recognition and our North-South connection;
- operating with a decentralized approach to the operational management of our dealerships; and
- utilizing technology throughout operations.

### Development of the Company; Acquisitions

MarineMax was founded in January 1998. MarineMax itself, however, conducted no operations until the acquisition of five independent recreational boat dealers on March 1, 1998. We acquired a sixth recreational boat dealer on April 30, 1998. Since our initial public offering in June 1998, we have acquired 11 additional recreational boat dealers, two boat brokerage operations, and a full-service yacht repair operation.



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Each of our acquired dealers is continuing its operations under the MarineMax name as a wholly owned operating subsidiary of our company. The following table sets forth information regarding the acquired companies and their geographic regions.

Acquired Companies	Acquisition Date	Geographic Region
Bassett Boat Company of Florida	March 1998	Southeast, Florida
Louis DelHomme Marine	March 1998	Dallas and Houston, Texas
Gulfwind USA, Inc.	March 1998	West Central, Florida
Gulfwind South, Inc.	March 1998	Southwest, Florida
Harrison's Boat Center, Inc.	March 1998	Northern California
Harrison's Marine Centers of Arizona, Inc.	March 1998	Arizona
Stovall Marine, Inc.	April 1998	Georgia
Cochran's Marine, Inc. and C & N Marine Corporation	July 1998	Minnesota
Sea Ray of North Carolina, Inc.	July 1998	North and South Carolina
Brevard Boat Company	September 1998	East Central Florida
Sea Ray of Las Vegas	September 1998	Nevada
Treasure Cove Marina, Inc.	September 1998	Northern Ohio
Woods & Oviatt, Inc.	October 1998	Southeast Florida
Boating World	February 1999	Dallas, Texas
Merit Marine, Inc.	March 1999	Southern New Jersey
Suburban Boatworks, Inc.	April 1999	Central New Jersey
Hansen Marine, Inc.	August 1999	Northeast Florida
Duce Marine, Inc.	December 1999	Utah
Clark's Landing, Inc. (selected New Jersey locations and operations)	April 2000	Northern New Jersey
Associated Marine Technologies, Inc.	January 2001	Southeast Florida

In October 1998, we received the Hatteras Yachts dealership for the state of Florida, excluding certain portions of the Florida Panhandle, and became the U.S. distributor for Hatteras products over 82 feet. In October 2001, we received the Hatteras Yachts dealership for the state of Texas.

As a part of our acquisition strategy, we frequently engage in discussions with various recreational boat dealers regarding their potential acquisition by us. In connection with these discussions, we and each potential acquisition candidate exchange confidential operational and financial information, conduct due diligence inquiries, and consider the structure, terms, and conditions of the potential acquisition. In certain cases, the prospective acquisition candidate agrees not to discuss a potential acquisition with any other party for a specific period of time, grants us an option to purchase the prospective dealer for a designated price during a specific time, and agrees to take other actions designed to enhance the possibility of the acquisition, such as preparing audited financial information and converting its accounting system to the system specified 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.

## Business

### General

We are the largest recreational boat dealer in the United States. Through 53 retail locations in Arizona, California, Delaware, Florida, Georgia, Minnesota, Nevada, New Jersey, North Carolina, Ohio, South Carolina, Texas, and Utah, we sell new and used recreational boats, including pleasure boats (such as sport boats, sport cruisers, sport yachts, and yachts) ski boats, 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

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addition, we arrange related boat and yacht financing, insurance, and extended service contracts; provide repair and maintenance services; and offer boat and yacht brokerage services.

We are the nation's largest retailer of Sea Ray and Boston Whaler recreational boats and Hatteras Yachts. Sales of new Brunswick boats accounted for 58% of our revenue in fiscal 2001, which we believe represented in excess of 30% of all new Sea Ray boat sales and approximately 9% of all Brunswick marine product sales during the period. Brunswick Corporation is the world's largest manufacturer of recreational boats and engines, including Sea Ray, Boston Whaler, and Mercury. Sales of new Hatteras Yachts accounted for 12% of our revenue in fiscal 2001. In November 2001, Brunswick completed the acquisition of Hatteras Yachts from Genmar Industries, Inc. Each of our principal operating subsidiaries is a party to a ten-year dealer agreement with Brunswick covering Sea Ray products and is the exclusive dealer of Sea Ray boats in its geographic market. We also have had the right to sell Hatteras Yachts throughout the state of Florida (excluding the Florida Panhandle) and the U.S. distribution rights for Hatteras products over 82 feet since October 1998 and the right to sell Hatteras Yachts in the state of Texas since October 2001.

### U.S. Recreational Boating Industry

We believe that total U.S. recreational boating sales generated \$25.6 billion in revenue in calendar 2000, including retail 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. We believe that retail sales of new boats, engines, trailers, and accessories accounted for approximately \$11.2 billion of such sales in 2000. Retail recreational boating sales were \$17.9 billion in the late 1980s, but declined to a low of \$10.3 billion in 1992. We believe this decline can be attributed 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 recreational boating sales have increased each year thereafter through 2000.

Sales in the recreational boat industry are impacted significantly by other recreational opportunities; economic factors, including general economic conditions, consumer income and wealth levels, tax law changes, and fuel prices; and demographics. The share of recreational dollars that U.S. consumers spend on boating declined from 3.1% in 1988, the boating industry's peak year, to 2.0% in 1996. We believe that the decline in boating is attributable to poor customer service throughout the industry, lack of boater education, and the perception that boating is time consuming, costly, and difficult.

Most of our consumers are in the 35 to 54 age group. Although this age group accounts for approximately 30% of the U.S. population over age 16, they account for over 50% of discretionary income and represent the fastest growing segment of the U.S. population.

The recreational boat retail market remains highly fragmented with little consolidation having occurred to date. We estimate that the boat retailing industry includes more than 5,000 boat retailers, most of which are small companies owned by individuals that operate in a single market, have annual sales of less than \$3 million, and provide varying degrees of merchandising, professional management, and customer service. We believe that many such 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.

### Strategy

Our goal is to enhance our position as the nation's leading operator of recreational boat dealerships. Key elements of our strategies include the following:

*Emphasizing Customer Satisfaction and Loyalty.* We seek to achieve a high level of customer satisfaction and establish long-term customer loyalty by creating an overall enjoyable boating experience beginning with the negotiation-free purchase process. We further enhance and simplify the purchase process by offering financing and insurance at our retail locations with competitive terms and streamlined turnaround. We offer the customer a thorough in-water orientation of boat operation, where available, as well as ongoing

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boat safety, maintenance, and use seminars and demonstrations for the customer's entire family. We also continue our customer service after the sale by leading and sponsoring MarineMax *Getaways!* group boating trips to various destinations, rendezvous gatherings, and on-the-water organized events to provide our customers with pre-arranged opportunities to enjoy the pleasures of the boating lifestyle. We also endeavor to provide superior maintenance and repair services, often through mobile service at the customer's wet slip and with extended service department hours and emergency service availability, that minimize the hassles of boat maintenance.

*Implementing Best Practices.* We implement the "best practices" of each of our acquired dealers as appropriate throughout our dealerships. As an example, we have implemented the MarineMax Value-Price sales approach at each of our dealerships. Under the MarineMax Value-Price approach, we sell our boats at posted prices, generally representing a discount from the manufacturer's suggested retail price, thereby eliminating the anxieties of price negotiations that occur in most boat purchases. In addition, we adopt, where beneficial, the best practices of each acquired dealer in terms of location design and layout, product purchases, maintenance and repair services (including extended service hours and mobile or dockside services), product mix, employee training, and customer education and services.

*Achieving Operating Efficiencies and Synergies.* We strive to increase the operating efficiencies of and achieve certain synergies among our dealerships in order to enhance internal growth and profitability. We centralize at the corporate level certain administrative functions such as accounting, finance, insurance coverage, employee benefits, marketing, strategic planning, legal support, purchasing and distribution, and management information systems. Centralization of these functions reduces duplicative expenses and permits the dealerships to benefit from a level of scale and expertise that would otherwise be unavailable to each dealership individually. We also seek to realize cost savings from reduced inventory carrying costs as a result of purchasing boat inventories on a national level and directing boats to dealership locations that can more readily sell such boats; lower financing costs through our credit facilities; and volume purchase discounts and rebates for certain marine products, supplies, and advertising. The ability of each of our retail locations to offer complementary services of our other retail locations, such as offering customer excursion opportunities, providing maintenance and repair services at the customer's boat location, and giving access to a larger inventory, increases the competitiveness of each retail location. By centralizing these types of activities, our store managers have more time to focus on the customer and the development of their teams.

*Emphasizing Employee Training and Development.* To promote continued internal growth, we devote substantial efforts to 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. Our Clearwater, Florida-based MarineMax University, or "MMU," teaches our retail philosophies to existing employees and employees added through acquisitions. 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.

*Opening New Facilities.* We intend to continue to establish additional retail facilities in our existing and new territories. We believe that the demographics of our existing geographic territories support the opening of additional facilities, and we have opened 10 new retail facilities, excluding those opened on a temporary basis for a specific purpose, since our formation in January 1998. We also plan to reach new customers by expanding various innovative retail formats developed by us such as mall stores and floating retail facilities. Our mall store concept is unique to the boating industry and is designed to draw mall traffic, thereby providing exposure to boating for the non-boating public as well as displaying our new product offerings to boating enthusiasts. Floating retail facilities place the sales facility, with a customer reception area and sales offices, on or anchored to a dock in a marina and use adjacent boat slips to display our new and used boats in areas of high boating activity. We continually monitor the performance of our retail locations and close retail locations that do not meet our expectations or that were opened for a specific purpose that is no longer relevant. Since March 1998, we have closed five retail locations, excluding those opened on a temporary basis for a specific purpose.

*Offering Additional Product Lines and Services.* We plan to continue to offer additional product lines and services throughout our dealerships or, when appropriate, in selected dealerships. We are offering

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throughout our existing and acquired dealerships product lines that previously have been offered only at certain of our locations. We also may obtain additional product lines through the acquisition of distribution rights directly from manufacturers and the acquisition of dealerships with distribution rights. For example, we added Baja, Sea Hunt, and Sea Pro product lines in fiscal 1996; Boston Whaler product lines in fiscal 1997; Hatteras, Supra, and Azimut product lines in fiscal 1999; Sport-Craft product lines in fiscal 2000; and Sea Hunt and MB Sports product lines in 2001. In October 2001, we added Hatteras Yachts to our Texas operations. In addition, we plan to increase our used boat sales and yacht brokerage services through an increased emphasis on these activities, cooperative efforts among our dealerships, and the use of the Internet. We also plan to offer enhanced financing and insurance packages and programs designed to better serve customers and thereby increase sales and improve profitability.

*Pursuing Strategic Acquisitions.* We capitalize upon the significant consolidation opportunities available in the highly fragmented recreational boat dealer industry by acquiring independent dealers and improving their performance and profitability through the implementation of our operating strategies. The primary acquisition focus is on well-established, high-end recreational boat dealers in geographic markets not currently served by us, particularly geographic markets with strong boating demographics, such as areas within the coastal states and the Great Lakes region. We also may seek to acquire boat dealers that, while located in attractive geographic markets, have not been able to realize favorable market share or profitability and that can benefit substantially from our systems and operating strategies. We may expand our range of product lines and our market penetration by acquiring dealers that distribute recreational boat product lines different from those we currently offer. As a result of the considerable industry experience and relationships of our management team, we believe we are well positioned to identify and evaluate acquisition candidates and assess their growth prospects, the quality of their management teams, their local reputation with customers, and the suitability of their locations. We believe we are regarded as an attractive acquirer by boat dealers because of (1) the historical performance and the experience and reputation of our management team within the industry; (2) our decentralized operating strategy, which generally enables the managers of an acquired dealer to continue their involvement in dealership operations; (3) the ability of management and employees of an acquired dealer to participate in our growth and expansion through potential stock ownership and career advancement opportunities; and (4) the ability to offer liquidity to the owners of acquired dealers through the receipt of common stock or cash. Brunswick has agreed to cooperate in good faith with us and not to unreasonably withhold its consent to the acquisition by us each year of Sea Ray boat dealers with aggregate total revenue not exceeding 20% of our revenue in our prior fiscal year to the extent such Sea Ray dealers desire to be acquired by us. See “Business — Brunswick Agreement Relating to Acquisitions.”

*Utilization of the Internet.* Our web initiative, MarineMax.com, provides customers with the ability to learn more about our company and our products. Our website generates direct sales and provides our stores leads to potential customers for new and used boats and brokerage services. We also conduct auctions of used boats on our website. This initiative is the first known auction format to focus on boats in the marine industry. We also plan to expand our ability to offer financing and insurance products on our website and enhance the marketing of our website.

*Promoting Brand Name Recognition and North-South Connection.* We are promoting our brand name recognition to take advantage of our status as the nation’s only coast-to-coast marine retailer. This strategy also recognizes that many existing and potential customers who reside in Northern markets and vacation for substantial periods in Southern markets will prefer to purchase and service their boats from the same well-known company. As a result, our signage emphasizes the MarineMax name at each of our locations, and we have increased our national advertising in various print and other media.

*Operating with Decentralized Management.* We maintain a generally decentralized approach to the operational management of our dealerships. The decentralized management approach takes advantage of the extensive experience of local managers, enabling them to implement policies and make decisions, including the appropriate product mix, based on the needs of the local market. Local management authority also fosters responsive customer service and promotes long-term community and customer relationships. In addition, the centralization of certain administrative functions at the corporate level enhances the ability of local managers to focus their efforts on day-to-day dealership operations and the customers.

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*Utilizing Technology Throughout Operations.* We believe that our management information system, which currently is being utilized by each operating subsidiary 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 operating subsidiaries and future acquired dealers. The system 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 purchasing, inventory, receivables, financial reporting, budgeting, and sales management. 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. Our representatives also utilize the computer system to assist in arranging customer financing and insurance packages. In fiscal 2000, we deployed a web-based tool that allows our managers to access essentially all financial and operational data from anywhere at anytime. This tool has increased the efficiency of our managers, and we expect it to lead to greater operating improvements.

## 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 arrange related boat financing, insurance, and extended service contracts; provide boat maintenance and repair services; and offer boat brokerage services.

### *New Boat Sales*

We primarily sell recreational boats, including pleasure boats (such as sport boats, sport cruisers, sport yachts, and yachts) and fishing boats. The principal products we offer are manufactured by Brunswick, the leading worldwide manufacturer of recreational boats, including Sea Ray pleasure boats and Boston Whaler offshore fishing boats. In fiscal 2001, approximately 58% of our revenue was derived from the sale of new boats manufactured by Brunswick. We believe that we exceed 30% of Sea Ray's new boat sales and approximately 9% of all of Brunswick's marine product sales during that period. Sales of new Hatteras Yachts, which was acquired by Brunswick in November 2001, accounted for 12% of our revenue during fiscal 2001. Certain of our dealerships also sell luxury yachts, fishing boats, ski boats, and pontoon boats provided by other manufacturers. During fiscal 2001, new boat sales accounted for approximately 73% 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 2001 average new boat sales price of approximately \$87,000 compared with our estimated industry average selling price of approximately \$21,000. Given our locations in some of the more affluent, offshore 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 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 styling.

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The following table is illustrative of the range of new boats that we offer but is not all inclusive:

Product Line and Trade Name	Number of Models	Overall Length	Manufacturer Suggested Retail Price Range
<b>Motor Yachts and Convertibles</b>			
Hatteras Motor Yachts	10	63' to 100'+	\$1,000,000 to \$8,000,000+
Hatteras Convertibles	8	50' to 90'	1,000,000 to 6,000,000+
<b>Pleasure Boats</b>			
Sea Ray Yachts	7	51' to 68'	950,000 to 3,100,000
Sea Ray Sport Yachts	9	38' to 48'	360,000 to 950,000
Sea Ray Sport Cruisers	9	26' to 34'	65,000 to 230,000
Sea Ray Sport Boats	15	18' to 26'	18,000 to 81,500
<b>Fishing Boats</b>			
Boston Whaler	17	12' to 34'	5,000 to 360,000

*Motor Yachts and Convertibles.* Hatteras Yachts is one of the world's premier yacht builders. The Hatteras fleet is one of the most extensive serving the luxury megayacht segment of the market, with configurations for cruising and sport fishing. All Hatteras models include state-of-the-art designs with live-aboard luxury. The motor yacht series, ranging from 63 feet to over 100 feet, 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 up to four staterooms for accommodations. The convertibles are primarily fishing vessels, which are well equipped to meet the needs of even the most serious tournament-class competitor. Ranging from 50 feet to 90 feet, Hatteras convertibles feature interiors that offer luxurious salon/galley arrangements, up to four 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. Sea Ray sport yachts and yachts serve the luxury segment of the recreational boating market and include top-of-the-line living accommodations with a salon, a fully equipped galley, and up to three staterooms. The sport yachts and yachts come in a variety of configurations, including aft cabin, bridge cockpit, and express cruiser models, to suit each customer's particular recreational boating style. Sea Ray sport boat and sport cruiser models are designed for performance and dependability to meet family recreational needs and include many of the features and accommodations of Sea Ray's sport yacht and yacht models. All 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, insulated in-floor fish boxes, fight chairs, rod holders, and bait prep and refreshment centers. Most Sea Ray pleasure boats feature Mercury or MerCruiser engines.

*Fishing Boats.* The fishing boats we offer 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, splash-well gates with rodholders, rigging stations, cockpit coaming pads, and fresh and saltwater washdowns.

### *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. Approximately 64% of the used boats we sold in fiscal 2001 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 boats through customer trade-ins. We intend to increase our used boat business as a result of the increased availability of quality used boats generated from our acquisition of used boats in our expanding sales efforts, the increasing number of used boats that are well-maintained

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through our boat maintenance plans, 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 has been posted on our web site, [www.MarineMax.com](http://www.MarineMax.com), which expands the awareness and availability of our products to a large audience of boating enthusiasts.

At most of our retail locations we offer the Sea Ray Legacy™ warranty plan available for used Sea Ray boats less than six years old. The Legacy plan applies to each qualifying used Sea Ray boat, which has passed a 48-point inspection and provides protection against failure of most mechanical parts for up to three years. We believe that the Sea Ray Legacy warranty plan, which is only available for used Sea Ray boats purchased from a Sea Ray dealer, will enhance our sales of used Sea Ray boats by motivating purchasers of used Sea Ray boats to purchase only from a Sea Ray dealer and motivating sellers of Sea Ray boats to sell through a Sea Ray dealer.

### *Marine Engines and Related Marine Equipment*

We offer marine engines and propellers, substantially all of which are manufactured by Mercury Marine, a division of Brunswick. We sell marine engines and propellers primarily to retail customers as replacements for their existing engines or propellers. Mercury Marine has introduced various new engine models that reduce engine emissions to comply with current Environmental Protection Agency requirements, including our OPTIMAX® 200-horsepower outboard engine, featuring a direct fuel injection technology that also increases fuel efficiency. See “Business — Environmental and Other Regulatory Issues.” An industry leader for almost six decades, Mercury Marine specializes in state-of-the-art marine propulsion systems and accessories. Most of our operating subsidiaries have been recognized by Mercury Marine as “Platinum Dealers.” This designation is generally awarded to the top 5% of Mercury Marine dealers.

We also sell related marine parts and accessories, including oils, lubricants, steering and control systems, corrosion control products, engine care and service products (primarily Mercury Marine’s Quicksilver line); Kiekhaefer high-performance accessories (such as propellers) and instruments; and a complete line of boating accessories, including life jackets, inflatables, and wakeboards. We also offer novelty items, such as shirts, caps, and floor mats bearing the manufacturers or dealer’s logo.

### *Maintenance and Repair Services*

Providing customers with professional, prompt maintenance and repair services is critical to our sales efforts and contributes to our profitability. 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. 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.

Our MarineMax Care Program provides for hassle-free boating by covering certain of the manufacturer’s scheduled maintenance generally for one year. Our dealerships generally include the MarineMax Care Program as part of the MarineMax Value-Price of the boat on many models. Our technicians provide maintenance on a regularly scheduled basis at either our retail locations or dockside, thereby encouraging preventative maintenance.

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, Brunswick reimburses 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 majority of 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. Our third-

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party extended warranty contracts 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 market conditions for different parts.

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

At each of our retail locations, we offer our customers the ability to finance new or used boat purchases and to purchase extended service contracts and insurance coverage, including credit-life, accident disability coverage, and boat property and casualty coverage (collectively, "F&I products"). During fiscal 2001, fee income generated from F&I products accounted for approximately 2.6% 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.

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 90 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 are able to offer our customers the opportunity to purchase credit life insurance, credit accident and disability insurance, as well as property and casualty insurance coverage. Credit life insurance policies provide for repayment of the boat financing contract if the purchaser dies while the contract is outstanding. Accident and disability insurance policies provide for payment of the monthly contract obligation during any period in which the buyer is disabled. Property and casualty insurance covers loss or damage to the boat. Some buyers choose to include their insurance premiums in their financing contract. We do not act as an insurance broker or agent or issue insurance policies on behalf of insurers. We, 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.

We also offer 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 above a deductible. While we sell all new boats with the boat manufacturer's standard hull warranty of generally five years and standard engine warranty of generally one year, 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. We manage the service obligations that we sell and provide the parts and service (or pay the cost of others that may provide such parts and services) for claims made under the contracts. Most required services under the contracts are provided by us and paid for by the third-party contract holder.

### ***Brokerage Services***

Through employees or subsidiaries that are licensed boat or yacht brokers, we offer boat or yacht brokerage services at most of our retail locations. For a commission, we offer for sale brokered boats or yachts,



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listing them on the “BUC” system, and advising our other retail locations of their availability through our integrated computer system and posting them on our web site, [www.MarineMax.com](http://www.MarineMax.com). The BUC system, which is similar to a real estate multiple listing service, is a national boat or yacht listing service of approximately 900 brokers maintained by BUC International. 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 services also enable us to offer a broad array of used boats or yachts without increasing related inventory costs.

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 is generally available to our brokerage customers. The purchaser of a Sea Ray 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.

### Retail Locations

We sell our recreational boats and other marine products and offer our related boat services through 53 retail locations in Arizona, California, Delaware, Florida, Georgia, Minnesota, Nevada, New Jersey, North Carolina, Ohio, South Carolina, Texas, and Utah. 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, and maintenance and repair facilities.

Many of our retail locations are waterfront properties on some of the nation’s most popular boating locations, including the Delta Basin in northern California; the Intracoastal Waterway, the Atlantic Ocean, Naples Bay (next to the Gulf of Mexico), Tampa Bay, and the Caloosahatchee River in Florida; Lake Lanier in Georgia; Leech Lake and the St. Croix River in Minnesota; Barnegat Bay, the Delaware River, the Hudson River, Lake Hopatcong, Little Egg Harbor, and the Manasquan River in New Jersey; Lake Erie in Ohio; and Clear Lake, Lake Canroe, and Lake Lewisville in Texas. Our waterfront retail locations, most of which include marina-type facilities and docks at which we display our boats, are easily accessible to the boating populace, serve as in-water showrooms, and enable the sales force to give the customer immediate in-water demonstrations of various boat models. Most of our other locations are in close proximity to water.

We plan to reach new customers by expanding in new locations through various innovative retail formats, such as mall stores and floating retail facilities. Our mall store concept is unique to the boating industry and is designed to draw mall traffic, thereby providing exposure to boating to the non-boating public as well as displaying our new product offerings to boating enthusiasts. Floating retail facilities place the sales facility, with a customer reception area and sales offices, on or anchored to a dock in a marina and use adjacent boat slips to display new and used boats in areas of high boating activity. We currently have three floating retail facilities. See “Properties.”

### 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 store manager, who oversees the day-to-day operations, personnel, and financial performance of the individual store, subject to the direction of a district manager, who generally has responsibility for the retail locations within a specified geographic region. Typically, each retail location also has a staff consisting of a sales manager, an F&I manager, a parts and service manager, sales representatives, maintenance and repair technicians, and various support personnel.

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We attempt to attract and retain quality employees at our retail locations by providing them with ongoing training to enhance sales professionalism and product knowledge, career advancement opportunities within a larger company, and favorable benefit packages. We maintain a formal training program, called MarineMax University or “MMU,” which provides training for employees in all aspects of our operations. Extensive training sessions are held periodically throughout the year covering a variety of topics. Highly trained, professional sales representatives are an important factor to our successful sales efforts. These sales representatives are trained at MMU to recognize the importance of fostering an enjoyable sales process, to educate customers on the operation and use of the boats, and to assist customers in making technical and design decisions in boat purchases. The overall focus of MMU is to teach our core retailing values, which focus on customer service.

Sales representatives receive compensation primarily on a commission basis. Each store manager is a salaried employee with incentive bonuses based on the performance of the managed dealership. Maintenance and repair service managers receive compensation primarily on a salary basis with commission incentives. Our management information system provides each store manager and sales representative with daily sales information, enabling them to monitor their performance on a daily, weekly, and monthly basis. We have a uniform, fully integrated management information system serving each of our dealerships. See “Business — Operations — Management Information System.”

### *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, hassle-free MarineMax Value-Price approach, highly trained sales representatives, high level of customer service, emphasis on educating the customer and the customer’s family on boat usage, and providing our customers with opportunities for boating. We strive to provide superior customer service and support before, during, and after the sale.

Each retail location offers the customer the opportunity to evaluate a large 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.

We sell our boats at posted value prices that generally represent a discount from the manufacturer’s suggested retail price, including one year of scheduled maintenance on many models. The MarineMax Value-Price sales approach focuses on customer service by eliminating customer anxiety associated with price negotiation and the ongoing hassles of maintaining the boat.

As a part of our sales and marketing efforts, we also participate in boat shows and in-the-water sales events at area boating locations, typically held in January and February, in each of our markets and in certain locations in close proximity to our markets. These shows and events are normally held at convention centers or marinas, with area dealers renting space. Boat shows and other offsite promotions are an important venue for generating sales orders for our new boats. The boat shows also generate a significant amount of interest in our products resulting in boat sales after the show.

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 boat 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 and enables us to actively promote new product offerings to boating enthusiasts.

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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 prospect management system that tracks the status of each sales representative's contacts with a prospect, automatically generates follow-up correspondence, facilitates company-wide availability of a particular boat or other marine product desired by a customer, and tracks the maintenance and service needs for the customer's boat.

### *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. We also exchange new boats with other dealers to accommodate customer demand and to balance inventory.

We purchase new boats and other marine related products from Brunswick, which is the world's largest manufacturer of recreational boats, including Sea Ray, Boston Whaler, Baja, and, since November 2001, Hatteras. We also purchase new boats and other marine related products from other manufacturers, including Century, MB Sports, Misty Harbor, Sea Hunt, Sea Pro, and Tracker Marine. In fiscal 2001, sales of new Brunswick boats accounted for 58% of our revenue and sales of new Hatteras Yachts accounted for 12% of our revenue. We believe our Sea Ray boat purchases exceeded 30% of Sea Ray's boat sales, and approximately 9% of all Brunswick marine product sales during fiscal 2001. No other manufacturer accounted for a significant portion of our net purchases in fiscal 2001. Brunswick has entered into a ten-year dealer agreement with each of our principal operating subsidiaries covering Sea Ray products. See "Business — Dealer Agreements With Brunswick."

We typically deal with each of our manufacturers, other than the Sea Ray division of Brunswick, under an annually renewable, non-exclusive dealer agreement. Manufacturers generally establish prices on an annual basis, but may change prices in 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.

The dealer agreements with the Sea Ray division of Brunswick do not restrict our right to sell any Sea Ray product lines or competing products. See "Business — Dealer Agreements With Brunswick." Arrangements with certain other manufacturers may restrict our right to offer some product lines in certain markets. We do not believe that these restrictions will have a material impact on our business, financial condition, or results of operations. See "Special Considerations — Boat manufacturers exercise substantial control over our business."

