

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**FORM 10-Q**

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

For the quarterly period ended **June 30, 2022**  
or

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number: **001-39213**

**OneWater Marine Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of incorporation or organization)

**83-4330138**  
(IRS Employer Identification No.)

**6275 Lanier Islands Parkway  
Buford, Georgia**  
(Address of principal executive offices)

**30518**  
(Zip code)

(Registrant's telephone number, including area code): **(678) 541-6300**

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

<u>Title of Each Class</u>	<u>Trading Symbol(s)</u>	<u>Name of Each Exchange on Which Registered</u>
Class A common stock, par value \$0.01 per share	ONEW	The Nasdaq Global Market

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

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

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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

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

The registrant had 14,133,130 shares of Class A common stock, par value \$0.01 per share, and 1,429,940 shares of Class B common stock, par value \$0.01 per share, outstanding as of August 3, 2022.

ONEWATER MARINE INC.  
FORM 10-Q  
FOR THE QUARTER ENDED JUNE 30, 2022

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## CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

The information in this Quarterly Report on Form 10-Q includes “forward-looking statements.” All statements, other than statements of historical fact included in this Quarterly Report on Form 10-Q, regarding our strategy, future operations, financial position, estimated revenues and losses, projected costs, prospects, plans and objectives of management are forward-looking statements. When used in this Quarterly Report on Form 10-Q, the words “could,” “believe,” “anticipate,” “intend,” “estimate,” “expect,” “project” and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain such identifying words. These forward-looking statements are based on our current expectations and assumptions about future events and are based on currently available information as to the outcome and timing of future events. When considering forward-looking statements, you should keep in mind the risk factors and other cautionary statements described under the headings “Risk Factors,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Business” included in our Annual Report on Form 10-K for the year ended September 30, 2021, filed with the U.S. Securities and Exchange Commission (the “SEC”) on December 17, 2021, and under the headings “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in this Quarterly Report on Form 10-Q. These forward-looking statements are based on management’s current belief, based on currently available information, as to the outcome and timing of future events.

Forward-looking statements may include statements about:

- the impact of the novel coronavirus (“COVID-19”) on our business and results of operations;
- general economic conditions, including changes in employment levels, consumer demand, preferences and confidence levels, fuel prices, inflation, levels of discretionary income, consumer spending patterns and uncertainty regarding the timing, pace and extent of an economic recovery in the United States;
- economic conditions in certain geographic regions in which we primarily generate our revenue;
- credit markets and the availability and cost of borrowed funds;
- our business strategy, including acquisitions and same-store growth;
- our ability to integrate acquired marine retailers;
- our ability to maintain our relationships with manufacturers, including meeting the requirements of our dealer agreements and receiving the benefits of certain manufacturer incentives;
- our ability to finance working capital and capital expenditures;
- demand for our products and our ability to maintain acceptable pricing for our products and services, including financing, insurance and extended service contracts;
- our operating cash flows, the availability of capital and our liquidity;
- our future revenue, same-store sales, income, financial condition, and operating performance;
- our ability to sustain and improve our utilization, revenue and margins;
- competition;
- seasonality and inclement weather such as hurricanes, severe storms, fire and floods, generally and in certain geographic regions in which we primarily generate our revenue;
- any potential tax savings we may realize as a result of our organizational structure;
- our future operating results and profitability;
- our ability to successfully close the pending acquisition of Ocean Bio-Chem, Inc. (“OBCI”), or once closed, integrate the operations of OBCI with our existing operations and fully realize the expected synergies of the OBCI Acquisitions (as defined below) or on the expected timeline; and
- plans, objectives, expectations and intentions contained in this Form 10-Q that are not historical.

We caution you that these forward-looking statements are subject to all of the risks and uncertainties, most of which are difficult to predict and many of which are beyond our control. Should one or more of the risks or uncertainties occur, or should underlying assumptions prove incorrect, our actual results and plans could differ materially from those expressed in any forward-looking statements. These risks include, but are not limited to:

- decline in demand for our products and services;
- the effects of the COVID-19 pandemic on the Company’s business;
- other risks associated with the COVID-19 pandemic including, among others, the ability to safely operate our stores, access to inventory and customer demand;
  - the seasonality and volatility of the boat industry;
- global public health concerns, including the COVID-19 pandemic;
- general domestic and international political and regulatory conditions, including changes in tax or fiscal policy and the effects of current

restrictions on various commercial and economic activities in response to the COVID-19 pandemic;

- environmental conditions and real or perceived human health or safety risks;
- our acquisition strategies and our ability to integrate additional marine retailers;
- effects of industry-wide supply chain challenges and our ability to manage our inventory;
- our ability to retain key personnel and the effects of labor shortages;
- the inability to comply with the financial and other covenants and metrics in our credit facilities;
- cash flow and access to capital;
- the timing of development expenditures; and
- the other risks described under “Risk Factors” and discussed elsewhere in our Annual Report on Form 10-K for the year ended September 30, 2021 and discussed elsewhere in this Quarterly Report on Form 10-Q.

All forward-looking statements, expressed or implied, included in this Quarterly Report on Form 10-Q are expressly qualified in their entirety by this cautionary statement. This cautionary statement should also be considered in connection with any subsequent written or oral forward-looking statements that we or persons acting on our behalf may issue.

Any forward-looking statement that we make in this Quarterly Report on Form 10-Q speaks only as of the date of such statement. Except as otherwise required by applicable law, we disclaim any duty to update any forward-looking statements, all of which are expressly qualified by the statements in this section, to reflect events or circumstances after the date of this Quarterly Report on Form 10-Q.

**PART I – FINANCIAL INFORMATION****Item 1. Condensed Consolidated Financial Statements (Unaudited)**

**ONEWATER MARINE INC.**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(\$ in thousands, except par value and share data)

	<u>June 30, 2022</u>	<u>September 30, 2021</u>
<b>Assets</b>		
<b>Current assets:</b>		
Cash	\$ 95,690	\$ 62,606
Restricted cash	16,209	11,343
Accounts receivable, net	80,495	28,529
Inventories, net	269,430	143,880
Prepaid expenses and other current assets	57,389	34,580
Total current assets	<u>519,213</u>	<u>280,938</u>
<b>Property and equipment, net</b>	80,235	67,114
<b>Operating lease right-of-use assets</b>	<u>126,433</u>	<u>89,141</u>
<b>Other assets:</b>		
Deposits	823	526
Deferred tax assets	32,585	29,110
Identifiable intangible assets, net	245,659	85,294
Goodwill	342,605	168,491
Total other assets	<u>621,672</u>	<u>283,421</u>
Total assets	<u>\$ 1,347,553</u>	<u>\$ 720,614</u>
<b>Liabilities and Stockholders' Equity</b>		
<b>Current liabilities:</b>		
Accounts payable	\$ 51,199	\$ 18,114
Other payables and accrued expenses	54,725	27,665
Customer deposits	65,520	46,610
Notes payable – floor plan	217,338	114,234
Current portion of operating lease liabilities	12,788	9,159
Current portion of long-term debt	19,450	11,366
Current portion of tax receivable agreement liability	915	482
Total current liabilities	<u>421,935</u>	<u>227,630</u>
<b>Long-term Liabilities:</b>		
Other long-term liabilities	25,766	14,991
Tax receivable agreement liability	45,290	39,622
Noncurrent operating lease liabilities	114,545	80,464
Long-term debt, net of current portion and unamortized debt issuance costs	316,349	103,074
Total liabilities	<u>923,885</u>	<u>465,781</u>
<b>Stockholders' Equity:</b>		
Preferred stock, \$0.01 par value, 1,000,000 shares authorized, none issued and outstanding as of June 30, 2022 and September 30, 2021	-	-
Class A common stock, \$0.01 par value, 40,000,000 shares authorized, 14,133,130 shares issued and outstanding as of June 30, 2022 and 13,276,538 issued and outstanding as of September 30, 2021	141	133
Class B common stock, \$0.01 par value, 10,000,000 shares authorized, 1,429,940 shares issued and outstanding as of June 30, 2022 and 1,819,112 issued and outstanding as of September 30, 2021	14	18
Additional paid-in capital	178,347	150,825
Retained earnings	186,536	74,952
Total stockholders' equity attributable to OneWater Marine Inc.	<u>365,038</u>	<u>225,928</u>
Equity attributable to non-controlling interests	58,630	28,905
Total stockholders' equity	<u>423,668</u>	<u>254,833</u>
Total liabilities and stockholders' equity	<u>\$ 1,347,553</u>	<u>\$ 720,614</u>

**ONEWATER MARINE INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
(\$ in thousands except per share data)  
(Unaudited)

	Three Months Ended June 30,		Nine Months Ended June 30,	
	2022	2021	2022	2021
<b>Revenues</b>				
New boat	\$ 376,886	\$ 288,222	\$ 903,104	\$ 679,704
Pre-owned boat	98,181	71,116	227,484	165,778
Finance & insurance income	18,979	15,238	43,234	32,990
Service, parts & other	74,854	29,631	173,477	69,429
<b>Total revenues</b>	<b>568,900</b>	<b>404,207</b>	<b>1,347,299</b>	<b>947,901</b>
<b>Cost of sales (exclusive of depreciation and amortization shown separately below)</b>				
New boat	274,544	211,141	659,046	520,820
Pre-owned boat	68,749	52,566	164,078	125,566
Service, parts & other	41,668	13,548	96,729	33,341
<b>Total cost of sales</b>	<b>384,961</b>	<b>277,255</b>	<b>919,853</b>	<b>679,727</b>
Selling, general and administrative expenses	87,867	60,476	222,455	143,685
Depreciation and amortization	4,073	1,475	10,549	3,816
Transaction costs	1,337	65	5,158	633
Change in fair value of contingent consideration	3,118	-	11,022	377
<b>Income from operations</b>	<b>87,544</b>	<b>64,936</b>	<b>178,262</b>	<b>119,663</b>
<b>Other expense (income)</b>				
Interest expense – floor plan	1,131	956	3,056	2,206
Interest expense – other	3,311	1,083	7,937	3,222
Other (income) expense, net	(166)	(158)	491	(247)
<b>Total other expense, net</b>	<b>4,276</b>	<b>1,881</b>	<b>11,484</b>	<b>5,181</b>
Income before income tax expense	83,268	63,055	166,778	114,482
Income tax expense	18,785	11,498	36,455	20,559
<b>Net income</b>	<b>64,483</b>	<b>51,557</b>	<b>130,323</b>	<b>93,923</b>
Less: Net income attributable to non-controlling interests	(959)	-	(1,970)	-
Less: Net income attributable to non-controlling interests of One Water Marine Holdings, LLC	(7,547)	(17,054)	(16,060)	(31,158)
<b>Net income attributable to OneWater Marine Inc.</b>	<b>\$ 55,977</b>	<b>\$ 34,503</b>	<b>\$ 112,293</b>	<b>\$ 62,765</b>
Earnings per share of Class A common stock – basic	\$ 3.96	\$ 3.14	\$ 8.14	\$ 5.77
Earnings per share of Class A common stock – diluted	\$ 3.86	\$ 3.04	\$ 7.90	\$ 5.63
Basic weighted-average shares of Class A common stock outstanding	14,133	10,976	13,791	10,884
Diluted weighted-average shares of Class A common stock outstanding	14,512	11,341	14,205	11,143

**ONEWATER MARINE INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
(\$ in thousands)  
(Unaudited)

	<u>Class A Common Stock</u>		<u>Class B Common Stock</u>		<u>Additional Paid-in Capital</u>	<u>Retained Earnings</u>	<u>Non- controlling Interest</u>	<u>Total Stockholders' Equity</u>
	<u>Shares</u>	<u>Amount</u>	<u>Shares</u>	<u>Amount</u>				
<b>Balance at September 30, 2021</b>	13,277	\$ 133	1,819	\$ 18	\$ 150,825	\$ 74,952	\$ 28,905	\$ 254,833
Net income	-	-	-	-	-	20,019	3,467	23,486
Distributions to members	-	-	-	-	-	(442)	(177)	(619)
Non-controlling interest in subsidiary	-	-	-	-	-	-	19,311	19,311
Exchange of B shares for A shares	389	4	(389)	(4)	7,405	-	(7,405)	-
Establishment of liabilities under tax receivable agreement and related changes to deferred tax assets associated with increases in tax basis	-	-	-	-	(283)	-	-	(283)
Shares issued upon vesting of equity-based awards, net of tax withholding	53	1	-	-	(469)	-	-	(468)
Shares issued in connection with a business combination	133	1	-	-	6,833	-	-	6,834
Equity-based compensation	-	-	-	-	2,100	-	-	2,100
<b>Balance at December 31, 2021</b>	13,852	\$ 139	1,430	\$ 14	\$ 166,411	\$ 94,529	\$ 44,101	\$ 305,194
Net income	-	-	-	-	-	36,297	6,057	42,354
Distributions to members	-	-	-	-	-	(266)	(605)	(871)
Exchange of B shares for A shares	-	-	-	-	(574)	-	574	-
Shares issued upon vesting of equity-based awards, net of tax withholding	27	-	-	-	(455)	-	-	(455)
Equity-based compensation	-	-	-	-	2,713	-	-	2,713
<b>Balance at March 31, 2022</b>	13,879	\$ 139	1,430	\$ 14	\$ 168,095	\$ 130,560	\$ 50,127	\$ 348,935
Net income	-	-	-	-	-	55,977	8,506	64,483
Distributions to members	-	-	-	-	-	(1)	(3)	(4)
Shares issued in connection with a business combination	254	2	-	-	7,791	-	-	7,793
Equity-based compensation	-	-	-	-	2,461	-	-	2,461
<b>Balance at June 30, 2022</b>	<u>14,133</u>	<u>\$ 141</u>	<u>1,430</u>	<u>\$ 14</u>	<u>\$ 178,347</u>	<u>\$ 186,536</u>	<u>\$ 58,630</u>	<u>\$ 423,668</u>

**ONEWATER MARINE INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
(\$ in thousands)  
(Unaudited)

	<u>Class A Common Stock</u>		<u>Class B Common Stock</u>		<u>Additional Paid-in Capital</u>	<u>Retained Earnings</u>	<u>Non- controlling Interest</u>	<u>Total Stockholders' Equity</u>
	<u>Shares</u>	<u>Amount</u>	<u>Shares</u>	<u>Amount</u>				
<b>Balance at September 30, 2020</b>	10,392	\$ 104	4,583	\$ 46	\$ 105,947	\$ 16,757	\$ 50,433	\$ 173,287
Net income	-	-	-	-	-	7,788	3,987	11,775
Distributions to members	-	-	-	-	-	-	(1,319)	(1,319)
Effect of September offering, including underwriter exercise of option to purchase shares	387	4	(387)	(4)	4,146	-	(4,256)	(110)
Exchange of B shares for A shares	88	1	(88)	(1)	916	-	(916)	-
Establishment of liabilities under tax receivable agreement and related changes to deferred tax assets associated with increases in tax basis	-	-	-	-	(228)	-	-	(228)
Adjustment to adopt Topic 842	-	-	-	-	-	1,073	-	1,073
Equity-based compensation	-	-	-	-	1,078	-	-	1,078
<b>Balance at December 31, 2020</b>	10,867	\$ 109	4,108	\$ 41	\$ 111,859	\$ 25,618	\$ 47,929	\$ 185,556
Net income	-	-	-	-	-	20,475	10,117	30,592
Distributions to members	-	-	-	-	-	(61)	(140)	(201)
Exchange of B shares for A shares	37	-	(37)	-	558	-	(558)	-
Establishment of liabilities under tax receivable agreement and related changes to deferred tax assets associated with increases in tax basis	-	-	-	-	(6)	-	-	(6)
Shares issued upon vesting of equity-based awards, net of tax withholding	64	1	-	-	(450)	-	-	(449)
Equity-based compensation	-	-	-	-	1,127	-	-	1,127
<b>Balance at March 31, 2021</b>	10,968	\$ 110	4,071	\$ 41	\$ 113,088	\$ 46,032	\$ 57,348	\$ 216,619
Net income	-	-	-	-	-	34,503	17,054	51,557
Distributions to members	-	-	-	-	-	(45)	(2,206)	(2,251)
Dividends and distributions declared (\$1.80 per share and per unit, respectively)	-	-	-	-	-	(20,461)	(7,328)	(27,789)
Exchange of B shares for A shares	694	7	(694)	(7)	11,214	-	(11,214)	-
Establishment of liabilities under tax receivable agreement and related changes to deferred tax assets associated with increases in tax basis	-	-	-	-	(1,805)	-	-	(1,805)
Equity-based compensation	-	-	-	-	1,146	-	-	1,146
<b>Balance at June 30, 2021</b>	<u>11,662</u>	<u>\$ 117</u>	<u>3,377</u>	<u>\$ 34</u>	<u>\$ 123,643</u>	<u>\$ 60,029</u>	<u>\$ 53,654</u>	<u>\$ 237,477</u>



