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AOR 2013-19

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October 25, 2013

VIA OVERNIGHT DELIVERY

Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463

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OFFICE OF GENERAL
COUNSEL

Dear Sir or Madam:

This firm represents Yamaha Motor Corporation, U.S.A. in its efforts to establish a separate segregated fund. Its parent company, Yamaha Motor Co., Ltd. ("YMC"), was started in 1955. Yamaha Motor Corporation, U.S.A. ("YMUS" or "Yamaha") is the wholly owned subsidiary of YMC. YMUS is the distributor of various motorized products manufactured by YMC, as well as Yamaha Motor Manufacturing Corporation of America ("YMMC") and Tennessee Watercraft, Inc. (TWI) in the United States. Such products include motorcycles, all terrain vehicles, scooters, snowmobiles, golf carts, outboard engines, personal watercraft and jet boats. YMUS' Marine Division is responsible for the sale and distribution of outboard engines under the Yamaha brand name.

Yamaha wishes to create a separate segregated fund ("SSF") to contribute to federal candidates and raise funds from its dealers and service centers. There are two types of businesses from which Yamaha wishes to raise funds related to its Marine Division: (1) Dealers, which provide retail sales and service of Yamaha products; and (2) Service Centers, which service Yamaha products and sell Yamaha outboard motors packaged with a boat, but do not sell loose Yamaha outboard motors, and mainly provide servicing functions.

Pursuant to 11 C.F.R. § 112.1(b), Yamaha seeks an Advisory Opinion regarding the following items: (1) whether Yamaha, as an organization that operates primarily through dealers and service centers, may solicit PAC contributions from the executive and administrative personnel of its Dealers; and (2) whether Yamaha, as an organization that operates primarily through dealers and service centers, may solicit PAC contributions from executive and administrative personnel of its Service Centers.

Yamaha distributes its marine products through a network of Dealers and Service Centers that are separate corporate entities from Yamaha. Due to the level of control Yamaha exercises over its Dealers and Service Centers, we believe that under the Federal Election Campaign Act ("FECA"), FEC regulations, and advisory opinions, the executive and administrative personnel, stockholders, and families of Yamaha's Dealers and Service Centers can be solicited as licensees pursuant to 11 C.F.R. §§ 114.5(g)(1) and Advisory Opinions 1992-7, 1988-46 and 1985-31. However, recognizing the very fact-specific nature of these questions, Yamaha seeks an Advisory Opinion confirming that the proposed solicitations comply with the FECA and its attendant regulations.

Yamaha previously sought an advisory opinion from the Commission, filed as Request No. 2012-37. The Commission was unable to reach a conclusion on the proposed Advisory Opinion in December 2012. Yamaha has narrowed the scope of this request from its original request.

FACTUAL BACKGROUND

YMUS is a California corporation which is the wholly owned subsidiary of YMC. YMUS is the distributor of various motorized products manufactured by YMC, YMMC, and TWI. Such products include motorcycles, all terrain vehicles, scooters, snowmobiles, golf carts, outboard engines, personal watercraft, and jet boats. Yamaha's Marine Division is responsible for the sale and distribution of outboard engines under the Yamaha brand name. The President of the Marine Division is empowered by the Board of YMUS to manage and oversee the operations of the Marine Division, and would be empowered to solely manage and oversee the operation of its SSF.

Yamaha sells its products through an extensive network of Dealers and Service Centers. All of the Dealers and Service Centers have the right to use Yamaha's trademarks as part of their advertising, and would be considered by the public to be affiliated with Yamaha, even though none of the Dealers and Service Centers are owned by Yamaha.

The Dealers and Service Centers are closely affiliated with Yamaha. Dealer and Service Center agreements, discussed below, demonstrate that Yamaha exercises control over the hours of business, display and inventory, and facilities. Yamaha controls who manages the Dealers and Service Centers. Yamaha reviews detailed financial information of its Dealers and Service Centers beyond just sales of Yamaha products. Yamaha evaluates the performance of its Dealers and Service Centers based on factors beyond the volume of sales, also reviewing the manner of advertising, treatment of customers, and sales promotions. Yamaha's agreements with its Dealers and Service Centers can be terminated if they do not meet the standards outlined by Yamaha.

There are two standard agreements used by Yamaha: (1) the Dealer Agreement (attached as Ex. A); and (2) the Outboard Motors Service Center Agreement (attached as Ex. B). Each one is explained below.

1. The Dealer Agreement

Yamaha's Dealers provide retail sales and service of Yamaha products throughout the country. After completing an application process, Dealers are selected by Yamaha to sell its products to retail customers and are the exclusive method by which retail customers are able to purchase new Yamaha products. Most Dealers are small- to mid-sized corporations and while some dealers sell other marine products, most exclusively deal in Yamaha products.

The process for becoming a Yamaha Dealer involves a minimum of four steps:

1. The initial contact can come from the prospective dealer to Yamaha or by Yamaha to a prospective dealer.

2. Yamaha then conducts an analysis of the market and the District Marketing Manager (DMM) reviews the prospective dealer's capabilities. That review includes the prospective dealer's financials, boat lines sold, shop location, management in place, inspection of the store, and potentially other factors the DMM thinks are relevant.
3. If Yamaha and the prospective dealer agree that it would be beneficial to move forward, the prospective dealer then officially "applies" to become a dealer. This includes the Dealer Agreement attached to this request, but the paperwork makes clear it is only an application until the management of Yamaha's Marine Division accepts the application.
4. Once Yamaha accepts the application, it executes a Dealer Agreement and a dealer number is provided, along with setup for dealer training.

In order to be considered for a dealership, Dealers have to disclose a significant amount of financial and credit information to Yamaha. After being selected, prospective Dealers then must complete a number of training requirements, including operational training and training on servicing Yamaha products. Achieving higher levels of certification from Yamaha (which can be used in advertising) requires additional online training modules. Some training takes place online and other training takes place in one of two physical training locations operated by Yamaha.

Each Dealer is assigned a DMM, who visits each location no less than each quarter (and usually monthly) to evaluate the displays, setup of the store, and the Dealer's operations. Yamaha's control over the Dealer extends to more than just the setup of its own products, because it also includes the overall store and the placement of specific products from Yamaha with prominence.

Yamaha requires that Dealers purchase a sign with the Yamaha logo and does not grant a license to use its mark to its Dealers. Instead, Yamaha retains control over the Yamaha marks through a Yamaha Visual Identity Manual and review of Dealer advertisements. Dealers are not required to obtain pre-approval of advertisements that use Yamaha's marks and follow the Manual. But Dealers must submit all advertisements for approval in order to receive reimbursement. Yamaha does not provide a full reimbursement for the costs of the advertisement, but reimburses a significant portion of the costs.

In addition, Yamaha's control over its Dealers includes continuing evaluations of the financial performance and health of Dealers, the hours of business, and the required purchase of special tools to service Yamaha products. Yamaha also prohibits the assignment of the agreement with the Dealers because of the personal nature of the agreement.

The Dealer Agreement lays out these requirements for Yamaha Dealers and defines the relationship between Yamaha and its Dealers. Sections 2.4 through 2.10 specifically state the variety of criteria that must be followed in order for a Dealer to serve in that capacity for Yamaha:

2.4 Performance Criteria. Dealers level of performance may be evaluated periodically by Yamaha, based on reasonable criteria such as the following:

- (a) The volume of Dealers sales of the Products as compared with the sale of competitive products in the market area served by Dealer's Location.
- (b) The volume of Dealers sales of the Products as compared to other dealers of the Products.
- (c) The actual sales volume of the Products by Dealer as compared to the reasonable annual sales objectives which may be established by Yamaha for Dealer.
- (d) The manner in which Dealer has conducted its sales operations including advertising, sales promotion and treatment of consumers.
- (e) The trend over a reasonable period of time of Dealer's sales performance.
- (f) The availability of Products to Dealer.
- (g) Significant local conditions that may have directly affected Dealers performance.
- (h) The compliance with all of the terms and conditions of this Agreement.

Evaluations prepared pursuant to this Section 2.4 will be discussed with and provided to Dealer, with the expectation that Dealer will take such action as may be required to correct any deficiencies in Dealers performance of its responsibilities.

2.5 Customer Relations. Dealer shall at all times conduct its operations in such a manner so as to develop and maintain good customer relations. Dealer shall provide prompt and courteous service to customer inquiries and complaints relating to the Products. Dealer shall at all times properly represent the Products and shall not make, directly or indirectly, any false, misleading, or disparaging representations to any customer or other person in regards to Yamaha or the Products.

2.6 Hours of Business. Dealer agrees that its operations shall be conducted in the normal course of business during usual business hours and for not less than the usual number of days of the week and hours of the day which are customary for the same type of business in the market area served by Dealer's Location.

2.7 Display and Inventory. Dealer agrees to maintain a prominent display of a reasonable representation of the entire line of the Products at Dealer's Location, which display shall be in accordance with the guidelines established by Yamaha. Dealer also agrees to maintain a reasonable inventory of the Products which is adequate to meet the current and anticipated demand in the market area served by Dealer's Location, subject to availability and to guidelines established by Yamaha.

2.8 Report and Records. in order that Yamaha may comply with applicable regulations and achieve its marketing objective, Dealer shall report to Yamaha, all retail sales of the Products within ten (10) days of completion of such sale. Dealer shall periodically provide to Yamaha complete and accurate data regarding Dealer's inventories of the Products and such other reasonable information as and when requested by Yamaha. Dealer shall keep complete and accurate records regarding sales and service activities for the Products, applications for discounts, allowances, warranty claims, refunds and credits and shall retain for at least three (3) years all such records and documents. Dealer shall permit any designated representative of Yamaha, at reasonable times, to examine and audit such records and documents.

2.9 Cooperation with Yamaha. Dealer shall at all times cooperate and work closely with Yamaha's representatives and shall maintain close communications with such representatives in regards to Dealers operations hereunder.