We transfer individual boats among our retail locations to fill customer orders that otherwise might take three to four weeks 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 the appropriate inventory levels to meet current market demands. We are not bound by contractual agreements governing the amount of inventory that we must purchase in any year from any manufacturer. We participate in numerous end-of-summer manufacturer boat shows, which manufacturers sponsor to sell off their remaining inventory at reduced costs before the introduction of new model year products, typically beginning in July.

### *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. As of September 30, 2001, we owed an aggregate of approximately \$98 million under our revolving lines of credit. As of September 30, 2001, the lines of credit provided us with

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an additional available borrowing capacity of approximately \$62 million. Advances on the lines accrued interest at a weighted average rate of 5.1% as of September 30, 2001.

We have obtained commitments from four separate financial institutions for a combined revolving credit facility. The commitment provides for a working capital borrowing facility of \$220 million. Interest will accrue at a rate equal to the one-month London Interbank Offered Rate plus 175 to 260 basis points, which will be determined in accordance with the performance pricing grid set forth in the agreement. The availability of loan advances from time to time will be based upon the value of new and used boat inventories, parts, and accounts receivable of our direct and indirect subsidiaries. Advances may be used for acquisition of inventories, working capital, and other purposes satisfactory to the lenders. We will pledge all of our assets, other than real estate, as collateral for the obligations under the credit agreement. We expect the credit facility to close on or before January 31, 2001. Should we be unable to close on the credit facility, we believe there would be adequate alternative funding services available.

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

We believe that our management information system, which currently is being utilized by each of our operating subsidiaries and was developed by certain of the acquired dealers over a number of years through cooperative efforts with a common vendor, enhances our ability to integrate successfully the operations of our operating subsidiaries 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 purchasing, inventory, receivables, financial reporting and 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.

### **Brunswick Agreement Relating to Acquisitions**

We and Brunswick entered into an agreement providing for Brunswick to cooperate in good faith and not to unreasonably withhold its consent to the acquisitions each year by us of Sea Ray boat dealers with aggregate total revenue not exceeding 20% of our revenue in our prior fiscal year. Any acquisitions in excess of the 20% benchmark will be at Brunswick's discretion. In the event that our sales of Sea Ray boats exceed 49% of the sales of Sea Ray boats by all Sea Ray boat dealers, including us, in any fiscal year of Brunswick, the agreement provides that we and Brunswick will negotiate in good faith the standards for acquisitions of Sea Ray boat dealers by us during Brunswick's next succeeding fiscal year but that Brunswick may grant or withhold its consent to any such acquisition in its sole discretion for as long as our Sea Ray boat sales exceed the 49% benchmark.

### **Dealer Agreements with Brunswick**

Brunswick, through its Sea Ray division, and we, through our principal operating subsidiaries, are parties to Sales and Service Agreements relating to Sea Ray products. These dealer agreements appoint one of our operating subsidiaries as a non-exclusive dealer for the retail sale, display, and servicing of designated Sea Ray products and repair parts currently or in the future sold by Sea Ray. Each dealer agreement designates a non-exclusive area of primary responsibility for the dealer, which is a geographical area in proximity to the dealer's retail locations based on such areas that are customarily designated by Sea Ray and applicable to its domestic dealers. Each dealer agreement also specifies retail locations, which the dealer may not close, change, or add to without the prior written consent of Sea Ray, provided that Sea Ray may not unreasonably withhold its consent. Upon at least one year's prior notice and the failure by the dealer to cure, Sea Ray may remove the dealer's right to operate any particular retail location if the dealer fails to meet its material obligations, performance standards, or terms, conditions, representations, warranties, and covenants applicable to that

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location. Each dealer agreement also restricts the dealer from selling, advertising, soliciting for sale, or offering for resale any Sea Ray products outside its area of primary responsibility without the prior written consent of Sea Ray as long as similar restrictions also apply to all domestic Sea Ray dealers selling comparable Sea Ray products. Each dealer agreement provides for the lowest product prices charged by the Sea Ray division of Brunswick from time to time to other domestic Sea Ray dealers, subject to the dealer meeting all the requirements and conditions of Sea Ray'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 requires the dealer to

- promote, display, advertise, and sell Sea Ray boats at each of its retail locations in accordance with the agreement and applicable laws;
- purchase and maintain sufficient inventory of current Sea Ray boats to meet the reasonable demand of customers at each of its locations and to meet the minimum inventory requirements applicable to all Sea Ray dealers;
- maintain at each retail location, or at another acceptable location, a service department to service Sea Ray boats promptly and professionally and to maintain parts and supplies to service Sea Ray boats properly on a timely basis;
- perform all necessary installation and inspection services prior to delivery to purchasers and perform post-sale services of all Sea Ray products sold by the dealer or brought to the dealer for service;
- furnish purchasers with Sea Ray's limited warranty on new products and with information and training as to the sale and proper operation and maintenance of Sea Ray boats;
- assist Sea Ray in performing any product defect and recall campaigns;
- maintain complete product sales and service records;
- achieve annual sales performance in accordance with fair and reasonable sales levels established by Sea Ray, after consultation with the dealer, based on factors such as population, sales potential, local economic conditions, competition, past sales history, number of retail locations, and other special circumstances that may affect the sale of products or the dealer, in each case consistent with standards established for all domestic Sea Ray dealers selling comparable products;
- provide designated financial information;
- conduct its business in a manner that preserves and enhances the reputation of Sea Ray and the dealer for providing quality products and services;
- maintain the financial ability to purchase and maintain on hand required inventory levels;
- indemnify Sea Ray against any claims or losses resulting from the dealer's failure to meet its obligations to Sea Ray;
- maintain customer service ratings sufficient to maintain Sea Ray's image in the marketplace; and
- achieve within designated time periods and thereafter maintain master dealer status (which is Sea Ray's highest performance status) for the locations designated by Sea Ray and the dealer.

Each dealer agreement has an initial term of ten years. Each dealer agreement, however, may be terminated

- by Sea Ray if the dealer fails or refuses to place a minimum stocking order of the next model year's products in accordance with requirements applicable to all Sea Ray dealers generally or fails to meet its financial obligations as they become due to Sea Ray or to the dealer's lenders;
- by Sea Ray or the dealer where good cause exists (including the material breach, default, or noncompliance with any material term, provision, warranty, or obligation under the agreement) and

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has not been cured within 60 days of prior written notice of the claimed deficiency or at the end of the 60-day period without the opportunity to cure where the cause constitutes bad faith;

- by Sea Ray or the dealer in the event of the insolvency, bankruptcy, or receivership of the other;
- by Sea Ray in the event of the assignment of the agreement by the dealer without the prior written consent of Sea Ray;
- by Sea Ray upon at least 10 days' prior written notice in the event of the failure to pay any sums due and owing to Sea Ray that are not disputed in good faith;
- by Sea Ray if a majority of our Board of Directors does not consist of specified senior executives and Other Designated Members (as defined in the Stockholders' Agreement); or
- upon the mutual consent of the dealer and Sea Ray.

## Employees

As of September 30, 2001, we had 986 employees, 948 of whom were in store-level operations and 38 of whom were in corporate administration and management. This includes 75 store-level employees that were added in conjunction with the January 2001 acquisition of Associated Marine Technologies, Inc. We are not a party to any collective bargaining agreements and are not aware of any efforts to unionize our employees. We consider our relations with our employees to be excellent.

## 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," "Delivering the Dream," and "MarineMax and Design." We have registered the name "MarineMax" in the European community. We have a trademark application pending with the U.S. Patent and Trademark Office for "New Coast Financial Services." We have trade name and trademark applications pending in Canada for various names, including "MarineMax," "MarineMax Value Price," "Value Price," "Delivering the Dream," "Delivering and Selling the Dream," "Getaways," and "The Water Gene." 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. Over the three-year period ended September 30, 2001, the average net sales for the quarters ended December 31, March 31, June 30, and September 30 represented 17%, 26%, 33%, and 24%, respectively, of our average annual net sales. With the exception of Florida, our geographic territories generally realize significantly lower sales in the quarterly period ending December 31, with boat sales generally improving in January with the onset of the public boat and recreation shows, and continue through July.

Our business is also subject to weather patterns, which may adversely affect our results of operations. For example, drought conditions (or merely reduced rainfall levels) or excessive rain, may close 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. 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.

## Environmental and Other Regulatory Issues

Our operations are subject to extensive regulation, supervision, and licensing under various 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

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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 federal, state, and local regulatory agencies, including the Occupational Safety and Health Administration (“OSHA”), the United States Environmental Protection Agency (the “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 has various air emissions regulations for outboard marine engines that impose stricter emissions standards for two-cycle, gasoline outboard marine engines. Emissions from such engines must be reduced by approximately 75% over a nine-year period beginning with the 1998 model year. Costs of comparable new engines, if materially more expensive than previous engines, or the inability of our manufacturers to comply with EPA requirements, could have a material adverse effect on our business, financial condition, and results of operations.

Certain of our facilities own and operate underground storage tanks, or “USTs,” for the storage of various petroleum products. The USTs are generally subject to federal, state, and, or local laws and regulations that require testing and upgrading of USTs and remediation of contaminated soils and groundwater resulting from leaking USTs. In addition, if leakage from company-owned or operated USTs 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 UST 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 the acquired dealers have indemnified us 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 may 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.

Two 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. Also, one of our properties is within the boundaries of a Superfund site, although our property has

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not been and is not expected to be identified as a contributor to the contamination in the area. We, however, do not believe that 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.

### 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, there can be no assurance that we will not experience legal claims in excess of our insurance coverage or that claims will 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.

### 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. Our inability to participate in boat shows in our existing or targeted markets could have a material adverse effect on our business, financial condition, and results of operations.

We compete primarily with single-location boat dealers and, with respect to sales of marine equipment, parts, and accessories, with national specialty marine stores, catalog retailers, sporting goods stores, and mass merchants. Dealer competition continues to increase 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 boating accessories, are large national or regional chains that have substantial financial, marketing, and other resources. However, we believe that our integrated corporate infrastructure and marketing and sales capabilities, our cost structure, and our nationwide presence enable us to compete effectively against these companies. Private sales of used boats is an additional significant source of competition.

### Executive Officers

The following table sets forth information concerning each of our executive officers:

Name	Age	Position
William H. McGill Jr.	57	Chairman of the Board, Chief Executive Officer, and Director
Richard R. Bassett	48	President and Director
David L. Cochran	55	Senior Vice President, Chief Operating Officer
Michael H. McLamb	36	Vice President, Chief Financial Officer, Secretary, and Treasurer
Paul Graham Stovall	63	Senior Vice President and Director

*William H. McGill Jr.* has served as the Chief Executive Officer of MarineMax since January 23, 1998 and as the Chairman of the Board and as a director of our company since March 6, 1998. Mr. McGill served as the President of our company from January 1988 until September 8, 2000. Mr. McGill was the principal



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owner and president of Gulfwind USA, Inc., one of the operating subsidiaries, from 1973 until its merger with us.

*Richard R. Bassett* has served as President of our company since September 8, 2000 and a director of our company since March 6, 1998. Mr. Bassett served as Executive Vice President of our company from October 1, 1998 until September 8, 2000 and as Senior Vice President of our company from March 6, 1998 until October 1, 1998. Mr. Bassett was the owner and president of Bassett Boat Company of Florida, one of the operating subsidiaries, from 1979 until its merger with us.

*David L. Cochran* has served as a Senior Vice President of our company since October 1, 1998 and as Chief Operating Officer of our company since September 8, 2000. Mr. Cochran was a principal owner and president of Cochran's Marine, Inc. and C&N Marine, Inc. (together "Cochran's"), one of the operating subsidiaries, from 1977 until its merger with us.

*Michael H. McLamb* has served as Vice President, Chief Financial Officer, and Treasurer of MarineMax since January 23, 1998 and as Secretary of our company since April 5, 1998. 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.

*Paul Graham Stovall* has served as a Senior Vice President and director of our company since May 1, 1998. Mr. Stovall was a principal owner and president of Stovall Marine, Inc., one of the operating subsidiaries, from 1960 until its merger with us.

### Special Considerations

#### **We must integrate the operations of the dealers we recently acquired.**

MarineMax was founded in January 1998. On March 1, 1998, MarineMax acquired five independent recreational boat dealers that operated under their principal owners for an average of more than 21 years. MarineMax itself, however, conducted no operations and generated no sales or revenue until its acquisition of the five dealers on March 1, 1998. Since March 1, 1998, we have acquired 11 additional recreational boat dealers, two boat brokerage operations, and a full-service yacht repair facility. The acquired dealers operated independently prior to their acquisition by us. The consolidated financial results of MarineMax cover periods when MarineMax and the acquired dealers were not under common management or control and are not necessarily indicative of the results that would have been achieved if MarineMax and the acquired dealers had been operated on an integrated basis or the results that may be realized on a consolidated basis in the future.

Our success depends, in part, on our ability to integrate the operations of the acquired dealers and other dealers we acquire in the future, 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. Our senior executives operated independently in the recreational boat industry prior to our formation and have been assembled only recently as a management team. Management may not be able to oversee the combined entity efficiently or to implement effectively our growth and operating strategies. To the extent that we successfully implement our acquisition strategy, our resulting growth will place significant additional demands on our management and infrastructure. Our failure to implement successfully our strategies or operate effectively the combined entity could have a material adverse effect on our business, financial condition, and results of operations. These effects could include lower revenue, higher cost of sales, increased selling, general, and administrative expenses, and reduced margins on a consolidated basis.

#### **We rely on Brunswick and other key manufacturers.**

Our success depends to a significant extent on the continued popularity and reputation for quality of the boating products of our manufacturers, particularly Brunswick's Sea Ray boat lines. Approximately 58% of our revenue in fiscal 2001 resulted from sales of new boats manufactured by Brunswick, including 57% from Brunswick's Sea Ray division. Approximately 12% of our new boat revenue in fiscal 2001 resulted from sales of new boats manufactured by Hatteras Yachts. Brunswick acquired Hatteras Yachts in November 2001. The

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remainder of our fiscal 2001 revenue from new boat sales resulted from sales of products from a limited number of other manufacturers, none of which accounted for a significant portion of our revenue. Any adverse change in the financial condition, production efficiency, product development, and management and marketing capabilities of our manufacturers, particularly Brunswick given our reliance on Sea Ray and Hatteras, would have a substantial impact on our business.

To ensure adequate inventory levels to support our expansion, it may be necessary for Brunswick and other manufacturers to increase production levels or allocate a greater percentage of their production to us. The interruption or discontinuance of the operations of Brunswick or other manufacturers could cause us to experience shortfalls, disruptions, or delays with respect to needed inventory. Although we believe that adequate alternate sources would be available that could replace any manufacturer other than Brunswick as a product source, there can be no assurance that such alternate sources will be available at the time of any such interruption or that alternative products will be available at comparable quality and prices.

Through our principal operating subsidiaries, we maintain dealer agreements with Brunswick covering Sea Ray products. Each dealer agreement has a ten-year term and provides for the lowest product prices charged by the Sea Ray division of Brunswick from time to time to other domestic Sea Ray dealers. These terms are subject to

- the dealer meeting all the requirements and conditions of Sea Ray'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.

The agreements do not give us the exclusive right to sell Sea Ray product lines within any particular territory or restrict us from selling competing products.

As is typical in the industry, we deal with our manufacturers, other than the Sea Ray division of Brunswick, 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 at the manufacturer's sole discretion. Any change or termination of these arrangements for any reason, including changes in competitive, regulatory, or marketing practices, could adversely affect our business, financial condition, and results of operations. In addition, the timing, structure, and amount of manufacturer sales incentives and rebates could impact the timing and profitability of our sales.

### **General economic conditions, discretionary consumer spending, and changes in tax laws affect our business.**

Our operations depend upon a number of factors relating to or affecting consumer spending for luxury goods, such as recreational boats. Unfavorable local, regional, or national economic developments or uncertainties regarding future economic prospects could reduce consumer spending in the markets we serve and adversely affect our business. Consumer spending on luxury goods also may decline as a result of lower consumer confidence levels, even if prevailing economic conditions are favorable. In an economic downturn, consumer discretionary spending levels generally decline, at times resulting in disproportionately large reductions in the sale of luxury goods. Similarly, rising interest rates could have a negative impact on the ability or willingness of consumers to finance boat purchases, which could also adversely affect our ability to sell our products. Local influences, such as corporate downsizing and military base closings, also could adversely affect our operations in certain markets. We may be unable to maintain our profitability during any period of adverse economic conditions or low consumer confidence. Changes in federal and state tax laws, such as an imposition of luxury taxes on new boat purchases, and stock market performance also could 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

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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 the late 1980s to a low of \$10.3 billion in 1992.

### **The boating industry has been stagnant during recent years.**

The recreational boating industry is cyclical and has experienced relatively stagnant overall growth over the last ten-year period. General economic conditions, consumer spending patterns, federal tax policies, and the cost and availability of fuel can impact overall boat purchases. We believe that the lack of increase in overall boat purchases has resulted from increased competition from other recreational activities, perceived hassles of boat ownership, and relatively poor customer service and education throughout the retail boat industry. Although our strategy addresses many of these industry factors and we have achieved significant growth during the period of stagnant industry growth, the cyclical nature of the recreational boating industry or the lack of industry growth could adversely affect our business, financial condition, or results of operations in the future.

### **Our acquisition strategy involves significant risks.**

Our growth strategy of acquiring additional recreational boat dealers involves 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 rapid 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 may increase purchase prices for acquisitions to levels beyond our financial capability or to levels that would not result in the returns required by our acquisition criteria. In addition, we may encounter difficulties in integrating the operations of acquired dealers with our own operations or managing acquired dealers profitably without substantial costs, delays, or other operational or financial problems.

We may issue common or preferred stock and incur substantial indebtedness in making future acquisitions. The size, timing, and integration of any future acquisitions may cause substantial fluctuations in operating results from quarter to quarter. Consequently, operating results for any quarter may not be indicative of the results that may be achieved for any subsequent quarter or for a full fiscal year. These fluctuations could adversely affect the market price of our common stock.

Our ability to continue to grow through the acquisition of additional dealers will depend 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 funds or common stock with a sufficient market price to complete the acquisitions,
- the ability to obtain any requisite manufacturer or governmental approvals, and
- the absence of one or more manufacturers attempting to impose unsatisfactory restrictions on us in connection with their approval of acquisitions.

As a part of our acquisition strategy, we frequently engage in discussions with various recreational boat dealers regarding their potential acquisition by us. In connection with these discussions, we and each potential acquisition candidate exchange confidential operational and financial information, conduct due diligence inquiries, and consider the structure, terms, and conditions of the potential acquisition. In certain cases, the prospective acquisition candidate agrees not to discuss a potential acquisition with any other party for a specific period of time, grants us an option to purchase the prospective dealer for a designated price during a specific time, and agrees to take other actions designed to enhance the possibility of the acquisition, such as preparing audited financial information and converting its accounting system to the system specified 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 may need manufacturers' consent to dealer acquisitions and market expansions.**

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.

We and Brunswick have entered into an agreement providing for Brunswick to cooperate in good faith and not to unreasonably withhold its consent to the acquisitions each year by us of Sea Ray boat dealers with aggregate total revenue not exceeding 20% of our revenue in our prior fiscal year. Any acquisitions in excess of the 20% benchmark will be at Brunswick's discretion. In the event that our sales of Sea Ray boats exceed 49% of the sales of Sea Ray boats by all Sea Ray boat dealers, including us, in any fiscal year of Brunswick, the agreement provides that we and Brunswick will negotiate in good faith the standards for acquisitions of Sea Ray boat dealers by us during Brunswick's next succeeding fiscal year, but that Brunswick may grant or withhold its consent to any such acquisition in its sole discretion for as long as our Sea Ray boat sales exceed the 49% benchmark.

Our growth strategy also entails expanding our product lines and geographic scope by 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 our business, financial condition, and results of operations.

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

We depend on our dealer agreements. Through dealer agreements, boat manufacturers, including Brunswick, exercise significant control over their dealers, restrict them to specified locations, and retain approval rights over changes in management and ownership. The continuation of our dealer agreements with most manufacturers, including Brunswick, depends upon, among other things, our achieving stated goals for customer satisfaction ratings and market share penetration in the market served by the applicable dealership. 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, or
- denial of approval of future acquisitions.

Our dealer agreements with manufacturers, including Brunswick, generally do not give us the exclusive right to sell those manufacturers' products within a given geographical area. Accordingly, a manufacturer, including Brunswick, could authorize another dealer to start a new dealership in proximity to one or more of our locations, or an existing dealer could move a dealership to a location that would be directly competitive with us. These events could have a material adverse effect on us and our operations.

### **We may have significant capital needs.**

Our growth strategy may require us to secure significant additional capital. Our future capital requirements will depend upon the size, timing, and structure of future acquisitions and our working capital and general corporate needs. 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 stockholders will experience a dilution in the voting power of their common stock and earnings per share could be negatively impacted. The extent to which we will be able or willing to use our common stock for acquisitions will depend on the market value of our common stock from time to time and the willingness of potential sellers to accept our common stock as full or partial consideration. Our inability to use our common stock as consideration, to generate cash from operations, or to obtain additional funding through debt or equity financings in order to pursue our acquisition program could materially limit our growth.

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. If our cash flow from operations is insufficient to meet our debt service requirements, we could be required to sell additional equity securities, refinance our obligations, or dispose of assets in order to meet our debt service requirements. In addition, our credit arrangements contain financial and operational covenants and other restrictions with which we must comply, including limitations on capital expenditures and the incurrence of additional indebtedness. Adequate financing may not be available if and when we need it or may not be available on terms acceptable to us. The failure to obtain sufficient financing on favorable terms and conditions could have a material adverse effect on our growth prospects and our business, financial condition, and results of operations.

Our current credit facilities provide for borrowings of up to approximately \$235 million, subject to a borrowing base formula. We believe these credit facilities will be sufficient for our currently anticipated needs and reflect competitive terms and conditions. We have pledged certain of our assets, principally boat inventories, to secure our credit facilities. While we believe we will continue to obtain adequate financing from lenders, such financing may not be available to us.

### **Our internal growth and operating strategies 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. 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 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 products, 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 that management will expend significant time and effort in opening and acquiring new retail locations and introducing new products. Our systems, procedures, controls, and financial resources may not be adequate to support our expanding operations. The inability to manage our

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growth effectively could have a material adverse effect on our business, financial condition, and results of operations.

Our planned growth also will impose significant added responsibilities on members of senior management and require us to identify, recruit, and integrate additional senior level managers. We may not be able to identify, hire, or train suitable additions to management.

### **Seasonality and weather conditions impact our operations.**

Our business, as well as the entire recreational boating industry, is highly seasonal, with seasonality varying in different geographic markets. During the three-year period ended September 30, 2001, the average net sales for the quarterly periods ended December 31, March 31, June 30, and September 30 represented 17%, 26%, 33%, and 24%, respectively, of our average annual net sales. With the exception of Florida, we generally realize significantly lower sales in the quarterly period ending December 31 with boat sales generally improving in January with the onset of the public boat and recreation shows. Our business could become substantially more seasonal as we acquire dealers that operate in colder regions of the United States.

Weather conditions may adversely impact our operating results. For example, drought conditions, reduced rainfall levels, and excessive rain may force boating areas to close 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 shorter selling seasons in certain locations. Hurricanes and other storms could result in the disruption of our operations or damage to our boat inventories and facilities. 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 our future geographic expansion will reduce the overall impact on us of adverse weather conditions in any one market area, weather conditions will continue to represent potential material adverse risks to us and our future operating performance. As a result of the foregoing and other factors, our operating results in some future quarters could be below the expectations of stock market analysts and investors.

### **We face intense competition.**

We operate in a highly competitive environment. In addition to facing competition generally from non-boating recreation businesses seeking to attract discretionary spending dollars, the recreational boat industry itself is highly fragmented, resulting in intense competition for customers, product distribution rights, and suitable retail locations, particularly on or near waterways. Competition increases during periods of stagnant industry growth, such as currently exists.

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, 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.

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

A portion of our income results from referral fees derived from the placement of various 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. During fiscal 2001, F&I products accounted for approximately 2.6% of our revenue.

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.

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Lenders may impose terms in their boat financing arrangements with us that may be unfavorable to us or our customers, resulting in reduced demand for our customer financing programs and lower participation and other fees.

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 an adverse effect on our business, financial condition, and results of operations.

### **We depend on key personnel.**

Our success depends, in large part, upon the continuing efforts and abilities of our executive officers. Although we have an employment agreement with each of our executive officers, we cannot assure that these individuals will remain with us throughout the term of the agreements, or thereafter. As a result of our decentralized operating strategy, we also rely on the management teams of our operating subsidiaries. In addition, we likely will depend on the senior management of any significant businesses we acquire in the future. The loss of the services of one or more of these key employees before we are able to attract and retain qualified replacement personnel could adversely affect our business.

### **We face product and service liability risks.**

The products we sell or service 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 adversely affect our business, financial condition, and results of operations as well as our business reputation with potential customers.

### **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. The failure to satisfy those and other regulatory requirements could have a material adverse effect on our business, financial condition, and results of operations.

Various federal, state, and local regulatory agencies, including the Occupational Safety and Health Administration, or OSHA, the United States Environmental Protection Agency, or the 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 recently promulgated emissions regulations for outboard marine engines that impose stricter emissions standards for two-cycle, gasoline outboard marine engines. Emissions from such engines must be reduced by approximately 75% over a nine-year period beginning with the 1998 model year. Costs of comparable new engines, if materially more expensive than previous engines, or the inability of our manufacturers to comply with EPA requirements, could have a material adverse effect on our business, financial condition, and results of operations.

Certain of our facilities own and operate underground storage tanks, or USTs, for the storage of various petroleum products. USTs are generally subject to federal, state, and local laws and regulations that require testing and upgrading of USTs and remediation of contaminated soils and groundwater resulting from leaking USTs. 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 USTs 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.

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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, or CERCLA or Superfund, imposes joint, strict, and several liability on (i) owners or operators of facilities at, from, or to which a release of hazardous substances has occurred; (ii) parties who generated hazardous substances that were released at such facilities; and (iii) parties who 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, stricter interpretations of existing laws, or the future discovery of environmental conditions may require additional expenditures by us, and such expenditures may be material.

Two 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. Also, one of our properties is within the boundaries of a Superfund site, although our property has not been identified as a contributor to the contamination in the area.

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.

### **Fuel prices and supply may 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. At various times in the past, diesel or gasoline fuel has been difficult to obtain. 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.

### **We must evaluate goodwill for impairment.**

Goodwill is an intangible asset that represents the difference between the aggregate purchase price for the net assets acquired and the amount of such purchase price allocated to such net assets for purposes of our balance sheet. Through our fiscal year ended September 30, 2001, we were required to amortize the goodwill from acquisitions accounted for as purchases over a period of time, with the amount amortized in a particular period constituting an expense that reduced our net income for that period. As of September 30, 2001, our acquisitions that have been accounted for as purchases have resulted in goodwill of approximately \$42.6 million, which we were amortizing over a period of 40 years.

In June 2001, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 142, "Goodwill and Other Intangible Assets." SFAS 142 provides that goodwill and certain intangibles no longer will be amortized, but instead will be tested for impairment at least annually. SFAS 142 is required to be applied starting with fiscal years beginning after December 15, 2001, with early application



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permitted in certain circumstances. We plan to early adopt SFAS 142 in fiscal 2002 and do not expect any impairment of goodwill upon adoption. Accumulated amortization of goodwill was approximately \$2.6 million at September 30, 2001.

A reduction in net income resulting from the impairment of goodwill may have an adverse impact upon the market price of our common stock. Impairment in the goodwill or regulatory action that changes the impairment testing methodology, requires amortization, or a write-off of goodwill may materially and adversely affect the financial position of our company.