**ONEWATER MARINE INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(\$ in thousands)  
(Unaudited)

<b>For the Nine Months Ended June 30</b>	<b>2022</b>	<b>2021</b>
<b>Cash flows from operating activities</b>		
Net income	\$ 130,323	\$ 93,923
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	10,816	3,816
Equity-based awards	7,274	3,351
Gain on asset disposals	(59)	(196)
Non-cash interest expense	1,370	503
Deferred income tax provision	2,030	2,338
Loss on change in fair value of contingent consideration	11,022	-
(Increase) decrease in assets:		
Accounts receivable	(41,235)	(19,031)
Inventories	(88,158)	47,146
Prepaid expenses and other assets	(17,770)	(16,767)
Deposits	(160)	(152)
Increase (decrease) in liabilities:		
Accounts payable	33,624	11,124
Other payables and accrued expenses	8,096	5,662
Tax receivable agreement liability	313	-
Customer deposits	4,637	21,478
Net cash provided by operating activities	<u>62,123</u>	<u>153,195</u>
<b>Cash flows from investing activities</b>		
Purchases of property and equipment and construction in progress	(11,649)	(7,802)
Proceeds from disposal of property and equipment	122	168
Cash used in acquisitions	(326,089)	(83,486)
Net cash used in investing activities	<u>(337,616)</u>	<u>(91,120)</u>
<b>Cash flows from financing activities</b>		
Net borrowings from floor plan	103,103	(27,455)
Proceeds from long-term debt	240,000	30,000
Payments of long-term debt	(18,090)	(7,237)
Payments of debt issuance costs	(4,057)	(701)
Payments of September 2020 offering costs	-	(540)
Payments of contingent consideration	(133)	-
Payments of tax withholdings for equity-based awards	(923)	(449)
Distributions to members	(6,457)	(3,160)
Net cash provided by (used in) financing activities	<u>313,443</u>	<u>(9,542)</u>
<b>Net change in cash</b>	<u>37,950</u>	<u>52,533</u>
<b>Cash and restricted cash at beginning of period</b>	<u>73,949</u>	<u>68,153</u>
<b>Cash and restricted cash at end of period</b>	<u>\$ 111,899</u>	<u>\$ 120,686</u>
<b>Supplemental cash flow disclosures</b>		
Cash paid for interest	\$ 9,623	\$ 4,925
Cash paid for income taxes	6,344	13,993
<b>Noncash items</b>		
Acquisition purchase price funded by seller notes payable	\$ 1,126	\$ 2,056
Acquisition purchase price funded by contingent consideration	15,321	5,482
Acquisition purchase price funded by issuance of Class A common stock	6,834	-
Purchase of property and equipment funded by long-term debt	1,423	1,693
Initial operating lease right-of-use assets for adoption of Topic 842	-	71,835
Right-of-use assets obtained in exchange for new operating lease liabilities	46,378	17,224
Dividends and distributions payable	-	27,789
Distributions to members payable	-	610

**OneWater Marine Inc. and Subsidiaries**  
**Notes to the Condensed Consolidated Financial Statements**  
**(Unaudited)**

## **1. Description of Company and Basis of Presentation**

### **Description of the Business**

OneWater Marine Inc. (“OneWater Inc.”) was incorporated in Delaware on April 3, 2019 and was a wholly-owned subsidiary of One Water Marine Holdings, LLC (“OneWater LLC”). Pursuant to a reorganization on February 11, 2020 into a holding company structure for the purpose of facilitating an initial public offering (the “IPO”) and related transactions in order to carry on the business of OneWater LLC and its subsidiaries (together with OneWater Marine Inc., the “Company”), OneWater Inc. is the holding company and its sole material asset is the equity interest in OneWater LLC. OneWater LLC was organized as a limited liability company under the law of the State of Delaware in 2014 and is the parent company of One Water Assets & Operations (“OWAO”), and its wholly-owned and majority-owned subsidiaries.

The Company is one of the largest recreational boat retailers in the United States. The Company engages primarily in the retail sale, brokerage, and service of new and pre-owned boats, motors, trailers, the sale of marine parts and accessories, and offers slip and storage accommodations in certain locations. The Company also arranges related boat financing, insurance, and extended service contracts for customers with third-party lenders and insurance companies. As of June 30, 2022, the Company operated a total of 96 retail locations, 10 distribution centers/warehouses and multiple online marketplaces in 19 states, several of which are in the top twenty states for marine retail expenditures.

Operating results are generally subject to seasonal variations. Demand for products is generally highest during the third and fourth quarters of the fiscal year and, accordingly, revenues are generally expected to be higher during these periods. General economic conditions and consumer spending patterns can negatively impact the Company’s operating results. Unfavorable local, regional, national, or global economic developments, global public health concerns, including the COVID-19 pandemic, or uncertainties could reduce consumer spending and adversely affect the Company’s business. Consumer spending on discretionary goods may also decline as a result of lower consumer confidence levels, even if prevailing economic conditions are otherwise favorable. Economic conditions in areas in which the Company operates stores, particularly in the Southeast, can have a major impact on the Company’s overall results of operations. Local influences such as corporate downsizing, inclement weather such as hurricanes and other storms, environmental conditions, and other events could adversely affect the Company’s operations in certain markets and in certain periods. Any extended period of adverse economic conditions or low consumer confidence is likely to have a negative effect on the Company’s business.

Sales of new boats from the Company’s top ten brands represent approximately 42.9% and 41.1% of total sales for the nine months ended June 30, 2022 and 2021, respectively, making them major suppliers of the Company. Of this amount, Malibu Boats, Inc., including its brands Malibu, Axis, Cobalt, Pursuit, Maverick, Hewes, Cobia and Pathfinder accounted for 15.6% and 17.1% of our consolidated revenue for the nine months ended June 30, 2022 and 2021, respectively. As is typical in the industry, the Company contracts with most manufacturers under renewable annual dealer agreements, each of which provides the right to sell various makes and models of boats within a given geographic region. Any change or termination of these agreements, or the agreements discussed above, for any reason, or changes in competitive, regulatory, or marketing practices, including rebate or incentive programs, could adversely affect results of operations. Pre-owned boats are usually trade-ins from retail customers who are purchasing a boat from the Company.

### **Principles of Consolidation**

As the sole managing member of OneWater LLC, OneWater Inc. operates and controls all of the businesses and affairs of OneWater LLC, and through OneWater LLC and its wholly-owned subsidiaries as well as majority-owned subsidiaries over which the Company exercises control, conducts its business. As a result, OneWater Inc. consolidates the financial results of OneWater LLC and its subsidiaries and reports non-controlling interests related to the portion of units of OneWater LLC (the “OneWater LLC Units”) not owned by OneWater Inc., which will reduce net income (loss) attributable to OneWater Inc.’s Class A stockholders. As of June 30, 2022, OneWater Inc. owned 90.8% of the economic interest of OneWater LLC.

Commencing December 31, 2021, the Company owns 80% of the economic interest of Quality Assets and Operations, over which the Company exercises control and the minority interest in this subsidiary has been recorded accordingly. See Note 4 for additional information regarding the acquisition.

### **Basis of Financial Statement Preparation**

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles (“GAAP”) for interim financial statements, which do not include all the information and notes required by such accounting principles for annual financial statements. The unaudited condensed consolidated financial statements should be read in conjunction with OneWater Inc.’s Annual Report on Form 10-K for the year ended September 30, 2021. All adjustments, consisting of only normal recurring adjustments considered necessary for fair presentation, have been reflected in these unaudited condensed consolidated financial statements.

All intercompany transactions have been eliminated in consolidation. The Company operates on a fiscal year basis with the first day of the fiscal year being October 1, and the last day of the year ending on September 30. Additionally, since there are no differences between net income and comprehensive income, all references to comprehensive income have been excluded from the accompanying unaudited condensed consolidated financial statements.

## **COVID-19 Pandemic**

The duration and related impact of the COVID-19 global pandemic on the Company's consolidated financial statements is currently uncertain, and it is possible that the pandemic, including the resurgence of COVID-19 in certain geographic areas or the emergence of variant strains of the virus, may negatively impact the Company's future results of operations. The impact of COVID-19 on our suppliers and the recent increase in demand for marine retail products has led to industry-wide supply chain constraints. The Company is monitoring and assessing the situation and preparing for implications to the business, including the ability to safely operate its stores, access to inventory and customer demand.

## **2. Summary of Significant Accounting Policies**

### **Fair Value of Financial Instruments**

The Company's financial instruments include cash and cash equivalents, accounts receivable, accounts payable, other payables and accrued expenses, floor plan notes payable, term note payable and revolving note payable with Truist Bank, seller notes payable and company vehicle notes payable. The carrying values approximate their fair values because of the nature of their terms and current market rates of these instruments.

### **Inventories**

Inventories are stated at the lower of cost or net realizable value. The cost of the new and pre-owned boat inventory is determined using the specific identification method. In assessing lower of cost or net realizable value, the Company considers the aging of the boats, historical sales of a brand and current market conditions. The cost of manufactured and assembled parts and accessories is determined using standard costing. The cost of acquired parts and accessories is determined using the weighted average cost method.

### **Goodwill and Other Identifiable Intangible Assets**

Goodwill and intangible assets are accounted for in accordance with the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 350, "Intangibles - Goodwill and Other" ("ASC 350"), which provides that the excess of cost over the fair value of the net assets of businesses acquired, including other identifiable intangible assets, is recorded as goodwill. Goodwill is an asset representing operational synergies and future economic benefits arising from other assets acquired in a business combination that are not individually identified and separately recognized. In accordance with ASC 350, Goodwill is tested for impairment at least annually, or more frequently when events or circumstances indicate that impairment might have occurred. ASC 350 also states that if an entity determines, based on an assessment of certain qualitative factors, that it is more likely than not that the fair value of a reporting unit is greater than its carrying amount, then a quantitative goodwill impairment test is unnecessary.

Identifiable intangible assets consist of trade names, design libraries and customer relationships related to the acquisitions the Company has completed. The Company has determined that trade names have an indefinite life, as there are no economic, contractual or other factors that limit their useful lives and they are expected to generate value as long as the trade name is utilized by the marine retailer, and therefore, are not subject to amortization. Design libraries and customer relationships are amortized over their estimated useful lives of ten years and are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recoverable. Intangible asset amortization expense was approximately \$2.1 million and \$4.7 million for the three and nine months ended June 30, 2022, respectively. No expense was recorded for the three and nine months ended June 30, 2021.

### **Sales Tax**

The Company collects sales tax on all of the Company's sales to nonexempt customers and remits the entire amount to the states that imposed the sales tax on and concurrent with specific sales transactions. The Company's accounting policy is to exclude the tax collected and remitted to the states from revenues and cost of sales.

### **Revenue Recognition**

Revenue is recognized from the sale of products and commissions earned on new and pre-owned boats (including used, brokerage, consignment and wholesale) when ownership is transferred to the customer, which is generally upon acceptance or delivery. At the time of acceptance or delivery, the customer is able to direct the use of, and obtain substantially all of the benefits at such time. We are the principal with respect to revenue from new, pre-owned and consignment sales and such revenue is recorded at the gross sales price. With respect to brokerage transactions, we are acting as an agent in the transaction, therefore the fee or commission is recorded on a net basis.

Revenue from parts and accessories sold directly to a customer (not on a repair order) are recognized when control of the items is transferred to the customer, which is typically upon shipment. Revenue from parts and service operations (boat maintenance and repairs) are recorded over time as services are performed. Satisfaction of this performance obligation creates an asset with no alternative use for which an enforceable right to payment for performance to date exists within our contractual agreements. Each boat maintenance and repair service is a single performance obligation that includes both the parts and labor associated with the service. Payment for boat maintenance and repairs is typically due upon the completion of the service, which is generally completed within a period of one year or less from contract inception. The Company recorded contract assets in prepaid expenses and other current assets of \$3.8 and \$2.3 million as of June 30, 2022 and September 30, 2021, respectively.

Certain parts and service transactions require the Company to perform shipping and handling activities after the transfer of control to the customer (e.g., when control transfers prior to delivery). They are considered fulfillment activities, and accordingly, the costs are accrued when the related revenue is recognized and are included in selling, general and administrative expenses.

Revenue from storage and marina operations is recognized on a straight-line basis over the term of the contract as services are completed. Revenue from arranging financing, insurance and extended warranty contracts to customers through various third-party financial institutions and insurance companies is recognized when the related boats are sold. We do not directly finance our customers' boat, motor or trailer purchases. We are acting as an agent in the transaction, therefore the commission is recorded on a net basis. Subject to our agreements and in the event of early cancellation, prepayment or default of such loans or insurance contracts by the customer, we may be assessed a chargeback for a portion of the commission paid by the third-party financial institutions and insurance companies. We reserve for these chargebacks based on our historical experience with repayments or defaults. Chargebacks were not material to the unaudited condensed consolidated financial statements for the three and nine months ended June 30, 2022 and 2021.

Contract liabilities consist of deferred revenues from marina and storage operations and customer deposits and are classified in customer deposits in the Company's unaudited condensed consolidated balance sheets. Deposits received from customers are recorded as a liability until the related sales orders have been fulfilled by us and control of the vessel or part/accessory is transferred to the customer. The activity in customer deposits for the three and nine months ended June 30, 2022 is as follows:

(\$ in thousands)	<b>Three Months Ended June 30, 2022</b>	<b>Nine Months Ended June 30, 2022</b>
Beginning contract liability	\$ 63,514	\$ 46,610
Revenue recognized from contract liabilities included in the beginning balance	(35,337)	(42,595)
Increases due to cash received, net of amounts recognized in revenue during the period	37,343	61,505
Ending contract liability	<u>\$ 65,520</u>	<u>\$ 65,520</u>

The following tables set forth percentages on the timing of revenue recognition for the three and nine months ended June 30, 2022 and 2021.

	<b>Three Months Ended June 30, 2022</b>	<b>Three Months Ended June 30, 2021</b>
Goods and services transferred at a point in time	95.0%	94.4%
Goods and services transferred over time	5.0%	5.6%
Total Revenue	<u>100.0%</u>	<u>100.0%</u>

	<b>Nine Months Ended June 30, 2022</b>	<b>Nine Months Ended June 30, 2021</b>
Goods and services transferred at a point in time	94.6%	94.1%
Goods and services transferred over time	5.4%	5.9%
Total Revenue	<u>100.0%</u>	<u>100.0%</u>

## Income Taxes

OneWater Inc. is a corporation and as a result, is subject to U.S. federal, state and local income taxes. We account for income taxes under the asset and liability method, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events included in the consolidated financial statements. Under this method, we determine deferred tax assets and liabilities on the basis of the differences between the book value and tax bases of assets and liabilities by using enacted tax rates in effect for the year in which the differences are expected to reverse. The effect of a change in tax rates on deferred tax assets and liabilities is recognized in income in the period in which the enactment date occurs. We recognize deferred tax assets to the extent we believe these assets are more-likely-than-not to be realized. In making such a determination, we consider all available positive and negative evidence, including future reversals of existing taxable temporary differences, projected future taxable income, tax planning strategies and recent results of operations.

OneWater LLC is treated as a partnership for U.S. federal income tax purposes and therefore does not pay U.S. federal income tax on its taxable income. Instead, the OneWater LLC members are liable for U.S. federal income tax on their respective shares of the Company's taxable income reported on the members' U.S. federal income tax returns.

When there are situations with uncertainty as to the timing of the deduction, the amount of the deduction, or the validity of the deduction, the Company adjusts the financial statements to reflect only those tax positions that are more-likely-than-not to be sustained. Positions that meet this criterion are measured using the largest benefit that is more than 50% likely to be realized. Interest and penalties related to income taxes are included in the benefit (provision) for income taxes in the consolidated statements of operations.

### **Vendor Consideration Received**

Consideration received from vendors is accounted for in accordance with FASB Accounting Standards Codification 330, "Inventory" ("ASC 330"). Pursuant to ASC 330, manufacturer incentives based upon cumulative volume of sales and purchases are recorded as a reduction of inventory cost and related cost of sales when the amounts are probable and reasonably estimable.

### **Use of Estimates**

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosures of contingent assets and liabilities as of the date of the financial statements, and the reported amounts of revenues and expenses during the periods presented. Actual results could differ materially from these estimates. Estimates and assumptions are reviewed periodically, and the effects of any revisions are reflected in the consolidated financial statements in the period they are determined to be necessary. Significant estimates made in the accompanying unaudited condensed consolidated financial statements include, but are not limited to, those relating to inventory mark downs, certain assumptions related to intangible and long-lived assets, share based compensation, valuation of acquisition contingent consideration and accruals for expenses relating to business operations.

### **Segment Information**

As of June 30, 2022 and September 30, 2021, the Company had one operating segment, marine retail. The marine retail segment consists of the sale of new and pre-owned boats, arrangement of finance and insurance products, performance of repair and maintenance services and offering marine related parts and accessories. The marine retail business has discrete financial information and is regularly reviewed by the Company's chief operating decision maker ("CODM") to assess performance and allocate resources. The Company has identified its Chief Executive Officer as its CODM. The Company has determined its marine retail operating segment is its reporting unit and is also the reportable segment.