2.10 Facilities. Dealer shall establish and maintain the appearance and condition of the facilities at Dealer's Location so as to favorably reflect on the Products and the quality image of Yamaha. As part of the facilities at Dealer's Location, Dealer shall install and maintain prominent and suitable signs as recommended by Yamaha, which identify Dealer as a dealer of the Products. Dealer agrees to maintain the facilities in a neat and orderly fashion and in accordance with the standards established by Yamaha which may be changed from time to time. The facilities must at all times comply with such standards with respect to appearance, location, size, layout of building, showroom, office, parts department and service operation. Yamaha may periodically evaluate Dealer's facilities. Dealer shall permit any designated representative of Yamaha, at reasonable times, to inspect the facilities and Dealer agrees to make such alterations or improvements to the facilities as Yamaha may reasonably specify.

Other provisions of the Agreement are also relevant: Yamaha undertakes efforts within its sole discretion to provide sales assistance to Dealers (Section 5.2) and to allow Dealers to use Yamaha's trademarks (Section 5.4). The Dealers' use of Yamaha's trademarks is not a license, but Yamaha retains control of the use of its marks. Assignment is prohibited because of the personal nature of the agreement (Section 7.1).

Yamaha also requires Dealers to submit financial reports and financial information to Yamaha on a regular basis:

5.5 Financial Responsibility. Dealer shall maintain for its operations hereunder adequate working capital and lines of wholesale credit to enable Dealer to fulfill its responsibilities under this Agreement. Dealer further agrees to comply with financial responsibility guidelines issued by Yamaha from time to time. Dealer agrees to furnish Yamaha, at reasonable times, financial reports and other financial data in a format acceptable to Yamaha to enable Yamaha to determine Dealer's financial responsibility. At least within ninety (90) days following the close of Dealer's fiscal year, Dealer agrees to submit to Yamaha Dealer's audited financial statement for the previous year.

2. The Outboard Motors Service Center Agreement

In addition to its Dealers, Yamaha also selects entities to serve as Service Centers that do not sell loose Yamaha outboard motors to retail customers but instead provide warranty and other service on Yamaha products and sell boats powered by Yamaha outboard motors provided to them by boat builders ("Packaged Products"). Service Centers may provide some sales of parts as part of the service process, but otherwise only sell Packaged Products and do not sell loose Yamaha outboard motors. Service Centers are chosen through the same process described above for Dealers.

Through the standard Service Center agreement, Yamaha exercises control over the hours of operation of the Service Centers, makes monthly to quarterly visits to check the cleanliness and operations of the locations, and requires the purchase of special tools for warranty work. Like the Dealer agreement, owners of Service Centers must undergo training from Yamaha and the agreement cannot be assigned. Yamaha also requires that Service Centers purchase a sign with the Yamaha logo and retains control over the Yamaha marks through the same Yamaha Visual Identity Manual required of Dealers.

The Service Center Agreement provides less control over the operations of the service center than the Dealer agreement, but still controls a number of points indicating control over policies and practices. Specifically, the Service Center Agreement provides for hours of operation and the authority of Yamaha to inspect the records of the Service Center at any time it so chooses. The Service Agreement specifically provides:

4.3 Customer Relations. Service Center shall at all times conduct its operations in such a manner so as to develop and maintain good customer relations. Service Center shall provide prompt and courteous service to customer inquiries and complaints relating to the Products. Service Center shall at all times properly represent the Products, parts and accessories and shall not make, directly or indirectly, any false, misleading, or disparaging representations to any customer or other person in regards to Yamaha or the Products, parts and accessories.

4.4 Hours of Business. Service Center agrees that its operations shall be conducted in the normal course of business during usual business hours and for not less than the usual number of days of the week and hours of the day which are customary for the same type of business in the market area served by Service Center location.

4.5 Report and Records. Service Center shall periodically provide to Yamaha complete and accurate data regarding Service Center service activities and such other reasonable information as and when requested by Yamaha. Service Center shall keep complete and accurate records regarding service activities for the Products. Service Center shall permit any designated representative of Yamaha, at reasonable times, to examine and audit such records and documents.

4.6 Facilities. Service Center shall establish and maintain the appearances and condition of the facilities at Service Center location so as to favorably reflect on the Products and the quality image of Yamaha. As part of the facilities at Service Center location, Service Center shall install and maintain prominent and suitable signs as recommended by Yamaha, which identify Service Center as a service center of the Products. Service Center agrees to maintain the facilities in a neat and orderly fashion and in accordance with the standards established by Yamaha which may be changed from time to time.

In addition, similar provisions to the Dealer Agreement exist regarding the use of Yamaha's trademarks (Section 4.2), and limitations on assignment due to the personal nature of the agreement (Section 6.1).

ANALYSIS

1. Solicitation of Dealers

Yamaha exercises a substantial amount of control over the business policies, practices, and procedures of its Dealers. Those Dealers are also subject to a large amount of contractual obligations to Yamaha. This is similar to the control maintained by H&R Block over its franchisees, found to be appropriate under AO 1992-7, including extensive training and oversight, regular supervisory visits, control over appearance of the facilities, requirements regarding the hours of operation, and restrictions on transferability. *See also* AO 1988-46 and 1979-38. The Commission reviews the factors set forth at 11 C.F.R. § 100.5(g)(4) to determine whether an organization is an affiliate of a corporation. Those factors include control over the governance of the other organization and the ability to control the decision making employees at the organization. 11 C.F.R. § 100.5(g)(4)(ii)(B) and (C).

Although Yamaha's dealers are not franchisees, they are licensees and Yamaha maintains a sufficient level of control over its Dealers for them to be considered affiliates for purposes of FECA and this Commission's regulations. The amount of control Yamaha exercises over governance extends to hours of operation, the financial health of the Dealers, and extensive reporting of sales to Yamaha. The level of control includes requiring Dealers to obtain permission from Yamaha prior to changing business location or even changing their ownership or management personnel. Yamaha controls who operates the dealerships through its limitations on control of the Dealers and limitations on assignment. These facts demonstrate affiliation between Yamaha and its Dealers that is consistent with the advance approval and control in AO 1979-38 (Hardee's).

The advance approval Yamaha requires of its Dealers is in sharp contrast to relationship of Anheuser-Busch to its wholesalers in AO 1985-07, which only required discussion of a prospective sale. Anheuser-Busch also had "limited rights" to "approve the wholesaler's designation of a Successor-Manager," but Yamaha's agreements and relationship give it broad veto power over such decisions. There is no indication that Anheuser-Busch had the authority to prevent changes of ownership and key personnel as Yamaha does in its agreements.

Unlike the limited financial reporting information submitted to Anheuser-Busch in AO 1985-07, Yamaha does not have limits on the financial information required of Dealers. It requires Dealers to submit their entire audited financial statement for the previous year and does not only receive reports about the sale and service of Yamaha products. Dealers must also make reports available for inspection and audit by Yamaha regarding their activities, the same requirement that existed for H&R Block franchisees in AO 1992-07.

Like the standards outlined in AO 2012-12 (Dunkin' Brands), Yamaha exercises control over the training of personnel for Dealers, the display of products and inventory, and dealings with customers. Yamaha also exercises oversight over the Dealers' hours of operation and the location, size, and layout of their buildings, showrooms, offices, parts departments, and service operations. Dealers are required to provide service to any person who has purchased a Yamaha product, even if they did not purchase the product from that particular Dealer, and to purchase specialized tools and equipment prescribed by Yamaha to service Yamaha products. Also like Dunkin' Brands, Yamaha regulates the advertising process for its Dealers and only grants the authority to use its trademarks in a manner specified by Yamaha and subject to its complete control.

The amount of control surrendered by the Dealers to Yamaha in exchange for becoming a Dealer is far more than a "typical business contract between two independent and separate entities" recognized in AO 1985-07. In contrast, the Dealer becomes sufficiently connected to Yamaha that it loses a significant degree of independence in the process while Yamaha exercises "pervasive supervision and direction" over the Dealer. AO 1985-07.

Yamaha's relationship with its Dealers meets the factors set forth at 11 C.F.R. § 100.5(g)(4) to demonstrate that it is affiliated with its Dealers. This is the type of control required by this Commission and should authorize a finding that Yamaha may solicit the executive and administrative personnel, and

the families thereof, of its Dealers. 11 C.F.R. § 114.1(c). In addition, Yamaha should be able to solicit from contributions from the Dealers themselves if they are individuals or partnerships, pursuant to AO 1988-46 and 1983-48.

2. Solicitation of Service Centers

While the level of control exercised by Yamaha over its Service Centers is less than the control over its Dealers, it is still substantial under 11 C.F.R. § 100.5(g)(4) and AO 1992-7. *See also* AO 1988-46 and 1979-38. Yamaha regulates the governance of the Service Centers in their hours of operation, customer relations, and facilities. Service Centers must make reports available for inspection and audit by Yamaha, in the same way as Dealers. Service Centers receive the same supervisory visits, training, and tool purchase requirements as Dealers. Like its relationship with Dealers, Yamaha controls whether the Service Centers can change ownership. Yamaha also regulates the advertising process for Service Centers and only grants the authority to use its trademarks in a manner specified by Yamaha and subject to its complete control.

As with the Dealers, this is the type of control required by the Commission and should authorize a finding that Yamaha may solicit the executive and administrative personnel, and the families thereof, of its Service Centers. 11 C.F.R. § 114.1(c). In addition, Yamaha should be able to solicit from contributions from the Service Centers themselves if they are individuals or partnerships, pursuant to AO 1988-46 and 1983-48.

3. Lack of Exclusivity in Arrangements

The lack of exclusivity in the arrangements between Yamaha and its Dealers and Service Centers should not foreclose Yamaha from soliciting the executive and administrative personnel of those entities, particularly in light of the unique nature of the marine products market.