### **Conflicts exist relating to transactions with affiliates.**

We have various arrangements that may involve conflicts of interest. We lease two retail locations from an irrevocable trust of which relatives of Louis R. DelHomme Jr., a principal stockholder of our company, are the beneficiaries; and four retail locations from partnerships in which Paul Graham Stovall, a director and executive officer of our company, is an owner. These arrangements were negotiated in conjunction with the acquisition of their respective companies. During fiscal 2000, we purchased from Mr. Bassett, principal stockholder, a director, and executive officer of our company, land for the purpose of constructing a retail sales operation. We paid Mr. Bassett \$3.0 million for the property, which was equal to the appraised fair market value of the property. The interests of directors or officers of our company or holders of more than 5% of our common stock, in their individual capacities or capacities with related third-party entities, may conflict with the interests of these persons in their capacities with our company.

### **Directors, officers, and certain other stockholders own a significant portion of our stock.**

Our directors and executive officers and persons associated with them own beneficially a total of approximately 38.6% of the issued and outstanding shares of our common stock, exclusive of options to acquire 650,267 additional shares of our common stock. As a result of this ownership, these persons have the power effectively to control our company, including the election of directors, the determination of matters requiring stockholder approval, and other matters pertaining to corporate governance. This concentration of ownership also may have the effect of delaying or preventing a change in control of our company.

We, Brunswick, and various of our senior executive officers are parties to a stockholders' agreement, and we and Brunswick are parties to a governance agreement, each dated April 28, 1998. Subject to certain limitations, the stockholders' agreement provides various rights of first refusal on the sale of shares of common stock by the parties to the agreement, particularly in the event that Brunswick does not own its targeted investment percentage of 19% of our common stock at the time of the proposed sale or in the event the proposed sale is to a competitor of Brunswick. The governance agreement provides for various terms and conditions concerning Brunswick's participation in the corporate governance of our company. Among other provisions and subject to certain conditions, the governance agreement requires Brunswick and our senior executives to vote their common stock for nominees of the board of directors in the election of directors and to vote their common stock in favor of all proposals and recommendations approved by our board of directors and submitted to a vote of our stockholders.

As a result, the stockholders' agreement and the governance agreement will have the effect of increasing the control of our directors, executive officers, and persons associated with them and may have the effect of delaying or preventing a change in control of our company.

### **Our stock price may be volatile.**

The market price of our common stock could be subject to wide fluctuations as a result of many factors. Factors that could affect the trading price include the following:

- variations in operating results,
- the level and success of our acquisition program and new store openings,
- variations in same-store sales,

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- the success of dealership integration,
- relationships with manufacturers,
- changes in earnings estimates published by analysts,
- general economic, political, and market conditions,
- seasonality and weather conditions,
- governmental policies and regulations,
- the performance of the recreational boat industry in general, and
- factors relating to suppliers and competitors.

In addition, the relatively few shares held by the public, market demand for small- and mid-capitalization stocks, and price and volume fluctuations in the stock market unrelated to our performance could result in significant fluctuations in market price of our common stock. The performance of our common stock could adversely affect our ability to raise equity in the public markets and adversely affect our acquisition program.

### **Stockholders may incur immediate and substantial dilution.**

The issuance of additional common stock in the future, including shares that we may issue pursuant to option grants and future acquisitions, may result in dilution in the net tangible book value per share of our common stock. Our board of directors has the legal power and authority to determine the terms of an offering of shares of our capital stock, or securities convertible into or exchangeable for these shares, to the extent of our shares of authorized and unissued capital stock.

### **A substantial number of shares are eligible for future sale.**

As of September 30, 2001, there were outstanding 15,221,378 shares of our common stock. A portion of these shares are freely tradable without restriction or further registration under the securities laws, unless held by an “affiliate” of our company, as that term is defined in Rule 144 under the securities laws. Shares held by affiliates of our company are subject to the resale limitations of Rule 144 described below. Outstanding shares of common stock issued in connection with the acquisition of any acquired dealers are available for resale beginning one year after the respective dates of the acquisitions, subject to compliance with the provisions of Rule 144 under the securities laws.

As of September 30, 2001, we had issued options to purchase approximately 2,273,209 shares of common stock under our 1998 incentive stock plan and 149,377 of the 500,000 shares of common stock reserved for issuance under our 1998 employee stock purchase plan. We have filed a registration statement under the securities laws to register the common stock to be issued under these plans. As a result, shares issued under these plans will be freely tradable without restriction unless acquired by affiliates of our company, who will be subject to the volume and other limitations of Rule 144.

We may issue additional shares of common stock or preferred stock under the securities laws as part of any acquisition we may complete in the future. Pursuant to Rule 145 under the securities laws, these shares generally will be freely tradable after their issuance by persons not affiliated with us or the acquired companies.

### **We rely on our operating subsidiaries.**

We are a holding company, the principal assets of which are the shares of the capital stock of our subsidiaries, including the operating subsidiaries. As a holding company without independent means of generating operating revenue, we depend on dividends and other payments from our subsidiaries to fund our obligations and meet our cash needs. Financial covenants under future loan agreements of our subsidiaries may limit our subsidiaries’ ability to make sufficient dividend or other payments to permit us to fund our obligations or meet our cash needs, in whole or in part.

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

We have never paid cash dividends on our common stock and do not anticipate paying cash dividends in the foreseeable future. Moreover, financial covenants under certain of our credit facilities restrict our ability to pay dividends.

### **Our stockholders' rights plan may adversely affect existing stockholders.**

During September 2001, we adopted a Stockholders' Rights Plan that may have the effect of deterring, delaying, or preventing a change in control that might otherwise be in the best interests of our stockholders. Under the Rights Plan, we issued a dividend of one Preferred Share Purchase Right for each share of our common stock held by stockholders of record as of the close of business on September 7, 2001. Each right entitles stockholders to purchase, at an exercise price of \$50 per share, one-thousandth of a share of our newly created Series A Junior Participating Preferred Stock.

In general, subject to certain limited exceptions, the stock purchase rights become exercisable when a person or group acquires 15% or more of our common stock or a tender offer or exchange offer for 15% or more of our common stock is announced or commenced. After any such event, our other stockholders may purchase additional shares of our common stock at 50% of the then-current market price. The rights will cause substantial dilution to a person or group that attempts to acquire us on terms not approved by our board of directors. The rights should not interfere with any merger or other business combination approved by our board of directors since the rights may be redeemed by us at \$0.01 per stock purchase right at any time before any person or group acquires 15% or more of our outstanding common stock. The rights expire on August 28, 2001.

### **Change in control provisions may adversely affect existing stockholders.**

Certain provisions of our restated certificate of incorporation and bylaws and Delaware law may make a change in the control of our company more difficult to complete, even if a change in control were in the stockholders' interest or might result in a premium over the market price for the shares held by the stockholders. Our certificate of incorporation and bylaws divide the board of directors into three classes of directors elected for staggered three-year terms. The certificate of incorporation also provides that the board of directors may authorize the issuance of one or more series of preferred stock from time to time and may determine the rights, preferences, privileges, and restrictions and fix the number of shares of any such series of preferred stock, without any vote or action by our stockholders. The board of directors may authorize the issuance of preferred stock with voting or conversion rights that could adversely affect the voting power or other rights of the holders of common stock. The certificate of incorporation also allows our board of directors to fix the number of directors and to fill vacancies on the board of directors.

We also are subject to the anti-takeover provisions of Section 203 of the Delaware General Corporation Law, which prohibits us from engaging in a "business combination" with an "interested stockholder" for a period of three years after the date of the transaction in which the person became an "interested stockholder," unless the business combination is approved in a prescribed manner. The senior executives of the five original acquired dealers and Stovall Marine, Inc. were exempted from the application of Section 203.

Certain of our dealer agreements could also make it difficult for a third party to attempt to acquire a significant ownership position in our company. In addition, the stockholders' agreement and governance agreement will have the effect of increasing the control of our directors, executive officers, and persons associated with them and may have the effect of delaying or preventing a change in control of our company.

## **Item 2. *Properties***

We lease our corporate offices in Clearwater, Florida. We also lease 36 of our retail locations under leases that generally contain multi-year renewal options and often grant us a first right of refusal to purchase the property at fair value. In all such cases, we pay a fixed rent at negotiated rates. In substantially all of the leased

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locations, we are responsible for taxes, utilities, insurance, and routine repairs and maintenance. We own the property associated with our 17 other retail locations.

The following table reflects the status, approximate size, and facilities of our various retail locations as of the date of this report.

Location	Owned or Leased	Square Footage(1)	Facilities at Property	Operated Since(2)	Waterfront
<b>Arizona</b>					
Tempe	Company owned	34,000	Retail and service	1992	—
<b>California</b>					
Oakland	Third-party lease	17,700	Retail and service; 20 wet slips	1985	Alameda Estuary (San Francisco Bay)
Santa Rosa	Third-party lease	8,100	Retail and service	1990	—
Sacramento	Company owned	24,800	Retail and service	1995	—
Sacramento (River Bend) (floating facility)	Third-party lease	500	Retail and service; 20 wet slips	1998	Sacramento River
Tower Park (near San Francisco)	Third-party lease	400	Retail only	1999	Sacramento River
<b>Delaware</b>					
Bear	Third-party lease	5,000	Retail and service; 15 wet slips	1995	Chesapeake Bay
<b>Florida</b>					
Clearwater	Company owned	42,000	Retail and service; 16 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
Dania	Third-party lease	3,500	Retail only; 8 wet slips	2001	Port Everglades
Ft. Lauderdale	Third-party lease	2,400	Retail and service; 15 wet slips	1977	Port Everglades Intracoastal Waterway
Fort Myers	Third-party lease	8,000	Retail and service; 18 wet slips	1983	Caloosahatchee River
Jacksonville	Third-party lease	1,000	Retail only; 7 wet slips	1995	St. Johns River
Miami	Company owned	7,200	Retail and service; 15 wet slips	1980	Intracoastal Waterway
Naples	Company owned	19,600	Retail and service; 13 wet slips	1997	Naples Bay
Palm Beach	Company owned	22,800	Retail and service; 8 wet slips	1998	Intracoastal Waterway
Pompano Beach	Company owned	23,000	Retail and service; 16 wet slips	1990	Intracoastal Waterway
Stuart(3)	Company owned	6,700	Retail and service; 60 wet slips	1994	Intracoastal Waterway
Tampa	Company owned	13,100	Retail and service	1995	—
<b>Georgia</b>					
Buford (Atlanta)	Third-party lease	8,500	Retail and service	2001	—
Forest Park (Atlanta)	Affiliate lease	47,300	Retail and service	1973	—
Lake Lanier	Affiliate lease	3,000	Retail and service; 50 wet slips	1981	Lake Lanier
<b>Minnesota</b>					
Bay Port	Third-party lease	450	Retail only; 10 wet slips	1996	St. Croix River
Rogers	Company owned	70,000	Retail, service, and storage	1991	—
Walker	Company owned	76,400	Retail, service, and storage	1989	—
Walker	Company		Retail and service; 93 wet		

Woodbury	owned	6,800	slips	1977	Leech Lake
	Third-party lease	13,392	Retail and service	1997	—
<b>Nevada</b> Las Vegas	Company owned	21,600	Retail and service	1990	—
<b>New Jersey</b> Brick	Company owned	20,000	Retail and service; 225 wet slips	1977	Manasquan River

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Location	Owned or Leased	Square Footage(1)	Facilities at Property	Operated Since(2)	Waterfront
Brant Beach	Third-party lease	3,800	Retail and service; 36 wet slips	1965	Barnegat Bay
Delran	Third-party lease	5,100	Retail, service, and storage; 335 slips	1990	Delaware River
Greenbrook	Third-party lease	18,500	Retail and service	1995	—
Jersey City	Third-party lease	500	Retail only; 6 wet slips	2000	Hudson River
Lake Hopatcong	Third-party lease	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 and service; 33 wet slips	1987	Little Egg Harbor Bay
<b>North Carolina</b>					
Wrightsville Beach	Affiliate lease	34,523	Retail, service, and storage	1996	Intracoastal Waterway
<b>Ohio</b>					
Cleveland (Flats)	Third-party lease	19,000	Retail and service	1999	Lake Erie
Port Clinton	Affiliate lease	63,700	Retail, service, and storage; 155 Wet slips	1974	Lake Erie
Port Clinton	Affiliate lease	93,250	Retail, service, and storage	1997	Lake Erie
Toledo	Affiliate lease	12,240	Retail and service	1989	—
<b>South Carolina</b>					
Myrtle Beach	Third-party lease	500	Retail only	1999	Coquina Harbor
<b>Texas</b>					
Arlington	Third-party lease	21,000	Retail and service	1999	—
Houston	Affiliate lease	10,000	Retail only(4)	1987	—
Houston	Affiliate lease	10,000	Retail only(4)	1981	—
Houston	Third-party lease	10,000	Service only	1999	—
League City (floating Facility) (5)	Third-party lease	800	Retail and service; 30 wet slips	1988	Clear Lake
Lewisville (Dallas)	Third-party lease	10,000	Retail and service	1992	Lake Lewisville
Lewisville (Dallas) (floating facility)	Third-party lease	500	Retail only; 20 wet slips(6)	1994	Lake Lewisville
Montgomery (floating Facility)	Third-party lease	600	Retail only; 10 wet slips	1995	Lake Conroe
<b>Utah</b>					
Salt Lake City	Third-party lease	21,200	Retail and service	1975	—

(1) Square footage 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 a company acquired by us.

(3) The Stuart retail property consists of two parcels, each of which is owned by a separate, wholly owned subsidiary of our company.

(4) Service performed at Houston service center leased by us.

(5) We own the floating facility, however, the related dock and marina space is leased by us from an unaffiliated third party.

(6) Shares service facility located at the other Lewisville retail location.

### Item 3. Legal Proceedings

We are involved in various legal proceedings arising out of our operations in the ordinary course of business. We do not believe that such proceedings, even if determined adversely, will have a material adverse effect on our business, financial condition, or results of operations.

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### Item 4. *Submission of Matters to a Vote of Security Holders*

Not applicable.

## PART II

### Item 5. *Market for the Registrant's Common Equity and Related Stockholder Matters*

Our common stock has been traded on the New York Stock Exchange under the symbol HZO since our initial public offering on June 3, 1998 at \$12.50 per share. 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>1999</b>		
First quarter	\$12.75	\$ 8.00
Second quarter	\$12.13	\$10.63
Third quarter	\$12.00	\$ 9.38
Fourth quarter	\$ 9.81	\$ 8.50
	High	Low
<b>2000</b>		
First quarter	\$11.00	\$9.25
Second quarter	\$ 9.94	\$7.00
Third quarter	\$ 8.13	\$6.75
Fourth quarter	\$ 6.75	\$4.88
	High	Low
<b>2001</b>		
First quarter	\$8.63	\$5.63
Second quarter	\$9.95	\$7.30
Third quarter	\$9.41	\$6.00
Fourth quarter (through December 13, 2001)	\$8.15	\$6.31

On December 13, 2001, the closing sale price of our common stock was \$8.15 per share. On December 13, 2001, there were approximately 134 record holders and approximately 2,600 beneficial owners of our common stock.

### 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 data as of September 30, 1997, 1998, 1999, 2000, and 2001 and the statements of operations data for the nine months ended September 30, 1997, and the fiscal years ended September 30, 1998, 1999, 2000, and 2001 were derived from the consolidated financial statements and notes thereto that have been audited by Arthur Andersen LLP, independent certified public accountants. The statement of operations data for the nine months ended September 30, 1996 has been derived from the unaudited financial statements of our company, which we believe have been prepared on the same basis as the audited financial statements and include all adjustments, consisting of normal recurring adjustments, which we consider necessary for a fair presentation of the selected financial data shown. The financial data shown below should be read in conjunction with the



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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.

	Nine Months Ended September 30,		Fiscal Year Ended September 30,			
	1996	1997	1998	1999	2000	2001
	(In thousands, except share and per share data)					
<b>Statement of Operations Data :</b>						
Revenue	\$156,611	\$200,414	\$ 291,182	\$ 450,058	\$ 550,654	\$ 504,071
Cost of sales	117,514	150,479	220,364	338,403	419,080	383,984
Gross profit	39,097	49,935	70,818	111,655	131,574	120,087
Selling, general, and administrative expenses	25,378	30,388	52,479	79,484	92,520	92,734
Non-recurring settlement(1)	—	—	15,000	—	—	—
Income from operations	13,719	19,547	3,339	32,171	39,054	27,353
Interest expense, net	1,453	1,806	2,212	2,040	4,127	2,396
Income before tax provision (benefit)	12,266	17,741	1,127	30,131	34,927	24,957
Tax provision (benefit)	661	596	1,705	11,978	13,534	9,608
Net income (loss)	\$ 11,605	\$ 17,146	\$ (577)	\$ 18,153	\$ 21,393	\$ 15,349
Net income (loss) per share: Diluted(2)			\$ (0.05)	\$ 1.21	\$ 1.41	\$ 1.01
Weighted average number of shares: Diluted(2)			11,027,949	14,964,727	15,204,182	15,238,719
<b>Other Data:</b>						
Number of stores(3)	23	24	40	51	52	53
Sales per store(4)	\$ 7,027	\$ 8,722	\$ 11,269	\$ 12,938	\$ 14,056	\$ 12,382
Same-store sales growth(5)	8%	28%	18%	18%	20%	(9)%

	September 30,				
	1997	1998	1999	2000	2001
<b>Balance Sheet Data:</b>					
Working capital	\$23,556	\$ 29,080	\$ 28,353	\$ 40,853	\$ 47,447
Total assets	89,591	150,458	235,751	231,330	264,490
Long-term debt (including current portion)	7,414	3,692	7,520	6,280	6,423
Total stockholders’ equity	23,298	66,335	90,234	112,340	127,693

- (1) On March 12, 1998, we and Brunswick entered into a Settlement Agreement under which Brunswick agreed not to challenge the change in control provisions of the acquired companies dealership agreements and we agreed to pay Brunswick \$15.0 million.
- (2) We have elected to present historical per share data for the fiscal years ended September 30, 1998, 1999, 2000, and 2001 only, as the per share data for the other periods is not meaningful due to changes in the historical equity structure and compensation paid to stockholder employees.
- (3) Includes only those stores open at period end.
- (4) Includes only those stores open for the entire preceding 12- or nine-month period, respectively.
- (5) New and acquired stores are included in the comparable base at the end of the store’s thirteenth month of operations.

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

We are the largest recreational boat retailer in the United States with fiscal 2001 revenue exceeding \$504 million. Through 53 retail locations in 13 states, 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 warranty contracts; provide boat repair and maintenance services; and offer yacht or boat brokerage services.

MarineMax was incorporated in January 1998. We have significantly expanded our operations through the acquisition of 16 recreational boat dealers, two boat brokerage operations, and one full-service yacht repair facility since our formation. 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.

During the fiscal year ended September 30, 2001, we completed the acquisition of one full-service yacht repair facility. We acquired the net assets, including the assumption of certain liabilities and related property and buildings, for approximately \$5.6 million in cash, including acquisition costs. The acquisition was accounted for under the purchase method of accounting.

During the fiscal year ended September 30, 2000, we completed the acquisition of two recreational boat dealers. We acquired the net assets and assumed or retired certain liabilities, including the outstanding floor plan obligations related to new boat inventories, for approximately \$4.8 million in cash, including acquisition costs. These acquisitions were accounted for under the purchase method of accounting.

During the fiscal year ended September 30, 1999, we completed the acquisition of three recreational boat dealers and one boat brokerage operation. We acquired the net assets and assumed or retired certain liabilities, including the outstanding floor plan obligations related to new boat inventories, for approximately \$4.6 million in cash, including acquisition costs, 597,090 shares of our common stock, valued at approximately \$6.2 million, and \$3.5 million in promissory notes.

Each of the Acquired Companies historically operated with a calendar year-end, but adopted the September 30 year-end of MarineMax on or before the completion of its acquisition. The September 30 year-end more closely conforms to the natural business cycle of our company. The following discussion should be read in conjunction with our consolidated financial statements, including the related notes thereto, appearing elsewhere in this report.

We derive our revenue from selling new and used recreational boats and related marine products; arranging third-party financing, insurance, and extended warranty products; providing boat repair and maintenance services; and offering boat and yacht brokerage services. Revenue from boat or related marine product sales, boat repair and maintenance services, and boat or yacht brokerage services is recognized at the time the product is delivered to the customer or the service is completed. Revenue earned by us for arranging financing, insurance, and extended warranty products is recognized at the later of customer acceptance of the service contract terms as evidenced by contract execution, or when the related boat sale is recognized.

Cost of sales generally includes the cost of the recreational boat or other marine product, plus any additional labor, parts or consumables used in providing maintenance, repair, and rigging services.

Results of Operations

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

	1999		2000		2001	
	Fiscal Year Ended September 30,					
Revenue	\$450,058	100.0%	\$550,654	100.0%	\$504,071	100.0%
Cost of sales	338,403	75.2%	419,080	76.1%	383,984	76.2%
Gross profit	111,655	24.8%	131,574	23.9%	120,087	23.8%
Selling, general, and administrative expenses	79,484	17.7%	92,520	16.8%	92,734	18.4%
Income from operations	32,171	7.2%	39,054	7.1%	27,353	5.4%
Interest expense, net	2,040	0.5%	4,127	0.8%	2,396	0.4%
Income before tax provision	30,131	6.7%	34,927	6.3%	24,957	5.0%
Income tax provision	11,978	2.6%	13,534	2.5%	9,608	1.9%
Net Income	\$ 18,153	4.0%	\$ 21,393	3.9%	\$ 15,349	3.0%

*Fiscal Year Ended September 30, 2001 Compared to Fiscal Year Ended September 30, 2000*

*Revenue.* Revenue decreased \$46.6 million, or 8.5%, to \$504.1 million for the fiscal year ended September 30, 2001, from \$550.7 million for the fiscal year ended September 30, 2000. The decrease was attributable to a decline in the economic environment in the current year and adverse weather conditions in certain of our operating regions. These factors resulted in a 9% decline in same-store sales, or a revenue decrease of \$49.8 million, partially offset by, \$3.2 million related to stores not eligible for inclusion in the comparable-store base.

*Gross Profit.* Gross profit decreased \$11.5 million, or 8.7%, to \$120.1 million for the fiscal year ended September 30, 2001 from \$131.6 million for the fiscal year ended September 30, 2000. Gross profit margin as a percentage of revenue decreased from 23.9% to 23.8% from fiscal 2000 to 2001. The slight decrease in gross profit margin was attributable to an increase in the sale of larger products, which historically yield lower gross profits per unit and downward pressure on the sales price of our products due to the generally worse economic environment. The decrease in gross profit margin was partially offset by an increase in service and finance and insurance income. These products historically yield higher gross profits.

*Selling, General, and Administrative Expenses.* Selling, general, and administrative expenses increased approximately \$200,000, or 0.2%, to \$92.7 million for the fiscal year ended September 30, 2001 from \$92.5 million for the fiscal year ended September 30, 2000. Selling, general, and administrative expenses as a percentage of revenue increased to 18.4% in fiscal 2001 from 16.8% in fiscal 2000. The increase in selling, general, and administrative expenses as a percentage of revenue is attributable to a weaker leveraging of the operating expense structure, due to the decrease in revenue. Additionally, while our service operations yield higher gross profits they also carry a higher selling, general and administrative expense structure.

*Interest Expense, Net.* Interest expense, net decreased approximately \$1.7 million, or 41.5%, to \$2.4 million for the fiscal year ended September 30, 2001 from \$4.1 million for the fiscal year ended September 30, 2000. Interest expense, net as a percentage of revenue, decreased to 0.4% in 2001 from 0.8% in 2000. The decrease in total interest charges was the result of a more favorable interest rate environment during the year ended September 2001 versus 2000 and changes in our product mix.

*Income Tax Provision.* Income taxes decreased \$3.9 million, or 29.0%, to \$9.6 million for the fiscal year ended September 30, 2001, from \$13.5 million for the fiscal year ended September 30, 2000. Our effective income tax rate remained relatively constant at 38.5% in 2001 and 38.7% in 2000.

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### *Fiscal Year Ended September 30, 2000 Compared with Fiscal Year Ended September 30, 1999*

*Revenue.* Revenue increased \$100.6 million, or 22.4%, to \$550.7 million for the fiscal year ended September 30, 2000 from \$450.1 million for the fiscal year ended September 30, 1999. Of this increase, \$84.0 million was attributable to 20% growth in comparable store sales in 2000 and \$16.6 million was attributable to stores not eligible for inclusion in the comparable store base. The increase in comparable store sales in fiscal 2000 resulted primarily from the continued training of employees through MarineMax University or MMU. MMU teaches our core retailing values, which focus among other things on customer service. We believe our training has resulted in an increased closing rate on sales and a more effective utilization of the prospective customer tracking feature of the integrated computer system. In addition, we have experienced an increase in larger boat sales, such as sport yacht and yachts.

*Gross Profit.* Gross profit increased \$19.9 million, or 17.8%, to \$131.6 million for the fiscal year ended September 30, 2000 from \$111.7 million for the fiscal year ended September 30, 1999. Gross profit margin as a percentage of revenue decreased from 24.8% to 23.9% from fiscal 1999 to 2000. The decrease was due to an increase in our larger boat sales which historically result in lower gross profits. Excluding our larger boat sales, gross profit was up modestly.

*Selling, General, and Administrative Expenses.* Selling, general, and administrative expenses increased approximately \$13.0 million, or 16.4%, to \$92.5 million for the fiscal year ended September 30, 2000 from \$79.5 million for the fiscal year ended September 30, 1999. Selling, general, and administrative expenses as a percentage of revenue decreased to 16.8% in fiscal 2000 from 17.7% in fiscal 1999. The decrease in selling, general and administrative expenses as a percentage of revenue is attributable to our ability to better leverage our infrastructure, including leverage associated with an increase in our larger boat business.

*Interest Expense, Net.* Interest expense, net increased approximately \$2.1 million, or 102.3%, to \$4.1 million for the fiscal year ended September 30, 2000 from \$2.0 million for the fiscal year ended September 30, 1999. Interest expense, net as a percentage of revenue increased to 0.8% in fiscal 2000 from 0.5% in fiscal 1999. The increase in total interest charges was the result of increased interest rates associated with our inventory financing facilities.

*Income Tax Provision.* Income taxes increased \$1.5 million, or 13.0%, to \$13.5 million for the fiscal year ended September 30, 2000, from \$12.0 million for the fiscal year ended September 30, 1999. Our effective income tax rate decreased to 38.7% in 2000, from 39.8% in 1999. The decrease in the effective income tax rate is due the implementation of certain tax planning strategies during 2000.

### **Quarterly Data and Seasonality**

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,

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consisting only of normal recurring adjustments, necessary for the fair presentation of such quarterly financial information.

The operating results for any quarter are not necessarily indicative of the results to be expected for any future period.

	December 31, 1999	March 31, 2000	June 30, 2000	September 30, 2000	December 31, 2000	March 31, 2001	June 30, 2001	September 30, 2001
Revenue	\$ 93,517	\$ 155,240	\$ 174,546	\$ 127,350	\$ 84,777	\$ 143,224	\$ 165,694	\$ 110,376
Cost of sales	72,775	122,461	131,924	91,920	64,440	112,718	127,301	79,525
Gross profit	20,742	32,779	42,622	35,430	20,337	30,506	38,393	30,851
Selling, general, and administrative expenses	18,734	25,412	24,946	23,427	21,067	24,776	24,390	22,501
Income (loss) from Operations	2,008	7,367	17,676	12,003	(730)	5,730	14,003	8,350
Interest expense (income), net	1,180	1,378	1,019	550	289	579	732	796
Income (loss) before tax provision	828	5,989	16,657	11,453	(1,019)	5,151	13,271	7,554
Tax provision (benefit)	351	2,367	6,350	4,466	(371)	2,015	5,056	2,908
Net income (loss)	\$ 477	\$ 3,622	\$ 10,307	\$ 6,987	\$ (648)	\$ 3,136	\$ 8,215	\$ 4,646
Net income (loss) per share: Diluted	\$ 0.03	\$ 0.24	\$ 0.68	\$ 0.46	\$ (0.04)	\$ 0.21	\$ 0.54	\$ 0.30
Weighted average number of shares: Diluted	15,180,211	15,192,732	15,218,620	15,221,780	15,250,026	15,195,815	15,231,290	15,255,303

In order to maintain consistency and comparability between periods, certain amounts have been reclassified from the previously reported financial statements to conform with the financial statements of the current period.