## **3. New Accounting Pronouncements**

In December 2019, the FASB issued ASU 2019-12, "Income Taxes (Topic 740) – Simplifying the Accounting for Income Taxes". The pronouncement is effective for a public company's annual reporting periods beginning after December 15, 2020, and interim periods within those annual periods. The Company adopted the new guidance in fiscal first quarter 2022. The adoption of the guidance did not have a material impact on the Company's financial statement.

In March 2020, the FASB issued ASU 2020-04, "Reference Rate Reform", which provides temporary optional guidance to companies impacted by the transition away from the London Interbank Offered Rate ("LIBOR"). The guidance provides certain expedients and exceptions to applying GAAP in order to lessen the potential accounting burden when contracts, hedging relationships, and other transactions that reference LIBOR as a benchmark rate are modified. The guidance is effective upon issuance and expires on December 31, 2022. The Company is currently assessing the impact of the LIBOR transition and this ASU on the Company's financial statements.

In October 2021, the FASB issued ASU 2021-08, "Business Combinations (Topic 805) – Accounting for Contract Assets and Contract Liabilities from Contracts with Customers", which is intended to improve the accounting for acquired revenue contracts with customers in a business combination by addressing diversity in practice and inconsistency related to the recognition of an acquired contract liability and payment terms and their effect on subsequent revenue recognized by the acquirer. The pronouncement is effective for a public company's annual reporting periods beginning after December 15, 2022, and interim periods within those annual periods. The Company is currently evaluating the impact that this standard will have on the consolidated financial statements. The Company plans to adopt the pronouncement in fiscal year 2024.

## **4. Acquisitions**

The results of operations of acquisitions are included in the accompanying unaudited condensed consolidated financial statements from the acquisition date. The purchase price of acquisitions is allocated to identifiable tangible assets and intangible assets acquired based on their estimated fair values at the acquisition date, with the excess being allocated to goodwill. Under the acquisition method of accounting, the purchase price is allocated to the tangible and intangible assets acquired and liabilities assumed based on information currently available. For acquisitions of Quality Boats, Denison Yachting and YakGear, the valuation of tangible assets, assumed liabilities and identifiable intangible assets are preliminary as the acquisitions are subject to certain customary closing and post-closing adjustments and certain valuations are not complete. Any changes to the value of identifiable intangible assets will be reclassified from goodwill upon the completion of the valuations.

For the nine months ended June 30, 2022, the Company completed the following transactions:

- On October 1, 2021, Naples Boat Mart with one location in Florida
- On November 30, 2021, T-H Marine, a leading provider of branded marine parts and accessories, with locations in Alabama, Florida, Illinois, Indiana, Oklahoma and Texas
- On December 1, 2021, Norfolk Marine Company with one location in Virginia
- On December 31, 2021, a majority interest in Quality Boats with three locations in Florida. The sellers retained a 20% economic interest in Quality Boats. The Company has the exclusive right, but not obligation, to acquire the remaining 20% interest at any time before January 1, 2027.
- On February 1, 2022, JIF Marine, a leading supplier of stainless steel ladders, dock products and other accessories which is based in Tennessee
- On March 1, 2022, YakGear, a leading supplier of kayak equipment, paddle sports accessories and boat mounting accessories which is based in Texas
- On April 1, 2022, Denison Yachting, a leader in yacht and superyacht sales as well as ancillary yacht services, with 20 retail locations in 7 states

Consideration paid for the consummated acquisitions was \$357.2 million with \$326.1 million paid at closing (net of cash acquired), \$1.1 million financed through a note payable to the sellers bearing interest at a rate of 4.0% per year, estimated payments of \$15.3 million in contingent consideration and the remaining \$14.6 million with the issuance of shares of Class A common stock. The notes are payable in one lump sum on December 1, 2024, with interest payments due quarterly. The estimated payments of contingent consideration are part of multiple earnouts varying from the achievement of certain post-acquisition increases in adjusted EBITDA to the generation of acquisition leads for the Company. The acquisition contingent consideration was developed using weighted average projections based on the Company's historical experience, current forecasts for the industry and current expectations of the ability to generate viable acquisition leads. The minimum payout on acquisition contingent consideration is \$5.9 million and the maximum payout is \$24.7 million.

The table below summarizes the fair values (Quality Boats, Denison Yachting and YakGear are preliminary) of the assets acquired and liabilities assumed at the acquisition date, including the goodwill recorded as a result of the transactions:

#### Summary of Assets Acquired and Liabilities Assumed

(\$ in thousands)	T-H Marine	Quality Boats	Denison	Other Acquisitions	Total Acquisitions
Accounts receivable	\$ 8,955	\$ -	\$ 654	\$ 1,122	\$ 10,731
Inventories	19,856	5,937	1,981	9,618	37,392
Prepaid expenses	1,547	47	2,053	357	4,004
Property and equipment	3,896	803	293	1,227	6,219
Deposits	-	-	126	13	139
Operating lease right-of-use assets	5,960	11,877	1,221	7,375	26,433
Identifiable intangible assets	105,500	31,700	16,600	11,276	165,076
Goodwill	51,694	78,682	29,144	14,594	174,114
Accounts payable	(3,876)	-	(80)	(471)	(4,427)
Accrued expenses	(1,697)	-	(252)	(553)	(2,502)
Customer deposits	(394)	(5,047)	(5,524)	(3,307)	(14,272)
Operating lease liabilities	(5,960)	(11,877)	(1,221)	(7,375)	(26,433)
Aggregate acquisition date fair value	<u>\$ 185,481</u>	<u>\$ 112,122</u>	<u>\$ 44,995</u>	<u>\$ 33,876</u>	<u>\$ 376,474</u>
Consideration transferred	\$ 185,481	\$ 92,811	\$ 44,995	\$ 33,876	\$ 357,163
Fair value of non-controlling interests	-	19,311	-	-	19,311
Aggregate acquisition date fair value	<u>\$ 185,481</u>	<u>\$ 112,122</u>	<u>\$ 44,995</u>	<u>\$ 33,876</u>	<u>\$ 376,474</u>

Included in our results for the three and nine months ended June 30, 2022, the acquisitions contributed \$91.8 million and \$178.5 million to our consolidated revenue and \$16.6 million and \$29.9 to our income before income tax expense, respectively. Costs related to acquisitions are included in transaction costs and primarily relate to legal, accounting, valuation and other fees, which are charged directly to operations in the accompanying consolidated statements of operations as incurred in the amount of \$1.2 million and \$4.9 million for the three and nine months ended June 30, 2022, respectively. Comparatively, we recorded \$0.1 million and \$0.6 million in acquisition related transaction costs for the three and nine months ended June 30, 2021, respectively.

The following unaudited pro forma summary presents consolidated information as if all acquisitions in the nine months ended June 30, 2022 and the three and nine months ended June 30, 2021 had occurred on October 1, 2020:

	<b>Three Months Ended June 30, 2021</b>
	(\$ in thousands) (Unaudited)
Pro forma revenue	\$ 526,136
Pro forma net income	\$ 66,648
	<b>Nine Months Ended June 30, 2022</b>
	<b>Nine Months Ended June 30, 2021</b>
	(\$ in thousands) (Unaudited)

Pro forma revenue	\$	1,431,881	\$	1,297,780
Pro forma net income	\$	135,253	\$	129,158

The amounts have been calculated by applying our accounting policies and estimates. Certain acquired entities completed acquisitions during the periods presented, prior to our acquisition of the business. Their acquisitions are included in the results of their operations from the acquisition date forward but were not included on a pro forma basis. Pro forma net income has been tax affected based on the Company's effective tax rate in the historical periods presented.

We expect substantially all of the goodwill related to completed acquisitions to be deductible for federal income tax purposes.

On June 21, 2022, the Company announced that it signed a definitive agreement to acquire OBCI (NASDAQ: OBCI) ("the "Ocean Bio-Chem Acquisition"), a leading supplier and distributor of appearance, cleaning, and maintenance products for the marine industry and the automotive, powersports, recreational vehicles, and outdoor power equipment markets. As part of the transaction, the Company will also acquire Star Brite Europe, Inc. (the "SB Europe Acquisition"), and certain real property assets from PEJE, Inc., controlled by Peter G. Dornau, the Chairman of OBCI (the "Real Estate Acquisition" and together with the Ocean Bio-Chem Acquisition and SB Europe Acquisition, the "OBCI Acquisitions"). The transaction is expected to close in the Company's fiscal fourth quarter.

## 5. Inventories

Inventories consisted of the following at:

(\$ in thousands)	June 30, 2022	September 30, 2021
New vessels	\$ 182,184	\$ 105,625
Pre-owned vessels	37,443	22,906
Work in process, parts and accessories, net	49,803	15,349
	<u>\$ 269,430</u>	<u>\$ 143,880</u>

## 6. Goodwill and Other Identifiable Intangible Assets

Our acquisitions have resulted in the recording of goodwill and other identifiable intangible assets. Goodwill is an asset representing operational synergies and future economic benefits arising from other assets acquired in a business combination that are not individually identified and separately recognized. Identifiable intangible assets consist of trade names, design libraries and customer relationships related to the acquisitions the Company has completed. The changes in goodwill and identifiable intangible assets are as follows:

(\$ in thousands)	Goodwill	Trade Names	Design Libraries	Customer Relationships	Total Identifiable Intangible Assets, net
	Unamortized	Unamortized	Amortized	Amortized	
Net balance as of September 30, 2021	\$ 168,491	\$ 85,294	\$ -	\$ -	\$ 85,294
Acquisitions during the nine months ended June 30, 2022	174,114	83,171	14,050	67,855	165,076
Accumulated amortization for the nine months ended June 30, 2022	-	-	(808)	(3,903)	(4,711)
Net balance as of June 30, 2022	<u>\$ 342,605</u>	<u>\$ 168,465</u>	<u>\$ 13,242</u>	<u>\$ 63,952</u>	<u>\$ 245,659</u>

Amortization expense was \$2.1 million and \$4.7 million for the three and nine months ended June 30, 2022, respectively, and is recorded in depreciation and amortization expense in the unaudited condensed consolidated statements of operations. No amortization expense was recorded for the three and nine months ended June 30, 2021.

The following table summarizes the expected amortization expense for fiscal years 2022 through 2026 and thereafter (Dollars in thousands):

2022 (excluding the nine months ended June 30, 2022)	\$ 2,048
2023	8,190
2024	8,190
2025	8,190
2026	8,190
Thereafter	42,386
	<u>\$ 77,194</u>



## 7. Notes Payable — Floor Plan

The Company maintains an ongoing wholesale marine products inventory financing program with a syndicate of banks. The program is administered by Wells Fargo Commercial Distribution Finance, LLC (“Wells Fargo”). On December 29, 2021, the Company and certain of its subsidiaries entered into the Seventh Amended and Restated Inventory Financing Agreement (as amended, the “Inventory Financing Facility”) with Wells Fargo and the other financial institutions party thereto to increase the maximum borrowing amount available to \$500.0 million. The Inventory Financing Facility expires on December 1, 2023. The outstanding balance of the facility was \$217.3 million and \$114.2 million, as of June 30, 2022 and September 30, 2021, respectively.

Effective October 1, 2021, interest on new boats and for rental units is calculated using the Adjusted 30-Day Average SOFR (as defined in the Inventory Financing Facility) (“SOFR”) plus an applicable margin of 2.75% to 5.00% depending on the age of the inventory. Interest on pre-owned boats is calculated at the new boat rate plus 0.25%. Wells Fargo will finance 100.0% of the vendor invoice price for new boats, engines and trailers. As of June 30, 2022 the interest rate on the Inventory Financing Facility ranged from 3.95% to 6.20% for new inventory and 4.20% to 6.45% for pre-owned inventory. As of September 30, 2021 the interest rate on the Inventory Financing Facility was calculated under the legacy London Inter-Bank Offering Rate and ranged from 3.08% to 5.33% for new inventory and 3.33% to 5.58% for pre-owned inventory. Borrowing capacity available at June 30, 2022 and September 30, 2021 was \$282.7 million and \$278.3 million, respectively.

The Inventory Financing Facility has certain financial and non-financial covenants as specified in the agreement. The financial covenants include requirements to comply with a maximum Funded Debt to EBITDA Ratio (as defined in the Inventory Financing Facility) as well as a minimum Fixed Charge Coverage Ratio (as defined in the Inventory Financing Facility). In addition, certain non-financial covenants could restrict the Company’s ability to sell assets (excluding inventory in the normal course of business), engage in certain mergers and acquisitions, incur additional debt and pay cash dividends or distributions, among others. The Company was in compliance with all covenants at June 30, 2022.

The collateral for the Inventory Financing Facility consists primarily of our inventory that is financed through the Inventory Financing Facility and related assets, including accounts receivable, bank accounts and proceeds of the foregoing, and excludes the collateral that underlies the term note payable to Truist Bank.

## 8. Long-term Debt and Line of Credit

On November 30, 2021, the Company and certain of its subsidiaries entered into an Incremental Amendment No. 2 (the “Second Amendment”) to the Credit Facility (as defined below) with Truist Bank. The Second Amendment amends the Credit Facility to, among other things, provide for an incremental term loan (the “Incremental Term Loan”) in an aggregate principal amount equal to \$200.0 million, which will be added to, and constitute part of, the existing \$110.0 million term loan and will be on the same terms applicable to the existing term loan under the Credit Facility. Additionally, the Second Amendment further provides a \$20.0 million increase in the revolving commitment, which will be added to, and constitute part of, the existing \$30.0 revolving commitment.

The Credit Facility is collateralized by certain real and personal property (including certain capital stock) of the Company and its subsidiaries. The collateral does not include inventory or certain other assets of the Company’s subsidiaries financed under the Inventory Financing Facility. The Credit Facility is subject to certain financial covenants related to the maintenance of a minimum fixed charge coverage ratio and a maximum consolidated leverage ratio. The Credit Facility also contains non-financial covenants and restrictive provisions that, among other things, limit the ability of the Company to incur additional debt, transfer or dispose of all of its assets, make certain investments, loans or payments and engage in certain transactions with affiliates. The Company was in compliance with all covenants as of June 30, 2022.

Long-term debt consisted of the following at:

(\$ in thousands)	June 30, 2022	September 30, 2021
Term note payable to Truist Bank, secured and bearing interest at 4.5% at June 30, 2022 and 2.75% at September 30, 2021. The note requires quarterly principal payments, maturing with a full repayment on July 22, 2025	\$ 293,958	\$ 105,875
Revolving note payable for an amount up to \$50.0 million to Truist Bank, secured and bearing interest at 4.5% at June 30, 2022. The note requires full repayment on July 22, 2025	40,000	-
Note payable to commercial vehicle lenders secured by the value of the vehicles bearing interest at rates ranging from 0.0% to 8.9% per annum. The notes require monthly installment payments of principal and interest ranging from \$100 to \$5,600 through July 2028	3,853	3,248
Note payable to Tom George Yacht Sales, Inc., unsecured and bearing interest at 5.5% per annum. The note requires quarterly interest payments, with a balloon payment of principal due on December 1, 2023	2,056	2,056
Note payable to Norfolk Marine Company, unsecured and bearing interest at 4.0% per annum. The note requires quarterly interest payments, with a balloon payment of principal due on December 1, 2024	1,126	-
Note payable to Central Marine Services, Inc., unsecured and bearing interest at 5.5% per annum. The note was repaid in full	-	2,164
Note payable to Ocean Blue Yacht Sales, unsecured and bearing interest at 5.0% per annum. The note was repaid in full	-	1,920
Note payable to Slalom Shop, LLC, unsecured and bearing interest at 5.0% per annum. The note was repaid in full	-	1,271
<b>Total debt outstanding</b>	<b>340,993</b>	<b>116,534</b>
Less current portion (net of debt issuance costs)	(19,450)	(11,366)
Less unamortized portion of debt issuance costs	(5,194)	(2,094)
<b>Long-term debt, net of current portion of unamortized debt issuance costs</b>	<b>\$ 316,349</b>	<b>\$ 103,074</b>

## 9. Stockholders' and Members' Equity

### Equity-Based Compensation

We maintain the OneWater Marine Inc. Omnibus Incentive Plan (the "LTIP") to incentivize individuals providing services to OneWater Inc. and its subsidiaries and affiliates. The LTIP provides for the grant, from time to time, at the discretion of the board of directors of OneWater Marine Inc. (the "Board") or a committee thereof, of (1) stock options, (2) stock appreciation rights, (3) restricted stock, (4) restricted stock units, (5) stock awards, (6) dividend equivalents, (7) other stock-based awards, (8) cash awards, (9) substitute awards and (10) performance awards. The total number of shares reserved for issuance under the LTIP that may be issued pursuant to incentive stock options (which generally are stock options that meet the requirements of Section 422 of the Code) is 1,556,307. The LTIP is and will continue to be administered by the Board, except to the extent the Board elects a committee of directors to administer the LTIP. Class A common stock subject to an award that expires or is cancelled, forfeited, exchanged, settled in cash or otherwise terminated without delivery of shares (including forfeiture of restricted stock awards) and shares withheld to pay the exercise price of, or to satisfy the withholding obligations with respect to, an award will again be available for delivery pursuant to other awards under the LTIP.