The requirements of 11 C.F.R. § 100.5(g)(4) that the Commission reviews for affiliation are primarily about governance, not sales. In AO 1985-07 (Anheuser-Busch), the Commission looked primarily to the lack of governance and control Anheuser-Busch had over its wholesalers, while only finding the lack of exclusivity was "further evidence" beyond the governance issues. Similarly, in AO 1988-46 (Collins), the Commission focused on the governance and control exercised by the licensor over the licensee. The regulatory focus on governance first, as opposed to exclusivity, makes sense as a matter of policy because the amount of management control exercised by a company over its licensees is what creates an affiliation beyond a "typical business contract." AO 1985-07.

Even if a Dealer or Service Center also had agreements with other marine product manufacturers who decided to form PACs and solicit the same entities Yamaha proposes to solicit, this should not prohibit a finding of affiliation between Yamaha and its Dealers and Service Centers. It is not unusual for individuals to be part of multiple solicitable classes. Individuals who serve on multiple corporate boards often will be in more than one solicitable class. For example, in Advisory Opinion 2001-07, members of the board of the Nuclear Management Company (NMC) were also executives of corporations that already had their own SSFs. The fact that those executives could be solicited to contribute to multiple

SSFs did not prohibit NMC from establishing its own SSF and soliciting employees.¹ An individual who holds stock in more than one publicly-traded company is similarly within multiple solicitable classes if a company chooses to make such a solicitation.² The fact that someone might be in multiple solicitable classes at a future point should not operate to defeat a finding of affiliation in this case.

In addition, the uniqueness of the marine products market further limits the potential effects of the requested advisory opinion. Yamaha exercises a level of selectivity in its selection of Dealers that is far closer to an exclusive franchise relationship than a non-exclusive retailer arrangement. As indicated above, Yamaha carefully studies the local market before forming a full line Dealer relationship and does not allow more full line dealers to sell Yamaha products than that particular market can bear. This is distinctly different than the desire of a manufacturer to sell its product in as many outlets as possible.

Several additional practical realities of the marine products market also limit any potential for a dramatic expansion of this Commission's past decisions, even though Yamaha's agreements with most of its Dealers and Service Centers are not exclusive. The number of marine manufacturers in the U.S. is very small (Yamaha, Mercury, Evinrude, and Suzuki are the most prominent), so even assuming that every marine manufacturer has agreements that are as intrusive as Yamaha's agreements with its Dealers and Service Centers,³ Dealers could not be in the solicitable classes of more than a handful of SSFs.

The marine product market is also unlike other markets in that marine products are not sold primarily through "big box" type stores, but rather through small- to medium-sized businesses. This difference in the market allows the type of intrusive relationship between Yamaha and its Dealers, which would not be possible if Yamaha's marine products were marketed through large corporate entities. The reality is that most Dealers have to sell multiple lines because being an exclusive Dealer of a particular brand of marine products is not economically feasible in many parts of the country.

Another feature of the marine products market is that many Dealers self-identify primarily with one manufacturer. While those Dealers may carry more than one manufacturer's products, it is unlikely that those manufacturers will choose to participate in more than one SSF because they primarily sell the products of only one manufacturer.

Thus, when considered with the unique marine products market and the Commission's precedent, this Commission should look beyond whether the agreements in question are exclusive and find affiliation exists based on the pervasive supervision and direction and unique business relationship between Yamaha and its Dealers and Service Centers.

¹ See also Advisory Opinions 2012-21 and 2007-12, finding no affiliation between organizations even though there was the potential or actual overlap in Board members serving in multiple entities.

² 11 C.F.R. § 114.5(g)(1).

³ Yamaha is not aware of whether other marine product manufacturers require the same level of control over management personnel and financial reporting required by its dealer and service center agreements.

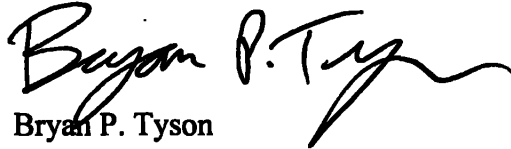
CONCLUSION

Under the Federal Election Campaign Act, its attendant regulations, and this Commission's Advisory Opinions, we believe that Yamaha's SSF may solicit for voluntary contributions from the executive and administrative personnel, and their families, of its Dealers and Service Centers. But because of the fact-specific nature of these issues, we seek this Commission's guidance through an Advisory Opinion.

If the Commission requires any additional facts or information, we will be happy to supplement this request.

Sincerely,

STRICKLAND BROCKINGTON LEWIS LLP


Bryan P. Tyson

Enclosures (as stated)

YAMAHA
YAMAHA
YAMAHA
YAMAHA
YAMAHA

Dealer Agreement

EXHIBIT

A

YAMAHA MOTOR CORPORATION, U.S.A. SALES AND SERVICE AGREEMENT

THIS AGREEMENT is made by and between YAMAHA MOTOR CORPORATION, U.S.A., a California Corporation, having its principal office located at 6555 Katella Avenue, Cypress, California 90630 (hereinafter referred to as "Yamaha") and Dealer as identified below.

A. Dealer's Complete Legal Name

Name: _____
(Corporation, LLC, Proprietorship, Partnership referred to in the Agreement as "Dealer")

Corporation (Complete Sec. C-1 & C-2)	Limited Liability Corporation (LLC) (Complete Sec. C-2)	Sole Proprietorship (Complete Sec. C-2)	Partnership (Complete Sec. C-2)
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Fictitious Business Name (if different from above) _____

B. Dealer's Location

Address: _____
(Referred to in the Agreement as "Dealer's Location")

C. Dealer: Owners and Management

	Name	Title
1. Officers:	_____	President
	_____	Vice President
	_____	Secretary
	_____	Treasurer
	Name	Percentage of Ownership
2. Shareholders Members, Owner or Partners	_____	_____
	_____	_____
	_____	_____
	_____	_____

RECITALS

A. Yamaha is the exclusive distributor in the United States of quality products which are sold under certain trademarks owned by Yamaha ("Yamaha", "RIVA" and "Riva by Yamaha") and distributes parts and accessories therefor which products, parts and accessories are more specifically defined on the Addendum(s), attached hereto and made a part hereof (hereinafter collectively referred to as the "Products").

B. Dealer has represented as an inducement to Yamaha's entering into this Agreement, that: (1) Dealer is capable of performing the terms and conditions of this Agreement, (2) Dealer has a sufficient number of trained personnel and adequate facilities to sell and service the Products, and (3) Dealer has adequate financial resources to perform the necessary obligations herein.

C. Dealer desires to engage in sales of the Products in accordance with the terms and conditions hereof; and Yamaha desires to appoint Dealer as a retail sales and service location for the Products in accordance herewith.

Yamaha and Dealer agree to govern their relationship in accordance with the following:

1. ESTABLISHMENT OF RELATIONSHIP

1.1 Appointment of Dealer. Yamaha hereby appoints Dealer as an authorized dealer for the sale and service of the Products; and Dealer hereby accepts such appointment. Yamaha and Dealer agree that Dealer

shall only sell the Products to retail consumers and shall not sell or otherwise transfer the Products to any other dealer except those dealers authorized by Yamaha to sell and service the Products.

1.2 Location of Dealer. In order to enable Yamaha to maintain an effective network of authorized Yamaha dealers, Dealer agrees not to directly or indirectly sell or offer for sale the Products from any location other than from Dealer's Location.

1.3 Change of Location. Dealer agrees not to change Dealer's Location or establish or operate any other location for the sale or service of the Products without obtaining Yamaha's prior written approval of such proposed change. Yamaha's approval shall not be unreasonably withheld. Any proposed change of location is subject to applicable state laws; however, nothing herein shall be construed to require Yamaha to take any step to obtain governmental approval for any proposed change of location.

1.4 Nonexclusive. The rights granted herein are nonexclusive. Yamaha reserves the right to appoint additional dealers of any or all of the Products at any time pursuant to Yamaha's marketing program and policies.

2. DEALER'S SALES OBLIGATIONS

2.1 Sales. Dealer agrees to vigorously promote and sell the Products to retail consumers, and shall continually work to increase the market for the Products in the area served by Dealer's Location.

Dealer shall attain the annual sales objectives, if any, established by Yamaha for Dealer. Dealer shall conduct a continuing program of quality advertising and sales promotion activities for the Products. Dealer may sell the Products to retail consumers at such prices as Dealer may establish from time to time.

2.2 Sales Organization. Dealer agrees to maintain a fully qualified sales organization which includes qualified sales personnel who are thoroughly familiar with the Products. Dealer, at its expense, shall cause such personnel to attend training programs for the Products and study sales manuals and bulletins for the Products as may be provided by Yamaha from time to time.

2.3 Multiple Brands. Yamaha recognizes that Dealer may handle brands which are competitive with the Products sold to Dealer pursuant to this Agreement. In the event Dealer handles such competitive products, Dealer agrees to afford the Products at least as much effort as Dealer gives to competitive products handled by Dealer in terms of promotion and sale, floor space, inventory and service.

2.4 Performance Criteria. Dealer's level of performance may be evaluated periodically by Yamaha, based on reasonable criteria such as the following:

- (a) The volume of Dealer's sales of the Products as compared with the sale of competitive products in the market area served by Dealer's Location.
- (b) The volume of Dealer's sales of the Products as compared to other dealers of the Products.
- (c) The actual sales volume of the Products by Dealer as compared to the reasonable annual sales objectives which may be established by Yamaha for Dealer.
- (d) The manner in which Dealer has conducted its sales operations, including advertising, sales promotion and treatment of consumers.
- (e) The trend over a reasonable period of time of Dealer's sales performance.
- (f) The availability of Products to Dealer.
- (g) Significant local conditions that may have directly affected Dealer's performance.
- (h) The compliance with all of the terms and conditions of this Agreement.

Evaluations prepared pursuant to this Section 2.4 will be discussed with and presented to Dealer, with the expectation that Dealer will take such action as may be required to correct any deficiencies in Dealer's performance of its responsibilities.

2.5 Customer Relations. Dealer shall at all times conduct its operations in such a manner so as to develop and maintain good customer relations. Dealer shall provide prompt and courteous service to customer inquiries and complaints relating to the Products. Dealer shall at all times properly represent the Products and shall not make, directly or indirectly, any false, misleading, or disparaging representations to any customer or other person in regards to Yamaha or the Products.