### 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 and new store openings. These cash needs have historically been financed with cash from operations and borrowings under credit facilities. We depend upon dividends and other payments from our operating subsidiaries to fund our obligations and meet our cash needs. Currently, no agreements exist that restrict this flow of funds.

For the fiscal years ended September 30, 1999, 2000, and 2001, we generated cash flows from operating activities of approximately \$15.1 million, \$15.8 million, and \$9.6 million, respectively. In addition to net income, cash provided by operating activities was due primarily to inventory management, including the management of inventory financing.

For the fiscal years ended September 30, 1999, 2000, and 2001, cash flows used in investing activities was approximately \$14.4 million, \$10.9 million, and \$14.4 million, respectively. Cash used in investing activities was primarily attributable to cash used in business acquisitions, in addition to purchases of property and equipment associated with opening new or improving existing retail facilities.

For the fiscal years ended September 30, 1999 and 2000, cash flows used in financing activities approximated \$0.2 million and \$0.6 million, respectively. For the fiscal year ended September 30, 2001 cash flows provided by financing activities approximated \$2.2 million. For the fiscal years ended September 30, 1999 and 2000 cash used in financing activities was primarily attributable to repayments on long-term debt. For the fiscal year ended September 30, 2001, cash flows provided by financing activities reflect the proceeds from borrowing on long-term debt, a mortgage, which was partially offset by the repayment of long-term debt.

At September 30, 2000, our indebtedness totaled approximately \$106.6 million, of which approximately \$8.6 million was associated with our real estate holdings and \$98.0 million was associated with financing our inventory and working capital needs.

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We have working capital borrowing facilities with four separate financial institutions providing for combined borrowing availability of \$235 million at a weighed average interest rate equal to the one month LIBOR rate plus 165 basis points. Borrowings under the facilities are pursuant to a borrowing base formula and are used primarily for working capital and financing our inventory. The facilities have similar terms and mature on various dates ranging from December 2001 through December 2002.

We have obtained commitments from four separate financial institutions for a combined revolving credit facility. The combined facility will provide for a maximum borrowing availability of \$220 million and will have a three-year term with renewal provisions. The participants in the combined facility are the same lenders we have utilized historically. Interest will accrue at a rate equal to the one-month LIBOR rate plus 175 to 260 basis points, which will be determined in accordance with a performance pricing grid contained in the agreement. The terms and conditions of the proposed combined facility will be substantially similar to the terms and conditions of our current facilities.

During the fiscal years ended September 30, 1999, 2000, and 2001 we completed the acquisition of seven marine retail operations. We acquired the net assets, related property and buildings and assumed or retired certain liabilities, including the outstanding floor plan obligations related to new boat inventories, for approximately \$15.0 million in cash, including acquisition costs, 597,090 shares of our common stock, valued at approximately \$6.2 million, and \$3.5 million in promissory notes.

Except as specified in this “Management’s Discussion and Analysis of Financial Condition, and Results of Operations” and in the attached 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.

### **Item 7A. *Quantitative and Qualitative Disclosures About Market Risk***

Not applicable.

### **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 statement, notes, and report are incorporated herein by reference.

### **Item 9. *Changes In and Disagreements With Accountants on Accounting and Financial Disclosure***

Not applicable.

## **PART III**

### **Item 10. *Directors and Executive Officers of the Registrant***

The information required by this Item relating to our directors is incorporated herein by reference to the definitive Proxy Statement to be filed pursuant to Regulation 14A of the Exchange Act for our 2002 Annual Meeting of Stockholders. The information required by this Item relating to our executive officers included in “Business — Executive Officers.”

### **Item 11. *Executive Compensation***

The information required by this Item is incorporated herein by reference to the definitive Proxy Statement to be filed pursuant to Regulation 14A of the Exchange Act for our 2002 Annual Meeting of Stockholders.

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### Item 12. *Security Ownership of Certain Beneficial Owners and Management*

The information required by this Item is incorporated herein by reference to the definitive Proxy Statement to be filed pursuant to Regulation 14A of the Exchange Act for our 2002 Annual Meeting of Stockholders.

### Item 13. *Certain Relationships and Related Transactions*

The information required by this Item is incorporated herein by reference to the definitive Proxy Statement to be filed pursuant to Regulation 14A of the Exchange Act for our 2002 Annual Meeting of Stockholders.

## PART IV

### Item 14. *Exhibits, Financial Statement Schedules, and Reports on Form 8-K*

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

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

(2) 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.

#### (b) Reports on Form 8-K

Current Report on Form 8-K dated July 25, 2001, indicated in Item 9 the Company's outlook for the quarter ended September 30, 2001 and fiscal year ending September 30, 2002.

Current Report on Form 8-K dated September 4, 2001, contained in Item 5 a press release issued by the Company announcing the adoption of its Stockholders' Rights Plan.

#### (c) Exhibits

Exhibit Number	Exhibit
3.1	Restated Certificate of Incorporation of the Registrant, including all amendments to date
3.2	Amended and Restated Bylaws of the Registrant
3.3	Certificate of Designation of Series A Junior Participating Preferred Stock
4.1	Specimen of Stock Certificate
4.2	Rights Agreement, dated August 28, 2001 between Registrant and American Stock Transfer & Trust Company, as Rights Agent(3)
10.1(a)	Merger Agreement between Registrant and its acquisition subsidiary and Bassett Boat Company of Florida and Richard Bassett(1)
10.1(b)	Merger Agreement between Registrant and its acquisition subsidiary and 11502 Dumas, Inc. d/b/a Louis DelHomme Marine and its stockholders(1)
10.1(c)	Merger Agreement between Registrant and its acquisition subsidiary and Gulfwind USA, Inc. and its stockholders(1)
10.1(d)	Merger Agreement between Registrant and its acquisition subsidiary and Gulfwind South, Inc. and its stockholders(1)
10.1(e)	Merger Agreement between Registrant and its acquisition subsidiary and Harrison's Boat Center, Inc. and its stockholders(1)
10.1(f)	Merger Agreement between Registrant and its acquisition subsidiary and Harrison's Marine Centers of Arizona, Inc. and its stockholders(1)

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Exhibit Number	Exhibit
10.1(g)	Merger Agreement between Registrant and its acquisition subsidiary and Stovall Marine, Inc. and its stockholders(1)
10.1(h)	Agreement of Merger and Plan of Reorganization dated as of the 7th day of July, 1998 by and among MarineMax, Inc., C & N Acquisition Corp. (a subsidiary of MarineMax, Inc.), C & N Marine Corporation and the Stockholders named therein(2)
10.1(i)	Agreement of Merger and Plan of Reorganization dated as of the 7th day of July, 1998 by and among MarineMax, Inc., Cochrans Acquisition Corp. (a subsidiary of MarineMax, Inc.), Cochrans Marine, Inc. and the Stockholders named therein(2)
10.1(j)	Asset Purchase Agreement between Registrant and Treasure Cove Marina, Inc.(3)
10.2(a)	Contribution Agreement between Registrant and Bassett Boat Company and its owner(1)
10.2(b)	Contribution Agreement between Registrant and Bassett Realty, L.L.C. and its owner(1)
10.2(c)	Contribution Agreement between Registrant and Gulfwind South Realty, L.L.C. and its owners(1)
10.2(d)	Contribution Agreement between Registrant and Harrison's Realty, L.L.C. and its owners(1)
10.2(e)	Contribution Agreement between Registrant and Harrison's Realty California, L.L.C. and its owners(1)
10.3(a)	Employment Agreement between Registrant and William H. McGill Jr.(1)
10.3(b)	Employment Agreement between Registrant and Michael H. McLamb(1)
10.3(c)	Employment Agreement between Registrant and Richard R. Bassett(1)
10.3(d)	Employment Agreement between Registrant and Paul Graham Stovall(1)
10.3(e)	Employment Agreement between Registrant and David L. Cochran(4)
10.3(f)	Employment Agreement between Registrant and David H. Pretasky(4)
10.4	1998 Incentive Stock Plan, as amended through November 15, 2000
10.5	1998 Employee Stock Purchase Plan(1)
10.6	Settlement Agreement between Brunswick Corporation and Registrant(1)
10.7	Letter of Intent between Registrant and Stovall(1)
10.8	Restated Agreement Relating to the Purchase of MarineMax Common Stock between Registrant and Brunswick Corporation, dated as of April 28, 1998(1)
10.9	Stockholders' Agreement among Registrant, Brunswick Corporation, and Senior Founders of Registrant, dated April 28, 1998(1)
10.10	Governance Agreement between Registrant and Brunswick Corporation, dated April 28, 1998(1)
10.11	Agreement Relating to Acquisitions between Registrant and Brunswick Corporation, dated April 28, 1998(1)
10.12	Form of Sea Ray Sales and Service Agreement(1)
10.13	Loan and Security Agreement between Registrant and NationsCredit Distribution Finance, Inc.(1)
10.14	Guaranty and Security Agreement of NationsCredit Distribution Finance, Inc.(1)
10.15	Guaranty and Security Agreement of NationsCredit Distribution Finance, Inc. by Stovall Marine, Inc.(1)
10.16	Credit Facility and Security Agreement, Accounts and Inventory between the Registrant and Key Bank National Association(5)
21	List of Subsidiaries
23.1	Consent of Arthur Andersen LLP

(1) Incorporated by reference to Registration Statement on Form S-1 (Registration 333-47873).

(2) Incorporated by reference to Registrant's Current Report on Form 8-K dated July 7, 1998, as filed on July 20, 1998.



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- (3) Incorporated by reference to Registrant's Form 8-K Report dated September 30, 1998, as filed on October 20, 1998.
- (4) Incorporated by reference to Registrant's Form 10-K for the year ended September 30, 1998, as filed on December 9, 1998.
- (5) Incorporated by reference to Registrant's Form 10-K for the year ended September 30, 1999, as filed on December 29 1999.
- (6) Incorporated by reference to Registration Statement on Form 8-A as filed on September 5, 2001.

**SIGNATURES**

In accordance with 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/ WILLIAM H. MCGILL JR.

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William H. McGill Jr.,  
*Chairman of the Board and Chief Executive Officer*

Date: December 19, 2001

In accordance with 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 date indicated.

Signature	Capacity	Date
/s/ WILLIAM H. MCGILL JR.	Chairman of the Board, and Chief Executive Officer (Principal Executive Officer)	December 19, 2001
William H. McGill Jr.		
/s/ MICHAEL H. MCLAMB	Vice President, Chief Financial Officer, Treasurer, and Secretary (Principal Accounting and Financial Officer)	December 19, 2001
Michael H. McLamb		
/s/ RICHARD R. BASSETT	President and Director	December 19, 2001
Richard R. Bassett		
/s/ PAUL GRAHAM STOVALL	Senior Vice President and Director	December 19, 2001
Paul Graham Stovall		
/s/ GERALD BENSTOCK	Director	December 19, 2001
Gerald Benstock		
/s/ ROBERT S. KANT	Director	December 19, 2001
Robert S. Kant		
/s/ STEWART TURLEY	Director	December 19, 2001
Stewart Turley		
/s/ DEAN S. WOODMAN	Director	December 19, 2001
Dean S. Woodman		



MARINEMAX, INC. AND SUBSIDIARIES

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**REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS**

To MarineMax, Inc.:

We have audited the accompanying consolidated balance sheets of MarineMax, Inc. (a Delaware corporation) and subsidiaries as of September 30, 2000 and 2001, and the related consolidated statements of operations, stockholders' equity and cash flows for each of the three years in the period ended September 30, 2001. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of MarineMax, Inc. and subsidiaries as of September 30, 2000 and 2001, and the results of their operations and their cash flows for each of the three years in the period ended September 30, 2001, in conformity with accounting principles generally accepted in the United States.

ARTHUR ANDERSEN LLP

Tampa, Florida,  
October 18, 2001

## MARINEMAX, INC. AND SUBSIDIARIES

## CONSOLIDATED BALANCE SHEETS

	September 30, 2000	September 30, 2001
	(Amounts in thousands except share data)	
<b>ASSETS</b>		
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents	\$ 12,583	\$ 9,997
Accounts receivable, net	18,845	12,614
Inventories	115,036	147,956
Prepays and other current assets	2,464	1,686
	<hr/>	<hr/>
Total current assets	148,928	172,253
Property and equipment, net	42,207	51,780
Goodwill and other assets	40,195	40,457
	<hr/>	<hr/>
Total assets	\$231,330	\$264,490
	<hr/>	<hr/>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>CURRENT LIABILITIES:</b>		
Accounts payable	\$ 5,717	\$ 4,772
Customer deposits	15,918	7,182
Accrued expenses	13,568	12,364
Short-term borrowings	72,100	98,000
Current maturities of long-term debt	521	2,217
Current deferred tax liabilities	251	271
	<hr/>	<hr/>
Total current liabilities	108,075	124,806
	<hr/>	<hr/>
Other liabilities	3,798	3,138
Deferred tax liabilities	1,358	2,430
Long-term debt, net of current maturities	5,759	6,423
<b>COMMITMENTS AND CONTINGENCIES</b>		
<b>STOCKHOLDERS' EQUITY:</b>		
Preferred stock, \$.001 par value, 5,000,000 and 1,000,000 shares authorized, none issued or outstanding at September 30, 2000 and 2001, respectively	—	—
Common stock, \$.001 par value; 40,000,000 and 24,000,000 shares authorized, 15,221,780 and 15,221,378 shares issued and outstanding at September 30, 2000 and 2001, respectively	15	15
Additional paid-in capital	63,572	63,931
Retained earnings	48,753	64,091
Treasury stock, at cost, 55,745, shares held at September 30, 2001.	—	(344)
	<hr/>	<hr/>
Total stockholders' equity	112,340	127,693
	<hr/>	<hr/>
Total liabilities and stockholders' equity	\$231,330	\$264,490
	<hr/>	<hr/>

The accompanying notes are an integral part of these consolidated balance sheets.

MARINEMAX, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS

	For the Year Ended September 30, 1999	For the Year Ended September 30, 2000	For the Year Ended September 30, 2001
	(Amounts in thousands except share and per share data)		
Revenue	\$ 450,058	\$ 550,654	\$ 504,071
Cost of sales	338,403	419,080	383,984
Gross profit	111,655	131,574	120,087
Selling, general and administrative Expenses	79,484	92,520	92,734
Income from operations	32,171	39,054	27,353
Interest expense, net	2,040	4,127	2,396
Income before income taxes	30,131	34,927	24,957
Income tax provision	11,978	13,534	9,608
Net income	\$ 18,153	\$ 21,393	\$ 15,349
Basic and diluted net income per common share	\$ 1.21	\$ 1.41	\$ 1.01
Weighted average number of common shares used in computing net income per common share:			
Basic	14,958,725	15,201,052	15,220,322
Diluted	14,964,727	15,204,182	15,238,719

The accompanying notes are an integral part of these consolidated statements.

MARINEMAX, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY

	Common Stock		Additional Paid-in Capital	Retained Earnings	Treasury Stock	Total Stockholders' Equity
	Shares	Amount				
	(Amounts in thousands except share data)					
BALANCE, September 30, 1998	14,600,428	\$ 14	\$57,114	\$ 9,207	—	\$ 66,335
Net income	—	—	—	18,153	—	18,153
Issuance of common stock	38,430	—	292	—	—	292
Issuance of common stock in exchange for businesses acquired	498,108	1	5,184	—	—	5,185
Issuance of stock warrants in exchange for business acquired	—	—	269	—	—	269
BALANCE, September 30, 1999	15,136,966	15	62,859	27,360	—	90,234
Net income	—	—	—	21,393	—	21,393
Issuance of common stock	84,814	—	713	—	—	713
BALANCE, September 30, 2000	15,221,780	15	63,572	48,753	—	112,340
Net income	—	—	—	15,349	—	15,349
Purchase of treasury stock	(81,413)	—	—	—	(501)	(501)
Issuance of treasury stock	25,668	—	5	(11)	157	151
Issuance of common stock	55,343	—	354	—	—	354
BALANCE, September 30, 2001	15,221,378	\$ 15	\$63,931	\$64,091	\$(344)	\$127,693

The accompanying notes are an integral part of these consolidated statements.



## MARINEMAX, INC. AND SUBSIDIARIES

## CONSOLIDATED STATEMENTS OF CASH FLOWS

	For the Year Ended September 30, 1999	For the Year Ended September 30, 2000	For the Year Ended September 30, 2001
		(Amounts in thousands)	
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>			
Net income	\$ 18,153	\$ 21,393	\$ 15,349
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	2,585	3,043	3,984
Deferred income tax provision	1,304	243	1,092
(Gain) loss on sale of property and equipment	98	(31)	(30)
Other	95	65	144
(Increase) decrease in —			
Accounts receivable, net	4,686	(4,003)	6,231
Inventories	(37,234)	30,132	(32,879)
Prepays and other assets	(4,913)	(1,436)	1,802
Increase (decrease) in —			
Accounts payable	5,729	(9,100)	(945)
Customer deposits	715	5,046	(8,821)
Accrued expenses and other liabilities	5,984	3,793	(2,194)
Short-term borrowings	32,858	(33,341)	25,900
Settlement payable	(15,000)	—	—
Net cash provided by operating activities	<u>15,060</u>	<u>15,804</u>	<u>9,633</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>			
Cash used in business acquisitions, net of cash acquired	(4,318)	(4,544)	(5,585)
Purchases of property and equipment	(10,122)	(7,003)	(8,940)
Proceeds from sale of property and equipment	41	628	86
Net cash used in investing activities	<u>(14,399)</u>	<u>(10,919)</u>	<u>(14,439)</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>			
Issuance of common stock	197	648	361
Borrowings on long-term debt	—	—	3,186
Repayments on long-term debt	(422)	(1,247)	(826)
Purchase of treasury stock	—	—	(501)
Net cash provided by (used in) financing activities	<u>(225)</u>	<u>(599)</u>	<u>2,220</u>
<b>NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS:</b>	436	4,286	(2,586)
<b>CASH AND CASH EQUIVALENTS, beginning of period</b>	<u>7,861</u>	<u>8,297</u>	<u>12,583</u>
<b>CASH AND CASH EQUIVALENTS, end of period</b>	<u>\$ 8,297</u>	<u>\$ 12,583</u>	<u>\$ 9,997</u>
<b>SUPPLEMENTAL DISCLOSURES OF NON-CASH INVESTING AND FINANCING ACTIVITIES:</b>			
Issuance of common stock and stock warrants in exchange for property and equipment and businesses acquired	\$ 25,433	—	—
Assumption of debt (primarily inventory financing) in conjunction with the purchase of property and equipment and businesses acquired	\$ 23,729	\$ 7,297	—

The accompanying notes are an integral part of these consolidated statements.

**MARINEMAX, INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(Amounts in thousands, except share and per share data)**

**1. Company Background and Basis of Presentation:**

MarineMax, Inc. (a Delaware corporation) was incorporated in January 1998 and is the largest boat retailer in the United States. MarineMax, Inc. and subsidiaries (MarineMax or the Company) engage primarily in the retail sale, brokerage and service of new and used boats, motors, trailers, marine parts and accessories. As of September 30, 2001, the Company operated through 53 retail locations in 13 states, consisting of Arizona, California, Delaware, Florida, Georgia, Minnesota, Nevada, New Jersey, North Carolina, Ohio, South Carolina, Texas and Utah.

MarineMax is the nation's largest retailer of Sea Ray, Boston Whaler, and Hatteras Yachts. Brunswick Corporation (Brunswick) is the world's largest manufacturer of recreational boats, including Sea Ray and Boston Whaler. Sales of new Brunswick boats accounted for approximately 66%, 60%, and 58% of the Company's revenue in fiscal 1999, 2000, and 2001, respectively. The Company represented approximately 9% of all Brunswick marine product sales during the same periods. The Company's applicable subsidiaries are party to a 10-year dealer agreement with Brunswick covering Sea Ray products and is the exclusive dealer of Sea Ray boats in its geographic market.

The Company's subsidiary, MarineMax Motor Yachts, Inc. (Motor Yachts), is party to a Dealership Agreement with Hatteras Yachts, a division of Genmar Industries, Inc. The agreement gives the Company the right to sell Hatteras Yachts throughout the state of Florida (excluding the Florida Panhandle) and the U.S. distribution rights for Hatteras products over 82 feet. Approximately 2%, 8%, and 12% of the Company's revenue during fiscal 1999, 2000, and 2001, respectively was derived from the sale of new boats acquired from Hatteras.

The Company is party to dealer agreements with other manufacturers, each of which gives the Company the right to sell various makes and models of boats within a given geographic region.

In order to maintain consistency and comparability between periods presented, certain amounts have been reclassified from the previously reported consolidated financial statements to conform with the financial statement presentation of the current period. The consolidated financial statements include the accounts of the Company and its subsidiaries, all of which are wholly owned. All significant intercompany transactions and accounts have been eliminated.

**2. Acquisitions:**

The Company has significantly expanded its operations through the acquisition of 16 recreational boat dealers, two boat brokerage operations, and one full-service yacht repair facility since its formation. As a part of the Company's acquisition strategy, it frequently engages in discussions with various recreational boat dealers regarding their potential acquisition by the Company. 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. The following are the acquisitions the Company has completed during the years ending September 30, 1999, 2000 and 2001.

On October 28, 1998, the Company acquired the net assets of Woods & Oviatt, Inc. (Woods & Oviatt), a prominent yacht brokerage operation, in exchange for approximately \$1.7 million of cash, including acquisition costs. The acquisition has been accounted for under the purchase method of accounting, which resulted in the recognition of approximately \$1.7 million in goodwill.

On February 11, 1999, the Company acquired the net assets of Boating World (Boating World) in exchange for approximately \$0.5 million of cash, including acquisition costs and warrants valued at

**MARINEMAX, INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

approximately \$0.3 million. The warrants provide the holder the right to buy 40,000 shares of the Company's common stock at \$15.00 per share and were valued using a Black-Scholes model assuming a 10 year term, a 5.25% risk free rate of return, a volatility factor of 44.7% and an expected dividend yield of 0%. The acquisition has been accounted for under the purchase method of accounting, which resulted in the recognition of approximately \$0.7 million in goodwill.

On March 9, 1999, the Company acquired the net assets of Merit Marine (Merit) in exchange for approximately \$1.2 million of cash, including acquisition costs, 476,000 shares of the Company's common stock, valued at approximately \$4.8 million, a \$3 million promissory note, with interest payable at LIBOR plus 125 basis points, and the assumption of certain liabilities. The assumed liabilities include the outstanding floor plan obligations primarily related to financing Merit Marine's Sea Ray products. The acquisition has been accounted for under the purchase method of accounting, which resulted in the recognition of approximately \$9.2 million in goodwill.

On April 5, 1999, the Company acquired the net assets of Suburban Boatworks, Inc. (Suburban) in exchange for approximately \$1.0 million of cash, including acquisition costs, 121,090 shares of the Company's common stock, valued at approximately \$1.4 million, a \$0.5 million promissory note, with interest payable at LIBOR plus 125 basis points, and the assumption of certain liabilities. The assumed liabilities include the outstanding floor plan obligations primarily related to financing Suburban's Sea Ray products. The acquisition has been accounted for under the purchase method of accounting, which resulted in the recognition of approximately \$3.7 million in goodwill.

On July 27, 1999, the Company acquired the net assets of Hansen Marine, Inc. (Hansen) in exchange for approximately \$0.2 million of cash, including acquisition costs. The acquisition has been accounted for under the purchase method of accounting, which resulted in the recognition of approximately \$0.2 million in goodwill.

On December 31, 1999, the Company acquired the net assets of Duce Marine, Inc. (Duce) for approximately \$1.2 million of cash, including acquisition costs. The Company assumed certain liabilities, including the outstanding floor plan obligations related to new boat inventories. The acquisition has been accounted for under the purchase method of accounting, which resulted in the recognition of approximately \$1.0 million in goodwill.

On April 18, 2000, the Company acquired the net assets of Clark's Landing at Greenbrook, Inc., Clark's Landing at Lake Hopatcong, Inc., and Clark's Landing at Dredge Harbor, Inc. (Clark's) for approximately \$3.6 million of cash, including acquisition costs. The Company assumed or retired certain liabilities, including the outstanding floor plan obligations related to new boat inventories. The acquisition has been accounted for under the purchase method of accounting, which resulted in the recognition of approximately \$4.4 million in goodwill.

On January 8, 2001, the Company acquired the net assets of Associated Marine Technologies, Inc. (Associated), including the assumption of certain liabilities and related property and buildings, for approximately \$5.6 million in cash, including acquisition costs. Associated operates a full-service yacht repair facility near Ft. Lauderdale, Florida. The acquisition has been accounted for under the purchase method of accounting, which resulted in the recognition of approximately \$2.3 million in goodwill.

Woods & Oviatt, Boating World, Merit, Suburban, Hansen, Duce, Clark's, and Associated (collectively, the Purchased Companies) have been reflected in the Company's consolidated financial statements subsequent to their respective acquisition dates. For purchase price allocation purposes, the Company's common stock issued in conjunction with the acquisition of the Purchased Companies has been valued at approximately the current market price on each of their respective measurement dates. The goodwill associated with the acquisition of the Purchased Companies represents the excess of the purchase price over the estimated fair value of the net assets acquired and is being amortized over forty years on a straight-line basis (See Note 3).

MARINEMAX, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The Company's unaudited pro forma consolidated results of operations assuming all significant acquisitions accounted for under the purchase method of accounting had occurred at the beginning of each period presented are as follows for the year ended September 30:

	1999
Revenue	\$465,224
Net income	17,881
Basic and diluted earnings per share	\$ 1.17

The fiscal 2000 and 2001 acquisitions were not significant to the Company's consolidated results of operations. Accordingly, pro forma results of operations, assuming the acquisitions had occurred at the beginning of the period, have been omitted.

The unaudited pro forma results of operations are presented for informational purposes only. The unaudited pro forma results of operations include an adjustment to record income taxes as if the significant acquisitions were taxed as C corporations from the beginning of the period presented until their respective acquisition dates. The unaudited pro forma results of operations do not include adjustments to remove certain private company expenses, which will not be incurred in future periods. The unaudited pro forma results of operations may not necessarily reflect the future results of operations of the Company or what the results of operations would have been had the Company owned and operated these businesses as of the beginning of each period presented.

**3. Significant Accounting Policies:**

*Statements of Cash Flows*

For purposes of the consolidated statements of cash flows, the Company considers all highly liquid investments with an original maturity of three months or less to be cash equivalents.

The Company made interest payments of approximately \$2.7 million, \$4.6 million, and \$2.4 million, for the years ended September 30, 1999, 2000 and 2001, respectively, including interest on debt which finances the Company's real estate holdings and new boat inventory, net of interest assistance provided by manufacturers. The Company made income tax payments of approximately \$8.3 million, \$13.1 million, and \$8.1 million, for the years ended September 30, 1999, 2000 and 2001, respectively.

*Inventories*

New and used boat inventories are stated at the lower of cost, determined on a specific-identification basis, or market. Parts and accessories are stated at the lower of cost, determined on the first-in, first-out basis, or market.