During the nine months ended June 30, 2022, the Board approved the grant of 52,227 performance-based restricted stock units, which represents 100% of the target award. Performance-based restricted stock units provide an opportunity for the recipient to receive a number of shares of our common stock based on our performance during fiscal year 2022 as measured against objective performance goals as determined by the Board. The actual number of units earned may range from 0% to 200% of the target number of units depending upon achievement of the performance goals. Performance-based restricted stock units vest in three equal annual installments, commencing on September 30, 2022. Upon vesting, each performance-based restricted stock unit equals one share of common stock of the Company. As of June 30, 2022, the Company estimated achievement of the performance targets at 200%.

During the nine months ended June 30, 2022, the Board approved the grant of 121,470 time-based restricted stock units. 14,186 restricted stock units fully vest on September 30, 2022, 12,000 restricted stock units fully vest on April 20, 2023 and the remaining 95,284 restricted stock units vest in three equal annual installments commencing on September 30, 2022.

Compensation cost for time-based restricted stock units is based on the closing price of our common stock on the date immediately preceding the grant and is recognized on a graded basis over the applicable vesting periods. Compensation cost for performance share units is based on the closing price of our common stock on the date immediately preceding the grant and the ultimate performance level achieved and is recognized on a graded basis over the applicable vesting period. The Company recognized \$2.5 million and \$1.1 million of compensation expense for the three months ended June 30, 2022 and 2021, respectively, which includes \$1.3 million and \$0.6 million of compensation expense for the three months ended June 30, 2022 and 2021, respectively, for performance share units. The Company recognized \$7.3 million and \$3.3 million of compensation expense for the nine months ended June 30, 2022 and 2021, respectively, which includes \$4.0 million and \$1.3 million of compensation expense for the nine months ended June 30, 2022 and 2021, respectively, for performance share units.

The following table further summarizes activity related to restricted stock units for the nine months ended June 30, 2022:

	Restricted Stock Unit Awards	
	Number of Units	Weighted Average Grant Date Fair Value (\$)
Unvested at September 30, 2021	545,094	\$ 22.68
Awarded	173,697	39.95
Vested	(100,872)	16.99
Forfeited	-	-
Unvested at June 30, 2022	617,919	\$ 28.46

As of June 30, 2022, the total unrecognized compensation expense related to outstanding equity awards was \$8.8 million, which the Company expects to recognize over a weighted-average period of 1.4 years.

We issue shares of our Class A common stock upon the vesting of performance-based restricted stock units and time-based restricted stock units. These shares are issued from our authorized and not outstanding common stock. In addition, in connection with the vesting of restricted stock units, we repurchase a portion of shares issued equal to the amount of employee income tax withholding.

## Earnings Per Share

Basic and diluted earnings per share of Class A common stock is computed by dividing net income attributable to OneWater Inc. by the weighted-average number of Class A common stock outstanding during the period. Diluted earnings per share is computed by giving effect to all potentially dilutive shares.

On March 30, 2022, the Board approved an up to \$50 million share repurchase program. As of June 30, 2022, no shares had been repurchased under the program. The repurchase program does not have a predetermined expiration date.

The following table sets forth the calculation of earnings per share for the three months ended June 30, 2022 and 2021 (in thousands, except per share data):

	<b>Three Months Ended June 30, 2022</b>	<b>Three Months Ended June 30, 2021</b>
<b>Earnings per share:</b>		
<b>Numerator:</b>		
Net income attributable to OneWater Inc.	\$ 55,977	\$ 34,503
<b>Denominator:</b>		
Weighted-average number of unrestricted outstanding common shares used to calculate basic net income per share	14,133	10,976
<b>Effect of dilutive securities:</b>		
Restricted stock units	379	365
Diluted weighted-average shares of Class A common stock outstanding used to calculate diluted earnings per share	<u>14,512</u>	<u>11,341</u>
<b>Earnings per share of Class A common stock – basic</b>	<u>\$ 3.96</u>	<u>\$ 3.14</u>
<b>Earnings per share of Class A common stock – diluted</b>	<u>\$ 3.86</u>	<u>\$ 3.04</u>

The following table sets forth the calculation of earnings per share for the nine months ended June 30, 2022 and 2021 (in thousands, except per share data):

	<b>Nine Months Ended June 30, 2022</b>	<b>Nine Months Ended June 30, 2021</b>
<b>Earnings per share:</b>		
<b>Numerator:</b>		
Net income attributable to OneWater Inc.	\$ 112,293	\$ 62,765
<b>Denominator:</b>		
Weighted-average number of unrestricted outstanding common shares used to calculate basic net income per share	13,791	10,884
<b>Effect of dilutive securities:</b>		
Restricted stock units	414	259
Diluted weighted-average shares of Class A common stock outstanding used to calculate diluted earnings per share	<u>14,205</u>	<u>11,143</u>
<b>Earnings per share of Class A common stock – basic</b>	<u>\$ 8.14</u>	<u>\$ 5.77</u>
<b>Earnings per share of Class A common stock – diluted</b>	<u>\$ 7.90</u>	<u>\$ 5.63</u>

Shares of Class B common stock and unvested restricted stock units do not share in the income (losses) of the Company and are therefore not participating securities. As such, separate presentation of basic and diluted earnings per share under the two-class method has not been presented.

The following number of weighted-average potentially dilutive shares were excluded from the calculation of diluted earnings per share because the effect of including such potentially dilutive shares would have been antidilutive upon conversion (in thousands):

	<b>Three Months Ended June 30, 2022</b>	<b>Three Months Ended June 30, 2021</b>
Class B common stock	1,430	4,063
Restricted Stock Units	256	201
	<u>1,686</u>	<u>4,264</u>
	<b>Nine Months Ended June 30, 2022</b>	<b>Nine Months Ended June 30, 2021</b>
Class B common stock	1,560	4,124
Restricted Stock Units	233	221
	<u>1,793</u>	<u>4,345</u>

### Employee Stock Purchase Plan

At the Company's 2021 Annual Meeting of Stockholders (the "Annual Meeting"), held on February 23, 2021, the Company's stockholders approved the OneWater Marine Inc. 2021 Employee Stock Purchase Plan (the "ESPP"), which was approved and adopted by the Board as of January 13, 2021 (the "Adoption Date"), subject to stockholder approval at the Annual Meeting. The effective date of the ESPP is February 23, 2021, and, unless earlier terminated, the ESPP will expire on the twentieth anniversary of the Adoption Date. The ESPP will be administered by the Board or by one or more committees to which the Board delegates such administration.

The ESPP enables eligible employees to purchase shares of the Company's Class A common stock at a discount through participation in discrete offering periods. The ESPP is intended to qualify as an employee stock purchase plan under section 423 of the Internal Revenue Code of 1986, as amended. Up to a maximum of 299,505 shares of the Company's Class A common stock may be issued under the ESPP, subject to certain adjustments as set forth in the ESPP. On the first day of each fiscal year during the term of the ESPP, beginning on October 1, and ending on (and including) September 30, the number of shares of Class A common stock that may be issued under the ESPP will increase by a number of shares equal to the least of (i) 1% of the outstanding shares on the Adoption Date, or (ii) such lesser number of shares (including zero) that the administrator determines for purposes of the annual increase for that fiscal year. The number of shares of Class A common stock that may be granted to any single participant in any single option period will be subject to certain limitations set forth in the plan. As of June 30, 2022, there has not yet been an offering period under the ESPP. The first offering period under the ESPP began on July 1, 2022.

### Distributions

During the nine months ended June 30, 2022 and 2021, the Company made distributions to OneWater Unit Holders for certain permitted tax payments.

### 10. Fair Value Measurements

In determining fair value, the Company uses various valuation approaches including market, income and/or cost approaches. FASB standard "Fair Value Measurements" (Topic 820) establishes a hierarchy for inputs used in measuring fair value that maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that the most observable inputs be used when available. Observable inputs are inputs that market participants would use in pricing the asset or liability developed based on market data obtained from independent sources. Unobservable inputs are those that reflect the Company's expectation of the assumptions market participants would use in pricing the asset or liability developed based on the best information available in the circumstances. The hierarchy is broken down into three levels based on the reliability of inputs as follows:

Level 1 – Valuations based on quoted prices in active markets for identical assets or liabilities that the Company has the ability to access. Assets utilizing Level 1 inputs include marketable securities that are actively traded.

Level 2 – Valuations based on quoted prices in markets that are not active or for which all significant inputs are observable, either directly or indirectly.

Level 3 – Valuations based on inputs that are unobservable and significant to the overall fair value measurement. Asset and liability measurements utilizing Level 3 inputs include those used in estimating fair value of non-financial assets and non-financial liabilities in purchase acquisitions, those used in assessing impairment of property, plant and equipment and other intangibles, those used in the reporting unit valuation in the annual goodwill impairment evaluation and those used in the valuation of contingent consideration.

The availability of observable inputs can vary and is affected by a wide variety of factors. To the extent that valuation is based on models or inputs that are less observable or unobservable in the market, the determination of fair value requires more judgment. Accordingly, the degree of judgment required in determining fair value is greatest for assets and liabilities categorized in Level 3. In certain cases, the inputs used to measure fair value may fall into different levels of the fair value hierarchy. In such cases, for disclosure purposes, the level in the fair value hierarchy within which the fair value measurement is disclosed is determined based on the lowest level input that is significant to the fair value measurement. Fair value measurements can be volatile based on various factors that may or may not be within the Company's control.

The following tables summarize the Company's financial liabilities measured at fair value in the accompanying unaudited condensed consolidated balance sheets as of June 30, 2022 and September 30, 2021:

	<b>June 30, 2022</b>			
	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>	<u>Total</u>
	(\$ in thousands)			
Liabilities:				
Contingent Consideration	\$ -	\$ -	\$ 38,282	\$ 38,282

  

	<b>September 30, 2021</b>			
	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>	<u>Total</u>
	(\$ in thousands)			
Liabilities:				
Contingent Consideration	\$ -	\$ -	\$ 12,072	\$ 12,072

There were no transfers between the valuation hierarchy Levels 1, 2, and 3 for the three or nine months ended June 30, 2022 and 2021.

We estimate the fair value of contingent consideration using a probability-weighted discounted cash flow model based on forecasted future earnings or forecasted probabilities of producing acquisition leads. The acquisition contingent consideration liability has been accounted for based on inputs that are unobservable and significant to the overall fair value measurement (Level 3). The contingent consideration balance is recorded in other payables and accrued expenses and other long-term liabilities in the unaudited condensed consolidated balance sheets. Changes in fair value and net present value of contingent consideration are included in change in fair value of contingent consideration in the unaudited condensed consolidated statements of operations. The fair value of contingent consideration is reassessed on a quarterly basis.

The following table sets forth the changes in fair value of our contingent consideration for the three and nine months ended June 30, 2022:

(\$ in thousands)	<b>Three Months Ended June 30, 2022</b>
Balance as of March 31, 2022	\$ 35,243
Additions from acquisitions	-
Settlement of contingent consideration	(79)
Change in fair value, including accretion	3,118
Balance as of June 30, 2022	<u>\$ 38,282</u>

  

(\$ in thousands)	<b>Nine Months Ended June 30, 2022</b>
Balance as of September 30, 2021	\$ 12,072
Additions from acquisitions	15,321
Settlement of contingent consideration	(133)
Change in fair value, including accretion	11,022
Balance as of June 30, 2022	<u>\$ 38,282</u>

## **11. Income Taxes**

The Company is a corporation and, as a result is subject to U.S. federal, state and local income taxes. OneWater LLC is treated as a pass-through entity for U.S. federal tax purposes and in most state and local jurisdictions. As such, OneWater LLC's members, including the Company, are liable for federal and state income taxes on their respective shares of OneWater LLC's taxable income.

Our effective tax rates of 22.6% and 21.9% for the three and nine months ending June 30, 2022, respectively, differ from statutory rates primarily due to earnings allocated to non-controlling interests.

The Company recognizes deferred tax assets to the extent it believes these assets are more-likely-than-not to be realized. In making such a determination, the Company considers all available positive and negative evidence, including future reversals of existing temporary differences, projected future taxable income, tax planning strategies and recent results of operations. Based on our cumulative earnings history and forecasted future sources of taxable income, we believe that we will fully realize our deferred tax assets in the future. The Company has not recorded a valuation allowance.

As of June 30, 2022 and September 30, 2021, the Company has not recognized any uncertain tax positions, penalties, or interest as management has concluded that no such positions exist. The Company is subject to examination in the US Federal and certain state tax jurisdictions for the tax years beginning with the year ended September 30, 2020. The Company is not currently under an income tax audit in any U.S. or state jurisdiction for any tax year.

### **Tax Receivable Agreement**

In connection with the IPO, the Company entered into a tax receivable agreement (the "Tax Receivable Agreement") with certain of the owners of OneWater LLC. As of June 30, 2022 and September 30, 2021, our liability under the Tax Receivable Agreement was \$46.2 million and \$40.1 million, respectively, representing 85% of the calculated net cash savings in U.S. federal, state and local income tax and franchise tax that OneWater Inc. anticipates realizing in future years from the result of certain increases in tax basis and certain tax benefits attributable to imputed interest as a result of OneWater Inc.'s acquisition of OneWater LLC Units pursuant to an exercise of the Redemption Right or the Call Right (each as defined in the amended and restated limited liability company agreement of OneWater LLC (the "OneWater LLC Agreement")).

The projection of future taxable income involves significant judgment. Actual taxable income may differ from our estimates, which could significantly impact our ability to make payments under the Tax Receivable Agreement. We have determined it is more-likely-than-not that we will be able to utilize all of our deferred tax assets subject to the Tax Receivable Agreement; therefore, we have recorded a liability under the Tax Receivable Agreement related to the tax savings we may realize from certain increases in tax basis and certain tax benefits attributable to imputed interest as a result of OneWater Inc.'s acquisition of OneWater LLC Units pursuant to an exercise of the Redemption Right or Call Right (each as defined in the OneWater LLC Agreement). If we determine the utilization of these deferred tax assets is not more-likely-than-not in the future, our estimate of amounts to be paid under the Tax Receivable Agreement would be reduced. In this scenario, the reduction of the liability under the Tax Receivable Agreement would result in a benefit to our consolidated statements of operations.

## **12. Contingencies and Commitments**

### **Employment Agreements**

The Company is party to employment agreements with certain executives, which provide for compensation, other benefits and severance payments under certain circumstances. The Company also has consulting and noncompete agreements in place with previous owners of acquired companies.

### **Claims and Litigation**

The Company is involved in various legal proceedings as either the defendant or plaintiff. Due to their nature, such legal proceedings involve inherent uncertainties including, but not limited to, court rulings, negotiations between the affected parties and other actions. Management assesses the probability of losses or gains for such contingencies and accrues a liability and/or discloses the relevant circumstances as appropriate. In the opinion of management, it is not reasonably probable that the pending litigation, disputes or claims against the Company, if decided adversely, will have a material adverse effect on its financial condition, results of operations or cash flows. Additionally, based on the Company's review of the various types of claims currently known, there is no indication of a material reasonably possible loss in excess of amounts accrued. The Company currently does not anticipate that any known claim will materially adversely affect our financial condition, liquidity, or results of operations. However, the outcome of any matter cannot be predicted with certainty, and an unfavorable resolution of one or more matters presently known or arising in the future could have a material adverse effect on the Company's financial condition, liquidity or results of operations.

## **Risk Management**

The Company is exposed to various risks of loss related to torts; theft of, damage to, and destruction of assets; errors and omissions and natural disasters for which the Company carries commercial insurance. There have been no significant reductions in coverage from the prior year and settlements have not exceeded coverage in the past years.

### **13. Leases**

The Company leases real estate and equipment under operating lease agreements. Leases with an initial term of 12 months or less are not recorded on the balance sheet. We recognize lease expense for these leases on a straight-line basis over the lease term. For leases with terms in excess of 12 months, we record a right-of-use (“ROU”) asset and lease liability based on the present value of lease payments over the lease term. We do not have any significant leases that have not yet commenced that create significant rights and obligations for us. The Company has elected the practical expedient not to separate lease and non-lease components for all leases that qualify.

Our real estate and equipment leases often require payment of maintenance, real estate taxes and insurance. These costs are generally variable and based on actual costs incurred by the lessor. These amounts are not included in the consideration of the contract when determining the ROU asset and lease liability but are reflected as variable lease payments.

Most leases include one or more options to renew, with renewal terms that can extend the lease from one to ten or more years. The exercise of the lease renewal option is typically at our sole discretion. If it is reasonably certain that we will exercise the option to renew, the period covered by the options are included in the lease term and are recognized as part of our ROU assets and lease liabilities. Certain leases include the option to purchase the leased property. The depreciable life of assets and leasehold improvements are limited by the expected lease term, which includes renewal options reasonably certain to be exercised.

Certain of our lease agreements include rental payments based on percentage of retail sales over contractual levels and others include rental payments adjusted periodically based on index rates. Our lease agreements do not contain any material residual value guarantees or material restrictive covenants.