2.6 Hours of Business. Dealer agrees that its operations shall be conducted in the normal course of business during usual business hours and for not less than the usual number of days of the week and hours of the day which are customary for the same type of business in the market area served by Dealer's Location.

2.7 Display and Inventory. Dealer agrees to maintain a prominent display of a reasonable representation of the entire line of the Products at Dealer's Location, which display shall be in accordance with the guidelines established by Yamaha. Dealer also agrees to maintain a reasonable inventory of the Products which is adequate to meet the current and anticipated demand in the market area served by Dealer's Location, subject to availability and to guidelines established by Yamaha.

2.8 Report and Records. In order that Yamaha may comply with applicable regulations and achieve its marketing objectives, Dealer shall report to Yamaha, all retail sales of the Products within ten (10) days of completion of such sale. Dealer shall periodically provide to Yamaha complete and accurate data regarding Dealer's inventories of the Products and such other reasonable information as and when requested by Yamaha. Dealer shall keep complete and accurate records regarding sales and service activities for the Products, applications for discounts, allowances, warranty claims, returns and credits and shall retain for at least three (3) years all such records and documents. Dealer shall permit any designated representative of Yamaha, at reasonable times, to examine and audit such records and documents.

2.9 Cooperation with Yamaha. Dealer shall at all times cooperate and work closely with Yamaha's representatives and shall maintain close communications with such representatives in regards to Dealer's operations hereunder.

2.10 Facilities. Dealer shall construct and maintain the appearance and condition of the facilities at Dealer's Location so as to favorably reflect on the Products and the quality image of Yamaha. As part of the facilities at Dealer's Location, Dealer shall install and maintain permanent and suitable signs as recommended by Yamaha, which identify Dealer as a dealer of the Products. Dealer agrees to maintain the facilities in a neat and orderly fashion and in accordance with the standards established by Yamaha which may be changed from time to time. The facilities must at all times comply with such standards with respect to appearance, location, size, layout of building, showroom, office, parts department and service operation. Yamaha may periodically evaluate Dealer's facilities. Dealer shall permit any designated representative of Yamaha, at reasonable times, to inspect the facilities and Dealer agrees to make such alterations or improvements to the facilities as Yamaha may reasonably specify.

3. DEALER'S SERVICE OPERATIONS

3.1 Service Operations. Dealer shall establish and maintain quality service operations as recommended by Yamaha for the Products at Dealer's Location including a parts and accessories department which will comply with all standards established by Yamaha. Dealer shall provide to owners of the Products such general service and repair as may be necessary. Any and all charges therefor shall be reasonable and consistent with those prevailing in the market area served by Dealer's Location and all such services and charges shall be in accordance with applicable law. Dealer agrees to provide service to any customer who has purchased a Product, regardless of the dealer from whom the Product was purchased.

3.2 Service Organization. Dealer agrees to maintain a fully qualified service organization which includes service personnel who are thoroughly familiar with the Products. Dealer, at its expense, shall cause such personnel to attend training programs for the service of the Products and study service manuals and bulletins for the Products as may be provided by Yamaha from time to time. Dealer agrees to purchase and provide to its service personnel all tools and equipment, as prescribed by Yamaha, that may be necessary to adequately and properly service the Products.

3.3 Review of Dealer's Service and Repair Performance. Yamaha may periodically evaluate Dealer's service and repair performance in accordance with the standards recommended by Yamaha. Evaluations prepared pursuant to this Section 3.3 will be discussed with and presented to Dealer, with the expectation that Dealer will take such action as may be required to correct any deficiencies in Dealer's performance of his responsibilities.

3.4 Delivery and Preparation Obligations. Dealer shall be responsible for and agrees to perform set-up, preparation, and delivery obligations as prescribed by Yamaha, prior to the delivery of the Products to purchasers thereof. Dealer agrees that all Products sold by it will be in proper operating condition prior to delivery to any purchaser. Dealer further agrees to provide purchasers of the Products with information concerning proper operation of the Products prior to delivery. Yamaha agrees to compensate Dealer in accordance with the policies of Yamaha as may be issued from time to time.

3.5 Warranty.

A. **Warranty.** Products supplied to Dealer by Yamaha are warranted only in accordance with Yamaha's written warranty to consumers, which written warranty is supplied to Dealer for distribution to Dealer's customers and which may be amended or modified from time to time only by Yamaha. OTHER THAN THE WARRANTY CONTAINED IN YAMAHA'S WRITTEN WARRANTY OR AS REQUIRED BY LAW, YAMAHA DISCLAIMS ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT BY WAY OF LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE. YAMAHA DISCLAIMS ANY LIABILITY FOR INCIDENTAL SPECIAL OR CONSEQUENTIAL DAMAGES OR COMMERCIAL LOSSES SUFFERED BY DEALER, ITS CUSTOMERS OR ANY THIRD PARTY, except as provided under state law.

B. **Warranty to Customers.** Dealer shall show customers any applicable Yamaha warranty prior to sale of the Products and will furnish customers a copy of any applicable Yamaha warranty at the time of sale. Dealer shall not give, or purport to give any additional or different warranty to customers on behalf of Yamaha, other than the applicable written warranty of Yamaha for the Products.

3.6 **Warranty Service.** Dealer agrees to perform all warranty service on all Products brought to Dealer, whether or not sold by Dealer. Dealer shall perform such warranty service in accordance with the policies of Yamaha as they may be issued from time to time in the Yamaha service and warranty manuals and bulletins. Any charges for such warranty service shall be reasonable and consistent with those prevailing in the market area served by Dealer's location. When performing warranty service on the Products, Dealer shall use only genuine Yamaha parts, or parts that are equivalent in quality and design as genuine Yamaha parts.

(a) Dealer acknowledges the importance of providing to owners of the Products prompt and skilled warranty service and the need to comply with all laws relating to warranty service. Dealer shall give immediate service to such warranty requests. Dealer agrees to perform all warranty service in a competent and workmanlike manner. Dealer agrees to maintain an inventory of genuine Yamaha parts in accordance with Section 2.7 and to provide all necessary warranty service.

(b) Dealer shall submit complete and accurate claims to Yamaha for reimbursement for parts and labor used in performing warranty service on warranty claim forms of Yamaha with all information required therein; and Yamaha shall reimburse Dealer for such parts and labor in accordance with the effective schedules and rates applicable to Dealer. Dealer shall keep and retain complete and accurate records and documents supporting such claims, which records and documents are subject to the provisions of Section 2.8, regarding inspection. In the event of the discovery of any improper claim or payment, Yamaha may charge back to Dealer all payments or credits previously issued thereon made by Yamaha to Dealer pursuant to such claims or otherwise, as well as the costs to Yamaha for such audit and the recovery of such payments or credit.

3.7 **Assistance and Protection.** In the event any warranty claim arises that Dealer is unable to perform, Yamaha should be promptly notified by Dealer and be provided the details of the claim and Yamaha shall use reasonable efforts to resolve such claim. Yamaha is relying upon Dealer's assurance that it is capable of performing service obligations for the Products. Dealer agrees to fully protect Yamaha from any claims, liability or loss that may result from a failure of Dealer to properly perform service for the Products as required hereunder or under applicable law.

3.8 **Technical Advice.** Yamaha will have service representatives available for Dealer to consult with, if necessary, in connection with service problems.

3.9 **Recall and Update.** Regardless of where Products covered by a recall or a modification program sponsored by Yamaha were purchased, Dealer will perform any inspection, recall, or modification service as may be required from time to time. All such service shall be performed in accordance with the announced policies and procedures of Yamaha.

4. PURCHASE OF THE PRODUCTS

4.1 **General Terms and Conditions.** Yamaha shall sell the Pro-

ducts to Dealer and Dealer shall purchase the Products from Yamaha in accordance with the terms and conditions set forth herein and the sales programs offered by Yamaha from time to time. Yamaha reserves the right to change any terms or conditions, including price and payment terms, at any time without accountability to Dealer. However, Yamaha shall endeavor to provide Dealer with advance notice of any such changes.

4.2 **Price.** Dealer shall pay to Yamaha the price and any other charges for the Products as set forth on Yamaha's price schedules, which are in effect at the time of invoicing of Dealer's order unless the sales program pursuant to which the Products were ordered specifies a different price. Yamaha may specify a future date upon which a new price and/or charge may take effect and upon that date the new price and/or charge shall take effect automatically.

4.3 **Payment.** Dealer shall pay the purchase price for the Products at the time of delivery thereof, unless Yamaha has approved other terms of credit for Dealer. If other credit terms have been approved, Dealer shall pay for the Products in accordance with the approved terms. Yamaha may suspend any order placed by Dealer or refuse the shipment thereof if Dealer fails to meet any payment term, credit, or financial requirement of Yamaha or of a financing source to which Yamaha has a recourse obligation. The cancellation or withholding of any order shall not be construed as a termination or breach of this Agreement by Yamaha.

4.4 **Orders.** Dealer shall order the Products from Yamaha in accordance with the ordering procedures established by Yamaha. The effective terms and conditions of Yamaha shall supersede any conflicting terms and conditions of any purchase order submitted by Dealer. All orders are subject to acceptance by Yamaha based on the availability of the Products and Dealer's compliance with the terms and conditions hereof. To enable Yamaha to place its purchases from the manufacturer of the Products, Dealer shall submit its purchase orders at such times as may be requested by Yamaha.

4.5 **Shipment.** Yamaha shall use its best efforts to ship all accepted orders for the Products to Dealer F.O.B. Yamaha's warehouse with reasonable promptness, provided, however, that Yamaha shall not be liable for any damage, loss, or delay, or otherwise, to the Products which occurs while in transit. Further, Yamaha shall not be liable for damages, consequential or otherwise, to Dealer which arise as a result of a failure to fill orders, delays in delivery, or any error in the filling of orders.