*Property and Equipment*

Property and equipment are recorded at cost and depreciated over their estimated useful lives using the straight-line method. Useful lives for purposes of computing depreciation are as follows:

	Years
Buildings and improvements	5-40
Machinery and equipment	5-10
Furniture and fixtures	5-10
Vehicles	5

MARINEMAX, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The cost of property and equipment sold or retired and the related accumulated depreciation are removed from the accounts at the time of disposition, and any resulting gain or loss is included in the consolidated statements of operations. Maintenance, repairs and minor replacements are charged to operations as incurred; major replacements and improvements are capitalized and amortized over their useful lives.

*Goodwill and Other Assets*

Goodwill and other assets consist primarily of the cost of acquired businesses in excess of the fair value of net assets acquired and other intangible assets. The cost in excess of the fair value of net assets is amortized over 40 years on a straight-line basis. The Company periodically evaluates the recoverability of goodwill and intangible assets and takes into account events or circumstances that warrant revised estimates of useful lives or that indicate that an impairment exists. Goodwill amortization expense was approximately \$0.4 million, \$0.9 million, and \$1.0 million, for the years ended September 30, 1999, 2000, and 2001, respectively. Accumulated amortization of goodwill was approximately \$1.6 million and \$2.6 million at September 30, 2000 and 2001, respectively.

In June 2001, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards (SFAS) 141, Business Combinations, and SFAS 142 Goodwill and Other Intangible Assets. SFAS 141 requires business combinations initiated after June 30, 2001 to be accounted for using the purchase method of accounting. It also specifies the types of acquired intangible assets that are required to be recognized and reported separately from goodwill. SFAS 142 requires that goodwill and certain intangibles no longer be amortized, but instead tested for impairment at least annually. SFAS 142 is required to be applied starting with fiscal years beginning after December 15, 2001, with early application permitted in certain circumstances. The Company plans to early adopt SFAS 142 in fiscal 2002 and does not expect any impairment of goodwill upon adoption.

*Customer Deposits*

Customer deposits primarily include amounts received from customers toward the purchase of boats. These deposits are recognized as revenue when the related boats are delivered to customers.

*Revenue Recognition*

Revenue from boat, motor and trailer sales and parts and service operations is recognized at the time the boat, motor, trailer or part is delivered to or accepted by the customer or service is completed. The Company recognizes commissions earned from a brokerage sale at the time the related brokerage transaction closes. Commissions earned by the Company for placing notes with financial institutions in connection with customer boat financing is recognized when the related boat sale is recognized. Marketing fees earned on credit life, accident and disability insurance products sold by third-party insurance companies are also recognized when the related boat sale is recognized. Pursuant to negotiated agreements with financial and insurance institutions, the Company is charged back for a portion of these fees should the customer terminate or default on the related finance or insurance contract before it is outstanding for a stipulated minimal period of time. The chargeback reserve, which was not material to the consolidated financial statements taken as a whole as of September 30, 2000 or 2001, is based on the Company's experience for repayments or defaults on the related finance or insurance contracts.

Commissions earned on extended warranty service contracts sold on behalf of third-party insurance companies are recognized at the later of customer acceptance of the service contract terms as evidenced by contract execution, or when the related boat sale is recognized. The Company is charged back for a portion of these commissions should the customer terminate or default on the service contract prior to its scheduled maturity. The chargeback reserve, which was not material to the consolidated financial statements taken as a

MARINEMAX, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

whole as of September 30, 2000 or 2001, is based upon the Company's experience for repayments or defaults on the service contracts.

*Advertising and Promotional Costs*

Advertising and promotional costs are expensed as incurred and are included in selling, general and administrative expenses in the accompanying consolidated statements of operations. Total advertising and promotional expenses, net of related co-op assistance, approximated \$5.3 million, \$4.3 million and \$4.9 million, for the years ended September 30, 1999, 2000 and 2001, respectively.

*Supplier and Customer Concentration*

*Dealership Agreements*

The Company has entered into dealership agreements with the Sea Ray division of Brunswick Corporation and with Boston Whaler, Inc., Mercury Marine and Baja Marine Corporation, all subsidiaries or divisions of Brunswick Corporation (collectively, Brunswick). Approximately 58% of the Company's revenue during fiscal 2001 was derived from the sale of new boats acquired from Brunswick. These agreements allow the Company to purchase, stock, sell and service boats and products of Brunswick. These agreements also allow the Company to use Brunswick's names, trade symbols and intellectual properties. The Company's applicable subsidiaries are party to a 10-year dealer agreement with Brunswick covering Sea Ray products, expiring beginning in 2008.

The Company has entered into a dealership agreement with Hatteras Yachts (Hatteras), a wholly owned subsidiary of Genmar Industries, Inc. Approximately 12% of the Company's revenue during fiscal 2001 was derived from the sale of new boats acquired from Hatteras. The agreement allows the Company to purchase, stock, sell and service boats and products of Hatteras. The agreement also allows the Company to use the Hatteras name, trade symbols and intellectual properties.

As is typical in the industry, the Company deals with manufacturers, other than the Sea Ray division of Brunswick, under renewable annual dealer agreements. Any change or termination of these agreements for any reason, including changes in competitive, regulatory, or marketing practices, could adversely affect the Company's results of operations. Although there are a limited number of manufacturers of the type of boats and products that the Company sells, the Company believes that other suppliers could provide similar boats and products on comparable terms. A change in suppliers, however, could cause a potential loss of revenue, which would affect operating results adversely.

*Concentrations of Credit Risk*

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

*New Accounting Pronouncements*

In August 2001, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 143, "Accounting for Asset Retirement Obligations" (SFAS 143). SFAS 143 establishes accounting standards for recognition and measurement of a liability for an asset retirement obligation and the associated asset retirement cost. SFAS 143 is effective for financial statements relating to fiscal years beginning after June 15, 2002. Management does not expect SFAS 143 to have a material effect on the Company's financial statements.

## MARINEMAX, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

In September 2001, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" (SFAS 144). SFAS 144 addresses the financial accounting and reporting for the impairment or disposal of long-lived assets. SFAS 144 is effective for financial statements issued for fiscal years beginning after December 15, 2001. Management does not expect SFAS 144 to have a material effect on the Company's financial statements.

*Fair Value of Financial Instruments*

The carrying amount of the Company's financial instruments approximates fair value due either to length of maturity or existence of interest rates that approximate prevailing market rates unless otherwise disclosed in these financial statements.

*Use of Estimates and Assumptions*

The preparation of financial statements in conformity with generally accepted accounting principles requires the Company 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 revenue and expenses during the reporting periods. Actual results could differ from those estimates.

**4. Accounts Receivable:**

Trade receivables consist of receivables from financial institutions, which provide funding for customer boat financing, and amounts due from financial institutions earned from arranging financing with the Company's customers. These receivables are normally collected within 30 days of the sale. Trade receivables also include amounts due from customers on the sale of boats, parts and service. Amounts due from manufacturers represent receivables for various manufacturer programs and parts and service work performed pursuant to the manufacturers' warranties. The accounts receivable balances consisted of the following as of September 30, 2000 and 2001:

	September 30, 2000	September 30, 2001
Trade receivables	\$10,417	\$ 7,543
Amounts due from manufacturers	7,956	4,603
Other receivables	472	468
	<u>          </u>	<u>          </u>
	\$18,845	\$12,614
	<u>          </u>	<u>          </u>

**5. Inventories:**

Inventories consisted of the following as of September 30, 2000 and 2001:

	September 30, 2000	September 30, 2001
New boats, motors and trailers	\$ 96,079	\$123,731
Used boats, motors and trailers	13,556	19,596
Parts, accessories and other	5,401	4,629
	<u>          </u>	<u>          </u>
	\$115,036	\$147,956
	<u>          </u>	<u>          </u>

## MARINEMAX, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

**6. Property and Equipment:**

Property and equipment consisted of the following as of September 30, 2000 and 2001:

	September 30, 2000	September 30, 2001
Land	\$ 14,957	\$ 17,138
Buildings and improvements	21,649	30,570
Machinery and equipment	7,951	8,498
Furniture and fixtures	5,978	6,350
Vehicles	2,528	2,878
	<u>53,063</u>	<u>65,434</u>
Less — Accumulated depreciation and amortization	(10,856)	(13,654)
	<u>\$ 42,207</u>	<u>\$ 51,780</u>

During the year ended September 30, 2000, the Company entered into a contract to acquire undeveloped land, for \$3.0 million, from a principal Officer and Director of the Company. The Company believes the terms of the transaction are consistent with those the Company could obtain from third parties. During the year ended September 30, 2001, the Company contracted with third party developers to construct a retail sales facility on the acquired land.

**7. Short-Term Borrowings:**

The Company has agreements for working capital borrowing facilities (the “Facilities”) with four separate financial institutions providing for combined borrowing availability of \$235 million at a weighted average interest rate equal to the one month London Interbank Offered Rate (“LIBOR”) plus 165 basis points. Borrowings under the Facilities are pursuant to a borrowing base formula and are used primarily for working capital purposes. The Facilities require the Company to maintain certain financial covenants, including a tangible net worth ratio, among other restrictions. As of September 30, 2001, the Company was in compliance with all of its financial covenants. The Facilities have similar terms and mature on various dates ranging from December 2001 through December 2002.

Short-term borrowings as of September 30, 2000, and 2001 were approximately \$72.1 million and \$98.0 million, respectively. The additional available borrowings under the Facilities at September 30, 2001 were approximately \$62.4 million. At September 30, 2001, the weighted average interest rate on the outstanding borrowings was 5.1%. Generally, the Company’s short-term borrowings are collateralized by certain accounts receivable and inventories.

The Company has obtained commitments from four separate financial institutions for a combined revolving credit facility (the “Combined Facility”). The Combined Facility will provide for a maximum borrowing availability of \$220 million and will have a three-year term (with renewal provisions). The participants in the Combined Facility are the same lenders the Company has utilized historically. Interest accrues at a rate equal to the one month LIBOR rate plus 175 to 260 basis points, which shall be determined in accordance with a Performance Pricing grid, as defined. The terms and conditions of the Combined Facility are substantially similar to the terms and conditions of the prior Facilities.

The Company receives interest assistance directly from boat manufacturers, including Brunswick. The interest assistance programs vary by manufacturer and generally included periods of free financing or reduced interest rate programs. The interest assistance may be paid directly to the Company or the Company’s lender depending on the arrangements the manufacturer has established. Discontinuance of these programs could result in a material increase in interest expense.



## MARINEMAX, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## 8. Long-Term Debt:

Long-term debt consisted of the following as of September 30, 2000 and 2001:

	September 30, 2000	September 30, 2001
Various mortgage notes payable, due in monthly installments ranging from \$3.5 to \$42.3, bearing interest at rates ranging from 5.96% to 10.25%, maturing April 2002 through March 2011, collateralized by machinery and equipment	\$5,954	\$ 8,309
Various notes payable, due in monthly installments ranging from \$1.0 to \$2.2, bearing interest at rates ranging from 7.90% to 9.79%, maturing June 2006 through March 2010, collateralized by certain vehicles and machinery and equipment	326	331
	<u>6,280</u>	<u>8,640</u>
Less — Current maturities	(521)	(2,217)
	<u>\$5,759</u>	<u>\$ 6,423</u>

The aggregate maturities of long-term debt were as follows at September 30, 2001:

Year Ending September 30,	Amount
2002.	\$2,217
2003	596
2004	631
2005	682
2006	733
Thereafter	3,781
	<u>\$8,640</u>

## 9. Income Taxes:

The components of the Company's provision for income taxes consisted of the following for the years ended September 30, 1999, 2000 and 2001.

	For the Year Ended September 30, 1999	For the Year Ended September 30, 2000	For the Year Ended September 30, 2001
Current Provision			
Federal	\$ 8,884	\$11,728	\$7,737
State	1,790	1,563	779
	<u>10,674</u>	<u>13,291</u>	<u>8,516</u>
Total current provision			
Deferred provision			
Federal	1,147	219	993
State	157	24	99
	<u>1,304</u>	<u>243</u>	<u>1,092</u>
Total deferred provision			
Total income tax provision	<u>\$11,978</u>	<u>\$13,534</u>	<u>\$9,608</u>



## MARINEMAX, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Below is a reconciliation of the statutory federal income tax rate to the Company's effective tax rate for the years ended September 30, 1999, 2000 and 2001:

	For the Year Ended September 30, 1999	For the Year Ended September 30, 2000	For the Year Ended September 30, 2001
Federal tax provision	35.0%	35.0%	35.0%
State tax provision, net of federal benefit	4.4%	3.4%	3.0%
Other	0.4%	0.4%	0.5%
	<hr/>	<hr/>	<hr/>
Effective tax rate	39.8%	38.8%	38.5%
	<hr/>	<hr/>	<hr/>

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 components of deferred taxes are as follows:

	September 30, 2000	September 30, 2001
Current deferred tax assets (liabilities):		
Inventories	\$ (428)	\$ (804)
Accrued expenses	134	472
Other	43	61
	<hr/>	<hr/>
Net current deferred tax liabilities	\$ (251)	\$ (271)
	<hr/>	<hr/>
Long-term deferred tax assets (liabilities):		
Depreciation and amortization	\$(1,465)	\$(2,545)
Other	107	115
	<hr/>	<hr/>
Net long-term deferred tax liabilities	\$(1,358)	\$(2,430)
	<hr/>	<hr/>

As of September 30, 2001, the Company estimated that it is more likely than not that it will recognize the benefit of its deferred tax assets and, accordingly, no valuation allowance has been recorded.

#### 10. Stockholders' Equity:

In November 2000, the Company's Board of Directors approved a share repurchase plan allowing the Company to repurchase up to 300,000 shares of its common stock. Under the plan, the Company may buy back common stock from time to time in the open market or in privately negotiated blocks, dependant upon various factors, including price and availability of the shares, and general market conditions. As of September 30, 2001, an aggregate of 81,413 shares of common stock has been repurchased under the plan for an aggregate purchase price of \$0.5 million.

On February 27, 2001, the Company's stockholders authorized an amendment to the Company's certificate of incorporation to reduce the total number of authorized shares of stock from 45.0 million to 25.0 million, consisting of 24.0 million shares of common stock and 1.0 million shares of preferred stock, and authorized the Company's Board of Directors, without further action of stockholders, to increase the total number of shares of stock from the reduced amount to the amount of 45.0 million, consisting of 40.0 million shares of common stock and 5.0 million shares of preferred stock.

## MARINEMAX, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

**11. Stock and Option Plans:**

On April 5, 1998 and April 30, 1998, respectively, the Board of Directors adopted and the stockholders approved the following stock option plans:

*1998 Incentive Stock Plan (the Incentive Stock Plan)* — The Incentive Stock Plan provides for the grant of incentive and non-qualified stock options to acquire common stock of the Company, the direct grant of common stock, the grant of stock appreciation rights and the grant of other cash awards to key personnel, directors, consultants, independent contractors and others providing valuable services to the Company. A maximum of the lesser of 4,000,000 shares or 20% (as amended February 27, 2001) of the then outstanding shares of common stock of the Company may be issued under the Incentive Stock Plan. The Incentive Stock Plan terminates in April 2008, and options may be granted at any time during the life of the Incentive Stock Plan. The date on which options vest and the exercise prices of options are determined by the Board of Directors or the Plan Administrator.

The Incentive Stock Plan also includes an Automatic Grant Program providing for the automatic grant of options (Automatic Options) to non-employee directors of the Company.

*Employee Stock Purchase Plan (the Stock Purchase Plan)* — The Stock Purchase Plan provides for up to 500,000 shares of common stock to be issued, and is available to all regular employees of the Company who have completed at least one year of continuous service.

The Stock Purchase Plan provides for implementation of up to 10 annual offerings beginning on the first day of October in the years 1998 through 2007, 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 \$0.025 million worth of common stock annually.

The Company accounts for its stock-based compensation plans under Accounting Principles Board Opinion No. 25 (APB 25), under which no compensation cost has been recognized. SFAS No. 123, "Accounting for Stock-Based Compensation" (SFAS 123), allows companies to continue following the accounting guidance of APB 25, but requires pro forma disclosure of net income and earnings per share for the effects on compensation expense had the accounting guidance of SFAS 123 been adopted. For SFAS 123 purposes, the fair value of each option grant has been estimated as of the date of grant using the Black-Scholes option-pricing model with the following weighted average assumptions:

	For the Year Ended September 30, 1999	For the Year Ended September 30, 2000	For the Year Ended September 30, 2001
Risk-free interest rate	6.0%	6.3%	4.4%
Dividend yield	0.0%	0.0%	0.0%
Expected life	8.9 years	8.4 years	7.6 years
Volatility	44.9%	41.6%	43.6%

Using these assumptions, the fair value of the stock options granted as of September 30, 1999, 2000, and 2001, is approximately \$7.7 million, \$6.3 million, and \$7.4 million respectively, which would be amortized as compensation expense over the vesting period of the options. Had compensation cost been determined

## MARINEMAX, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

consistent with SFAS 123, utilizing the assumptions detailed above, the Company's net income and net income per share, as reported would have been the following pro forma amounts:

	For the Year Ended September 30, 1999	For the Year Ended September 30, 2000	For the Year Ended September 30, 2001
Net income:			
As reported	\$18,153	\$21,393	\$15,349
Pro forma	\$17,364	\$20,474	\$13,163
Diluted earnings per share:			
As reported	\$ 1.21	\$ 1.41	\$ 1.01
Pro forma	\$ 1.16	\$ 1.35	\$ 0.86

A summary of the status of the Company's stock option plans for the years ended September 30, 1999, 2000 and 2001:

	1999		2000		2001	
	Options	Weighted- Average Exercise Price	Options	Weighted- Average Exercise Price	Options	Weighted- Average Exercise Price
Outstanding beginning of year	1,555,926	\$12.45	1,579,944	\$12.45	2,273,539	\$11.04
Granted	217,030	\$12.36	1,178,070	\$ 9.65	327,772	\$ 8.71
Forfeited	(193,012)	\$12.34	(484,475)	\$12.21	(328,102)	\$10.98
Outstanding end of year	1,579,944	\$12.45	2,273,539	\$11.04	2,273,209	\$10.85

The following table summarizes information about outstanding and exercisable stock options at September 30, 2001:

Range of Exercise Prices	Options Outstanding			Options Exercisable	
	Options	Weighted- Average Remaining Contractual Life in Years	Weighted- Average Exercise Price	Options	Weighted- Average Exercise Price
\$ 7.00- 9.00	580,097	9.1	\$ 8.05	6,669	\$ 8.42
\$ 9.01-11.00	478,603	7.8	\$ 9.84	52,001	\$ 9.99
\$11.01-13.00	1,134,509	6.8	\$12.49	278,564	\$12.49
\$13.01-15.00	80,000	6.7	\$13.75	48,000	\$13.75
	2,273,209	7.6	\$10.85	385,234	\$12.24

Generally, the options granted have a term of 10 years from the grant date and vest 20% per annum beginning at the end of year three.

## MARINEMAX, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

**12. Net Income Per Share:**

The following is a reconciliation of the shares used in the denominator for calculating basic and diluted EPS for the years ended September 30, 1999, 2000 and 2001:

	For the Year Ended September 30, 1999	For the Year Ended September 30, 2000	For the Year Ended September 30, 2001
Weighted average common shares outstanding used in calculating basic earnings per share	14,958,725	15,201,052	15,220,322
Effect of dilutive options	6,002	3,130	18,397
Weighted average common and common equivalent shares used in calculating diluted earnings per share	14,964,727	15,204,182	15,238,719

Options to purchase 1,509,944, 1,803,320, and 1,757,048 shares of common stock were outstanding as of September 30, 1999, 2000 and 2001, respectively, but were not included in the computation of diluted EPS because the options' exercise prices were greater than the average market price of the Company's common stock.

**13. Commitments and Contingencies:***Lease Commitments*

The Company leases certain land, buildings, machinery, equipment and vehicles related to its dealerships under non-cancelable third-party operating leases. Rental payments, including month-to-month rentals, were approximately \$4.8 million, \$5.9 million and \$6.2 million for the years ended September 30, 1999, 2000 and 2001, respectively. Rental payments to related parties under both cancelable and non-cancelable operating leases approximated \$1.4 million, \$1.1 million, and \$0.8 million for the years ended September 30, 1999, 2000 and 2001, respectively.

Future minimum lease payments under non-cancelable operating leases at September 30, 2001, were as follows:

Year Ending September 30,	Amount
2002.	\$ 5,284
2003.	4,225
2004.	3,015
2005.	2,199
2006.	1,967
Thereafter	3,768
Total	\$20,458

*Other Commitments*

The Company is party to various legal actions arising in the ordinary course of business. The ultimate liability, if any, associated with these matters was not determinable at September 30, 2001. While it is not feasible to determine the outcome of these actions at this time, the Company does not believe that these matters will have a material adverse effect on the Company's consolidated financial condition, results of operations or cash flows.

MARINEMAX, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The Company is 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. The Company believes that it is in compliance with such regulations.

**14. Employee 401(k) Profit Sharing Plans:**

Effective January 1, 2001, the Company amended the MarineMax, Inc. 401(k) Profit Sharing Plan (the Plan). Employees are eligible to participate in 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, the Company matches 50% of participants' contributions, subject to a maximum of 5% of each participants' compensation. The Company and its subsidiaries contributed, under the Plan, or pursuant to previous similar plans, amounts ranging from approximately \$0.5 million to approximately \$0.7 million for the years ended September 30, 1999, 2000 and 2001.

**15. Preferred Share Purchase Rights:**

During September 2001, the Company adopted a Stockholders' Rights Plan that may have the effect of deterring, delaying, or preventing a change in control that might otherwise be in the best interests of the Company's stockholders. Under the Rights Plan, a dividend of one Preferred Share Purchase Right was issued for each share of common stock held by the stockholders of record as of the close of business on September 7, 2001. Each right entitles stockholders to purchase, at an exercise price of \$50 per share, one-thousandth of a share of a newly created Series A Junior Participating Preferred Stock.

In general, subject to certain limited exceptions, the stock purchase rights become exercisable when a person or group acquires 15% or more of our common stock or a tender offer or exchange offer for 15% or more of the Company's common stock is announced or commenced. After any such event, other stockholders may purchase additional shares of our common stock at 50% of the then-current market price. The rights will cause substantial dilution to a person or group that attempts to acquire the Company on terms not approved by our board of directors. The rights should not interfere with any merger or other business combination approved by the board of directors since the rights may be redeemed by the Company at \$0.01 per stock purchase right at any time before any person or group acquires 15% or more of the outstanding common stock. The rights expire on August 28, 2011.

The Rights Plan adoption and Rights Distribution is a non-taxable event with no impact on the Company's financial results.

**16. Subsequent Events:**

In October 2001, Brunswick signed a definitive agreement to acquire Hatteras Yachts, Inc. from Genmar Industries. In fiscal 2001, approximately 58% and 12% of the Company's revenue was derived from the sale of new boats manufactured by Brunswick and Hatteras Yachts respectively. No other manufacturer accounted for a significant portion the Company's revenue in fiscal 2001.

Index to Exhibits

Exhibit Number	Exhibit
3.1	Restated Certificate of Incorporation of the Registrant, including all amendments to date
3.2	Amended and Restated Bylaws of the Registrant
3.3	Certificate of Designation of Series A Junior Participating Preferred Stock
4.1	Specimen of Stock Certificate
4.2	Rights Agreement, dated August 28, 2001 between Registrant and American Stock Transfer & Trust Company, as Rights Agent (3)
10.1(a)	Merger Agreement between Registrant and its acquisition subsidiary and Bassett Boat Company of Florida and Richard Bassett(1)
10.1(b)	Merger Agreement between Registrant and its acquisition subsidiary and 11502 Dumas, Inc. d/b/a Louis DelHomme Marine and its stockholders(1)
10.1(c)	Merger Agreement between Registrant and its acquisition subsidiary and Gulfwind USA, Inc. and its stockholders(1)
10.1(d)	Merger Agreement between Registrant and its acquisition subsidiary and Gulfwind South, Inc. and its stockholders(1)
10.1(e)	Merger Agreement between Registrant and its acquisition subsidiary and Harrison’s Boat Center, Inc. and its stockholders(1)
10.1(f)	Merger Agreement between Registrant and its acquisition subsidiary and Harrison’s Marine Centers of Arizona, Inc. and its stockholders(1)
10.1(g)	Merger Agreement between Registrant and its acquisition subsidiary and Stovall Marine, Inc. and its stockholders(1)
10.1(h)	Agreement of Merger and Plan of Reorganization dated as of the 7th day of July, 1998 by and among MarineMax, Inc., C & N Acquisition Corp. (a subsidiary of MarineMax, Inc.), C & N Marine Corporation and the Stockholders named therein(2)
10.1(i)	Agreement of Merger and Plan of Reorganization dated as of the 7th day of July, 1998 by and among MarineMax, Inc., Cochran’s Acquisition Corp. (a subsidiary of MarineMax, Inc.), Cochran’s Marine, Inc. and the Stockholders named therein(2)
10.1(j)	Asset Purchase Agreement between Registrant and Treasure Cove Marina, Inc.(3)
10.2(a)	Contribution Agreement between Registrant and Bassett Boat Company and its owner(1)
10.2(b)	Contribution Agreement between Registrant and Bassett Realty, L.L.C. and its owner(1)
10.2(c)	Contribution Agreement between Registrant and Gulfwind South Realty, L.L.C. and its owners(1)
10.2(d)	Contribution Agreement between Registrant and Harrison’s Realty, L.L.C. and its owners(1)
10.2(e)	Contribution Agreement between Registrant and Harrison’s Realty California, L.L.C. and its owners(1)
10.3(a)	Employment Agreement between Registrant and William H. McGill Jr.(1)
10.3(b)	Employment Agreement between Registrant and Michael H. McLamb(1)
10.3(c)	Employment Agreement between Registrant and Richard R. Bassett(1)
10.3(d)	Employment Agreement between Registrant and Paul Graham Stovall(1)
10.3(e)	Employment Agreement between Registrant and David L. Cochran(4)
10.3(f)	Employment Agreement between Registrant and David H. Pretasky(4)
10.4	1998 Incentive Stock Plan, as amended through November 15, 2000
10.5	1998 Employee Stock Purchase Plan(1)
10.6	Settlement Agreement between Brunswick Corporation and Registrant(1)
10.7	Letter of Intent between Registrant and Stovall(1)
10.8	Restated Agreement Relating to the Purchase of MarineMax Common Stock between Registrant and Brunswick Corporation, dated as of April 28, 1998(1)



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Exhibit Number	Exhibit
10.9	Stockholders' Agreement among Registrant, Brunswick Corporation, and Senior Founders of Registrant, dated April 28, 1998(1)
10.10	Governance Agreement between Registrant and Brunswick Corporation, dated April 28, 1998(1)
10.11	Agreement Relating to Acquisitions between Registrant and Brunswick Corporation, dated April 28, 1998(1)
10.12	Form of Sea Ray Sales and Service Agreement(1)
10.13	Loan and Security Agreement between Registrant and NationsCredit Distribution Finance, Inc.(1)
10.14	Guaranty and Security Agreement of NationsCredit Distribution Finance, Inc.(1)
10.15	Guaranty and Security Agreement of NationsCredit Distribution Finance, Inc. by Stovall Marine, Inc.(1)
10.16	Credit Facility and Security Agreement, Accounts and Inventory between the Registrant and Key Bank National Association(5)
21	List of Subsidiaries
23.1	Consent of Arthur Andersen LLP

- (1) Incorporated by reference to Registration Statement on Form S-1 (Registration 333-47873).
- (2) Incorporated by reference to Registrant's Current Report on Form 8-K dated July 7, 1998, as filed on July 20, 1998.
- (3) Incorporated by reference to Registrant's Form 8-K Report dated September 30, 1998, as filed on October 20, 1998.
- (4) Incorporated by reference to Registrant's Form 10-K for the year ended September 30, 1998, as filed on December 9, 1998.
- (5) Incorporated by reference to Registrant's Form 10-K for the year ended September 30, 1999, as filed on December 29 1999.
- (6) Incorporated by reference to Registration Statement on Form 8-A as filed on September 5, 2001.