### **14. Related Party Transactions**

In accordance with agreements approved by the Board, we purchased inventory, in conjunction with our retail sale of the products, from certain entities affiliated with common members of the Company. Total purchases incurred under these arrangements were \$14.7 million and \$27.5 million for the three months ended June 30, 2022 and 2021, respectively, and \$72.9 million and \$63.9 million for the nine months ended June 30, 2022 and 2021, respectively.

In accordance with agreements approved by the Board, certain entities affiliated with common members of the Company receive fees for rent of commercial property. Total expenses incurred under these arrangements were \$0.7 million and \$0.5 million for the three months ended June 30, 2022 and 2021, respectively, and \$2.0 million and \$1.6 million for the nine months ended June 30, 2022 and 2021, respectively.

In accordance with agreements approved by the Board, the Company received fees from certain entities and individuals affiliated with common members of the Company for goods and services. Total fees recorded under these arrangements were \$0.5 million and \$0.4 million for the three months ended June 30, 2022 and 2021, respectively, and \$5.4 million and \$1.8 million for the nine months ended June 30, 2022 and 2021, respectively.

In accordance with agreements approved by the Board, the Company made payments to certain entities and individuals affiliated with common members of the Company for goods and services. Total payments recorded under these arrangements were \$0.1 million for the three months ended June 30, 2020, and \$0.2 million and \$0.1 million for the nine months ended June 30, 2022 and 2021, respectively.

In connection with transactions noted above, the Company owed \$0.7 million and \$1.0 million as recorded within accounts payable as of June 30, 2022 and September 30, 2021, respectively. Additionally, the Company was due \$0.3 million and \$32,368 as recorded within accounts receivable as of June 30, 2022 and September 30, 2021, respectively.

**Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations****MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION  
AND RESULTS OF OPERATIONS**

*Unless the context requires otherwise, references in this report to the "Company," "we," "us," and "our" refer to OneWater Marine Inc. and its consolidated subsidiaries. The following discussion and analysis should be read in conjunction with the accompanying financial statements and related notes. The following discussion contains forward-looking statements that reflect our future plans, estimates, beliefs and expected performance. The forward-looking statements are dependent upon events, risks and uncertainties that may be outside our control. Our actual results could differ materially from those discussed in these forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those factors discussed above in "Cautionary Statement Regarding Forward-Looking Statements" and described under the heading "Risk Factors" included in our Annual Report on Form 10-K for the year ended September 30, 2021, filed with the U.S. Securities and Exchange Commission (the "SEC") on December 17, 2021, all of which are difficult to predict. In light of these risks, uncertainties and assumptions, the forward-looking events discussed may not occur. We do not undertake any obligation to publicly update any forward-looking statements except as otherwise required by applicable law.*

**Overview**

We believe that we are one of the largest and fastest-growing marine retailers in the United States with 96 retail locations, 10 distribution centers/warehouses and multiple online marketplaces as of June 30, 2022. Our retail locations are located in highly attractive markets throughout the Southeast, Gulf Coast, Mid-Atlantic and Northeast, many of which are in top twenty states for marine retail expenditures. We believe that we are a market leader by volume in sales of premium boats in 13 out of the 18 markets in which we operate. In fiscal year 2021, we sold approximately 9,500 new and pre-owned boats, many of which were sold to customers who had a trade-in or with whom we had otherwise established relationships. The combination of our significant scale, diverse inventory and revenue streams, access to premium boat brands and meaningful brand equity enable us to provide a consistently professional experience as reflected in the number of our repeat customers and same-store sales growth.

We were formed in 2014 as One Water Marine Holdings, LLC ("OneWater LLC") through the combination of Singleton Marine and Legendary Marine, which created a marine retail platform that collectively owned and operated 19 retail locations. Since the combination in 2014, we have acquired a total of 75 additional retail locations, 10 distribution centers/warehouses and multiple online marketplaces through 29 acquisitions. Our current portfolio of companies, as of June 30, 2022, consists of multiple brands which are recognized on a local, regional or national basis. Because of this, we believe we are one of the largest and fastest-growing premium recreational marine retailers in the United States based on number of stores and total boats sold. While we have opportunistically opened new locations in select markets, we believe that it is generally more effective economically and operationally to acquire existing locations with experienced staff and established reputations.

The marine retail industry is highly fragmented, as evidenced by the over 4,000 boat dealers nationwide. Most competing boat retailers offer new boat sales, pre-owned boat sales, finance & insurance products, repair and maintenance services, and parts and accessories and are operated by local business owners with three or fewer stores. Despite our size, we comprise less than 3% of total industry sales. Our scale and business model allow us to leverage our extensive inventory to provide consumers with the ability to find a boat that matches their preferences (e.g., make, model, color, configuration and other options) and to deliver the boat within days while providing a personalized sales experience. We are able to operate with a comparatively higher degree of profitability than other independent retailers because we allocate support resources across our store base, focus on high-margin products and services, utilize floor plan financing and provide core back-office functions on a scale that many independent retailers are unable to match. We seek to be the leading boat retailer by total market share within each boating market and within the product segments in which we participate. To the extent that we are not, we will evaluate acquiring other local retailers in order to increase our sales, to add additional brands or to provide us with additional high-quality personnel.

**Impact of COVID-19**

The COVID-19 pandemic and its related effects, including restraints on U.S. economic and leisure activities, has and may continue to have a significant impact on our operations and financial condition. National, state and local governments in affected regions have implemented and may continue to implement safety precautions, including shelter in place orders, travel restrictions, business closures, cancellations of public gatherings, including boat shows, and other measures. At times, these measures have affected our ability to sell and service boats, required us to temporarily close or partially close certain locations and may require additional closures in the future.

The COVID-19 pandemic and its related effects have, to date, positively impacted our sales as more customers desire to engage in outdoor recreational activities that can be enjoyed close to first or second homes, in a socially distanced manner. However, the COVID-19 pandemic has also caused significant supply chain challenges as suppliers were, and continue to be, faced with business closures and shipping delays. This has led to an industry wide inventory shortage of boats, engines and certain marine parts. The COVID-19 pandemic and its related effects may continue to interfere with the ability of our employees, contractors, customers, suppliers, and other business partners to perform our and their respective responsibilities and obligations with respect to the operation of our business.

While we continue to monitor the impact of the COVID-19 pandemic on our business and operations, our financial results for the three and nine months ended June 30, 2022 suggest that spending in all our regions and across product lines has proven resilient despite the challenges posed by the pandemic as customers have continued to focus on socially distanced outdoor recreations. The ultimate impact of the COVID-19 pandemic on our business remains uncertain and dependent on various factors including consumer demand, a possible resurgence of COVID-19, including variants of the virus in certain geographic areas, our ability to safely operate stores and the existence and extent of a prolonged economic downturn.



## **Trends and Other Factors Impacting Our Performance**

### **Acquisitions**

We are a highly acquisitive company. Since the combination of Singleton Marine and Legendary Marine in 2014, we have acquired a total of 75 additional retail locations, 10 distribution centers/warehouses and multiple online marketplaces through 29 acquisitions. Our team remains focused on expanding our retail locations in regions with strong boating cultures, enhancing the customer experience, and generating value for our shareholders. Additionally, we continue to evaluate acquisitions of companies who focus primarily on parts and accessory sales, further strengthening that area of our business.

We have an extensive acquisition track record within the marine retail industry and believe we have developed a reputation for treating sellers and their staff in an honest and fair manner. We typically retain the management team and name of the acquired group. We believe this practice preserves the acquired retailer's customer relationships and goodwill in the local marketplace. We believe our reputation and scale have positioned us as a buyer of choice for marine retailers who want to sell their businesses. Our strategy is to acquire stores at attractive EBITDA multiples and then grow same-store sales while benefitting from cost-reducing synergies. Historically, we have typically acquired dealer groups for less than 4.0x EBITDA on a trailing twelve-month basis and believe that we will be able to continue to make attractive acquisitions within this range.

### **General Economic Conditions**

General economic conditions and consumer spending patterns can negatively impact our operating results. Unfavorable local, regional, national, or global economic developments or uncertainties, including the adverse economic effects of the COVID-19 pandemic, including supply chain constraints, or a prolonged economic downturn, could reduce consumer spending and adversely affect our business. Consumer spending on discretionary goods may also decline as a result of lower consumer confidence levels, higher interest rates or higher fuel costs, even if prevailing economic conditions are otherwise favorable. Economic conditions in areas in which we operate stores, particularly in the Southeast, can have a major impact on our overall results of operations. Local influences, such as corporate downsizing and inclement weather such as hurricanes and other storms, environmental conditions, global public health concerns and events could adversely affect our operations in certain markets and in certain periods. Any extended period of adverse economic conditions or low consumer confidence is likely to have a negative effect on our business.

Our business was significantly impacted during the recessionary period that began in 2007. This period of weakness in consumer spending and depressed economic conditions had a substantial negative effect on our operating results. In response to these conditions we reduced our inventory purchases, closed certain stores and reduced headcount. Additionally, in an effort to counteract the downturn, we increased our focus on pre-owned sales, parts and repair services, and finance and insurance services. As a result, we surpassed our pre-recession sales levels in less than 24 months. While we believe the measures we took significantly reduced the impact of the downturn on the business, we cannot guarantee similar results in the event of a future downturn. Additionally, we cannot predict the timing or length of unfavorable economic or industry conditions, including a downturn as a result of the COVID-19 pandemic, or the extent to which they could adversely affect our operating results.

Although past economic conditions have adversely affected our operating results, we believe we are capable of responding in a manner that allows us to substantially outperform the industry and gain market share. We believe our ability to capture such market share enables us to align our retail strategies with the desires of customers. We expect our core strengths, including retail and acquisition strategies, will allow us to capitalize on growth opportunities as they occur, despite market conditions.

### **Critical Accounting Policies and Significant Estimates**

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, contingent assets and liabilities, each as of the date of the financial statements, and revenues and expenses during the periods presented. On an ongoing basis, management evaluates their estimates and assumptions, and the effects of any such revisions are reflected in the financial statements in the period in which they are determined to be necessary. Actual outcomes could differ materially from those estimates in a manner that could have a material effect on our consolidated financial statements. Set forth below are the policies and estimates that we have identified as critical to our business operations and understanding our results of operations, based on the high degree of judgment or complexity in their application.

### **Revenue Recognition**

Revenue is recognized from the sale of products and commissions earned on new and pre-owned boats (including used, brokerage, consignment and wholesale) when ownership is transferred to the customer, which is generally upon acceptance by or delivery to the customer. At the time of acceptance or delivery, the customer is able to direct the use of the product and obtain substantially all of the benefits at such time. We are the principal with respect to revenue from new, pre-owned and consignment sales and such revenue is recorded at the gross sales price. With respect to brokerage transactions, we are acting as an agent in the transaction, therefore the fee or commission is recorded on a net basis.

Revenue from parts and accessories sold directly to a customer (not on a repair order) are recognized when control of the items is transferred to the customer, which is typically upon shipment. Revenue from parts and service operations (boat maintenance and repairs) is recorded over time as services are performed. Satisfaction of this performance obligation creates an asset with no alternative use for which an enforceable right to payment for performance to date exists within our contractual agreements. Each boat maintenance and repair service is a single performance obligation that includes both the parts and labor associated with the service. Payment for boat maintenance and repairs is typically due upon the completion of the service, which is generally completed within a period of one year or less from contract inception. The Company recorded contract assets in prepaid expenses and other current assets of \$3.8 million and \$2.3 million as of June 30, 2022 and September 30, 2021, respectively.

Deferred revenue from storage and marina operations is recognized on a straight-line basis over the term of the contract as services are completed. Revenue from arranging financing, insurance and extended warranty contracts to customers through various third-party financial institutions and insurance companies is recognized when the related boats are sold. We do not directly finance our customers' boat, motor or trailer purchases. We are acting as an agent in the transaction, therefore the commissions are recorded on a net basis. Subject to our agreements and in the event of early cancellation, prepayment or default of such loans or insurance contracts by the customer, we may be assessed a chargeback for a portion of the commission paid by the third-party financial institutions and insurance companies. We reserve for these chargebacks based on our historical experience with repayments or defaults. Chargebacks were not material to the unaudited condensed consolidated financial statements for the three and nine months ended June 30, 2022.

### ***Inventories***

Inventories are stated at the lower of cost or net realizable value. The cost of new and pre-owned boat inventory is determined using the specific identification method. New and pre-owned boat sales history indicates that the overwhelming majority of such boats are sold for, or in excess of, the cost to purchase those boats. In assessing the lower of cost or net realizable value, we consider the aging of the boats, historical sales of a particular product and current market conditions. There are inherent uncertainties in assessing net realizable value as management must make assumptions and apply judgment to changes in the market, brands and other factors that drive consumer preferences and spending. We typically do not maintain a boat inventory reserve. The cost of manufactured and assembled parts and accessories is determined using standard costing. The cost of acquired parts and accessories is determined using the weighted average cost method. Inventory is reported net of write downs for obsolete and slow moving items of approximately \$1.5 million and \$0.8 million at June 30, 2022 and September 30, 2021, respectively.

### ***Goodwill and Other Intangible Assets***

In accordance with ASC 350, we review goodwill for impairment annually in the fourth fiscal quarter, or more often if events or circumstances indicate that impairment may have occurred. When evaluating goodwill for impairment, if the fair value of a reporting unit is less than its carrying value, the difference would represent the amount of required goodwill impairment in accordance with ASC 350. To the extent the reporting unit's earnings decline significantly or there are changes in one or more of these inputs that would result in a lower valuation, it could cause the carrying value of the reporting unit to exceed its fair value and thus require the Company to record goodwill impairment.

Identifiable intangible assets consist of trade names, design libraries and customer relationships related to the acquisitions we have completed. We have determined that trade names have an indefinite life, as there are no economic, contractual or other factors that limit their useful lives and they are expected to generate value as long as the trade name is utilized by the marine retailer, and therefore, are not subject to amortization. Design libraries and customer relationships are amortized over their estimated useful lives of ten years and are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recoverable.

Impairment testing requires the assessment of both qualitative and quantitative factors, including, but not limited to whether there has been a significant or adverse change in the business climate that could affect the value of an asset and/or significant or adverse changes in cash flow projections or earnings forecasts. These assessments require management to make judgements, assumptions and estimates. We did not perform impairment testing related to goodwill and identifiable intangible assets for the nine months ended June 30, 2022 as no triggering events have occurred.

### ***Business Combinations***

We account for business combinations using the acquisition method of accounting, which requires recognition of assets acquired and liabilities assumed at fair value as of the date of the acquisition. Determination of the estimated fair value assigned to each asset acquired or liability assumed can materially impact the net income in subsequent periods through depreciation and amortization and potential impairment charges.

The most critical areas of judgment in applying the acquisition method include selecting the appropriate valuation techniques and assumptions that are used to measure the acquired assets and assumed liabilities at fair value, particularly for inventory, acquisition contingent consideration, trade names, design libraries and customer relationships. The fair value of acquired inventory is based on manufacturer invoice cost, curtailments, and market data. The significant estimates used to value acquisition contingent consideration are future earnings and discount rates. Management estimated the fair value of the trade names and design libraries using the relief from royalty method and customer relationships using the multi-period excess earnings method. The fair value determination of the trade names and design libraries required management to make significant estimates and assumptions related to future revenues and the selection of the royalty rate and discount rate. The fair value determination of the customer relationships required management to make significant estimates and assumptions related to future revenues attributable to existing customers, future EBITDA margins and the selection of the customer attrition rate and discount rate.

In selecting the techniques and assumptions noted above, we generally engage third-party, independent valuation professionals to assist us in developing the assumptions and applying the valuation techniques to a particular business combination transaction. In particular, the discount rates selected are compared to and evaluated with (i) the industry weighted-average cost of capital, (ii) the inherent risks associated with each type of asset and (iii) the level and timing of future cash flows appropriately reflecting market participant assumptions.

## **How We Evaluate Our Operations**

### **Revenue**

We have a diversified revenue profile that is comprised of new boat sales, pre-owned boat sales, F&I products, repair and maintenance services, and parts and accessories. During different phases of the economic cycle, consumer behavior may shift away from new boats; however, we are well-positioned to benefit from revenue from pre-owned boats, repair and maintenance services, and parts and accessories, which have all historically increased during periods of economic uncertainty. We generate pre-owned sales from boats traded-in for new and pre-owned boats, boats purchased from consumers, brokerage transactions, consignment sales and wholesale sales. We continue to focus on all aspects of our business including non-boat sales of finance & insurance products, repair and maintenance services, and parts and accessories. Although non-boat sales contributed 16.5% and 11.1% to revenue in the three months ended June 30, 2022 and 2021, respectively, and 16.1% and 10.8% to revenue in the nine months ended June 30, 2022 and 2021, respectively, due to the higher gross margin on these product and service lines, non-boat sales contributed 28.4% and 24.7% to gross profit in the three months ended June 30, 2022 and 2021, respectively, and 28.1% and 25.8% to gross profit in the nine months ended June 30, 2022 and 2021, respectively. We have also diversified our business across geographies and dealership types (e.g., fresh water and salt water) in order to reduce the effects of seasonality. In addition to seasonality, revenue and operating results may also be significantly affected by quarter-to-quarter changes in economic conditions, manufacturer incentive programs, adverse weather conditions and other developments outside of our control.