4.6 **Taxes.** Dealer represents and warrants that all Products purchased hereunder are purchased for resale in the ordinary course of Dealer's business. Dealer agrees that it is responsible for and shall comply with all laws calling for the collection and/or payment of all taxes, including sales and use taxes and ad valorem taxes.

5. GENERAL RESPONSIBILITIES -- YAMAHA AND DEALER

5.1 **Supply of Products.** Yamaha shall make reasonable efforts to supply Dealer with the Products in accordance with accepted orders; however, during any period of shortage, Yamaha shall be permitted to allocate the Products in accordance with applicable marketing plans.

5.2 **Promotion and Assistance by Yamaha.** Yamaha shall, from time to time, provide to Dealer sales assistance, incentives, and programs. Yamaha shall conduct an advertising program for the Products which may include television and radio commercials, magazine advertisements, and promotional events. Any such incentives, programs, premiums and assistance shall be at the sole discretion of Yamaha.

5.3 **Change to the Products.** Dealer acknowledges that the Products are manufactured by suppliers of Yamaha; consequently, the Products available to Yamaha may be periodically changed as to design, models, or features or some or all of the Products may be discontinued all without accountability to Dealer in connection with any Products ordered by Dealer or Dealer's inventory of the Products. Yamaha will use reasonable efforts to provide advance notice of any such change.

5.4 **Trademarks.** Yamaha agrees to permit Dealer to identify itself as an authorized dealer for the Products and use the trademarks of Yamaha applicable to the Products in connection with Dealer's efforts to

sell and promote the Products provided, however, that such use shall be subject to the control of Yamaha and be in a manner consistent with the high quality image of the Products. Dealer shall not use the trademarks or trademarks of Yamaha as a part of its corporate name or in any manner inconsistent with the instructions of Yamaha. Dealer shall promptly notify Yamaha of any infringement or unauthorized use by any person of such patents, trademarks, tradenames, copyrights or designs. Dealer acknowledges that Yamaha has the sole right and interest in such patents, trademarks, tradenames, copyrights and designs. Dealer agrees to cease immediately all use of Yamaha trademarks, tradenames and copyrights and any other proprietary rights on termination of this agreement.

5.5 Financial Responsibility. Dealer shall maintain for its operations hereunder adequate working capital and lines of wholesale credit to enable Dealer to fulfill its responsibilities under this Agreement. Dealer further agrees to comply with financial responsibility guidelines issued by Yamaha from time to time. Dealer agrees to furnish Yamaha, at reasonable times, financial reports and other financial data in a format acceptable to Yamaha to enable Yamaha to determine Dealer's financial responsibility, at least within ninety (90) days following the close of Dealer's fiscal year. Dealer agrees to submit to Yamaha Dealer's audited financial statement for the previous year.

5.6 Compliance with Laws. Dealer shall conduct and maintain at all times its sales and service operations in strict compliance with all applicable federal and state laws and regulations, county and city ordinances and regulations and any other applicable law, regulation or ordinance.

6. TERMINATION

6.1 Entire Agreement. This Agreement shall be effective upon the execution hereof by Dealer and an authorized officer or representative of Yamaha and upon the execution of one or more Addendum(s) attached hereto and made a part hereof. This Agreement shall terminate upon termination of all Product Addendum(s) attached hereto.

6.2 Termination for Cause (Immediate Effect). Unless otherwise provided for or allowed under state law, Yamaha may terminate this Agreement with immediate effect on the giving of written notice to Dealer should any of the following events occur, such events being of such a serious nature so as to constitute good cause for immediate termination by Yamaha:

(a) Any misrepresentation by Dealer in entering into this Agreement or the submission by Dealer of any false or fraudulent application, claim or report in connection with its sales or service operations.

(b) Insolvency of Dealer; inability of Dealer to meet its debts as they mature; the filing by Dealer of a petition of voluntary bankruptcy under any chapter of the bankruptcy laws of the United States; the institution of proceedings to adjudicate Dealer a bankrupt in an insolvency proceeding; the execution of an assignment by Dealer for the benefit of creditors; the appointment by a court of a receiver, trustee for Dealer or the assets of Dealer; dissolution of Dealer; or the failure of Dealer to conduct its operations in the ordinary course of business including closing of Dealer's operations in any manner inconsistent with what is customary for the same type of business in the same market area.

(c) Any relocation or establishment of branch facilities without having complied with the requirements set forth in Section 7.3 of this Agreement.

(d) Any act by Dealer or any person involved in the ownership or operating management of Dealer which violates any law and affects adversely Dealer's operations or any conduct or unfair business practice by Dealer or any person involved in the ownership or operating management of Dealer which affects adversely Dealer's operation or the goodwill and reputation of Dealer, Yamaha, or the Products.

(e) Any failure by Dealer to pay to Yamaha any sums that may be due or become due pursuant to this Agreement or maintain adequate lines of credit for purposes of purchasing the Products or the parts and accessories from Yamaha.

(f) Any failure by Dealer to pay any debts, advances, obligations or liabilities of Dealer heretofore or hereinafter made, incurred or created, whether voluntary or involuntary and however arising (including, without limitation, indebtedness owing by Dealer to others for which Yamaha has a recourse obligation and other obligations incurred by

Yamaha to third parties on behalf of the Dealer; and further including, without limitation, any and all attorneys fees, costs, premiums, charges and/or interest owed by Dealer to Yamaha, whether under this Agreement, or otherwise) whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, whether Dealer may be liable individually or jointly with others, whether recovery upon such indebtedness may be or hereinafter becomes barred by any statute of limitations or whether such indebtedness may be or hereinafter becomes otherwise unenforceable, and includes Dealer's prompt, full and faithful performance, observance and discharge of and its every term, condition, agreement, representation, warranty, undertaking and provision to be performed by Dealer under this Agreement.

(g) Revocation or non-renewal of Dealer's motor vehicle dealer license or any other license or permit necessary to conduct its operations hereunder.

(h) Any failure to comply with Section 7.

(i) Any default under the Security Agreement.

(j) Any default under or cancellation of this Personal Guarantee.

6.3 Termination - By Yamaha. Unless otherwise provided for or allowed under state law or this Agreement, Yamaha may terminate this Agreement on the giving of at least sixty (60) days prior written notice to Dealer for failure of Dealer to fulfill any or all of its responsibilities and obligations as set forth in this Agreement, except for causes specified under Section 6.2 hereof.

6.4 Termination - By Dealer. Unless otherwise provided for or allowed under state law or this Agreement, Dealer may terminate this Agreement on the giving of at least sixty (60) days prior written notice to Yamaha. Dealer shall be considered to have voluntarily terminated this Agreement sixty (60) days following (i) closing of Dealer's operations, (ii) abandonment of Dealer's business or (iii) revocation or non-renewal of Dealer's motor vehicle dealer license or any other license or permit necessary to conduct its operations.

6.5 Termination - New Agreement. Yamaha may terminate or modify this Agreement at any time on the giving to Dealer of at least sixty (60) days prior written notice should Yamaha offer a new or modified form of agreement to agree or all of its claims for the Products, or should Yamaha's right to distribute the Products be terminated or modified.

7. ASSIGNMENT, TRANSFER, CHANGE OF OWNERSHIP

7.1 Assignment. The relationship created between Yamaha and Dealer is intended to be personal in nature, since Yamaha is relying on the continued ownership and active participation of certain individuals in the operations of Dealer, and consequently, any assignment or transfer by Dealer or change in ownership or management, shall require the prior written consent of Yamaha. This is necessary in order for Yamaha to determine that each successor will meet the continuing performance requirements set forth in this Agreement. Yamaha may terminate this Agreement on the giving to Dealer at least fifteen (15) days prior written notice, if Yamaha's prior written consent to any such transfer is not obtained. For the purposes of this Agreement, any change in ownership, the legal form of business or active management shall be deemed a transfer which requires the prior written consent of Yamaha. Yamaha may assign or transfer this Agreement, in whole or part, without notice to Dealer. Any transfer which is not made in accordance with this Section is void.

7.2 Owners and Management. Dealer represents that the current owners and key personnel of Dealer are those identified on the cover sheet and that these individuals shall continue to actively participate in the ownership and operating management of Dealer. Yamaha reserves the right to terminate this Agreement on the giving to Dealer of at least fifteen (15) days prior written notice in the event any of the key personnel ceases to be involved in an active substantial role in the operation of Dealer as a result of death, physical or mental incapacity or otherwise and Dealer fails to obtain Yamaha's prior written consent to the replacement of such person. Yamaha may delay such termination for a period not to exceed (6) months from such event in order to allow Dealer an opportunity to replace such person or persons with an equally qualified person or persons or allow an orderly liquidation of Dealer's operations; provided, however, that it can be demonstrated that the terms and conditions of this Agreement can be fulfilled during such period and thereafter.

8. RESPONSIBILITIES UPON TERMINATION

8.1 Continuing Responsibilities. Upon termination of the Agreement, Dealer shall no longer be an authorized dealer for the Products; however, Dealer shall pay any debts, advances, obligations or liabilities of Dealer heretofore or hereinafter made, incurred or created, whether voluntary or involuntary and however arising [including, without limitation, indebtedness owing by Dealer to others for which Yamaha has a recourse obligation and other obligations incurred by Yamaha to third parties on behalf of the Dealer; and further including, without limitation, any and all attorneys fees, costs, premiums, charges and/or interest owed by Dealer to Yamaha, whether under this Agreement, (or otherwise) whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, whether Dealer may be liable individually or jointly with others, whether recovery upon such indebtedness may be or hereinafter becomes barred by any statute of limitations or whether such indebtedness may be or hereafter becomes otherwise unenforceable, and includes Dealer's prompt, full and faithful performance, observance and discharge of each and every term, condition, agreement, representation, warranty, undertaking and provision to be performed by Dealer under this Agreement.