### Exhibit 3.1

## RESTATED CERTIFICATE OF INCORPORATION OF MARINEMAX, INC.

1. The name of the corporation (which is hereinafter referred to as the "Corporation") is MarineMax, Inc.
2. The original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on January 23, 1998, under the name MarineMax, Inc.
3. This Restated Certificate of Incorporation has been duly proposed by resolutions adopted and declared advisable by the Board of Directors of the Corporation, by written consent action given to the stockholders of the Corporation, and duly adopted, executed and acknowledged by an officer of the Corporation in accordance with the provisions of Sections 103, 228(d), 242 and 245 of the General Corporation Law of the State of Delaware and, restates, integrates and amends the provisions of the Certificate of Incorporation of the Corporation and, upon filing with the Secretary of State in accordance with Section 103, shall thenceforth supersede the original Certificate of Incorporation and shall, as it may thereafter be amended in accordance with its terms and applicable law, be the Certificate of Incorporation of the Corporation.
4. The text of the original Certificate of Incorporation of the Corporation is hereby amended and restated to read in its entirety as follows:

### ARTICLE I NAME

The name of the Corporation is: MarineMax, Inc.

### ARTICLE II REGISTERED OFFICE

The address of the registered office of the Corporation in the State of Delaware is The Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801, and the name of the Corporation's registered agent at that address is The Corporation Trust Company.

**ARTICLE III  
BUSINESS**

The purposes of the Corporation shall be to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended (the "GCL").

**ARTICLE IV.  
AUTHORIZED CAPITAL STOCK**

The total number of shares of stock that the Corporation shall have the authority to issue is Forty-five Million (45,000,000), consisting of Forty Million (40,000,000) shares of Common Stock, par value \$.001 per share ("Common Stock") and Five Million (5,000,000) shares of Preferred Stock, par value \$.001 per share ("Preferred Stock").

The Preferred Stock may be issued from time to time in one or more series. The Board of Directors of the Corporation (the "Board") is hereby authorized to provide for the issuance of shares of Preferred Stock in one or more series and, by filing a certificate pursuant to the GCL (hereinafter referred to as "Preferred Stock Designation"), to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and the relative, participating, optional or other rights of the shares of each such series and the qualifications, limitations and restrictions thereof. The authority of the Board with respect to each series shall include, but not be limited to, determination of the following:

- A. the designation of the series, which may be by distinguishing number, letter or title;
- B. the number of shares of the series, which number the Board may thereafter (except where otherwise provided in the Preferred Stock Designation) increase or decrease (but not below the number of shares thereof then outstanding);
- C. whether dividends, if any, shall be cumulative or noncumulative and the rights with respect to dividends of the series;
- D. the redemption rights and price or prices, if any, for shares of the series;
- E. the terms and amount of any sinking fund provided for the purchase or redemption of shares of the series;

F. the amounts payable on, and the preferences, if any, of shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation;

G. whether the shares of the series shall be convertible into shares of any other class or series, or any other security, of the Corporation or any other corporation, and, if so, the specification of such other class or series of such other security, the conversion price or prices or rate or rates, any adjustments thereof, the date or dates at which such shares shall be convertible and all other terms and conditions upon which such conversion may be made;

H. restrictions on the issuance of shares of the same series or of any other class or series; and

I. the voting rights, if any, of the holders of shares of the series.

The Common Stock shall be subject to the express terms of the Preferred Stock and any series thereof. The holders of shares of Common Stock shall be entitled to one (1) vote for each such share upon all questions presented generally to the stockholders.

The number of authorized shares of Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority in voting power of the stock of the Corporation entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the GCL, and no vote of the holders of either the Common Stock or the Preferred Stock voting separately as a class shall be required therefor.

## **ARTICLE V ELECTION OF DIRECTORS**

A. The business and affairs of the Corporation shall be conducted and managed by, or under the direction of, the Board. Subject to any rights to elect directors set forth in any Preferred Stock Designation, the total number of directors constituting the entire Board shall be not less than one (1) nor more than fifteen (15), with the then-designated number of directors being fixed from time to time by or pursuant to a resolution passed by the Board. Members of the Board shall hold office until their successors are elected and qualified or until their earlier death, resignation, disqualification or removal.

B. Unless and except to the extent that the Bylaws of the Corporation shall so require, the election of directors of the Corporation need not be by written ballot.

C. Except as otherwise provided for or fixed pursuant to the provisions of Article IV of this Restated Certificate of Incorporation relating to the rights of the holders of any

series of Preferred Stock to elect additional directors, and subject to the provisions hereof, newly created directorships resulting from any increase in the authorized number of directors, and any vacancies on the Board resulting from death, resignation, disqualification, removal, or other cause, may be filled only by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board. No decrease in the number of directors constituting the Board shall shorten the term of any incumbent director.

D. During any period when the holders of any series of Preferred Stock have the right to elect additional directors as provided for or fixed pursuant to the provisions of Article IV of this Restated Certificate of Incorporation, then upon commencement and for the duration of the period during which such right continues (1) the then otherwise total designated number of directors of the Corporation shall automatically be increased by such specified number of directors, and the holders of such series of Preferred Stock shall be entitled to elect the additional directors so provided for or fixed pursuant to said provisions, and (2) each such additional director shall serve until such director's successor shall have been duly elected and qualified, or until such director's right to hold such office terminates pursuant to said provisions, whichever occurs earlier, subject to the provisions of any Preferred Stock Designation and to his or her earlier death, disqualification, resignation or removal. Except as otherwise provided by the Board in the resolution or resolutions establishing such series, whenever the holders of any series of Preferred Stock having such right to elect additional directors are divested of such right pursuant to the provisions of such stock, the terms of office of all such additional directors elected by the holders of such stock, or elected to fill any vacancies resulting from the death, resignation, disqualification or removal of such additional directors, shall forthwith terminate and the total designated number of directors of the Corporation shall be reduced accordingly.

E. Except for such additional directors, if any, as are elected by the holders of any series of Preferred Stock as provided for or fixed pursuant to the provisions of Article IV of this Restated Certificate of Incorporation, any director may be removed from office only with cause and only by the affirmative vote of sixty six and two-thirds percent (66 2/3%) or more of the combined voting power of the then issued and outstanding shares of capital stock of the Corporation entitled to vote in the election of directors, voting together as a single class.

## **ARTICLE VI MEETINGS OF STOCKHOLDERS**

A. Meetings of stockholders of the Corporation may be held within or without the State of Delaware, as the Bylaws of the Corporation may provide. Except as otherwise provided for or fixed pursuant to the provisions of Article IV of this Restated Certificate of Incorporation relating to the rights of the holders of any series of Preferred Stock, special meetings of stockholders of the Corporation may be called only by the Chairman of the Board, or by the Board pursuant to a resolution adopted by the Board. Special meetings of stockholders may not be called by any other person or persons or in any other manner.

B. In addition to the powers conferred on the Board by this Restated Certificate of Incorporation and by the GCL, and without limiting the generality thereof, the Board is specifically authorized from time to time, by resolution of the Board without additional authorization by the stockholders of the Corporation, to adopt, amend or repeal the Bylaws of the Corporation, in such form and with such terms as the Board may determine, including, without limiting the generality of the foregoing, Bylaws relating to: (1) regulation of the procedure for submission by stockholders of nominations of persons to be elected to the Board; (2) regulation of the attendance at annual or special meetings of the stockholders of persons other than holders of record or their proxies; and (3) regulation of the business that may properly be brought by a stockholder of the Corporation before an annual or special meeting of stockholders of the Corporation.

#### **ARTICLE VII STOCKHOLDER CONSENT**

Except as otherwise provided for or fixed pursuant to the provisions of Article IV relating to the rights of holders of any series of Preferred Stock, no action that is required or permitted to be taken by the stockholders of the Corporation at any annual or special meeting of stockholders may be effected by written consent of stockholders in lieu of a meeting of stockholders, unless the action to be effected by written consent of stockholders and the taking of such action by such written consent have expressly been approved in advance by the Board.

#### **ARTICLE VIII LIMITATION OF LIABILITY**

A director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the GCL.

Any repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a director of the Corporation existing hereunder with respect to any act or omission occurring prior to such repeal or modification.

#### **ARTICLE IX BUSINESS COMBINATIONS; FAIR PRICE**

A. In addition to any affirmative vote required by law or this Restated Certificate of Incorporation, and except as otherwise expressly provided in paragraph B of this Article IX:

1. any merger or consolidation of the Corporation or any Subsidiary (as hereinafter

defined) with (a) any Interested Stockholder (as hereinafter defined), or (b) any other corporation, partnership or other entity (whether or not itself an Interested Stockholder) which is, or after such merger or consolidation would be, an Affiliate (as hereinafter defined) of an Interested Stockholder, other than a merger enacted in accordance with Section 253 of the GCL; or

2. any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) to or with any Interested Stockholder, including all Affiliates of the Interested Stockholder, of any assets of the Corporation or any Subsidiary having an aggregate Fair Market Value (as hereinafter defined) of ten million dollars (\$10,000,000) or more; or

3. the issuance or transfer by the Corporation or any Subsidiary (in one transaction or a series of transactions) of any securities of the Corporation or any Subsidiary to any Interested Stockholder, including all Affiliates of the Interested Stockholder, in exchange for cash, securities or other property (or a combination thereof) having an aggregate Fair Market Value of ten million dollars (\$10,000,000) or more (other than on a pro rata basis to all holders of Voting Stock, as hereinafter defined, of the same class or series of Voting Stock held by the Interested Stockholder pursuant to a stock split, reclassification, stock dividend or distribution of warrants or rights and other than in connection with the exercise or conversion of securities exercisable for or convertible into securities of the Corporation of any of its Subsidiaries which securities have been distributed pro rata to all holders of Voting Stock); or

4. the adoption of any plan or proposal for the liquidation or dissolution of the Corporation proposed by or on behalf of an Interested Stockholder or any Affiliates of an Interested Stockholder; or

5. any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries or any other transaction (whether or not an Interested Stockholder is a party thereto) which has the effect, directly or indirectly, of increasing the proportionate share by more than one percent (1%) of the issued and outstanding shares of any class or series of equity or convertible securities of the Corporation or any Subsidiary which are directly or indirectly owned by any Interested Stockholder or one or more Affiliates of the Interested Stockholder, other than a merger enacted in accordance with Section 253 of the GCL;

shall require the affirmative vote of the holders of at least sixty six and two-thirds percent (66 2/3%) of the voting power of the then issued and outstanding Voting Stock, voting together as a single class, and, to the extent not prohibited by the provisions of the GCL, the affirmative

vote of the holders of at least sixty six and two-thirds percent (66 2/3%) of the voting power of the then issued and outstanding Voting Stock not Beneficially Owned (as hereinafter defined) directly or indirectly by an Interested Stockholder or any Affiliate of any Interested Stockholder. Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that a lesser percentage may be permitted, by law or in any agreement with any national securities exchange or otherwise.

B. The provisions of Section A of this Article IX shall not be applicable to any particular Business Combination (as hereinafter defined), and such Business Combination shall require only such affirmative vote as is required by law or any other provision of this Restated Certificate of Incorporation, if the conditions specified in either of the following paragraphs 1 or 2 are met:

1. the Business Combination shall have been approved by a majority of the Continuing Directors (as hereinafter defined); or

2. all of the following price and procedural conditions shall have been met:

(a) the aggregate amount of the cash and the Fair Market Value as of the date of the consummation of the Business Combination of consideration other than cash, to be received per share by the holders of Common Stock in such Business Combination, shall be at least equal to the highest of the following:

(i) (if applicable) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Stockholder for any shares of Common Stock acquired by it (A) within the three (3) year period immediately prior to the first public announcement of the proposal of such Business Combination (the "Announcement Date"), or (B) in the transaction in which it became an Interested Stockholder, whichever is higher;

(ii) the Fair Market Value per share of Common Stock on the Announcement Date or on the date on which the Interested Stockholder became an Interested Stockholder (the "Determination Date"), whichever is higher; and

(iii) (if applicable) the price per share equal to the Fair Market Value per share of Common Stock determined pursuant to paragraph 2(a)(ii) above, multiplied by the ratio of (A) the highest price per share (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Stockholder for any shares

of Common Stock acquired by it within the three (3) year period immediately prior to the Announcement Date to (B) the Fair Market Value per share of Common Stock on the first day in such three (3) year period upon which the Interested Stockholder acquired any shares of Common Stock; and

(b) the aggregate amount of the cash and the Fair Market Value as of the date of the consummation of the Business Combination of consideration other than cash to be received per share by holders of shares of any other class or series, other than Common Stock or Excluded Preferred Stock (as hereinafter defined), of issued and outstanding Voting Stock shall be at least equal to the highest of the following (it being intended that the requirements of this paragraph 2(b) shall be required to be met with respect to every such class or series of issued and outstanding Voting Stock, whether or not the Interested Stockholder has previously acquired any shares of a particular class of Voting Stock):

(i) (if applicable) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Stockholder for any shares of such class or series of Voting Stock acquired by it (A) within the three (3) year period immediately prior to the Announcement Date, or (B) in the transaction in which it became an Interested Stockholder, whichever is higher;

(ii) (if applicable) the highest preferential amount per share to which the holders of shares of such class or series of Voting Stock are entitled in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation;

(iii) the Fair Market Value per share of such class or series of Voting Stock on the Announcement Date or on the Determination Date, whichever is higher; and

(iv) (if applicable) the price per share equal to the Fair Market Value per share of such class of Voting Stock determined pursuant to paragraph 2(b)(iii) above, multiplied by the ratio of (A) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Stockholder for any shares of such class or series of Voting Stock acquired by it within the three (3) year period immediately prior to the Announcement Date to (B) the Fair Market Value per share of such class of Voting Stock on the first day in such three (3) year period upon which the Interested Stockholder acquired any shares of such class of Voting Stock; and



(c) the consideration to be received by holders of a particular class or series of issued and outstanding Voting Stock (including Common Stock and other than Excluded Preferred Stock) shall be in cash or in the same form as the Interested Stockholder has previously paid for shares of such class or series of Voting Stock (if the Interested Stockholder has paid for shares of any class of Voting Stock with varying forms of consideration, the form of consideration for such class or series of Voting Stock shall be either cash or the form used to acquire the largest number of shares of such class or series of Voting Stock previously acquired by it); and

(d) after such Interested Stockholder has become an Interested Stockholder and prior to the consummation of such Business Combination: (i) there shall have been no failure to declare and pay at the regular date therefor any full quarterly dividends (whether or not cumulative) on any issued and outstanding shares of Preferred Stock, except as approved by a majority of the Continuing Directors; (ii) there shall have been no reduction in the annual rate of dividends paid on the Common Stock (except as necessary to reflect any subdivision of the Common Stock), except as approved by a majority of the Continuing Directors; (iii) there shall have been an increase in the annual rate of dividends as necessary fully to reflect any recapitalization (including any reverse stock split), reorganization or any similar reorganization which has the effect of reducing the number of issued and outstanding shares of the Common Stock, unless the failure so to increase such annual rate is approved by a majority of the Continuing Directors; and (iv) such Interested Stockholder shall not have become the Beneficial Owner of any additional Voting Stock except as part of the transaction which results in such Interested Stockholder becoming an Interested Stockholder; and

(e) after such Interested Stockholder has become an Interested Stockholder, such Interested Stockholder shall not have received the benefit, directly or indirectly (except proportionately as a stockholder), of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by the Corporation, whether in anticipation of or in connection with such Business Combination or otherwise; and

(f) a proxy or information statement describing the proposed Business Combination and complying with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder (or any subsequent provisions replacing such Act, rules or regulations) shall be mailed to stockholders of the Corporation at least thirty (30) days prior to the consummation of such Business Combination (whether or not such proxy or

information statement is required to be made pursuant to such Act or subsequent provisions).

C. For purposes of this Article IX the following terms shall have the following meanings:

1. "Affiliate" or "Associate" shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended from time to time.

2. "Beneficial Owner" shall have the meaning ascribed to such term in Rule 13d-3 of the General Rules and Regulations of the Securities Exchange Act of 1934, as amended from time to time. In addition, a Person shall be the "Beneficial Owner" of any Voting Stock which such Person or any of its Affiliates or Associates has: (a) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; or (b) the right to vote pursuant to any agreement, arrangement or understanding (but neither such Person nor any such Affiliate or Associate shall be deemed to be the Beneficial Owner of any shares of Voting Stock solely by reason of a revocable proxy granted for a particular meeting of the stockholders, pursuant to a public solicitation of proxies for such meeting, and with respect to which shares neither such Person nor any such Affiliate of Associate is otherwise deemed the Beneficial Owner).

3. "Business Combination" shall mean any transaction described in any one or more of clauses (1) through (5) of Section A of this Article IX.

4. "Continuing Director" shall mean any member of the Board who is unaffiliated with and is not the Interested Stockholder and was a member of the Board prior to the time that the Interested Stockholder became an Interested Stockholder, and any director who is thereafter chosen to fill any vacancy on the Board or who is elected and who, in either event, is unaffiliated with the Interested Stockholder and in connection with his or her initial assumption of office is recommended for appointment or election by a majority of Continuing Directors then on the Board.

5. "Excluded Preferred Stock" means any series of Preferred Stock with respect to which a majority of the Continuing Directors have approved a Preferred Stock Designation creating such series that expressly provides that the provisions of this Article IX shall not apply.

6. "Fair Market Value" shall mean: (a) in the case of stock, the highest closing sale price during the thirty (30) day period immediately preceding the date in question of a share of such stock on the Composite Tape for New York Stock Exchange listed

stocks, or, if such stock is not quoted on the composite tape, on the New York Stock Exchange, or, if such stock is not listed on such exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which such stock is listed, or, if such stock is not listed on any such exchange, the highest closing bid quotation with respect to a share of such stock during the thirty (30) day period preceding the date in question on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use in its stead, or if no such quotations are available, the fair market value on the date in question of a share of such stock as determined by the Board in accordance with Section D of this Article IX; and (b) in the case of property other than cash or stock, the fair market value of such property on the date in question as determined by the Board in accordance with Section D of this Article IX.

7. "Interested Stockholder" shall mean any Person to or which:

(a) itself, or along with its Affiliates, is the Beneficial Owner, directly or indirectly, of more than fifteen percent (15%) of the then issued and outstanding Voting Stock; or

(b) is an Affiliate of the Corporation and at any time within the three (3) year period immediately prior to the date in question was itself, or along with its Affiliates, the Beneficial Owner, directly or indirectly, of fifteen percent (15%) or more of the then issued and outstanding Voting Stock; or

(c) is an assignee of or has otherwise succeeded to any Voting Stock which was at any time within the three (3) year period immediately prior to the date in question beneficially owned by an Interested Stockholder, if such assignment or succession shall have occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the Securities Act of 1933.

For the purpose of determining whether a Person is an Interested Stockholder pursuant to paragraph 7 of this Section C, the number of shares of Voting Stock deemed to be issued and outstanding shall include shares deemed owned through application of paragraph 2 of this Section C but shall not include any other shares of Voting Stock that may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options or otherwise.

Notwithstanding anything to the contrary contained in this Restated Certificate of Incorporation, for purposes of this Restated Certificate of Incorporation, the term "Interested Stockholder" shall not, for any purpose, include, and the provisions of Article IX(A) hereof shall not apply to: (a) the Corporation or any Subsidiary; or (b) any employee stock ownership plan of the Corporation or any Subsidiary.

8. In the event of any Business Combination in which the Corporation survives, the phrase "other consideration to be received" as used in paragraphs 2(a) and (b) and paragraph B of this Article IX shall include the shares of Common Stock and/or the shares of any other class of issued and outstanding Voting Stock retained by the holders of such shares.

9. "Person" shall mean any individual, firm, corporation, partnership or other entity.

10. "Subsidiary" shall mean any corporation or other entity of which the Corporation owns, directly or indirectly, securities that enable the Corporation to elect a majority of the board of directors or other persons performing similar functions of such corporation or entity or that otherwise give to the Corporation the power to control such corporation or entity.

11. "Voting Stock" means all issued and outstanding shares of capital stock of the Corporation that pursuant to or in accordance with this Restated Certificate of Incorporation are entitled to vote generally in the election of directors of the Corporation, and each reference herein, where appropriate, to a percentage or portion of shares of Voting Stock shall refer to such percentage or portion of the voting power of such shares entitled to vote. The issued and outstanding shares of Voting Stock shall not include any shares of Voting Stock that may be issuable pursuant to any agreement, or upon the exercise or conversion of any rights, warrants or options or otherwise.

D. The Continuing Directors of the Corporation shall have the power and duty to determine for the purposes of this Article IX, on the basis of information known to them after reasonable inquiry, all facts necessary to determine compliance with this Article IX, including, without limitation: (i) whether a Person is an Interested Stockholder; (ii) the number of shares of Voting Stock beneficially owned by any Person; (iii) whether a Person is an Affiliate or Associate of another; (iv) whether the applicable conditions set forth in paragraph 2 of paragraph B of this Article IX have been met with respect to any Business Combination; (v) the Fair Market Value of stock or other property in accordance with paragraph 6 of paragraph C of this Article IX; and (vi) whether the assets which are the subject of any Business Combination have, or the consideration to be received for the issuance or transfer of securities by the Corporation or any Subsidiary in any Business Combination has, an aggregate Fair Market Value of ten million dollars (\$10,000,000) or more.

E. Nothing contained in this Article IX shall be construed to relieve any Interested Stockholder from any fiduciary obligation imposed by law.

**ARTICLE X.  
AMENDMENT OF CORPORATE DOCUMENTS**

A. In addition to any affirmative vote required by applicable law and in addition to any vote of the holders of any series of Preferred Stock provided for or fixed pursuant to the provisions of Article IV of this Restated Certificate of Incorporation, any alteration, amendment, repeal or rescission (a "Change") of any provision of this Restated Certificate of Incorporation must be approved by at least a majority of the then serving directors and by the affirmative vote of the holders of at least a majority of the combined voting power of the issued and outstanding shares of Voting Stock, voting together as a single class; provided, however, that if any such Change relates to Articles V, VI, VII, VIII, IX, XI or XII hereof or to this Article X, such Change must also be approved by the affirmative vote of the holders of at least sixty six and two-thirds percent (66 2/3%) of the combined voting power of the issued and outstanding shares of Voting Stock, voting together as a single class.

Subject to the provisions hereof, the Corporation reserves the right at any time, and from time to time, to amend, alter, repeal or rescind any provision contained in this Restated Certificate of Incorporation in the manner now or hereafter prescribed by law, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereinafter prescribed by law; and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this Restated Certificate of Incorporation in its present form or as hereafter amended are granted subject to the rights reserved in this Article X.

B. In addition to any affirmative vote required by law, any Change of the Bylaws of the Corporation may be adopted either: (i) by the Board; or (ii) by the stockholders by the affirmative vote of the holders of at least sixty six and two-thirds percent (66 2/3%) of the combined voting power of the issued and outstanding shares of Voting Stock, voting together as a single class.

**ARTICLE XI.  
BOARD CONSIDERATIONS UPON SIGNIFICANT EVENTS**

The Board, when evaluating any (A) tender offer or invitation for tenders, or proposal to make a tender offer or request or invitation for tenders, by another party, for any equity security of the Corporation, or (B) proposal or offer by another party to (1) merge or consolidate the Corporation or any subsidiary with another corporation or other entity, (2) purchase or otherwise acquire all or a substantial portion of the properties or assets of the Corporation or any subsidiary, or sell or otherwise dispose of to the Corporation or any subsidiary all or a substantial portion of the properties or assets of such other party, or (3) liquidate, dissolve, reclassify the securities of, declare an extraordinary dividend of, recapitalize

or reorganize the Corporation, may take into account all factors that the Board deems relevant, including, without limitation, to the extent so deemed relevant, the potential impact on employees, customers, suppliers, partners, joint venturers and other constituents of the Corporation and the communities in which the Corporation operates.

**ARTICLE XII**  
**STRUCTURE OF BOARD OF DIRECTORS**

A. The Board (other than those directors elected by the holders of any series of Preferred Stock provided for or fixed pursuant to the provisions of Article IV hereof ("Preferred Stock Directors")) shall be divided into three classes, as nearly equal in number as possible, designated Class I, Class II and Class III. Class I directors shall initially serve until the 1999 meeting of stockholders; Class II directors shall initially serve until the 2000 meeting of stockholders; and Class III directors shall initially serve until the 2001 meeting of stockholders. Commencing with the annual meeting of stockholders in 1999, directors of each class, the term of which shall then expire, shall be elected to hold office for a three-year term and until the election and qualification of their respective successors in office. In case of any increase or decrease, from time to time, in the number of directors (other than Preferred Stock Directors), the number of directors in each class shall be apportioned as nearly equal as possible.

B. Any director chosen to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall be elected and qualified or until their earlier death, resignation, disqualification or removal.

IN WITNESS WHEREOF, this Restated Certificate of Incorporation has been signed this 5th day of March, 1998.

**MARINEMAX, INC.**

*By: /s/ William H. McGill*

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*William (Bill) H. McGill, Jr., President*

**CERTIFICATE OF AMENDMENT  
OF  
RESTATED CERTIFICATE OF INCORPORATION  
OF  
MARINEMAX, INC.**

MarineMax, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify:

FIRST: That the Board of Directors of the Corporation, by the unanimous written consent of its members, adopted a resolution proposing and declaring advisable a proposed amendment to the Restated Certificate of Incorporation of the Corporation, amending Article IV thereof to read as follows:

**"ARTICLE IV  
AUTHORIZED CAPITAL STOCK**

The total number of shares of stock that the Corporation shall have the authority to issue is Twenty-Five Million (25,000,000), consisting of Twenty-Four Million (24,000,000) shares of Common Stock, par value \$.001 per share ("Common Stock") and One Million (1,000,000) shares of Preferred Stock, par value \$.001 per share ("Preferred Stock").

The Board of Directors of the Corporation (the "Board") is hereby authorized to increase the total number of authorized shares to any amount consisting of any greater number of Common Stock or Preferred Stock so long as such amounts do not exceed Forty-Five Million (45,000,000), consisting of Forty Million (40,000,000) shares of Common Stock and Five Million (5,000,000) shares of Preferred Stock, by filing a certificate of amendment pursuant to the General Corporation Law of the State of Delaware (the "GCL").

The Preferred Stock may be issued from time to time in one or more series. The Board is hereby authorized to provide for the issuance of shares of Preferred Stock in one or more series and, by filing a certificate pursuant to the GCL (hereinafter referred to as "Preferred Stock Designation"), to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences, and the relative, participating, optional, or other rights of the shares of each such series and the

qualifications, limitations, and restrictions thereof. The authority of the Board with respect to each series shall include, but not be limited to, determination of the following:

- A. the designation of the series, which may be by distinguishing number, letter or title;
- B. the number of shares of the series, which number the Board may thereafter (except where otherwise provided in the Preferred Stock Designation) increase or decrease (but not below the number of shares thereof then outstanding);
- C. whether dividends, if any, shall be cumulative or noncumulative and the rights with respect to dividends of the series;
- D. the redemption rights and price or prices, if any, for shares of the series;
- E. the terms and amount of any sinking fund provided for the purchase or redemption of shares of the series;
- F. the amounts payable on, and the preferences, if any, of shares of the series in the event of any voluntary or involuntary liquidation, dissolution, or winding up of the affairs of the Corporation;
- G. whether the shares of the series shall be convertible into shares of any other class or series, or any other security, of the Corporation or any other corporation, and, if so, the specification of such other class or series of such other security, the conversion price or prices or rate or rates, any adjustments thereof, the date or dates at which such shares shall be convertible and all other terms and conditions upon which such conversion may be made;
- H. restrictions on the issuance of shares of the same series or of any other class or series; and
- I. the voting rights, if any, of the holders of shares of the series.