### **Gross Profit**

We calculate gross profit as revenue less cost of sales. Cost of sales consists of actual amounts paid for products, costs of services (primarily labor), transportation costs from manufacturers to our retail stores and vendor consideration. Gross profit excludes depreciation and amortization, which is presented separately in our consolidated statements of operations.

### **Gross Profit Margin**

Our overall gross profit margin varies with our revenue mix. Sales of new and pre-owned boats, which have comparable margins, generally result in a lower gross profit margin than our non-boat sales. As a result, when revenue from non-boat sales increases as a percentage of total revenue, we expect our overall gross profit margin to increase.

### **Selling, General and Administrative Expenses**

Selling, general, and administrative (“SG&A”) expenses consist primarily of salaries and incentive-based compensation, advertising, rent, insurance, utilities, and other customary operating expenses. A portion of our cost structure is variable (such as sales commissions and incentive compensation), or controllable (such as advertising), which we believe allows us to adapt to changes in the retail environment over the long term. We typically evaluate our variable expenses, selling expenses and all other SG&A expenses in the aggregate as a percentage of total revenue.

### **Same-Store Sales**

We assess the organic growth of our revenue on a same-store basis. We believe that our assessment on a same-store basis represents an important indicator of comparative financial results and provides relevant information to assess our performance. New and acquired stores become eligible for inclusion in the comparable store base at the end of the store’s thirteenth month of operations under our ownership and revenues are only included for identical months in the same-store base periods. Stores relocated within an existing market remain in the comparable store base for all periods. Additionally, amounts related to closed stores are excluded from each comparative base period. Because same-store sales may be defined differently by other companies in our industry, our definition of this measure may not be comparable to similarly titled measures of other companies, thereby diminishing its utility.

### **Adjusted EBITDA**

We define Adjusted EBITDA as net income before interest expense – other, income tax expense, depreciation and amortization and other (income) expense, further adjusted to eliminate the effects of items such as the change in fair value of warrant liability, change in fair value of contingent consideration, loss on extinguishment of debt and transaction costs. See “—Comparison of Non-GAAP Financial Measure” for more information and a reconciliation of Adjusted EBITDA to net income, the most directly comparable financial measure calculated and presented in accordance with accounting principles generally accepted in the United States of America (“GAAP”).

## Summary of Acquisitions

The comparability of our results of operations between the periods discussed below is naturally affected by the acquisitions we have completed during such periods. We are also continuously evaluating and pursuing acquisitions on an ongoing basis, and such acquisitions, if completed, will continue to impact the comparability of our financial results. While we expect continued growth and strategic acquisitions in the future, our acquisitions may have materially different characteristics than our historical results, and such differences in economics may impact the comparability of our future results of operations to our historical results.

### *Fiscal 2022 Year-to-date Acquisitions*

- Effective October 1, 2021, we acquired Naples Boat Mart, a full-service marine retailer with one location in Florida.
- Effective November 30, 2021, we acquired T-H Marine, a leading provider of branded marine parts and accessories, with locations in Alabama, Florida, Illinois, Indiana, Oklahoma and Texas.
- Effective December 1, 2021, we acquired Norfolk Marine Company, a full-service marine retailer with one location in Virginia.
- Effective December 31, 2021, we acquired a majority interest in Quality Boats, a full-service marine retailer with three locations in Florida.
- Effective February 1, 2022, we acquired JIF Marine, a leading supplier of stainless steel ladders, dock products and other accessories which is based in Tennessee.
- Effective March 1, 2022, we acquired YakGear, a leading supplier of kayak equipment, paddle sport accessories and boat mounting accessories which is based in Texas.
- Effective April 1, 2022, Denison Yachting, a leader in yacht and superyacht sales as well as ancillary yacht services, with 20 retail locations.

We refer to the acquisitions described above collectively as the “2022 Acquisitions.” Naples Boat Mart is fully reflected in our unaudited Condensed Consolidated Statements of Operations for the three and nine months ended June 30, 2022. All other transactions completed in fiscal year 2022 are fully reflected in our unaudited Condensed Consolidated Statements of Operations for the three months ended June 30, 2022 and partially reflected for the nine months ended June 30, 2022.

On June 21, 2022 the Company announced that it signed a definitive agreement to acquire Ocean Bio-Chem, Inc. (“OBCI”) (NASDAQ: OBCI) (the “Ocean Bio-Chem Acquisition”), a leading supplier and distributor of appearance, cleaning, and maintenance products for the marine industry and the automotive, powersports, recreational vehicles, and outdoor power equipment markets. As part of the transaction, the Company will also acquire Star Brite Europe, Inc. (the “SB Europe Acquisition”), and certain real property assets from PEJE, Inc., controlled by Peter G. Dornau, the Chairman of OBCI (the “Real Estate Acquisition” and, together with the Ocean Bio-Chem Acquisition and SB Europe Acquisition, the “OBCI Acquisitions”). The transaction is expected to close in the Company’s fiscal fourth quarter.

### *Fiscal 2021 Acquisitions*

- Effective December 1, 2020, we acquired Tom George Yacht Sales, Inc, a full-service marine retailer based in Florida with two locations.
- Effective December 31, 2020, we acquired Walker Marine Group, Inc., a full-service marine retailer based in Florida with five locations.
- Effective December 31, 2020, we acquired Roscioli Yachting Center, Inc., a full-service marina and yachting facility located in Florida, including the related real estate and in-water slips.
- Effective August 1, 2021, we acquired substantially all of the assets of Stone Harbor Marine, Inc., a full-service marine retailer based in New Jersey with one store.
- Effective September 1, 2021, we acquired substantially all of the assets of PartsVu, an online marketplace for OEM marine parts, electronics and accessories.

We refer to the acquisitions described above collectively as the “2021 Acquisitions.” The Tom George Yacht Sales, Inc, Walker Marine Group, Inc. and Roscioli Yachting Center Inc. acquisitions are fully reflected in our unaudited Condensed Consolidated Statements of Operations for the three months ended June 30, 2021 and partially reflected for the nine months ended June 30, 2021. Stone Harbor Marine, Inc. and PartsVu are not reflected in the unaudited Condensed Consolidated Statements of Operations for the three and nine months ended June 30, 2021.

## Other Factors Affecting Comparability of Our Future Results of Operations to Our Historical Results of Operations

Our historical financial results discussed below may not be comparable to our future financial results for the reasons described below.

- OneWater Inc. is subject to U.S. federal, state and local income taxes as a corporation. Our accounting predecessor, OneWater LLC, was and is treated as a partnership for U.S. federal income tax purposes, and as such, was generally not subject to U.S. federal income tax at the entity level. Rather, the tax liability with respect to its taxable income is passed through to its members. Accordingly, the financial data attributable to our predecessor contains no provision for U.S. federal income taxes or income taxes in any state or locality. OneWater Inc. was subject to U.S. federal, state and local taxes at an estimated blended statutory rate of 24.4% of pre-tax earnings for the nine months ended June 30, 2022.
- As we further implement controls, processes and infrastructure applicable to companies with publicly traded equity securities, it is likely that we will incur additional SG&A expenses relative to historical periods. Our future results will depend on our ability to efficiently manage our combined operations and execute our business strategy.

## Results of Operations

### Three Months Ended June 30, 2022, Compared to Three Months Ended June 30, 2021

	For the Three Months Ended June 30, 2022		For the Three Months Ended June 30, 2021		\$ Change	% Change
	Amount	% of Revenue	Amount	% of Revenue		
	(\$ in thousands)					
<b>Revenues</b>						
New boat	\$ 376,886	66.2%	\$ 288,222	71.3%	\$ 88,664	30.8%
Pre-owned boat	98,181	17.3%	71,116	17.6%	27,065	38.1%
Finance & insurance income	18,979	3.3%	15,238	3.8%	3,741	24.6%
Service, parts and other	74,854	13.2%	29,631	7.3%	45,223	152.6%
Total revenues	<u>568,900</u>	100.0%	<u>404,207</u>	100.0%	<u>164,693</u>	40.7%
<b>Gross Profit</b>						
New boat	102,342	18.0%	77,081	19.1%	25,261	32.8%
Pre-owned boat	29,432	5.2%	18,550	4.6%	10,882	58.7%
Finance & insurance	18,979	3.3%	15,238	3.8%	3,741	24.6%
Service, parts & other	33,186	5.8%	16,083	4.0%	17,103	106.3%
Total gross profit	<u>183,939</u>	32.3%	<u>126,952</u>	31.4%	<u>56,987</u>	44.9%
Selling, general and administrative expenses	87,867	15.4%	60,476	15.0%	27,391	45.3%
Depreciation and amortization	4,073	0.7%	1,475	0.4%	2,598	176.1%
Transaction costs	1,337	0.2%	65	0.0%	1,272	*
Change in fair value of contingent consideration	<u>3,118</u>	0.5%	<u>-</u>	0.0%	<u>3,118</u>	100.0%
Income from operations	87,544	15.4%	64,936	16.1%	22,608	34.8%
Interest expense - floor plan	1,131	0.2%	956	0.2%	175	18.3%
Interest expense - other	3,311	0.6%	1,083	0.3%	2,228	205.7%
Other income, net	(166)	0.0%	(158)	0.0%	(8)	5.1%
Income before income tax expense	<u>83,268</u>	14.6%	<u>63,055</u>	15.6%	<u>20,213</u>	32.1%
Income tax expense	<u>18,785</u>	3.3%	<u>11,498</u>	2.8%	<u>7,287</u>	63.4%
Net income	64,483	11.3%	51,557	12.8%	12,926	25.1%
Less: Net income attributable to non-controlling interest	(959)		-		(959)	100.0%
Less: Net income attributable to non-controlling interests of One Water Marine Holdings, LLC	(7,547)		(17,054)		9,507	-55.7%
Net income attributable to One Water Marine Inc.	<u>\$ 55,977</u>		<u>\$ 34,503</u>		<u>\$ 21,474</u>	62.2%

## Revenue

Overall, revenue increased by \$164.7 million, or 40.7%, to \$568.9 million for the three months ended June 30, 2022 from \$404.2 million for the three months ended June 30, 2021. Revenue generated from same-store sales increased 12.0% for the three months ended June 30, 2022 as compared to the three months ended June 30, 2021, primarily due to an increase in the average selling price of new boats, the number of pre-owned boats sold, the model mix of boats sold, an increase in finance & insurance sales and an increase in service, parts and other sales. Overall revenue increased by \$164.7 million as a result of a \$48.7 million increase in same-store sales and a \$116.0 million increase from stores not eligible for inclusion in the same-store sales base. New and acquired stores become eligible for inclusion in the comparable store base at the end of the store's thirteenth month of operations under our ownership and revenues are only included for identical months in the same-store base periods.

### New Boat Sales

New boat sales increased by \$88.7 million, or 30.8%, to \$376.9 million for the three months ended June 30, 2022 from \$288.2 million for the three months ended June 30, 2021. The increase was primarily attributable to our same-store sales growth, our acquisitions and an increase in our average unit price. We believe the increase in sales was primarily due to continued execution of operational improvements on previously acquired dealers, the mix of boat brands and models sold, and product improvements in the functionality of technology of boats which drove average unit prices higher.

### Pre-owned Boat Sales

Pre-owned boat sales increased by \$27.1 million, or 38.1%, to \$98.2 million for the three months ended June 30, 2022 from \$71.1 million for the three months ended June 30, 2021. We sell a wide range of brands and sizes of pre-owned boats under different types of sales arrangements (e.g., trade-ins, brokerage, consigned and wholesale), which causes periodic and seasonal fluctuations in the average sales price. The increase was primarily attributable to our same-store sales growth, our acquisitions and an increase in the number of units sold.

### *Finance & Insurance Income*

We generate revenue from arranging finance & insurance products, including financing, insurance and extended warranty contracts, to customers through various third-party financial institutions and insurance companies. Finance & insurance income increased by \$3.7 million, or 24.6%, to \$19.0 million for the three months ended June 30, 2022 from \$15.2 million for the three months ended June 30, 2021. The increase was primarily due to the additional new and pre-owned boat revenues. We remain very focused on improving sales of finance & insurance products throughout our dealer network and implementing best practices at acquired dealer groups and existing stores. Finance & insurance products decreased slightly as a percentage of total revenue to 3.3% in the three months ended June 30, 2022 from 3.8% in the three months ended June 30, 2021. Finance & insurance income is recorded net of related fees, including fees charged back due to any early cancellation of loan or insurance contracts by a customer. Since finance & insurance income is fee-based, we do not incur any related cost of sale.

### *Service, Parts & Other Sales*

Service, parts & other sales increased by \$45.2 million, or 152.6%, to \$74.9 million for the three months ended June 30, 2022 from \$29.6 million for the three months ended June 30, 2021. The increase in service, parts & other sales is primarily due to the contributions from our recently acquired businesses as well as increases across the board in labor, parts, fuel and storage sales, driven by ancillary sales generated from our increase in new and pre-owned boat sales.

### **Gross Profit**

Overall, gross profit increased by \$57.0 million, or 44.9%, to \$183.9 million for the three months ended June 30, 2022 from \$127.0 million for the three months ended June 30, 2021. This increase was primarily due to our overall increase in same-store sales which was driven by increases in all revenue streams, the impact of the 2022 Acquisitions and the Company's focus on dynamic pricing. Overall gross margins increased 90 basis points to 32.3% for the three months ended June 30, 2022 from 31.4% for the three months ended June 30, 2021 due to the factors noted below.

### *New Boat Gross Profit*

New boat gross profit increased by \$25.3 million, or 32.8%, to \$102.3 million for the three months ended June 30, 2022 from \$77.1 million for the three months ended June 30, 2021. This increase was primarily due to our overall increase in same-store sales as well as the impact of the 2022 Acquisitions. New boat gross profit as a percentage of new boat revenue was 27.2% for the three months ended June 30, 2022 as compared to 26.7% in the three months ended June 30, 2021. The increase in new boat gross profit and gross profit margin is due primarily to a shift in the mix and size of boat models sold, the margin profile of recently acquired locations and our emphasis on expanding new boat gross profit margins amid the industry wide inventory and supply chain constraints.

### *Pre-owned Boat Gross Profit*

Pre-owned boat gross profit increased by \$10.9 million, or 58.7%, to \$29.4 million for the three months ended June 30, 2022 from \$18.6 million for the three months ended June 30, 2021. The increase in pre-owned gross profit was driven by the increase in pre-owned revenue as a result of our same-store sales growth and the impact of the 2022 Acquisitions. Pre-owned boat gross profit as a percentage of pre-owned boat revenue was 30.0% and 26.1% for the three months ended June 30, 2022 and 2021, respectively. We sell a wide range of brands and sizes of pre-owned boats under different types of sales arrangements (e.g., trade-ins, brokerage, consignment and wholesale), which may cause periodic and seasonal fluctuations in pre-owned boat gross profit as a percentage of revenue. The increase in our gross profit margin was primarily attributable to the acquisition of Denison Yachting which led to an increase in brokerage sales and gross profit.

### *Finance & Insurance Gross Profit*

Finance & insurance gross profit increased by \$3.7 million, or 24.6%, to \$19.0 million for the three months ended June 30, 2022 from \$15.2 million for the three months ended June 30, 2021. Finance & insurance income is fee-based revenue for which we do not recognize incremental cost of sale.

### *Service, Parts & Other Gross Profit*

Service, parts & other gross profit increased by \$17.1 million, or 106.3%, to \$33.2 million for the three months ended June 30, 2022 from \$16.1 million for the three months ended June 30, 2021. Service, parts & other gross profit as a percentage of service, parts & other revenue was 44.3% and 54.3% for the three months ended June 30, 2022 and 2021, respectively. The increase in gross profit was primarily the result of our same-store sales growth as well as contributions from the 2022 Acquisitions. The decrease in gross profit margin percentage was primarily due to a shift in the mix of products sold towards parts & accessories which has a lower margin percentage than service and other sales.

### **Selling, General & Administrative Expenses**

Selling, general & administrative expenses increased by \$27.4 million, or 45.3%, to \$87.9 million for the three months ended June 30, 2022 from \$60.5 million for the three months ended June 30, 2021. This increase was primarily due to expenses incurred to support the overall increase in revenues and gross profit. The selling, general & administrative increase primarily consisted of a \$17.0 million increase in personnel expenses. Selling, general & administrative expenses as a percentage of revenue increased to 15.4% from 15.0% for the three months ended June 30, 2022 and 2021, respectively. The increase in selling, general and administrative expenses as a percentage of revenue was primarily due to higher marketing expenses, as well as higher administrative costs.

### ***Depreciation and Amortization***

Depreciation and amortization expense increased \$2.6 million, or 176.1%, to \$4.1 million for the three months ended June 30, 2022 compared to \$1.5 million for the three months ended June 30, 2021. The increase in depreciation and amortization expense was primarily attributable to a \$2.1 million increase in amortization of design libraries and customer relationships from the 2022 Acquisitions.