(a) Yamaha has the right to pursue any debts, advances, obligations or liabilities of Dealer heretofore or hereinafter made, incurred or created, whether voluntary or involuntary and however arising [including, without limitation, indebtedness owing by Dealer to others for which Yamaha has a recourse obligation and other obligations incurred by Yamaha to third parties on behalf of the Dealer; and further including, without limitation, any and all attorneys fees, costs, premiums, charges and/or interest owed by Dealer to Yamaha, whether under this Agreement, or otherwise] whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined; whether Dealer may be liable individually or jointly with others, whether recovery upon such indebtedness may be or hereinafter becomes barred by any statute of limitations or whether such indebtedness may be or hereafter becomes otherwise unenforceable, and includes Dealer's prompt, full and faithful performance, observance and discharge of each and every term, condition, agreement, representation, warranty, undertaking and provision to be performed by Dealer under this Agreement.

8.2 Discontinuance of Use of Trademarks. Upon termination of this Agreement, Dealer shall (1) discontinue use with any and all use of the trademarks of Yamaha, including such use in advertising, business material of Dealer and as part of the firm or trade name of Dealer, (2) forthwith remove or obliterate any and all signs designating Dealer as an authorized dealer for the Products or which include any trademark of Yamaha, (3) forthwith notify and instruct publications and others who may list or publish Dealer's name as an authorized Yamaha dealer, including telephone directories, yellow pages, and other business directories, to discontinue such listing of Dealer as an authorized Yamaha dealer, and (4) cease the use of all promotional literature and material including point of purchase materials and displays furnished to Dealer by Yamaha. In the event Dealer fails to comply with any of the provisions of this Section, Yamaha is authorized to take all steps necessary to insure compliance with same.

8.3 Orders for the Products. Upon termination of this Agreement, all unshipped orders for the Products shall be deemed cancelled. However, from the date of the notice of termination to the effective date of termination, orders may be filled by Yamaha if such orders are bona fide and reasonable in quantity. Dealer pays for such items in cash on delivery, and Dealer is capable of meeting its sales and service obligations hereunder.

8.4 Repurchase of Products.

A. Upon termination of this Agreement, Yamaha shall repurchase from Dealer and Dealer shall sell to Yamaha, within sixty (60) days after the effective date of termination, any or all new, unused, undamaged, resalable, Products excluding parts and accessories, which (i) were invoiced by Yamaha to Dealer within eighteen (18) months prior to the effective date of termination, and (ii) were purchased by Dealer and are the unencumbered property of and in the possession of Dealer. The repurchase price shall be the net invoice price or unperfected wholesale dealer price whichever is less, exclusive of transportation charges and delivery and preparation reimbursement, previously paid by Dealer therefor less all costs incurred in regards to their repurchase and any applicable rebates.

B. Upon termination of this Agreement, Yamaha shall have the option, but not the obligation, to repurchase any or all new, unused, undamaged, resalable, Products excluding parts and accessories, which (i) were invoiced by Yamaha to Dealer more than eighteen (18) months prior to the effective date of termination, and (ii) were purchased by Dealer and are the unencumbered property of and in the possession of Dealer. The repurchase price shall be the net invoice price or current wholesale dealer price whichever is less, exclusive of transportation charges and delivery and preparation reimbursement, previously paid by Dealer therefor less all costs incurred in regards to their repurchase and any applicable rebates.

C. Upon termination of this Agreement, Yamaha shall have the option, but not the obligation, to repurchase any or all new, unused, undamaged, resalable parts and accessories, which (i) were invoiced by Yamaha to Dealer within eighteen (18) months prior to the effective date of termination, and (ii) were purchased by Dealer and are the unencumbered property of and in the possession of Dealer. The repurchase price shall be the net invoice price or otherwise, wholesale dealer price whichever is less, exclusive of transportation charges and delivery and preparation reimbursement, previously paid by Dealer therefor less all costs incurred in regards to their repurchase and any applicable rebates.

D. Within thirty (30) days of the date of termination of this Agreement, Dealer shall deliver or mail to Yamaha a detailed inventory of all of the items referred to in Section 8.4. In the event Dealer fails to supply such a list to Yamaha within said period, Yamaha shall have the right to enter onto Dealer's premises for the purpose of compiling such an inventory list and Dealer shall reimburse Yamaha for any costs incurred in connection therewith.

E. As a condition of repurchase, payment for repurchase of Products, parts or accessories will first be applied against any obligations or money owed by Dealer to Yamaha, and will then be applied to any monies owed to a financing source to which Yamaha has a recourse obligation.

F. This Section 8.4 is not applicable in the event of any transfer of Dealer in accordance with Section 7.

8.5 Warranty Claims. Upon termination of this Agreement, Dealer shall no longer be authorized to provide warranty service and shall refer warranty service requests to the nearest authorized Yamaha dealer for the Products or to Yamaha. Dealer acknowledges that any acceptance and payment of warranty or other claims by Yamaha after the effective date of termination shall not be construed to be a reinstatement of Dealer.

8.6 Records on Termination. Upon the termination of Dealer and upon the request of Yamaha, Dealer will deliver to Yamaha copies of Dealer's records of set-up, preparation, delivery of Products, warranty service, repair or update service or other service of the Products.

9. MISCELLANEOUS

9.1 Relationship of the Parties. This Agreement does not in any way create the relationship of principal and agent between Dealer and Yamaha and in no circumstance shall Dealer, its agents or employees be considered the agent of Yamaha. Dealer shall not act or attempt to act or represent itself directly or by implication as an agent of Yamaha or in any manner assume or create or attempt to assume or create any obligation or to make any contract, agreement, representation or warranty on behalf of or in the name of Yamaha, except those authorized in writing by Yamaha. Dealer shall indemnify and hold Yamaha harmless from any and all liability caused by the acts of Dealer, its employees or agents and from liability caused by any unauthorized act by Dealer, its agents, or employees.

9.2 Force Majeure. Yamaha and Dealer shall not be responsible for or liable for failure to perform any part of this Agreement or for any delay in the performance of any part of this Agreement, directly or indirectly resulting from or contributed to by any foreign or domestic embargoes, seizures, acts of God, insurrections, wars and/or circumstances of war; or the adoption or enactment of any law, ordinance, regulation, ruling or order directly or indirectly interfering with the production, delivery or payment hereunder; or lack of the usual means of transportation, fires, floods, explosion, strikes; extraordinary currency devaluations,

taxes, or custom duties or other similar charges or assessments, or other events or contingencies beyond its control, either of the foregoing nature or of any kind, nature or description affecting the transportation, production, sale or distribution of the Products or any components used in or in connection with their production.

9.3 Entire Agreement. This Agreement and its Addendum(s) supersede and terminate any and all agreements or contracts written or oral, entered into between Yamaha and Dealer as of the effective date of this Agreement with reference to all matters covered by this Agreement. All conversations, negotiations, correspondence and memoranda which passed between Yamaha and Dealer with reference to all matters covered by this Agreement are merged herein. This Agreement constitutes the entire agreement between Yamaha and Dealer. This Agreement may not be altered, modified, amended or changed, in whole or in part, except in writing and executed by Yamaha and Dealer in the same manner as is provided for the execution of this Agreement.

9.4 Venue. Dealer agrees that any legal proceeding between Dealer and Yamaha which arises out of this Agreement, the dealings or relationship between the parties, including discontinuance of such relationship, may be brought by Dealer or Yamaha in state court or federal court located in the County of Orange, State of California. Dealer irrevocably consents to the jurisdiction of said court. Dealer waives any objection it may now or hereafter have to the jurisdiction of such court.

9.5 Governing Law. This Agreement shall be governed by and construed in accordance with the law of the State of California, including but not limited to the California Statute of Limitations.

9.6 Construction. This Agreement and all of the words, terms, and provisions hereof shall be construed in accordance with their usual and ordinary meanings, and not in favor of or against either party hereto. Paragraph headings are not a part of this Agreement, but are only for convenience.

9.7 Nonwaiver of Rights. Failure of either party hereto to enforce any of the provisions of this Agreement or any rights with respect thereto or failure to exercise any election provided for herein shall in no way be considered to be a waiver of such provisions, rights or elections or in any way affect the validity of this Agreement. The failure of either party to exercise any of said provisions, rights or elections shall not preclude or prejudice such party from later enforcing or exercising the same or any other provisions, rights or elections which it may have under this Agreement. Any action taken by Yamaha, subsequent to termination of this Agreement, shall not be construed to be a reinstatement of Dealer. Dealer may be reinstated only by the execution of a new Dealer Agreement by both Dealer and Yamaha.

9.8 Invalidity. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

9.9 Notices. All notices required or permitted to be given or made under this Agreement may be effected in writing by certified mail, postage prepaid, return receipt requested, and shall be deemed communicated three (3) days from the mailing thereof. Mailed notices shall be addressed to the parties at their addresses appear above, but each party may change his address by written notice in accordance with this paragraph.

9.10 Terms of Agreement. The terms of this Agreement govern unless inconsistent with the terms set forth in an Addendum(s) attached hereto and made a part hereof, in which case the terms of the Addendum(s) will control.

9.11 Release of Claims. Dealer waives and releases any and all claims of any kind and nature whatsoever which Dealer has against Yamaha, which arises out of or in connection with any prior agreement including but not limited to any Addendum entered into between them.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this _____ day of _____.

20 _____. Dealer expressly acknowledges that it has read this Agreement in its entirety and understands its rights and responsibilities under this Agreement and the provisions resulting to termination.

"YAMAHA"

**YAMAHA MOTOR CORPORATION, U.S.A.
A California Corporation**

By _____
Title _____

"DEALER"

By _____
Title _____

By _____
Title _____

YAMAHA MOTOR CORPORATION, U.S.A. OUTBOARD MOTORS SERVICE CENTER AGREEMENT

THIS AGREEMENT is made by and between YAMAHA MOTOR CORPORATION, U.S.A., a California Corporation, having its principal office located at 6555 Katella Avenue, Cypress, California 90630 (hereinafter to as "Yamaha") and Service Center as identified below.