The Common Stock shall be subject to the express terms of the Preferred Stock and any series thereof. The holders of shares of Common Stock shall be entitled to one (1) vote for each such share upon all questions presented generally to the stockholders.

The number of authorized shares of Common Stock or Preferred Stock may be increased or decreased (but not below the



number of shares thereof then outstanding) by the affirmative vote of the holders of a majority in voting power of the stock of the Corporation entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the GCL of the State of Delaware, and no vote of the holders of either the Common Stock or the Preferred Stock voting separately as a class shall be required therefor."

SECOND: That the aforesaid amendment to Article IV of the Restated Certificate of Incorporation was duly adopted and approved by the affirmative vote of the stockholders of the Corporation entitled to vote thereon, in accordance with the provisions of the Restated Certificate of Incorporation.

THIRD: That the aforesaid amendment was duly adopted in accordance with the applicable provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, MarineMax, Inc. has caused this Certificate of Amendment to Restated Certificate of Incorporation to be signed by William H. McGill, its Chief Executive Officer, as of the 28th day of February, 2001.

**MARINEMAX, INC.**

*By: /s/ William H. McGill*

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*William H. McGill,  
Chief Executive Officer*

**Exhibit 3.2**

**AMENDED AND RESTATED**

**BYLAWS**

**OF**

**MARINEMAX, INC.**

**ADOPTED AS OF NOVEMBER 13, 2001**

**AMENDED AND RESTATED**

**BYLAWS**

**OF**

**MARINEMAX, INC.**

**ARTICLE I**

**STOCKHOLDERS**

Section 1.1 Place of Meetings. Meetings of stockholders shall be held at the place, either within or without the State of Delaware, as may be designated by resolution of the Board of Directors from time to time.

Section 1.2 Annual Meetings. If required by applicable law, an annual meeting of the stockholders shall be held for the election of directors at such date, time and place, either with or without the State of Delaware, as may be designated by resolution of the Board of Directors from time to time. Any other proper business may be transacted at the annual meeting.

Section 1.3 Special Meetings. Except as otherwise provided for or fixed pursuant to the Certificate of Incorporation relating to the rights of the holders of any series of preferred stock of the corporation, special meetings of stockholders may be called only by the Chairman of the Board of Directors, or by the Board of Directors pursuant to a resolution adopted by the Board of Directors, and may not be called by any other person or persons or in any other manner.

Section 1.4 Notice of Meetings. Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law, the Certificate of Incorporation or these Bylaws, the written notice of any meeting shall be given no less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting. If mailed, such notice shall be deemed to be given when deposited in the mail, postage prepaid, directed to the stockholder at his or her address as it appears on the records of the corporation.

Section 1.5 Adjournments. Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 1.6 Quorum. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, at each meeting of stockholders the presence in person or by proxy of the holders of shares of stock having a majority of the votes which could be cast by the holders of all outstanding shares of stock entitled to vote at the meeting shall be necessary and sufficient to constitute a quorum. In the absence of a quorum, the stockholders so present may, by majority vote, adjourn the meeting from time to time in the manner provided in Section 1.5 of these Bylaws until a quorum shall attend. Shares of its own stock belonging to the corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

Section 1.7 Organization. Meetings of stockholders shall be presided over by the Chairman of the Board, if any, or in his or her absence by the Vice Chairman of the Board, if any, or in his or her absence by the President, or in his or her absence by a Vice President, or in the absence of the foregoing persons by a chairman designated by the Board of Directors, or in the absence of such designation by a chairman chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairman of the meeting may appoint any person to act as secretary of the meeting. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the person presiding over any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the presiding officer of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The presiding officer at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding officer should so determine, such person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 1.8 Voting; Proxies. Except as otherwise provided by the Certificate of Incorporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of stock held by him which has voting power upon the matter in

question. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for him by proxy, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or another duly executed proxy bearing a later date with the Secretary of the corporation. Voting at meetings of stockholders need not be by written ballot and need not be conducted by inspectors of election unless so determined by the holders of shares of stock having a majority of the votes which could be cast by the holders of all outstanding shares of stock entitled to vote thereon which are present in person or by proxy at such meeting. At all meetings of stockholders for the election of directors a plurality of the votes cast shall be sufficient to elect. All other elections and questions shall, unless otherwise provided by law, the Certificate of Incorporation or these Bylaws, be decided by the vote of the holders of shares of stock having a majority of the votes which could be cast by the holders of all shares of stock entitled to vote thereon which are present in person or represented by proxy at the meeting.

Section 1.9 Filing Date for Determination of Stockholders of Record. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date: (1) in the case of determination of stockholders entitled to vote at any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting; (2) in the case of determination of stockholders entitled to express consent to corporate action in writing without a meeting, shall not be more than ten (10) days from the date upon which the resolution fixing the record date is adopted by the Board of Directors; and (3) in the case of any other action, shall not be more than sixty (60) days prior to such other action. If no record date is fixed: (1) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; (2) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting when no prior action of the Board of Directors is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation in accordance with applicable law, or, if prior action by the Board of Directors is required by law, shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action; and (3) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 1.10 List of Stockholders Entitled to Vote. The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, as required by applicable law. Upon the willful neglect or refusal of the directors to produce such list at any meeting for the election of directors held at a place, or to open such a list to examination on a reasonably accessible electronic network during any meeting for the election of directors held solely by means of remote communication, they shall be ineligible for election to any office at such meeting. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list of stockholders or the books of the corporation, or to vote in person or by proxy at any meeting of stockholders.

Section 1.11 Action by Consent of Stockholders. Unless otherwise restricted by the Certificate of Incorporation, any action required or permitted to be taken at any annual or special meeting of the stockholders may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

Section 1.12 Notice of Stockholder Business and Nominations.

(A) Annual Meetings of Stockholders. (1) Nominations of persons for election to the Board of Directors of the corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders only (a) pursuant to the corporation's notice of meeting (or any supplement thereto), (b) by or at the direction of the Board of Directors or (c) by any stockholder of the corporation who was a stockholder of record of the corporation at the time the notice provided for in this

Section 1.12 is delivered to the Secretary of the corporation, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 1.12.

(2) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (c) of paragraph (A)(1) of this Section 1.12, the stockholder must have given timely notice thereof in writing to the Secretary of the corporation and any such proposed business other than the nominations of persons for election to the Board of Directors must constitute a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the ninetieth (90th) day nor earlier than the

close of business on the one hundred twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting (provided, however, that in the event that the date of the annual meeting is more than thirty (30) days before or more than seventy (70) days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made by the corporation). In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth:

(a) as to each person whom the stockholder proposes to nominate for election as a director (i) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to and in accordance with Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and (ii) such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected; (b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws of the corporation, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the corporation's books, and of such beneficial owner, (ii) the class and number of shares of capital stock of the corporation which are owned beneficially and of record by such stockholder and such beneficial owner, (iii) a representation that the stockholder is a holder of record of stock of the corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination, and (iv) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (x) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the corporation's

outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (y) otherwise to solicit proxies from stockholders in support of such proposal or nomination. The foregoing notice requirements shall be deemed satisfied by a stockholder if the stockholder has notified the corporation of his or her intention to present a proposal at an annual meeting in compliance with Rule 14a-8 (or any successor thereof) promulgated under the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the corporation to solicit proxies for such annual meeting. The corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the corporation.

(3) Notwithstanding anything in the second sentence of paragraph (A)(2) of this Section 1.12 to the contrary, in the event that the number of directors to be elected to the Board of Directors of the corporation at an annual meeting is increased and there is no public announcement by the corporation naming the nominees for the additional directorships at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 1.12 shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the corporation.

(B) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the corporation's notice of meeting (1) by or at the direction of the Board of Directors or (2) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the corporation who is a stockholder of record at the time the notice provided for in this Section 1.12 is delivered to the Secretary of the corporation, who is entitled to vote at the meeting and upon such election and who complies with the notice procedures set forth in this Section 1.12. In the event the corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be)



for election to such position(s) as specified in the corporation's notice of meeting, if the stockholder's notice required by paragraph (A)(2) of this Section 1.12 shall be delivered to the Secretary at the principal executive offices of the corporation not earlier than the close of business on the one hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(C) General. (1) Only such persons who are nominated in accordance with the procedures set forth in this Section 1.12 shall be eligible to be elected at an annual or special meeting of stockholders of the corporation to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 1.12. Except as otherwise provided by law, the chairman of the meeting shall have the power and duty (a) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 1.12 (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by clause (A)(2)(c)(iv) of this Section 1.12) and (b) if any proposed nomination or business was not made or proposed in compliance with this Section 1.12, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Section 1.12, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the corporation to present a nomination or business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the corporation.

(2) For purposes of this Section 1.12, "public announcement" shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national

news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15 (d) of the Exchange Act.

(3) Notwithstanding the foregoing provisions of this Section 1.12, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 1.12. Nothing in this Section 1.12 shall be deemed to affect any rights (a) of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (b) of the holders of any series of preferred stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

Section 1.13 Inspectors of Election. The corporation may, and shall if required by law, in advance of any meeting of stockholders, appoint one or more inspectors of election, who may be employees of the corporation, to act at the meeting or any adjournment thereof and to make a written report thereof. The corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that no inspector so appointed or designated is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector or inspectors so appointed or designated shall (i) ascertain the number of shares of capital stock of the corporation outstanding and the voting power of each such share, (ii) determine the shares of capital stock of the corporation represented at the meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares of capital stock of the corporation represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the corporation, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election.

## **ARTICLE II**

### **BOARD OF DIRECTORS**

Section 2.1 Number; Qualifications. The Board of Directors shall consist of not less than one (1) nor more than fifteen (15) members, the number thereof to be determined from time to time by resolution of the Board of Directors. The number of directors which shall comprise the initial Board of Directors shall be that number set forth in the Certificate of Incorporation. Directors need not be stockholders.

Section 2.2 Election; Resignation; Removal; Vacancies. Other than those directors elected by the holders of any series of preferred stock of the corporation provided for or fixed pursuant to the Certificate of Incorporation, the Board of Directors shall be divided into three classes, as nearly equal in number as possible, designated as Class I, Class II and Class III. Class I directors shall initially serve until the 1999 meeting of stockholders; Class II directors shall initially serve until the 2000 meeting of stockholders; and Class III directors shall initially serve until the 2001 meeting of stockholders. Commencing with the annual meeting of stockholders in 1999, directors of each class, the term of which shall then expire, shall be elected to hold office for a three-year term and until the election and qualification of their respective successors in office. In case of any increase or decrease, from time to time, in the number of directors (other than those directors elected by the holders of any series of preferred stock of the corporation provided for or fixed pursuant to the Certificate of Incorporation), the number of directors in each class shall be apportioned as nearly equal as possible. Any director chosen to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall be elected and qualified or until their earlier death, resignation, disqualification or removal. Any director may resign at any time upon written notice to the corporation. Unless otherwise restricted by the Certificate of Incorporation and except as otherwise provided for or fixed pursuant to the Certificate of Incorporation relating to the rights of the holders of any series of preferred stock of the Corporation, any newly created directorships resulting from any increase in the authorized number of directors, and any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other cause, may be filled only by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum, and each director so elected shall hold office until the expiration of the term of office of the director whom he has replaced or until his or her successor is elected and qualified.

Section 2.3 Regular Meetings. Regular meetings of the Board of Directors may be held at such places within or without the State of Delaware and at such times as the Board of Directors may from time to time determine, and if so determined, notices thereof need not be given.

Section 2.4 Special Meetings. Special meetings of the Board of Directors may be held at any time or place within or without the State of Delaware whenever called by the President, any Vice President, the Secretary, or by any member of the Board of Directors. Notice of a special meeting of the Board of Directors shall be given by the person or persons calling the meeting at least twenty-four (24) hours before the special meeting.

Section 2.5 Telephonic Meetings Permitted. Members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting thereof by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this bylaw shall constitute presence in person at such meeting.

Section 2.6 Quorum; Vote Required for Action. At all meetings of the Board of Directors a majority of the whole Board of Directors shall constitute a quorum for the transaction of business. Except in cases in which the Certificate of Incorporation or these Bylaws otherwise

provide, the vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 2.7 Organization. Meetings of the Board of Directors shall be presided over by the Chairman of the Board, if any, or in his or her absence by the Vice Chairman of the Board, if any, or in his or her absence by the President, or in their absence by a chairman chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 2.8 Informal Action by Directors. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board of Directors or such committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors or such committee.

### **ARTICLE III**

#### **COMMITTEES**

Section 3.1 Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by law and to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all pages which may require it.

Section 3.2 Committee Rules. Unless the Board of Directors otherwise provides, each committee designated by the Board of Directors may make, alter and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to Article II of these Bylaws.

### **ARTICLE IV**

#### **OFFICERS**

Section 4.1 Executive Officers; Election; Qualifications; Term of Office; Resignation; Removal; Vacancies. The Board of Directors shall elect a President and Secretary, and it may, if it so determines, choose a Chairman of the Board and a Vice Chairman of the Board from among its members. The Board of Directors may also elect one or more Vice Presidents, one or more

Assistant Secretaries, a Treasurer, one or more Assistant Treasurers, and such other officers as the Board of Directors deems necessary. Each such officer shall hold office until the first meeting of the Board of Directors after the annual meeting of stockholders next succeeding his or her election, and until his or her successor is elected and qualified or until his or her earlier resignation or removal. Any officer may resign at any time upon written notice to the corporation. The Board of Directors may remove any officer with or without cause at any time, but such removal shall be without prejudice to the contractual rights of such officer, if any, with the corporation. Any number of offices may be held by the same person. Any vacancy occurring in any office of the corporation by death, resignation, removal or otherwise may be filled for the unexpired portion of the term by the Board of Directors at any regular or special meeting.

Section 4.2 Powers and Duties of Executive Officers. The officers of the corporation shall have such powers and duties in the management of the corporation as may be prescribed by the Board of Directors and, to the extent not so provided, as generally pertain to their respective officers, subject to the control of the Board of Directors. The Board of Directors may require any officer, agent or employee to give security for the faithful performance of his or her duties.

## **ARTICLE V**

### **STOCK**

Section 5.1 Certificates. Every holder of stock shall be entitled to have a certificate signed by or in the name of the corporation by the Chairman or Vice Chairman of the Board of Directors, if any, or the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, of the corporation, certifying the number of shares owned by him in the corporation. Any of or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent, or registrar at the date of issue.

Section 5.2 Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates. The corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate, or his or her legal representative, to give the corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

## **ARTICLE VI**

### **INDEMNIFICATION**

Section 6.1 Right to Indemnification. The corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is made or is threatened to be made a party or is otherwise

involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding"), by reason of the fact that he or she or a person for whom he or she is the legal representative, is or was a director or officer of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans (an "indemnitee"), against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such indemnitee. The corporation shall be required to indemnify an indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if the initiation of such proceeding (or part thereof) by the indemnitee was authorized by the Board of Directors of the corporation.

Section 6.2 Prepayment of Expenses. The corporation shall pay the expenses (including attorneys' fees) incurred by an indemnitee in defending any proceeding in advance of its final disposition, provided, however, that the payment of expenses incurred by a director or officer in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the director or officer to repay all amounts advanced if it should be ultimately determined that the director or officer is not entitled to be indemnified under this Article or otherwise.

Section 6.3 Claims. If a claim for indemnification or payment of expenses under this Article is not paid in full within sixty (60) days after a written claim therefor by the indemnitee has been received by the corporation, the indemnitee may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expenses of prosecuting such claim. In any such action the corporation shall have the burden of proving that the indemnitee was not entitled to the requested indemnification or payment of expenses under applicable law.

Section 6.4 Nonexclusivity of Rights. The rights conferred on any person by this Article VI shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, these By-laws, agreement, vote of stockholders or disinterested directors or otherwise.

Section 6.5 Other Indemnification. The corporation's obligation, if any, to indemnify any person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise, or nonprofit entity shall be reduced by any amount such person may collect as indemnification from such other corporation, partnership, joint venture, trust, enterprise or nonprofit enterprise.

Section 6.6 Amendment or Repeal. Any repeal or modification of the foregoing provisions of this Article VI shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

## ARTICLE VII

### MISCELLANEOUS

Section 7.1 Fiscal Year. The fiscal year of the corporation shall be determined by resolution of the Board of Directors.

Section 7.2 Seal. The corporate seal shall have the name of the corporation inscribed thereon and shall be in such form as may be approved from time to time by the Board of Directors.

Section 7.3 Waiver of Notice of Meetings of Stockholders, Directors and Committees. Any written waiver of notice, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in any written waiver of notice.

Section 7.4 Interested Directors; Quorum. No contract or transaction between the corporation and one or more of its directors or officers, or between the corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction, or solely because his, her or their votes are counted for such purpose, if: (1) the material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (2) the material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (3) the contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof, or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

Section 7.5 Form of Records. Any records maintained by the corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or be in the form of, punch cards, magnetic tape, photographs, microphotographs, or any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time. The corporation shall so convert any records so kept upon the request of any person entitled to inspect the same.

Section 7.6 Amendment of Bylaws. Unless otherwise restricted by the Certificate of Incorporation, these Bylaws may be altered or repealed, and new Bylaws made by the Board of Directors, but the stockholders may make additional bylaws and may alter and repeal any bylaws whether adopted by them or otherwise.

Section 7.7 Manner of Notice. Except as otherwise provided herein or permitted by applicable law, notices to directors and stockholders shall be in writing and delivered personally or mailed to the directors or stockholders at their addresses appearing on the books of the corporation. Notice to directors may be given by telegram, telecopier, telephone or other means of electronic transmission.



**Exhibit 3.3**

**CERTIFICATE OF DESIGNATION**

of

**SERIES A JUNIOR PARTICIPATING PREFERRED STOCK**

of

**MARINEMAX, INC.**

Pursuant to Section 151 of the General Corporation Law of the State of Delaware

MarineMax, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), in accordance with the provisions of Section 103 thereof, DOES HEREBY CERTIFY:

That pursuant to the authority vested in the Board of Directors in accordance with the provisions of the Certificate of Incorporation of the said Corporation, the said Board of Directors on July 26, 2001 adopted the following resolution creating a series of 50,000 shares of Preferred Stock designated as "Series A Junior Participating Preferred Stock":

RESOLVED, that pursuant to the authority vested in the Board of Directors of this Corporation in accordance with the provisions of the Certificate of Incorporation, a series of Preferred Stock, par value \$.001 per share, of the Corporation be and hereby is created, and that the designation and number of shares thereof and the voting and other powers, preferences, and relative, participating, optional, or other rights of the shares of such series and the qualifications, limitations, and restrictions thereof are as follows:

**SERIES A JUNIOR PARTICIPATING PREFERRED STOCK**

1. Designation and Amount. There shall be a series of Preferred Stock that shall be designated as "Series A Junior Participating Preferred Stock," and the number of shares constituting such series shall be 50,000. Such number of shares may be increased or decreased by resolution of the Board of Directors; provided, however, that no decrease shall reduce the number of shares of Series A Junior Participating Preferred Stock to less than the number of shares then issued and outstanding plus the number of shares issuable upon exercise of outstanding rights, options, or warrants or upon conversion of outstanding securities issued by the Corporation.

2. Dividends and Distribution.

(A) Subject to the prior and superior rights of the holders of any shares of any class or series of stock of the Corporation ranking prior and superior to the shares of Series A Junior Participating Preferred Stock with respect to dividends, the holders of shares of Series A Junior Participating Preferred Stock, in preference to the holders of shares of any class or series of stock of the Corporation ranking junior to the Series A Junior Participating Preferred Stock in

respect thereof, shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the last day of March, June, September, and December, in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Junior Participating Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) \$1.00 or (b) the Adjustment Number (as defined below) times the aggregate per share amount of all cash dividends, and the Adjustment Number times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock, par value \$.001 per share, of the Corporation (the "Common Stock") since the immediately preceding Quarterly Dividend Payment Date, or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Junior Participating Preferred Stock. The "Adjustment Number" shall initially be 1,000. In the event the Corporation shall at any time after August 28, 2001 (i) declare and pay any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the Adjustment Number in effect immediately prior to such event shall be adjusted by multiplying such Adjustment Number by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) The Corporation shall declare a dividend or distribution on the Series A Junior Participating Preferred Stock as provided in paragraph (a) above immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock).

(C) Dividends shall begin to accrue and be cumulative on outstanding shares of Series A Junior Participating Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares of Series A Junior Participating Preferred Stock, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Junior Participating Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series A Junior Participating Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series A Junior Participating Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be no more than 60 days prior to the date fixed for the payment thereof.

3. Voting Rights. The holders of shares of Series A Junior Participating Preferred Stock shall have the following voting rights:

(A) Each share of Series A Junior Participating Preferred Stock shall entitle the holder thereof to a number of votes equal to the Adjustment Number on all matters submitted to a vote of the stockholders of the Corporation.

(B) Except as required by law, by Section 3(C) and by Section 10 hereof, holders of Series A Junior Participating Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

(C) If, at the time of any annual meeting of stockholders for the election of directors, the equivalent of six quarterly dividends (whether or not consecutive) payable on any share or shares of Series A Junior Participating Preferred Stock are in default, the number of directors constituting the Board of Directors of the Corporation shall be increased by two. In addition to voting together with the holders of Common Stock for the election of other directors of the Corporation, the holders of record of the Series A Junior Participating Preferred Stock, voting separately as a class to the exclusion of the holders of Common Stock, shall be entitled at said meeting of stockholders (and at each subsequent annual meeting of stockholders), unless all dividends in arrears on the Series A Junior Participating Preferred Stock have been paid or declared and set apart for payment prior thereto, to vote for the election of two directors of the Corporation, the holders of any Series A Junior Participating Preferred Stock being entitled to cast a number of votes per share of Series A Junior Participating Preferred Stock as is specified in paragraph (a) of this Section

3. Each such additional director shall not be a member of Class I, Class II, or Class III of the Board of Directors of the Corporation, but shall serve until the next annual meeting of stockholders for the election of directors, or until his successor shall be elected and shall qualify, or until his right to hold such office terminates pursuant to the provisions of this Section 3(C). Until the default in payments of all dividends which permitted the election of said directors shall cease to exist, any director who shall have been so elected pursuant to the provisions of this Section 3(C) may be removed at any time, without cause, only by the affirmative vote of the holders of the shares of Series A Junior Participating Preferred Stock at the time entitled to cast a majority of the votes entitled to be cast for the election of any such director at a special meeting of such holders called for that purpose, and any vacancy thereby created may be filled by the vote of such holders. If and when such default shall cease to exist, the holders of the Series A Junior Participating Preferred Stock shall be divested of the foregoing special voting rights, subject to re-vesting in the event of each and every subsequent like default in payments of dividends. Upon the termination of the foregoing special voting rights, the terms of office of all persons who may have been elected directors pursuant to said special voting rights shall forthwith terminate, and the number of directors constituting the Board of Directors shall be reduced by two. The voting rights granted by this Section 3(C) shall be in addition to any other voting rights granted to the holders of the Series A Junior Participating Preferred Stock in this Section 3.

#### 4. Certain Restrictions.

(A) Whenever quarterly dividends or other dividends or distributions payable on the Series A Junior Participating Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Junior Participating Preferred Stock outstanding shall have been paid in full, the Corporation shall not:

(i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Junior Participating Preferred Stock;

(ii) declare or pay dividends on or make any other distributions on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution, or winding up) with the Series A Junior Participating Preferred Stock, except dividends paid ratably on the Series A Junior Participating Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled; or

(iii) purchase or otherwise acquire for consideration any shares of Series A Junior Participating Preferred Stock, or any shares of stock ranking on a parity with the Series A Junior Participating Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of Series A Junior Participating Preferred Stock, or to such holders and holders of any such shares ranking on a parity therewith, upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(B) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (a) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

5. **Reacquired Shares.** Any shares of Series A Junior Participating Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired promptly after the acquisition thereof. All such shares shall upon their retirement become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors, subject to any conditions and restrictions on issuance set forth herein.

6. **Liquidation, Dissolution, or Winding Up.** (A) Upon any liquidation, dissolution, or winding up of the Corporation, voluntary or otherwise, no distribution shall be made to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution, or winding up) to the Series A Junior Participating Preferred Stock unless, prior thereto, the holders of shares of Series A Junior Participating Preferred Stock shall have received an amount

per share (the "Series A Liquidation Preference") equal to the greater of (i) \$1.00 plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, or (ii) the Adjustment Number times the per share amount of all cash and other property to be distributed in respect of the Common Stock upon such liquidation, dissolution, or winding up of the Corporation.

(B) In the event, however, that there are not sufficient assets available to permit payment in full of the Series A Liquidation Preference and the liquidation preferences of all other classes and series of stock of the Corporation, if any, that rank on a parity with the Series A Junior Participating Preferred Stock in respect thereof, then the assets available for such distribution shall be distributed ratably to the holders of the Series A Junior Participating Preferred Stock and the holders of such parity shares in proportion to their respective liquidation preferences.

(C) Neither the merger or consolidation of the Corporation into or with another corporation nor the merger or consolidation of any other corporation into or with the Corporation shall be deemed to be a liquidation, dissolution, or winding up of the Corporation within the meaning of this Section 6.

7. Consolidation, Merger, Etc. In case the Corporation shall enter into any consolidation, merger, combination, or other transaction in which the outstanding shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case each share of Series A Junior Participating Preferred Stock shall at the same time be similarly exchanged or changed in an amount per share equal to the Adjustment Number times the aggregate amount of stock, securities, cash, and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged.

8. No Redemption. Shares of Series A Junior Participating Preferred Stock shall not be subject to redemption by the Corporation.

9. Ranking. The Series A Junior Participating Preferred Stock shall rank junior to all other series of the Preferred Stock as to the payment of dividends and as to the distribution of assets upon liquidation, dissolution, or winding up, unless the terms of any such series shall provide otherwise, and shall rank senior to the Common Stock as to such matters.

10. Amendment. At any time that any shares of Series A Junior Participating Preferred Stock are outstanding, the Certificate of Incorporation of the Corporation shall not be amended in any manner which would materially alter or change the powers, preferences, or special rights of the Series A Junior Participating Preferred Stock so as to affect them adversely without the affirmative vote of the holders of two-thirds of the outstanding shares of Series A Junior Participating Preferred Stock, voting separately as a class.

11. Fractional Shares. Series A Junior Participating Preferred Stock may be issued in fractions of a share that shall entitle the holder, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends, participate in distributions, and to have the benefit of all other rights of holders of Series A Junior Participating Preferred Stock.

IN WITNESS WHEREOF, the undersigned has executed this Certificate this 6th day of September, 2001.

**MARINEMAX, INC.**

By: /s/ William H. McGill, Jr.

-----  
Name: William H. McGill, Jr.

Title: Chairman of the Board and Chief  
Executive Officer

**Exhibit 4.1**

056281 071201

**NUMBER SHARES**

INCORPORATED UNDER THE LAWS OF  
THE STATE OF DELAWARE

COMMON STOCK

[MARINE MAX LOGO]

THIS CERTIFICATE IS TRANSFERABLE IN  
NEW YORK, NY

CUSIP 567908 10 8  
SEE REVERSE FOR CERTAIN DEFINITIONS

**MARINEMAX, INC.**

**THIS CERTIFIES THAT**

**IS THE OWNER OF**

fully paid and non-assessable Shares of the par value, \$.001 per share of the  
**COMMON STOCK of**

MarineMax, Inc. (hereinafter called the "Corporation") transferable on the books of the Corporation by said holder in person or by duly authorized attorney upon surrender of this certificate properly endorsed. This certificate and the shares represented hereby are issued and shall be held subject to all the provisions of the Certificate of Incorporation and all Amendments thereto, copies of which are on file at the office of the Transfer Agent, and the holder hereof, by acceptance of this certificate, consents to and agrees to be bound by all of said provisions. This certificate is not valid until countersigned by the Transfer Agent and registered by the Registrar.