### ***Transaction Costs***

The increase in transaction costs of \$1.3 million to \$1.3 million for the three months ended June 30, 2022 compared to \$0.1 million for the three months ended June 30, 2021 was primarily attributable to expenses related to the 2022 Acquisitions and the OBCI Acquisitions.

### ***Change in Fair Value of Contingent Consideration***

During the three months ended June 30, 2022, we incurred expenses of \$3.1 million related to updated forecasts and accretion of contingent consideration liabilities for acquisitions completed in fiscal year 2021 and 2022.

### ***Income from Operations***

Income from operations increased \$22.6 million, or 34.8%, to \$87.5 million for the three months ended June 30, 2022 compared to \$64.9 million for the three months ended June 30, 2021. The increase was primarily attributable to the \$57.0 million increase in gross profit, partially offset by a \$27.4 million increase in selling, general & administrative expenses during the same periods.

### ***Interest Expense – Floor Plan***

Interest expense – floor plan increased \$0.2 million to \$1.1 million for the three months ended June 30, 2022 compared to \$1.0 million for the three months ended June 30, 2021. The increase in floor plan interest expense was primarily attributable to the increase in average inventory for the three months ended June 30, 2022 as compared to the three months ended June 30, 2021, as well as rising interest rates.

### ***Interest Expense – Other***

Interest expense – other increased by \$2.2 million, or 205.7%, to \$3.3 million for the three months ended June 30, 2022 compared to \$1.1 million for the three months ended June 30, 2021. The increase in interest expense – other was related to the increase in our long-term debt which was used to fund certain of the 2022 Acquisitions.

### ***Other Expense (Income), Net***

Other income was flat at \$0.2 million for each of the three months ended June 30, 2022 and 2021.

### ***Income Tax Expense***

Income tax expense increased \$7.3 million, or 63.4%, to \$18.8 million for the three months ended June 30, 2022 compared to \$11.5 million for the three months ended June 30, 2021. The increase was primarily attributable to the 32.1% increase in income before income tax expense for the three months ended June 30, 2022 as compared to June 30, 2021 as well as the increased proportion of consolidated income before income tax expense that is allocated to OneWater Marine Inc. and therefore taxable due to exchanges of shares of Class B common stock for shares of Class A common stock.

### ***Net Income***

Net income increased by \$12.9 million to \$64.5 million for the three months ended June 30, 2022 compared to \$51.6 million for the three months ended June 30, 2021. The increase was primarily attributable to the \$57.0 million increase in gross profit, partially offset by the \$27.4 million increase in selling, general & administrative expenses and \$7.3 million increase in income tax expense compared to the three months ended June 30, 2021.



Nine Months Ended June 30, 2022, Compared to Nine Months Ended June 30, 2021

	For the Nine Months Ended June 30, 2022		For the Nine Months Ended June 30, 2021		\$ Change	% Change
	Amount	% of Revenue	Amount	% of Revenue		
(\$ in thousands)						
<b>Revenues</b>						
New boat	\$ 903,104	67.0%	\$ 679,704	71.7%	\$ 223,400	32.9%
Pre-owned boat	227,484	16.9%	165,778	17.5%	61,706	37.2%
Finance & insurance income	43,234	3.2%	32,990	3.5%	10,244	31.1%
Service, parts and other	173,477	12.9%	69,429	7.3%	104,048	149.9%
Total revenues	<u>1,347,299</u>	100.0%	<u>947,901</u>	100.0%	<u>399,398</u>	42.1%
<b>Gross Profit</b>						
New boat	244,058	18.1%	158,884	16.8%	85,174	53.6%
Pre-owned boat	63,406	4.7%	40,212	4.2%	23,194	57.7%
Finance & insurance	43,234	3.2%	32,990	3.5%	10,244	31.1%
Service, parts & other	76,748	5.7%	36,088	3.8%	40,660	112.7%
Total gross profit	<u>427,446</u>	31.7%	<u>268,174</u>	28.3%	<u>159,272</u>	59.4%
Selling, general and administrative expenses	222,455	16.5%	143,685	15.2%	78,770	54.8%
Depreciation and amortization	10,549	0.8%	3,816	0.4%	6,733	176.4%
Transaction costs	5,158	0.4%	633	0.1%	4,525	714.8%
Change in fair value of contingent consideration	11,022	0.8%	377	0.0%	10,645	*
Income from operations	<u>178,262</u>	13.2%	<u>119,663</u>	12.6%	<u>58,599</u>	49.0%
Interest expense - floor plan	3,056	0.2%	2,206	0.2%	850	38.5%
Interest expense - other	7,937	0.6%	3,222	0.3%	4,715	146.3%
Other expense (income), net	491	0.0%	(247)	0.0%	738	*
Income before income tax expense	166,778	12.4%	114,482	12.1%	52,296	45.7%
Income tax expense	36,455	2.7%	20,559	2.2%	15,896	77.3%
Net income	<u>130,323</u>	9.7%	<u>93,923</u>	9.9%	<u>36,400</u>	38.8%
Less: Net income attributable to non-controlling interest	(1,970)		-		(1,970)	100.0%
Less: Net income attributable to non-controlling interests of One Water Marine Holdings, LLC	(16,060)		(31,158)		15,098	-48.5%
Net income attributable to One Water Marine Inc.	<u>\$ 112,293</u>		<u>\$ 62,765</u>		<u>\$ 49,528</u>	78.9%

**Revenue**

Overall, revenue increased by \$399.4 million, or 42.1%, to \$1,347.3 million for the nine months ended June 30, 2022 from \$947.9 million for the nine months ended June 30, 2021. Revenue generated from same-store sales increased 14.2% for the nine months ended June 30, 2022 as compared to the nine months ended June 30, 2021, primarily due to an increase in the average selling price of new boats, an increase in pre-owned unit sales, the model mix of boats sold, an increase in finance & insurance sales and an increase in service, parts and other sales. Overall revenue increased by \$399.4 million as a result of a \$134.7 million increase in same-store sales and a \$264.7 million increase from stores not eligible for inclusion in the same-store sales base. New and acquired stores become eligible for inclusion in the comparable store base at the end of the store's thirteenth month of operations under our ownership and revenues are only included for identical months in the same-store base periods.

*New Boat Sales*

New boat sales increased by \$223.4 million, or 32.9%, to \$903.1 million for the nine months ended June 30, 2022 from \$679.7 million for the nine months ended June 30, 2021. The increase was primarily attributable to our same-store sales growth, our acquisitions and an increase in our average unit price. We believe the increase in sales was primarily due to continued execution of operational improvements on previously acquired dealers, the mix of boat brands and models sold, and product improvements in the functionality of technology of boats which drove average unit prices higher.

*Pre-owned Boat Sales*

Pre-owned boat sales increased by \$61.7 million, or 37.2%, to \$227.5 million for the nine months ended June 30, 2022 from \$165.8 million for the nine months ended June 30, 2021. We sell a wide range of brands and sizes of pre-owned boats under different types of sales arrangements (e.g., trade-ins, brokerage, consigned and wholesale), which causes periodic and seasonal fluctuations in the average sales price. Pre-owned revenue increased primarily due to growth in unit sales.

*Finance & Insurance Income*

We generate revenue from arranging finance & insurance products, including financing, insurance and extended warranty contracts, to customers through various third-party financial institutions and insurance companies. Finance & insurance income increased by \$10.2 million, or 31.1%, to \$43.2 million for the nine months ended June 30, 2022 from \$33.0 million for the nine months ended June 30, 2021. The increase was primarily due to the additional new and pre-owned boat revenues. We remain very focused on improving sales of finance & insurance products throughout our dealer network and implementing best practices at acquired dealer groups and existing stores. Finance & insurance products decreased slightly as a percentage of total revenue to 3.2% in the nine months ended June 30, 2022 from 3.5% in the nine months ended June 30, 2021. Finance & insurance income is recorded net of related fees, including fees charged back due to any early cancellation of loan or insurance contracts by a customer. Since finance & insurance income is fee-based, we do not incur any related cost of sale.



### *Service, Parts & Other Sales*

Service, parts & other sales increased by \$104.0 million, or 149.9%, to \$173.5 million for the nine months ended June 30, 2022 from \$69.4 million for the nine months ended June 30, 2021. The increase in service, parts & other sales is primarily due to contributions from our recently acquired businesses as well as increases across the board in labor, parts, fuel and storage sales, driven by ancillary sales generated from our increase in new and pre-owned boat sales.

### **Gross Profit**

Overall, gross profit increased by \$159.3 million, or 59.4%, to \$427.5 million for the nine months ended June 30, 2022 from \$268.2 million for the nine months ended June 30, 2021. This increase was primarily due to our overall increase in same-store sales which was driven by increases in all revenue streams, the impact of the 2021 Acquisitions and 2022 Acquisitions and the Company's focus on dynamic pricing. Overall gross margins increased 340 basis points to 31.7% for the nine months ended June 30, 2022 from 28.3% for the nine months ended June 30, 2021 due to the factors noted below.

### *New Boat Gross Profit*

New boat gross profit increased by \$85.2 million, or 53.6%, to \$244.1 million for the nine months ended June 30, 2022 from \$158.9 million for the nine months ended June 30, 2021. This increase was primarily due to our overall increase in same-store sales as well as the impact of the 2021 Acquisitions and 2022 Acquisitions. New boat gross profit as a percentage of new boat revenue was 27.0% for the nine months ended June 30, 2022 as compared to 23.4% in the nine months ended June 30, 2021. The increase in new boat gross profit and gross profit margin is due primarily to a shift in the mix and size of boat models sold, the margin profile of recently acquired locations, our emphasis on expanding new boat gross profit margins amid the industry wide inventory and supply chain constraints.

### *Pre-owned Boat Gross Profit*

Pre-owned boat gross profit increased by \$23.2 million, or 57.7%, to \$63.4 million for the nine months ended June 30, 2022 from \$40.2 million for the nine months ended June 30, 2021. The increase in pre-owned gross profit was driven by the increase in pre-owned revenue as a result of our same-store sales growth and the impact of the 2021 Acquisitions and 2022 Acquisitions. Pre-owned boat gross profit as a percentage of pre-owned boat revenue was 27.9% and 24.3% for the nine months ended June 30, 2022 and 2021, respectively. We sell a wide range of brands and sizes of pre-owned boats under different types of sales arrangements (e.g., trade-ins, brokerage, consignment and wholesale), which may cause periodic and seasonal fluctuations in pre-owned boat gross profit as a percentage of revenue. In the nine months ended June 30, 2022 as compared to the nine months ended June 30, 2021, we experienced an increase in our gross profit on pre-owned sales for each of the different sales arrangements with the exception of wholesale.

### *Finance & Insurance Gross Profit*

Finance & insurance gross profit increased by \$10.2 million, or 31.1%, to \$43.2 million for the nine months ended June 30, 2022 from \$33.0 million for the nine months ended June 30, 2021. Finance & insurance income is fee-based revenue for which we do not recognize incremental cost of sale.

### *Service, Parts & Other Gross Profit*

Service, parts & other gross profit increased by \$40.7 million, or 112.7%, to \$76.7 million for the nine months ended June 30, 2022 from \$36.1 million for the nine months ended June 30, 2021. Service, parts & other gross profit as a percentage of service, parts & other revenue was 44.2% and 52.0% for the nine months ended June 30, 2022 and 2021, respectively. The increase in gross profit was primarily the result of our same-store sales growth as well as contributions from the 2021 Acquisitions and 2022 Acquisitions. The decrease in gross profit margin percentage was due to a shift in the mix of products sold towards parts & accessories which has a lower margin percentage than service and other sales.

### ***Selling, General & Administrative Expenses***

Selling, general & administrative expenses increased by \$78.8 million, or 54.8%, to \$222.5 million for the nine months ended June 30, 2022 from \$143.7 million for the nine months ended June 30, 2021. This increase was primarily due to expenses incurred to support the overall increase in revenues and gross profit which included a \$52.5 million increase in personnel expenses. Selling, general & administrative expenses as a percentage of revenue increased to 16.5% from 15.2% for the nine months ended June 30, 2022 and 2021, respectively. The increase in selling, general and administrative expenses as a percentage of revenue was primarily due to higher variable-based compensation expense as a result of the Company's increased gross profit margin.

### ***Depreciation and Amortization***

Depreciation and amortization expense increased \$6.7 million, or 176.4%, to \$10.5 million for the nine months ended June 30, 2022 compared to \$3.8 million for the nine months ended June 30, 2021. The increase in depreciation and amortization expense was primarily attributable to a \$4.7 million increase in amortization of design libraries and customer relationships from the 2022 Acquisitions as well as an increase in property, plant and equipment.

### ***Transaction Costs***

The increase in transaction costs of \$4.5 million, or 714.8%, to \$5.2 million for the nine months ended June 30, 2022 compared to \$0.6 million for the nine months ended June 30, 2021 was primarily attributable to expenses related to the 2022 Acquisitions and the OBCI Acquisitions.

### ***Change in Fair Value of Contingent Consideration***

During the nine months ended June 30, 2022, we incurred expenses of \$11.0 million related to updated forecasts and accretion of contingent consideration liabilities for acquisitions completed in fiscal year 2021 and 2022. During the nine months ended June 30, 2021, we incurred an expense of \$0.4 million related to the settlement of contingent consideration from a fiscal year 2019 acquisition.

### ***Income from Operations***

Income from operations increased \$58.6 million, or 49.0%, to \$178.3 million for the nine months ended June 30, 2022 compared to \$119.7 million for the nine months ended June 30, 2021. The increase was primarily attributable to the \$159.3 million increase in gross profit, partially offset by a \$78.8 million increase in selling, general & administrative expenses, a \$6.7 million increase in depreciation and amortization and a \$10.6 million increase in the change in fair value of contingent consideration during the same periods.

### ***Interest Expense – Floor Plan***

Interest expense – floor plan increased \$0.9 million to \$3.1 million for the nine months ended June 30, 2022 compared to \$2.2 million for the nine months ended June 30, 2021. The increase in floor plan interest expense was primarily attributable to the increase in average inventory for the nine months ended June 30, 2022 as compared to the nine months ended June 30, 2021 as well as an increase in interest rates.

### ***Interest Expense – Other***

Interest expense – other increased by \$4.7 million, or 146.3%, to \$7.9 million for the nine months ended June 30, 2022 compared to \$3.2 million for the nine months ended June 30, 2021. The increase in interest expense – other was related to the increase in our long-term debt which was used to fund certain 2022 Acquisitions.

### ***Other Expense (Income), Net***

Other expense (income), net increased by \$0.7 million to expense of \$0.5 million for the nine months ended June 30, 2022 compared to income of \$0.2 million for the nine months ended June 30, 2021. The increase in expense was primarily due to the impact of tax rate changes on our tax receivable agreement liability.

### ***Income Tax Expense***

Income tax expense increased \$15.9 million, or 77.3%, to \$36.4 million for the nine months ended June 30, 2022 compared to \$20.6 million for the nine months ended June 30, 2021. The increase was primarily attributable to the 45.7% increase in income before income tax expense as well as the increased proportion of consolidated income before income tax expense that is allocated to OneWater Marine Inc. and therefore taxable due to exchanges of shares of Class B common stock for shares of Class A common stock.

### ***Net Income***

Net income increased by \$36.4 million to \$130.3 million for the nine months ended June 30, 2022 compared to \$93.9 million for the nine months ended June 30, 2021. The increase was primarily attributable to the increase in gross profit, partially offset by the increases in selling, general & administrative expenses, income tax expense, depreciation and amortization and the increase in the change in fair value of contingent consideration during the same periods.

## Comparison of Non-GAAP Financial Measure

We view Adjusted EBITDA as an important indicator of performance. We define Adjusted EBITDA as net income (loss) before interest expense – other, income tax expense, depreciation and amortization and other (income) expense, further adjusted to eliminate the effects of items such as the change in fair value of warrant liability, change in fair value of contingent consideration, loss on extinguishment of debt and transaction costs.

Our board of directors, management team and lenders use Adjusted EBITDA to assess our financial performance because it allows them to compare our operating performance on a consistent basis across periods by removing the effects of our capital structure (such as varying levels of interest expense), asset base (such as depreciation and amortization) and other items (such as the fair value adjustment of the warrants, change in fair value of contingent consideration, gain (loss) on extinguishment of debt and transaction costs) that impact the comparability of financial results from period to period. We present Adjusted EBITDA because we believe it provides useful information regarding the factors and trends affecting our business in addition to measures calculated under GAAP. Adjusted EBITDA is not a financial measure presented in accordance with GAAP. We believe that the presentation of this non-GAAP financial measure will provide useful information to investors and analysts in assessing our financial performance and results of operations across reporting periods by excluding items we do not believe are indicative of our core operating performance. Net income (loss) is the GAAP measure most directly comparable to Adjusted EBITDA. Our non-GAAP financial measure should not be considered as an alternative to the most directly comparable GAAP financial measure. You are encouraged to evaluate each of these adjustments and the reasons we consider them appropriate for supplemental analysis. In evaluating Adjusted EBITDA, you should be aware that in the future we may incur expenses that are the same as or similar to some of the adjustments in such presentation. Our presentation of Adjusted EBITDA should not be construed as an inference that our future results will be unaffected by unusual or non-recurring items. There can be no assurance that we will not modify the presentation of Adjusted EBITDA in the future, and any such modification may be material. Adjusted EBITDA has important limitations as an analytical tool and you should not consider Adjusted EBITDA in isolation or as a substitute for analysis of our results as reported under GAAP. Because Adjusted EBITDA may be defined differently by other companies in our industry, our definition of this non-GAAP financial measure may not be comparable to similarly titled measures of other companies, thereby diminishing its utility.