A. Service Center's Complete Legal Name
Name: _____

(Yamaha, Inc./Yamaha Corporation entered to in the Agreement as "Service Center")

Sole Proprietorship

Partnership

Corporation

Fictitious Business Name (if different from above) _____

B. Service Center's Location

Address: _____

(Referred to in the Agreement as "Service Center's Location")

RECITALS

A. Yamaha is the exclusive distributor in the United States of quality outboard motors which are sold under the trademark "Yamaha" (hereinafter referred to as the "Products") and distributes parts and accessories therefor.

B. Service Center desires to engage in service of the Products in accordance with the terms and conditions hereof; and Yamaha desires to appoint Service Center as a service location for the Products in accordance herewith.

Yamaha and Service Center agree to govern their relationship in accordance with the following:

1. ESTABLISHMENT OF RELATIONSHIP

1.1 Appointment of Service Center. Yamaha hereby appoints Service Center as an authorized Yamaha outboard motor service center for the service of the Products and Service Center hereby accepts such appointment. Yamaha and Service Center agree that Service Center shall only sell parts and accessories to parts customers in connection with its service operations and shall not sell or otherwise transfer the parts and accessories to any other person except those authorized by Yamaha to sell or service the Products. It is understood under this Agreement that Service Center is appointed only as an authorized service location of the Products and that Service Center shall not represent itself as an authorized dealer or service center of any other Yamaha product unless authorized under a separate agreement with Yamaha.

1.2 Location of Service Center. In order to enable Yamaha to maintain an effective network of authorized Yamaha service centers, Service Center agrees not to service the Products from any location other than from Service Center Location. Service Center agrees not to change Service Center Location's without obtaining Yamaha's prior written approval of such proposed change.

1.3 Nonexclusivity. The right to appoint additional service centers for Yamaha products is reserved to Yamaha. Yamaha reserves the right to appoint additional service centers for Yamaha products at any time.

2. SERVICE CENTER'S OPERATIONS

2.1 Service Operations. Service Center shall establish and maintain quality service operations as recommended by Yamaha for the Products at Service Center's Location. Service Center shall provide to owners of the Products such general service and repair as may be necessary. Any

and all charges therefore shall be reasonable and consistent with those prevailing in the market area served by Service Center's Location and all such services and charges shall be in accordance with applicable law. Service Center agrees to provide timely service to any customer who has purchased a Product, regardless of the dealer from whom the Product was purchased.

2.2 Service Organization. Service Center agrees to maintain a fully qualified service organization which includes service personnel who are thoroughly familiar with the Products. Service Center, at its expense, shall cause such personnel to attend training programs for the service of the Products and study service manuals and bulletins for the Products as may be provided by Yamaha from time to time. Service Center agrees to purchase and provide to its service personnel all tools and equipment, as prescribed by Yamaha, that may be necessary to adequately and properly service the Products.

2.3 Review of Service Center's Service and Repair Performance. Yamaha may periodically evaluate Service Center's service and repair performance in accordance with the standards recommended by Yamaha. Evaluations prepared pursuant to this Section 2.3 will be discussed with and provided to Service Center with the expectation that Service Center will take such action as may be required to correct any deficiencies in Service Center's performance of its responsibilities.

2.4 Warranty. The Products are warranted only in accordance with Yamaha's written warranty to consumers, which written warranty is distributed to customers by the selling dealer and which may be amended or modified from time to time only by Yamaha. OTHER THAN THE WARRANTY CONTAINED IN YAMAHA'S WRITTEN WARRANTY OR AS REQUIRED BY LAW, YAMAHA DISCLAIMS ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT BY WAY OF LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE. YAMAHA DISCLAIMS ANY LIABILITY FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR CONSEQUENTIAL LOSSES SUFFERED BY OWNER, ITS CUSTOMERS OR ANY THIRD PARTY, except as provided under state law.

2.5 Warranty Service. Service Center agrees to perform all warranty service on all Products brought to Service Center. Service Center shall perform such warranty service in accordance with the policies of Yamaha as they may be issued from time to time in the Yamaha service and warranty manuals and bulletins. Any charges for such warranty service shall

be reasonable and consistent with those prevailing in the market area served by Service Center's location. When performing warranty service on the Products, Service Center shall use only genuine Yamaha parts, or parts that are equivalent in quality and design to genuine Yamaha parts.

(a) Service Center acknowledges the importance of providing to owners of the Products prompt and skilled warranty service and the need to comply with all laws relating to warranty service. Service Center shall give immediate service to such warranty requests. Service Center agrees to perform all warranty service in a competent and workmanlike manner.

(b) Service Center shall submit complete and accurate claims to Yamaha for reimbursement for parts and labor used in performing warranty service on warranty claim forms of Yamaha with all information required therein; and Yamaha shall reimburse Service Center for such parts and labor in accordance with the effective schedules and rates applicable to Service Center. Service Center shall keep and retain complete and accurate records and documents supporting such claims, which records and documents are subject to the provisions of this Agreement regarding inspection. In the event of the discovery of any improper claim or payment, Yamaha may charge back to Service Center all payments or credits plus interest thereon made by Yamaha to Service Center pursuant to such claims as otherwise, in, as well as the costs to Yamaha for such audit and the recovery of such payments or credits.

2.6 Assistance and Protection. In the event any warranty claim arises that Service Center is unable to perform, Yamaha should be promptly notified by Service Center and be provided the details of the claim and Yamaha shall use reasonable efforts to resolve such claim. Yamaha is relying upon Service Center's assurance that it is capable of performing service obligations for the Products. Service Center agrees to fully protect Yamaha from any claims, liability claims that may result from a failure of Service Center to properly perform service for the Products required hereunder or under applicable law.

2.7 Recall and Update. Regardless of where Products covered by a recall or a modification program sponsored by Yamaha were purchased, Service Center will perform any inspection, recall, or modification service as may be required from time to time. All such service shall be performed in accordance with the announced policies and procedures of Yamaha.

3. PURCHASE OF PARTS AND ACCESSORIES

3.1 Price. Service Center shall pay to Yamaha the price and any other charges for the parts and accessories as set forth on Yamaha's price schedules, which are in effect at the time of invoicing of Dealer's order unless the sales program pursuant to which the parts and accessories were ordered specifies a different price.

3.2 Payment. Service Center shall pay the purchase price for the parts and accessories at the time of delivery thereof, unless Yamaha has approved other terms of credit for Service Center. If other credit terms have been approved, Service Center shall pay for the parts and accessories in accordance with the approved terms. Yamaha may cancel any order placed by Service Center or refuse the shipment thereof should Service Center fail to meet any payment term, credit, or financial requirements of Yamaha. The cancellation or withholding of any order shall not be construed as a termination or breach of this Agreement by Yamaha.

3.3 Shipment. Yamaha shall use its best efforts to ship all accepted orders for the parts and accessories to Service Center A.O.B. Yamaha's warehouse with reasonable promptness; provided, however, that Yamaha shall not be liable for any damages, consequential or otherwise, to the parts and accessories which occur while in transit. Further, Yamaha shall not be liable for damages, consequential or otherwise, to Service Center which arise as a result of a failure to fill orders, delays in delivery, or any error in the filling of orders.

3.4 Taxes. Service Center represents and warrants that all parts and accessories purchased hereunder are purchased for resale in the ordinary course of Service Center's business. Service Center agrees that it is

responsible for and shall comply with all laws calling for the collection and payment of all taxes, including sales and use taxes and all other taxes.

4. GENERAL RESPONSIBILITIES - YAMAHA AND DEALER

4.1 Supply of Parts and Accessories. Yamaha shall make reasonable efforts to supply Service Center with the parts and accessories in accordance with accepted orders; however, during any period of shortage, Yamaha shall be permitted to allocate the parts and accessories.

4.2 Trademarks. Yamaha agrees to permit Service Center to identify itself as an authorized service center for the Products and use the trademarks of Yamaha applicable to the Products in connection with Service Center's efforts to service the Products provided, however, that such use shall be subject to the control of Yamaha and be in a manner consistent with the high quality image of the Products. Service Center shall not use the trademarks or trademarks of Yamaha as a part of its corporate name or in any manner inconsistent with the instructions of Yamaha. Service Center acknowledges that Yamaha has the sole right and interest in such trademarks and tradenames. Service Center agrees to cease immediately all use of Yamaha trademarks, tradenames and copyrights and any other proprietary rights on termination of this Agreement.

4.3 Customer Relations. Service Center shall at all times conduct its operations in such a manner so as to develop and maintain good customer relations. Service Center shall provide prompt and courteous service to customer inquiries and complaints relating to the Products. Service Center shall at all times properly represent the Products, parts and accessories and shall not make, directly or indirectly, any false, misleading, or disparaging representation to any customer or other person in regard to Yamaha or the Products, parts and accessories.

4.4 Hours of Business. Service Center agrees that its operations shall be conducted in the normal course of business during usual business hours and for not less than the usual number of days of the week and hours of the day which are customary for the same type of business in the market area served by Service Center Location.

4.5 Report and Records. Service Center shall periodically provide to Yamaha complete and accurate data regarding Service Center service activities and such other statistical information as and when requested by Yamaha. Service Center shall keep complete and accurate records regarding service activities for the Products. Service Center shall permit any designated representative of Yamaha, at reasonable times, to examine and audit such records and documents.

4.6 Facilities. Service Center shall establish and maintain the appearance and condition of the facilities at Service Center Location so as to favorably reflect on the Products and the quality image of Yamaha. As part of the facilities at Service Center Location, Service Center shall install and maintain prominent and suitable signs as recommended by Yamaha, which identify Service Center as a service center of the Products. Service Center agrees to maintain the facilities in a neat and orderly fashion and in accordance with the standards established by Yamaha which may be changed from time to time.

4.7 Cooperation with Yamaha. Service Center shall at all times cooperate and work closely with Yamaha's representatives and shall maintain close communications with such representatives in regard to Service Center's operations hereunder.