In Witness Whereof, the Corporation has caused this certificate to be signed by the facsimile signatures of its duly authorized officers.

**DATED**

**COUNTERSIGNED AND REGISTERED:  
AMERICAN STOCK TRANSFER & TRUST COMPANY**

(NEW YORK, NY)

**TRANSFER AGENT  
AND REGISTRAR**

**BY**

**AUTHORIZED SIGNATURE**

[illegible signature] [illegible signature]

**CHAIRMAN OF THE BOARD,**

**SECRETARY CHIEF EXECUTIVE OFFICER AND PRESIDENT**

THE CORPORATION WILL FURNISH WITHOUT CHARGE TO EACH STOCKHOLDER WHO SO REQUESTS THE POWERS, DESIGNATIONS, PREFERENCES, AND RELATIVE, PARTICIPATING, OPTIONAL OR OTHER SPECIAL RIGHTS OF EACH CLASS OF STOCK OR SERIES THEREOF OF THE CORPORATION AND THE QUALIFICATIONS, LIMITATIONS OR RESTRICTIONS OF SUCH PREFERENCES AND/OR RIGHTS. SUCH REQUEST MAY BE MADE TO THE SECRETARY OF THE CORPORATION OR TO THE TRANSFER AGENT.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM -- as tenants in common  
TEN ENT -- as tenants by the entireties  
JT TEN -- as joint tenants with right of survivorship and not as tenants in common  
UNIF GIFT MIN ACT -- \_\_\_\_\_ Custodian \_\_\_\_\_  
(Cust) (Minor)

under Uniform Gifts to Minors Act \_\_\_\_\_

(State)

Additional abbreviations may also be used though not in the above list.

For value received, \_\_\_\_\_ hereby sell, assign and transfer unto

**PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE**

[ ]

---

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING ZIP CODE, OF ASSIGNEE)

---

\_\_\_\_\_ shares

of the capital stock represented by the within Certificate and do hereby irrevocably constitute and appoint

\_\_\_\_\_ **Attorney**

to transfer the said stock on the books of the within named Corporation with full power of substitution in the premises.

**Dated** \_\_\_\_\_

**X** \_\_\_\_\_

**NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER.**

THIS CERTIFICATE ALSO EVIDENCES AND ENTITLES THE HOLDER HEREOF TO CERTAIN RIGHTS AS SET FORTH IN A RIGHTS AGREEMENT BETWEEN MARINEMAX, INC. (THE "COMPANY") AND AMERICAN STOCK TRANSFER & TRUST COMPANY, AS RIGHTS AGENT, DATED AS OF AUGUST 28, 2001 AND AS AMENDED FROM TIME TO TIME (THE "RIGHTS AGREEMENT"). THE TERMS OF WHICH ARE HEREBY INCORPORATED HEREIN BY REFERENCE AND A COPY OF WHICH IS ON FILE AT THE PRINCIPAL EXECUTIVE OFFICES OF THE COMPANY. UNDER CERTAIN CIRCUMSTANCES, AS SET FORTH IN THE RIGHTS AGREEMENT, SUCH RIGHTS WILL BE EVIDENCED BY SEPARATE CERTIFICATES AND WILL NO LONGER BE EVIDENCED BY THIS CERTIFICATE. THE COMPANY WILL MAIL TO THE HOLDER OF THIS CERTIFICATE A COPY OF THE RIGHTS AGREEMENT WITHOUT CHARGE AFTER RECEIPT OF A WRITTEN REQUEST THEREFOR. UNDER CERTAIN CIRCUMSTANCES, AS SET FORTH IN THE RIGHTS AGREEMENT, RIGHTS OWNED BY OR TRANSFERRED TO ANY PERSON WHO IS OR BECOMES AN ACQUIRING PERSON (AS DEFINED IN THE RIGHTS AGREEMENT) AND CERTAIN TRANSFERREES THEREOF WILL BECOME NULL AND VOID AND WILL NO LONGER BE TRANSFERABLE.



## Exhibit 10.4

### MARINEMAX, INC. 1998 INCENTIVE STOCK PLAN (AS AMENDED THROUGH NOVEMBER 15, 2000)

1. **PURPOSE.** The purpose of this 1998 Incentive Stock Plan (the "Plan") is to attract, retain and motivate employees, directors and independent contractors by providing them with the opportunity to acquire a proprietary interest in MARINEMAX, INC. (the "Company") and to link their interests and efforts to the long-term interests of the Company's stockholders.

#### 2. PLAN ADMINISTRATION

2.1 **IN GENERAL.** The Plan shall be administered by the Company's Board of Directors (the "Board"). Except for the power to amend the Plan as provided in Section 12, the Board, in its sole discretion, may delegate its authority and duties under the Plan to a committee appointed by the Board, under such conditions and limitations as the Board may from time to time establish. The Board and/or any committee that has been delegated the authority to administer the Plan shall be referred to as the "Plan Administrator". Except as otherwise explicitly set forth in the Plan, the Plan Administrator shall have the authority, in its discretion, to determine all matters relating to awards under the Plan, including the selection of the individuals to be granted awards, the type of awards, the number of shares of the Company's common stock ("Common Stock") subject to an award, vesting conditions, and any and all other terms, conditions, restrictions and limitations, if any, of an award. All decisions made by the Plan Administrator pursuant to the Plan and related orders and resolutions shall be final and conclusive.

2.2 **RULE 16b-3 AND CODE SECTION 162(m).** Notwithstanding any provision of this Plan to the contrary, only the Board or a committee composed of two or more "Non-Employee Directors" may make determinations regarding grants of awards to officers, directors and 10% stockholders of the Company. (The term "Non-Employee Directors" shall have the meaning set forth in Rule 16b-3 promulgated under the Securities Exchange Act of 1934, as amended (the "1934 Act")). The Plan Administrator shall have the authority and discretion to determine the extent to which awards will conform to the requirements of Section 162(m) Internal Revenue Code of 1986, as amended (the "Code"), and to take such action, establish such procedures, and impose such restrictions as the Plan Administrator determines to be necessary or appropriate to conform to such requirements.

2.3 **OTHER PLANS.** The Plan Administrator shall also have authority to grant awards as an alternative to or as the form of payment for grants or rights earned or due under other compensation plans or arrangements of the Company, including the plan of any entity acquired by the Company.

3. **ELIGIBILITY.** Any employee of the Company shall be eligible to receive any award under the Plan. Directors who are not employees, proposed directors, proposed employees and independent contractors shall be eligible to receive awards other than Incentive Stock Options (as defined in Section 5.2). For purposes of this Section 3, the "Company," with respect to all awards under the Plan other than Incentive Stock Options, includes any entity that is directly or indirectly controlled by the Company or any entity in which the Company has a significant equity interest, as determined by the Plan Administrator. With respect to Incentive Stock Options, the "Company" includes any parent or subsidiary of the Company as defined in Section 424 of the Code.

#### 4. SHARES SUBJECT TO THE PLAN

4.1 **NUMBER AND SOURCE.** The shares offered under the Plan shall be shares of Common Stock and may be unissued shares or shares now held or subsequently acquired by the Company as treasury shares, as the Plan Administrator may from time to time determine. Subject to adjustment as provided in Section 4.3, the aggregate number of shares that may be issued under the Plan shall not exceed the lesser of 4,000,000 shares or 20% of the then outstanding shares; provided, however that awards shall not be granted under the Plan if, at the time of such grant, the aggregate number of shares of Stock that have been or may be issued under previously granted awards or options under the Plan equal or exceed 20% of the total number of outstanding shares at such time. The

aggregate number of shares that may be covered by awards granted to any one individual in any year shall not exceed 50% of the total number of shares that may be issued under the Plan.

**4.2 SHARES AVAILABLE.** Any shares subject to an award granted under the Plan that is forfeited, terminated or canceled, or any shares that do not vest, shall again be available for the granting of awards under the Plan. If a stock appreciation right is settled in cash, the shares covered by such award shall remain available for the granting of other awards. The payment of cash dividends and dividend equivalents paid in cash in conjunction with outstanding awards shall not be counted against the shares available for issuance.

**4.3 ADJUSTMENT OF SHARES AVAILABLE.** The aggregate number and type of shares available for awards under the Plan, the maximum number and type of shares that may be subject to awards to any individual under the Plan, the number and type of shares covered by each outstanding award, and the exercise price per share (but not the total price) for stock options, stock appreciation rights or similar awards outstanding under the Plan shall all be proportionately adjusted for any increase or decrease in the number of issued shares of Common Stock resulting from any split-up, combination or exchange of shares, consolidation, spin-off or recapitalization of shares or any like capital adjustment or the payment of any stock dividend.

**4.4 TRANSFER OF CONTROL.** In the event of a Transfer of Control, the surviving, continuing, successor or purchasing corporation or parent corporation thereof, as the case may be (the "Acquiring Corporation") shall either assume the Company's rights and obligations under outstanding awards or substitute for outstanding awards substantially equivalent awards for the Acquiring Corporation's stock. In the event the Acquiring Corporation elects not to assume or substitute for such outstanding awards in connection with the Transfer of Control, the Board may, in its discretion, provide that any unexercisable and/or unvested portion of the outstanding awards shall be immediately exercisable and vested in full on or before the date of the Transfer of Control. The exercise and/or vesting of any award that was permissible solely by reason of this

Section 4.4 shall be conditioned upon the consummation of the Transfer of Control. Any awards that are neither assumed or substituted for by the Acquiring Corporation in connection with the Transfer of Control nor exercised on or before the date of the Transfer of Control shall terminate and cease to be outstanding effective as of the date of the Transfer of Control. Unless otherwise determined by the Board, a "Transfer of Control" shall be deemed to have occurred in the event of any of the following: (a) the direct or indirect sale or exchange by the stockholders of the Company of all or substantially all of the stock of the Company if the stockholders of the Company before such sale or exchange do not retain, directly or indirectly, at least a majority of the beneficial interest in the voting stock of the Company after such sale or exchange; (b) a merger or consolidation if the stockholders of the Company before such merger or consolidation do not retain, directly or indirectly, at least a majority of the beneficial interest in the voting stock of the Company after such merger or consolidation (regardless of whether the Company is the surviving corporation); (c) the sale, exchange or transfer of all or substantially all of the assets of the Company; or (d) a liquidation or dissolution of the Company.

## 5. AWARDS

**5.1 TYPES OF AWARDS.** Subject to the Plan, the Plan Administrator shall have the authority, in its sole discretion, to determine the type or types of awards to be granted to employees, directors and independent contractors under the Plan. Such awards may include, but are not limited to, Incentive Stock Options, Nonqualified Stock Options (as defined in Section 5.2), stock appreciation rights or restricted stock awards. Such awards may be granted either alone, in addition to or in tandem with any other type of award granted under the Plan.

**5.2 STOCK OPTIONS.** The Plan Administrator may grant stock options, designated as "Incentive Stock Options," which comply with the provisions of

Section 422 of the Code or any successor statutory provision, or "Nonqualified Stock Options." The price for which shares may be purchased upon exercise of a particular option shall be determined by the Plan Administrator; however, the exercise price of an Incentive Stock Option shall not be less than 100% of the Fair Market Value of such shares on the date such option is granted (110% if options are intended to be Incentive Stock Options and are granted to a stockholder who at the time the option is granted owns or is deemed to own stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or of any parent or subsidiary of the Company). For purposes of the Plan, "Fair Market

Value" as to a particular day equals the per share closing price for the Common Stock as reported for the prior trading day in the Wall Street Journal or in such other source as the Plan Administrator deems reliable. The Plan Administrator shall set the term of each stock option, but no Incentive Stock Option shall be exercisable more than 10 years after the date such option is granted and, to the extent the aggregate Fair Market Value (determined as of the date the option is granted) of Common Stock with respect to which Incentive Stock Options granted to a particular individual become exercisable for the first time during any calendar year (under the Plan and all other stock option plans of the Company) exceeds \$100,000 (or such corresponding amount as may be set by the Code) such options shall be treated as Nonqualified Stock Options. An optionholder and the Plan Administrator can agree at any time to convert an Incentive Stock Option to a Nonqualified Stock Option.

**5.3 STOCK APPRECIATION RIGHTS.** The Plan Administrator may grant stock appreciation rights, either in tandem with a stock option granted under the Plan or with respect to a number of shares for which an option is not granted. A stock appreciation right shall entitle the holder to receive, with respect to each share of stock as to which the right is exercised, payment in an amount equal to the excess of the share's Fair Market Value on the date the right is exercised over its Fair Market Value on the date the right was granted. Such payment may be made in cash or in shares of Common Stock valued at Fair Market Value as of the date of the surrender, or partly in cash and partly in shares of Common Stock, as determined by the Plan Administrator in its sole discretion. The Plan Administrator may establish a maximum appreciation value payable for stock appreciation rights.

**5.4 RESTRICTED STOCK AWARDS.** The Plan Administrator may grant restricted stock awards under the Plan in Common Stock or denominated in units of Common Stock. The Plan Administrator, in its discretion, may make such awards subject to conditions and restrictions, as set forth in the instrument evidencing the award, which may be based on continuous service with the Company or the attainment of certain performance goals related to profits, profit growth, profit-related return ratios, cash flow or shareholder returns, where such goals may be stated in absolute terms or relative to comparison companies or indices to be achieved during a period of time. The Plan Administrator may choose, at the time of granting an award or at any time thereafter up to the time of payment of the award, to include as part of such award an entitlement to receive dividends or dividend equivalents, subject to such terms as the Plan Administrator may establish. All dividends or dividend equivalents that are not paid currently may, in the Plan Administrator's sole discretion, accrue interest and be paid to the participant if, when and to the extent such award is paid.

**5.5 PAYMENT; DEFERRAL.** Awards granted under the Plan may be settled through cash payments, the delivery of Common Stock (valued at Fair Market Value) or the granting of awards or combinations thereof as the Plan Administrator shall determine. Any award settlement, including payment deferrals, may be subject to such conditions, restrictions and contingencies as the Plan Administrator shall determine. The Plan Administrator may permit or require the deferral of any award payment, subject to such rules and procedures as it may establish, which may include provisions for the payment or crediting of interest, or dividend equivalents, including converting such credits to deferred stock unit equivalents.

**5.6 INDIVIDUAL AWARD AGREEMENTS.** Stock Options shall and other awards may be evidenced by agreements between the Company and the recipient in such form and content as the Plan Administrator from time to time approves, which agreements shall substantially comply with and be subject to the terms of the Plan. Such individual agreements may contain such provisions or conditions as the Plan Administrator deems necessary or appropriate to effectuate the sense and purpose of the Plan and may be amended from time to time in accordance with the terms thereof.

## **6. AWARD EXERCISE**

**6.1 PRECONDITION TO STOCK ISSUANCE.** No shares shall be delivered pursuant to the exercise of any stock option or stock appreciation right, in whole or in part, until qualified for delivery under such securities laws and regulations as may be deemed by the Plan Administrator to be applicable thereto and until, in the case of the exercise of an option, payment in full of the option price thereof (in cash or stock as provided in Section 6.3) is received by the Company. No holder of an option or stock appreciation right, or any legal representative, legatee or

distributee shall be or be deemed to be a holder of any shares subject to such option or right unless and until such shares are issued.

6.2 NO FRACTIONAL SHARES. No stock option may at any time be exercised with respect to a fractional share. No fractional share shall be issued with respect to a stock appreciation right; however, a fractional stock appreciation right may be exercised for cash.

6.3 FORM OF PAYMENT. An optionee may exercise a stock option using as the form of payment (a) cash or cash equivalent, (b) stock-for-stock payment (as described below), (c) any combination of the above, or (d) such other means as the Plan Administrator may approve. Any optionee who owns Common Stock may use such shares as a form of payment to exercise stock options granted under the Plan. The Plan Administrator, in its discretion, may restrict or rescind this right by notice to optionees. A stock option may be exercised in such manner only by tendering (actually or by attestation) to the Company whole shares of Common Stock having a Fair Market Value equal to or less than the exercise price. If an option is exercised by surrender of shares having a Fair Market Value less than the exercise price, the optionholder must pay the difference in cash.

## 7. AUTOMATIC GRANT PROGRAM

7.1 AMOUNT AND DATE OF GRANT. During the term of the Plan, the Company shall make automatic grants of options ("Automatic Options") in the form of Nonqualified Stock Options to each Board member ("Eligible Director") (or proposed Board member pursuant to Section 7.1.3) who is not employed by the Company, whether or not such person is a Non-Employee Director as referred to in Section 2.2 as follows:

7.1.1 ANNUAL GRANTS. Each year on the Annual Grant Date, an Automatic Option to acquire 2,500 shares of Common Stock shall be granted to each Eligible Director for so long as shares of Common Stock are available under Section 4.1 hereof. The "Annual Grant Date" shall be the date of the Company's annual stockholders meeting commencing as of the first annual meeting occurring after the date (the "Effective Date") the Plan is approved by the stockholders of the Company. Any Eligible Director that was granted an Automatic Option under Section 7.1.2 or Section 7.1.3 within 90 days of an Annual Grant Date shall be ineligible to receive an Automatic Option pursuant to this Section 7.1.1 on such Annual Grant Date.

7.1.2 INITIAL NEW DIRECTOR GRANTS. On the Initial Grant Date, every new member of the Board, who is an Eligible Director and has not previously received an Automatic Option under this Section 7.1.2 shall be granted an Automatic Option to acquire 5,000 shares of Common Stock for so long as shares of Common Stock are available under Section 4.1 hereof. The "Initial Grant Date" shall be the date that an Eligible Director is first appointed or elected to the Board. Any Eligible Director who previously received an Automatic Option pursuant to Section 7.1.3 shall be ineligible to receive an Automatic Option pursuant to this Section 7.1.2.

7.1.3 INITIAL PROPOSED DIRECTOR GRANTS. On the date that shares of Common Stock first become registered under Section 12 of the 1934 Act, the Company shall grant an Automatic Option to acquire 10,000 shares of Common Stock to each non-employee whose election to the Board is proposed as of such date.

7.2 EXERCISE PRICE. The exercise price per share of Common Stock subject to each Automatic Option granted under Section 7.1.1 or Section 7.1.2 shall be equal to 100 percent of the Fair Market Value per share of the Common Stock on the date such Automatic Option was granted as determined in accordance with the valuation provisions of Section 5.2 hereof granted. The exercise price per share of Common Stock subject to each Automatic Option granted under Section 7.1.3 shall be equal to the initial public offering price per share of Common Stock.

7.3 VESTING. Each Automatic Option granted pursuant to Section 7.1.1 shall vest and become exercisable 12 months after the date of grant. Each Automatic Option granted pursuant to Section 7.1.2 shall vest and become exercisable in a series of three equal and successive installments with the first installment vested on the date of grant and the next two installments 12 months and 24 months after the date of grant. Each Automatic Option granted pursuant to Section 7.1.3 shall vest and become exercisable in a series of three equal and successive

installments with the first installment vested on the date of the recipient's election to the Board and the next two installments 12 months and 24 months after the date of grant. Each Automatic Option shall vest and become exercisable only if the optionholder has not ceased serving as a Board member as of such vesting date.

**7.4 TERM OF AUTOMATIC OPTIONS.** Each Automatic Option shall expire on the tenth anniversary (the "Expiration Date") of the date on which such Automatic Option was granted. Except as determined by the Plan Administrator, should an Eligible Director's service as a Board member cease prior to the Expiration Date for any reason while an Automatic Option remains outstanding and unexercised, the Automatic Option term shall immediately be modified and the Automatic Option shall terminate and cease to be outstanding in accordance with the following provisions:

**7.4.1** The Automatic Option shall immediately terminate and cease to be outstanding with respect to any shares that were not vested at the time of the optionholder's cessation of Board service; provided, however, that a proposed director who receives a grant pursuant to Section 7.1.3 shall not be treated as ceasing to serve as a Board member for purposes of this Section 7 prior to such individual's election to the Board.

**7.4.2** Should an optionholder cease, for any reason other than death, to serve as a member of the Board, then the optionholder shall have 90 days measured from the date of such cessation of Board service in which to exercise his or her Automatic Options that vested prior to the time of such cessation of Board service. In no event, however, may any Automatic Option be exercised after the Expiration Date of such Automatic Option.

**7.4.3** Should an optionholder die while serving as a Board member or within 90 days after cessation of Board service, then the personal representative of the optionholder's estate (or the person or persons to whom the Automatic Option is transferred pursuant to the optionholder's will or in accordance with the laws of the descent and distribution) shall have a 90-day period measured from the date of the optionholder's cessation of Board service in which to exercise the Automatic Options that vested prior to the time of such cessation of Board service. In no event, however, may any Automatic Option be exercised after the Expiration Date of such Automatic Option.

**7.5 OTHER TERMS.** Except as expressly provided otherwise in this Section 7, an Automatic Option shall be subject to all of the terms and conditions of the Plan. Eligible Directors shall be entitled to receive other awards under the Plan or other plans of the Company in accordance with the terms and conditions thereof.

**8. TRANSFERABILITY.** Any Incentive Stock Option granted under the Plan shall, during the recipient's lifetime, be exercisable only by such recipient, and shall not be assignable or transferable by such recipient other than by will or the laws of descent and distribution. Except as specifically allowed by the Plan Administrator, any other award under the Plan and any of the rights and privileges conferred thereby shall not be assignable or transferable by the recipient other than by will or the laws of descent and distribution and such award shall be exercisable during the recipient's lifetime only by the recipient.

**9. WITHHOLDING TAXES; OTHER DEDUCTIONS.** The Company shall have the right to deduct from any settlement of an award granted under the Plan, including the delivery or vesting of shares, (a) an amount sufficient to cover withholding as required by law for any federal, state or local taxes, and (b) any amounts due from the recipient of such award to the Company or to any parent or subsidiary of the Company or to take such other action as may be necessary to satisfy any such withholding or other obligations, including withholding from any other cash amounts due or to become due from the Company to such recipient an amount equal to such taxes or obligations.

**10. TERMINATION OF SERVICES.** The terms and conditions under which an award may be exercised following termination of a recipient's employment, directorship or independent contractor relationship with the Company shall be determined by the Plan Administrator; provided, however, that Incentive Stock Options shall not be exercisable at any time after the earliest of the date that is (a) three months after termination of employment, unless due to death or Disability (as defined in Section 22(e)(3) of the Code); (b) one year after termination of employment due to Disability; or (c) ten years after the date of grant.

11. **TERM OF THE PLAN.** The Plan shall become effective as of the date of adoption by the Board, and shall remain in full force and effect through the date that is ten years thereafter, unless sooner terminated by the Board. After the Plan is terminated, no future awards may be granted, but awards previously granted shall remain outstanding in accordance with their applicable terms and conditions and the Plan's terms and conditions.

12. **PLAN AMENDMENT.** The Board may amend, suspend or terminate the Plan at any time; provided that no such amendment shall be made without the approval of the Company's stockholders (a) that would increase the number of shares available for issuance under the Plan (other than in accordance with Section 4), or (b) if such approval is required (i) to comply with Section 422 of the Code with respect to Incentive Stock Options, or (ii) for purposes of Section 162(m) of the Code.

13. **PLAN NOT EXCLUSIVE.** This Plan is not intended to be the exclusive means by which the Company may issue awards to acquire its Common Stock.

14. **BIFURCATION OF THE PLAN.** Notwithstanding any provision of this Plan to the contrary, the Board, in its sole discretion, may bifurcate the Plan so as to restrict, limit or condition the use of any provision of the Plan to participants who are officers or directors subject to Section 16 of the 1934 Act without so restricting, limiting or conditioning the Plan with respect to other participants.

**EXHIBIT 21**  
**LIST OF SUBSIDIARIES OF**  
**MARINEMAX, INC.**

(AS OF DECEMBER 20, 2001)

NAME OF SUBSIDIARY -----	STATE OF INCORPORATION OR ORGANIZATION -----
11502 Dumas, Inc.	Nevada
Bassett Boat Company	Florida
Bassett Realty, L.L.C.	Delaware
C & N Marine Realty, L.L.C.	Delaware
Dumas GP, Inc.	Nevada
Dumas GP, L.L.C. (1)	Delaware
Gulfwind South Realty, L.L.C.	Delaware
Harrison's Realty California, L.L.C.	Delaware
Harrison's Realty, L.L.C.	Delaware
Marina Drive Realty I, L.L.C.	Delaware
Marina Drive Realty II, L.L.C.	Delaware
MarineMax MidAtlantic, LP (2)	Delaware
MarineMax Motor Yachts, LLC (3)	Delaware
MarineMax New Jersey GP, Inc. (4)	Delaware
MarineMax NJ Partners, Inc. (4)	Delaware
MarineMax of Arizona, Inc.	Arizona
MarineMax of California, Inc.	California
MarineMax of Central Florida, LLC (3)	Delaware
MarineMax of Georgia, Inc.	Georgia
MarineMax of Las Vegas, Inc.	Delaware
MarineMax of Minnesota, Inc.	Minnesota
MarineMax of New Jersey Holdings, Inc.	Delaware
MarineMax of North Carolina, Inc.	North Carolina
MarineMax of Ohio, Inc.	Delaware
MarineMax of Sarasota, LLC (3)	Delaware

NAME OF SUBSIDIARY -----	STATE OF INCORPORATION OR ORGANIZATION -----
MarineMax of Southeast Florida, LLC (3)	Delaware
MarineMax of Southwest Florida, LLC (3)	Delaware
MarineMax of Utah, Inc.	Delaware
MarineMax Services, Inc. (5)	Delaware
MarineMax TX, L.P. (6)	Texas
MarineMax U.S.A., Inc.	Nevada
MMX GP, LLC (7)	Delaware
MMX Holdings, LLC (8)	Delaware
MMX Interests, LLC (9)	Delaware
MMX Member, Inc. (10)	Delaware
MMX Partners, Inc.	Delaware
MMX Ventures, LP (11)	Delaware
Newcoast Financial Services, Inc.	Delaware
Walker Marina Realty, L.L.C.	Delaware

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- (1) Wholly owned subsidiary of 11502 Dumas, Inc.
  - (2) 99% owned by MarineMax NJ Partners, Inc. as limited partner and 1% owned by MarineMax New Jersey GP, Inc., as general partner.
  - (3) Wholly owned subsidiary of MMX Holdings, LLC.
  - (4) Wholly owned subsidiary of MarineMax of New Jersey Holdings, Inc.
  - (5) Wholly owned subsidiary of MMX Partners, Inc.
  - (6) 99% owned by 11502 Dumas, Inc. as limited partner and 1% owned by Dumas GP, L.L.C. as general partner.
  - (7) 99% owned by MMX Partners, Inc. and 1% owned by MMX Member, Inc.
  - (8) 99% owned by MMX Interests, LLC and 1% owned by MMX GP, LLC.
  - (9) 99% owned by MMX Ventures, LP and 1% owned by MMX GP, LLC.
  - (10) Wholly owned subsidiary of MMX Partners, Inc.
  - (11) 99% owned by MMX Partners, Inc. as limited partner and 1% owned by MMX GP, LLC as general partner.



**CONSENT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS**

As independent certified public accountants, we hereby consent to the incorporation of our report included in this Form 10-K, into the Company's previously filed Registration Statement File Nos. 333-30094, 333-63307 and 333-85835.

/s/ Arthur Anersen LLP

Tampa, Florida  
December 19, 2001

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**End of Filing**

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