5. TERMINATION

5.1 Effectiveness. This Agreement shall be effective upon the execution hereof by Service Center and an authorized officer or representative of Yamaha at Cypress, California and shall remain effective for a period of one year from the date hereof, unless terminated earlier as provided herein. This Agreement shall be automatically renewed for each succeeding one (1) year term, provided, however, that Yamaha reserves the right upon at least sixty (60) days notice not to renew this Agreement at Yamaha's sole discretion.

5.2 Termination for Cause (Immediate Effect). Unless otherwise provided for or allowed under state law, Yamaha may terminate this Agreement with immediate effect on the giving of written notice to Service Center should any of the following events occur, such events being of such a serious nature so as to constitute good cause for immediate termination by Yamaha:

(a) Any misrepresentation by Service Center in entering into this Agreement or the submission by Service Center of any false or fraudulent application, claim or report in connection with its warranty or service operations.

(b) Insolvency of Service Center, inability of Service Center to meet its debts as they mature, the filing by Service Center of a petition of voluntary bankruptcy under any chapter of the bankruptcy laws of the United States, the institution of proceedings to adjudge Service Center a bankrupt in an involuntary proceeding; the execution of an assignment by Service Center for the benefit of creditors; the appointment by a court of a receiver, trustee for Service Center or the assets of Service Center; dissolution of Service Center or the failure of Service Center to conduct its operations in the ordinary course of business including closing of Service Center operations in any manner inconsistent with what is necessary for the same type of business in the same market area.

(c) Any relocation or establishment of branch locations without having complied with the requirements set forth in Section 1.2 of this Agreement.

(d) Any false representation by Service Center that Service Center is an authorized dealer of the Products or an authorized dealer or service center of any other Product distributed by Yamaha.

(e) Any act by Service Center or any person involved in the ownership or operating management of Service Center which violates any law and affects adversely Service Center's operations or any conduct or unfair business practice by Service Center or any person involved in the ownership or operating management of Service Center which affects adversely Service Center operation or the goodwill and reputation of Service Center, Yamaha, or the Products.

(f) Any failure by Service Center to pay to Yamaha any sums that may be due or become due pursuant to this Agreement.

(g) Any failure by Service Center to comply with Section 6.

5.3 Termination — By Yamaha. Unless otherwise provided for or allowed under state law or this Agreement, Yamaha may terminate this Agreement on the giving of at least sixty (60) days prior written notice to Service Center for the following reasons.

(a) The failure of Service Center to fulfill any or all of its responsibilities and obligations as set forth in this Agreement, except for causes specified under Section 5.2, herein.

(b) The failure of Service Center to continue to sell goods or products into which the Products have been incorporated by the manufacturer of the other goods or products.

5.4 Termination — By Service Center. Unless otherwise provided for or allowed under state law or this Agreement, Service Center may terminate this Agreement on the giving of at least sixty (60) days prior written notice to Yamaha.

6. ASSIGNMENT, TRANSFER, CHANGE OF OWNERSHIP

6.1 Assignment. The relationship created between Yamaha and Service Center is intended to be personal in nature since Yamaha is relying on the continued ownership and active participation of certain individuals in the operations of Service Center, and consequently, any assignment or transfer by Service Center or change in ownership or management, shall require the prior written consent of Yamaha. For the purpose of this Agreement, any change in ownership, the legal form of business or active

management shall be deemed a transfer which requires the prior written consent of Yamaha. Any transfer which is not made in accordance with this Section is void. For the purposes of this Agreement, any change in ownership, the legal form of business or active management shall be deemed a transfer which requires the prior written consent of Yamaha. Any transfer which is not made in accordance with this Section is void.

7. RESPONSIBILITIES UPON TERMINATION

7.1 Continuing Responsibilities. Upon termination of this Agreement, Service Center shall no longer be an authorized service center for the Products; however, Service Center shall immediately pay to Yamaha all amounts owed to Yamaha, whether or not due.

7.2 Discontinuance of Use of Trademarks. Upon termination of this Agreement, Service Center shall (1) discontinue forthwith any and all use of the trademarks of Yamaha, including such use in advertising, business material of Service Center and as part of the firm or trade name of Service Center, (2) forthwith remove or obliterate any and all signs designating Service Center as an authorized service center for the Products or which include any trademark of Yamaha, (3) forthwith notify and instruct publications and others who may list or publish Service Center's name as an authorized Yamaha service center, including telephone directories, yellow pages, and other business directories, to discontinue such listing of Service Center as an authorized Yamaha service center, and (4) cease the use of all promotional literature and material provided to Service Center by Yamaha. In the event Service Center fails to comply with any of the provisions of this Section, Yamaha is authorized to take all steps necessary to insure compliance with same.

7.3 Orders for the Parts and Accessories. Upon termination of this Agreement, all unshipped orders for parts and accessories shall be deemed cancelled. Notwithstanding, from the date of the notice of termination to the effective date of termination, orders may be filled by Yamaha if such orders are bona fide and reasonable in quantity. Service Center pays for such order in cash on delivery, and Service Center is capable of meeting its service obligations hereunder.

7.4 Repurchase of Parts and Accessories.

A. Upon termination of this Agreement, Yamaha shall have the option to repurchase any or all new, unused, undamaged, resalable parts and accessories, which are owned by Yamaha to Service Center, and (i) were purchased by Service Center and are the unencumbered property of and in the possession of Service Center.

B. As a condition of repurchase, payment for repurchase of the parts and accessories will first be applied against any obligations or money owed by Service Center to Yamaha.

7.5 Warranty Claims. Upon termination of this Agreement, Service Center shall no longer be authorized to provide warranty service and shall refer warranty service requests to the nearest authorized Yamaha dealer or service center for the Products or to Yamaha. Service Center acknowledges that any acceptance and payment of warranty or other claims by Yamaha after the effective date of termination shall not be construed to be a reinstatement of Service Center.

8. MISCELLANEOUS

8.1 Relationship of the Parties. This Agreement does not in any way create the relationship of principal and agent between Service Center and Yamaha and in no circumstance shall Service Center, its agent or employees be considered the agent of Yamaha. Service Center shall not act or attempt to act or represent itself directly or by implication as an agent of Yamaha or in any manner assume or create or attempt to assume or create any obligation or to make any contract, agreement, representation or warranty on behalf of or in the name of Yamaha, except those authorized in writing by Yamaha. Service Center shall indemnify and hold Yamaha harmless from any cost and liability caused by the acts or Service Center, its employees or agents and from liability caused by any unauthorized act by Service Center, its agents, or employees.

8.2 Force Majeure. Yamaha and Service Center shall not be responsible for or liable for failure to perform any part of this Agreement or for any delay in the performance of any part of this Agreement, directly or indirectly resulting from or contributed to by any foreign or domestic embargoes, seizures, acts of God, insurrections, wars and/or continuance of war; or the adoption or enactment of any law, ordinance, regulation, ruling or order directly or indirectly interfering with the production, delivery or payment hereunder; or lack of the usual means of transportation, fires, floods, explosion, strikes, extraordinary currency devaluations, taxes, or custom duties or other similar charges or assessments, or other events or contingencies beyond its control, either of the foregoing nature or of any kind, nature or description affecting the transportation, production, sale or distribution of the Products or any components used in or in connection with their production.

8.3 Entire Agreement. This Agreement supersedes and terminates any and all agreements or contracts written or oral, entered into between Yamaha and Service Center as of the effective date of this Agreement with reference to all matters covered by this Agreement. All conversations, negotiations, correspondence and documents with respect between Yamaha and Service Center with reference to all matters covered by this Agreement are merged herein. This Agreement constitutes the entire agreement between Yamaha and Service Center. This Agreement may not be altered, modified, amended, or changed, in whole or in part, except in writing and executed by Yamaha and Service Center in the same manner as is provided for the execution of this Agreement.

8.4 Venue. Service Center agrees that any legal proceeding between Service Center and Yamaha which arises out of this Agreement, the dealings or relationship between the parties, including enforcement of such relationship, may be brought by Service Center or Yamaha in state court or federal court located in the County of Orange, State of California. Service Center irrevocably consents to the jurisdiction of said court. Service Center waives any objection it may now or hereafter have to the jurisdiction of such court.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this _____ day of _____, 20____. Service Center expressly acknowledges that it has read this Agreement in its entirety and understands its rights and responsibilities under this Agreement and the provisions resulting to termination.

8.5 Governing Law. This Agreement shall be governed by and construed in accordance with the law of the State of California, including but not limited to the California Statute of Limitations.

8.6 Construction. This Agreement and all of the words, terms, and provisions hereof shall be construed in accordance with their usual and ordinary meanings, and not in favor of or against either party hereto. Paragraph Readings are not a part of this Agreement, but are only for convenience.

8.7 Nonwaiver of Rights. Failure of either party hereto to enforce any of the provisions of this Agreement or any rights with respect thereto or failure to exercise any election provided for herein shall in no way be considered to be a waiver of such provisions, rights or elections or in any way affect the validity of this Agreement. The failure of either party to exercise any of said provisions, rights or elections shall not preclude or prejudice such party from later enforcing or exercising the same or any other provisions, rights or elections which it may have under this Agreement. Any actions taken by Yamaha, subsequent to termination of this Agreement, shall not be construed to be a reinstatement of Service Center. Service Center may be reinstated only by the execution of a new Service Center Agreement by both Service Center and Yamaha.

8.8 Invalidity. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

8.9 Notice. All notices required or permitted to be given or made under this Agreement may be effected in writing by certified mail, postage prepaid, return receipt requested, and shall be deemed communicated three (3) days from the mailing thereof.

8.10 Release of Claims. Service Center waives and releases any and all claims of any kind and nature whatsoever which Service Center has against Yamaha, which arises out of or in connection with any prior agreement.

YAMAHA USE ONLY

"YAMAHA"
YAMAHA MOTOR CORPORATION, U.S.A. A California Corporation
By: _____
Title: _____

"SERVICE CENTER"
Business Name: _____
By: (Authorized Signature) _____
Title: _____