The following tables present a reconciliation of Adjusted EBITDA to our net income, which is the most directly comparable GAAP measure for the periods presented.

### Three Months Ended June 30, 2022, Compared to Three Months Ended June 30, 2021

Description	Three months ended June 30,	
	2022	2021
	(\$ in thousands)	
Net income	\$ 64,483	\$ 51,557
Interest expense – other	3,311	1,083
Income tax expense	18,785	11,498
Depreciation and amortization	4,274	1,475
Change in fair value of contingent consideration	3,118	-
Transaction costs	1,337	65
Other income, net	(166)	(158)
Adjusted EBITDA	<u>\$ 95,142</u>	<u>\$ 65,520</u>

Adjusted EBITDA was \$95.1 million for the three months ended June 30, 2022 compared to \$65.5 million for the three months ended June 30, 2021. The increase in Adjusted EBITDA resulted primarily from our 12.0% increase in same-store sales growth for the three months ended June 30, 2022 as compared to the three months ended June 30, 2021, the impact of the 2022 Acquisitions and our ability to increase gross profit margins and control selling, general and administrative expenses.

### Nine Months Ended June 30, 2022, Compared to Nine Months Ended June 30, 2021

Description	Nine months ended June 30,	
	2022	2021
	(\$ in thousands)	
Net income	\$ 130,323	\$ 93,923
Interest expense – other	7,937	3,222
Income tax expense	36,455	20,559
Depreciation and amortization	10,814	3,816
Change in fair value of contingent consideration	11,022	377
Transaction costs	5,158	633
Other expense (income), net	491	(247)
Adjusted EBITDA	<u>\$ 202,200</u>	<u>\$ 122,283</u>

Adjusted EBITDA was \$202.2 million for the nine months ended June 30, 2022 compared to \$122.3 million for the nine months ended June 30, 2021. The increase in Adjusted EBITDA resulted primarily from our 14.2% increase in same-store sales growth for the nine months ended June 30, 2022 as compared to the nine months ended June 30, 2021, the impact of the 2021 Acquisitions and 2022 Acquisitions and our ability to increase gross profit margins and control selling, general and administrative expenses.

## Seasonality

Our business, along with the entire recreational boating industry, is highly seasonal, and such seasonality varies by geographic market. With the exception of Florida, we generally realize lower sales and higher levels of inventories, and related floor plan borrowings, in the quarterly periods ending December 31 and March 31. Revenue generated from our stores in Florida serves to offset generally lower winter revenue in our other states and enables us to maintain a more consistent revenue stream. The onset of the public boat and recreation shows in January stimulates boat sales and typically allows us to reduce our inventory levels and related floor plan borrowings throughout the remainder of the fiscal year. The impact of seasonality on our results of operations could be materially impacted based on the location of our acquisitions. For example, our operations could be substantially more seasonal if we

acquire dealer groups that operate in colder regions of the United States. Our business is also subject to weather patterns, which may adversely affect our results of operations. For example, prolonged winter conditions, reduced rainfall levels or excessive rain, may limit access to boating locations or render boating dangerous or inconvenient, thereby curtailing customer demand for our products and services. In addition, unseasonably cool weather and prolonged winter conditions may lead to a shorter selling season in certain locations. Hurricanes and other storms could result in disruptions of our operations or damage to our boat inventories and facilities, as has been the case when Florida and other markets were affected by hurricanes. We believe our geographic diversity is likely to reduce the overall impact to us of adverse weather conditions in any one market area. Additionally, due to the COVID-19 pandemic, our seasonal trends may also change as a result of, among other things, store closures, disruptions to the supply chain and inventory availability, manufacturer delays, and cancellation of boat shows.

## Liquidity and Capital Resources

### Overview

OneWater Inc. is a holding company with no operations and is the sole managing member of OneWater LLC. OneWater Inc's principal asset consists of common units of OneWater LLC. Our earnings and cash flows and ability to meet our obligations under the Credit Facility, and any other debt obligations will depend on the cash flows resulting from the operations of our operating subsidiaries, and the payment of distributions by such subsidiaries. Our Credit Facility and Inventory Financing Facility (described below) contain certain restrictions on distributions or transfers from our operating subsidiaries to their members or unitholders, as applicable, as described in the summaries below under “—Debt Agreements—Credit Facility” and “—Inventory Financing Facility.” Accordingly, the operating results of our subsidiaries may not be sufficient for them to make distributions to us. As a result, our ability to make payments under the Credit Facility and any other debt obligations or to declare dividends could be limited.

Our cash needs are primarily for growth through acquisitions and working capital to support our operations, including new and pre-owned boat and related parts inventories and off-season liquidity. We routinely monitor our cash flow to determine the amount of cash available to complete acquisitions. We monitor our inventories, inventory aging and current market trends to determine our current and future inventory and related floorplan financing needs. Based on current facts and circumstances, we believe we will have adequate cash flow from operations, borrowings under our credit facilities and proceeds from any future public or private issuances of debt or equity to fund our current operations, to make share repurchases and to fund essential capital expenditures and acquisitions for the next twelve months and beyond.

Cash needs for acquisitions have historically been financed with our credit facilities and cash generated from operations. Our ability to utilize the Credit Facility to fund operations depends upon Adjusted EBITDA and compliance with covenants of the Credit Facility. Cash needs for inventory have historically been financed with our Inventory Financing Facility. Our ability to fund inventory purchases and operations depends on the collateral levels and our compliance with the covenants of the Inventory Financing Facility. As of June 30, 2022, we had liquidity in excess of \$120 million and we were in compliance with all covenants under the Credit Facility and the Inventory Financing Facility.

We have no material off balance sheet arrangements, except for purchase commitments under supply agreements entered into in the normal course of business.

### Cash Flows

#### Analysis of Cash Flow Changes Between the Nine Months Ended June 30, 2022 and 2021

The following table summarizes our cash flows for the periods indicated:

Description	Nine Months ended June 30,		
	2022	2021	Change
		(\$ in thousands)	
Net cash provided by operating activities	\$ 62,123	\$ 153,195	\$ (91,072)
Net cash used in investing activities	(337,616)	(91,120)	(246,496)
Net cash provided by (used in) financing activities	313,443	(9,542)	322,985
Net change in cash	\$ 37,950	\$ 52,533	\$ (14,583)

*Operating Activities.* Net cash provided by operating activities was \$62.1 million for the nine months ended June 30, 2022 compared to net cash provided by operating activities of \$153.2 million for the nine months ended June 30, 2021. The \$91.1 million decrease in cash provided by operating activities was primarily attributable to a \$135.3 million increase in the change in inventory, partially offset by a \$36.4 million increase in net income, an \$11.0 million increase in the loss on change in fair value of contingent consideration and a \$22.5 million increase in the change in accounts payable for nine months ended June 30, 2022 as compared to the nine months ended June 30, 2021.

*Investing Activities.* Net cash used in investing activities was \$337.6 million for the nine months ended June 30, 2022 compared to net cash used in investing activities of \$91.1 million for the nine months ended June 30, 2021. The \$246.5 million increase in cash used in investing activities was primarily attributable to a \$242.6 million increase in cash used in acquisitions for the nine months ended June 30, 2022 as compared to the nine months ended June 30, 2021.

*Financing Activities.* Net cash provided by financing activities was \$313.4 million for the nine months ended June 30, 2022 compared to net cash used in financing activities of \$9.5 million for the nine months ended June 30, 2021. The \$323.0 million increase in financing cash flow was primarily attributable to a \$210.0 million increase in borrowings on long-term debt and an \$130.6 million increase in net borrowings on our Inventory Financing Facility for the nine months ended June 30, 2022 as compared to the nine months ended June 30, 2021.

## Share Repurchase Program

On March 30, 2022, our Board authorized a share repurchase program of up to \$50 million of outstanding shares of Class A common stock. As of June 30, 2022, no shares had been repurchased under the program. The repurchase program does not have a predetermined expiration date.

## Debt Agreements

### Credit Facility

Effective July 22, 2020, we and certain of our subsidiaries entered into the Credit Agreement (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Credit Facility”) with Truist Bank and the other lenders party thereto. The Credit Facility provides for (i) a \$50.0 million revolving credit facility that may be used for revolving credit loans (including up to \$5.0 million in swingline loans and up to \$5.0 million in letters of credit from time to time, and (ii) a term loan facility (which includes incremental term loans as provided in the First Incremental Amendment and Second Incremental Amendment). Subject to certain conditions, the available amount under the revolving credit facility and the term loans may be increased. The revolving credit facility matures on July 22, 2025. The term loan is repayable in installments beginning on March 31, 2021, with the remainder due on the earlier of (i) July 22, 2025 or (ii) the date on which the principal amount of all outstanding term loans have been declared or automatically have become due and payable pursuant to the terms of the Credit Facility.

On February 2, 2021, we entered into the Incremental Amendment No. 1 (the “First Incremental Amendment”) to the Credit Facility to provide for, among other things, an incremental term loan (the “Incremental Term Loan”) to OWAO in an aggregate principal amount equal to \$30.0 million, which was added to, and constitutes a part of, the existing \$80.0 million term loan.

On November 30, 2021, we entered into the Incremental Amendment No. 2 (the “Second Incremental Amendment”) to the Credit Facility to provide for, among other things, an incremental term loan (the “Second Incremental Term Loan”) to OWAO in an aggregate principal amount equal to \$200.0 million, which will be added to, and constitute a part of, the existing \$110.0 million term loan. The Second Incremental Amendment further provides for a \$20.0 million increase in the existing revolving commitment (the “Incremental Revolving Increase”), which was added to, and constitutes a part of, the existing \$30.0 million revolving commitment. As of June 30, 2022, we had \$294.0 million outstanding under the term loan and \$40.0 million outstanding under the revolving credit facility.

Borrowings under the Credit Facility bear interest, at OWAO’s option, at either (a) a base rate (the “Base Rate”) equal to the highest of (i) the prime rate (as announced by Truist Bank from time to time), (ii) the Federal Funds Rate, as in effect from time to time, plus 0.50%, (iii) the Adjusted LIBO Rate (defined below) determined on a daily basis for an interest period of one month, plus 1.00%, or (iv) 1.75%, plus an applicable margin of up to 2.00%, or (b) the rate per annum obtained by dividing the London Interbank Offered Rate for such interest period by a percentage equal to 1.00% minus the Eurodollar Reserve Percentage (the “Adjusted LIBO Rate”) plus an applicable margin of up to 3.00%. Interest on swingline loans shall be the Base Rate plus an applicable margin of up to 2.00%. All applicable interest margins are subject to step-downs based on certain consolidated leverage ratio measures.

The Credit Facility is subject to certain financial covenants related to the maintenance of a minimum fixed charge coverage ratio and a maximum consolidated leverage ratio. The Credit Facility also contains non-financial covenants and restrictive provisions that, among other things, limit the ability of the Company to incur additional debt, transfer or dispose of all of its assets, make certain investments, loans or payments and engage in certain transactions with affiliates. The Company was in compliance with all covenants as of June 30, 2022.

### OBCI Acquisitions Financing Facility

The Company intends to finance the OBCI Acquisitions through debt financing and cash on hand. In connection with the OBCI Acquisitions, the Company entered into a debt financing commitment letter dated as of June 21, 2022 with Truist Bank, pursuant to which Truist Bank has committed to provide the Company with debt financing in an aggregate principal amount of \$125.0 million, subject to a number of conditions, including the receipt of executed loan documentation, satisfaction of the conditions to, and consummation of, the OBCI Acquisitions and other customary closing conditions for financings of this type.

### Inventory Financing Facility

On December 29, 2021, the Company and certain of its subsidiaries entered into the Inventory Financing Facility to, among other things, increase the maximum borrowing amount available to \$500.0 million. Loans under the Inventory Financing Facility may be extended from time to time to enable the Company to purchase inventory from certain manufacturers. The Inventory Financing Facility Expires on December 1, 2023.

Interest on new boats and for rental units is calculated using the Adjusted 30-Day Average SOFR (as defined in the Inventory Financing Facility) (“SOFR”) plus an applicable margin of 2.75% to 5.00% depending on the age of the inventory. Interest on pre-owned boats is calculated at the new boat rate plus 0.25%. Loans are extended from time to time to enable us to purchase inventory from certain manufacturers and to lease certain boats and related parts to customers. The applicable financial terms, curtailment schedule and maturity for each loan are set forth in separate program terms letters that were entered into from time to time. The collateral for the Inventory Financing Facility consisted primarily of our inventory that was financed through the Sixth Inventory Financing Facility and related assets, including accounts receivable, bank accounts, and proceeds of the foregoing, and excludes the collateral that secures the Credit Facility.



We are required to comply with certain financial and non-financial covenants under the Inventory Financing Facility, including certain provisions related to the Funded Debt to EBITDA Ratio (as defined in the Inventory Financing Facility) and the Fixed Charge Coverage Ratio (as defined in the Inventory Financing Facility). We are also subject to additional restrictive covenants, including restrictions on our ability to (i) use, sell, rent or otherwise dispose of any collateral securing the Inventory Financing Facility except for the sale of inventory in the ordinary course of business, (ii) incur certain liens, (iii) engage in any material transaction not in the ordinary course of business, (iv) change our business in any material manner or our organizational structure, other than as otherwise provided for in the Inventory Financing Facility, (v) engage in certain mergers or consolidations, (vi) acquire certain assets or ownership interests of any other person or entities, except for certain permitted acquisitions, (vii) guarantee or indemnify or otherwise become in any way liable with respect to certain obligations of any other person or entity, except as provided by the Inventory Financing Facility, (viii) redeem, retire, purchase or otherwise acquire, directly or indirectly, any of the equity of our acquired marine retailers (ix) make any change in any of our marine retailers' capital structure or in any of their business objectives or operations which might in any way adversely affect the ability of such marine retailer to repay its obligations under the Inventory Financing Facility, (x) incur, create, assume, guarantee or otherwise become or remain liable with respect to certain indebtedness, and (xi) make certain payments of subordinated debt. OneWater LLC and certain of its subsidiaries are restricted from, among other things, making cash dividends or distributions without the prior written consent of Wells Fargo. Under the Inventory Financing Facility, among other exceptions, OneWater LLC may make distributions to its members for certain permitted tax payments subject to certain financial ratios, may make scheduled payments on certain subordinated debt and is permitted to make pro rata distributions to the OneWater Unit Holders, including OneWater Inc., in an amount sufficient to allow OneWater Inc. to pay its taxes and to make payments under the Tax Receivable Agreement. OneWater LLC's subsidiaries are generally restricted from making loans or advances to OneWater LLC. Our Chief Executive Officer, Philip Austin Singleton, Jr., and our Chief Operating Officer, Anthony Aisquith, provide certain personal guarantees of the Inventory Financing Facility.

As of June 30, 2022 and September 30, 2021, our indebtedness associated with financing our inventory under the Inventory Financing Facility totaled \$217.3 million and \$114.2 million, respectively. Certain of our manufacturers enter into independent agreements with the lenders to the Inventory Financing Facility, which results in a lower effective interest rate charged to us for borrowings related to the products by such manufacturer. As of June 30, 2022 and September 30, 2021, the effective interest rate on the outstanding short-term borrowings under the Inventory Financing Facility was 1.9% and 2.0%, respectively. As of June 30, 2022 and September 30, 2021, our additional available borrowings under our Inventory Financing Facility were \$282.7 million and \$278.3 million, respectively, based upon the outstanding borrowings and the maximum facility amount. The aging of our inventory limits our borrowing capacity as defined curtailments reduce the allowable advance rate. As of June 30, 2022, we were in compliance with all covenants under the Inventory Financing Facility.

### **Notes Payable**

*Acquisition Notes Payable.* In connection with certain of our acquisitions of dealer groups, we have entered into notes payable agreements with the acquired entities to finance these acquisitions. As of June 30, 2022, our indebtedness associated with our 2 acquisition notes payable totaled an aggregate of \$3.2 million with a weighted average interest rate of 5.0% per annum. As of June 30, 2022, the principal amount outstanding under these acquisition notes payable ranged from \$1.1 million to \$2.1 million, and the maturity dates ranged from December 1, 2023 to December 1, 2024.

*Commercial Vehicles Notes Payable.* Since 2015, we have entered into multiple notes payable with various commercial lenders in connection with our acquisition of certain vehicles utilized in our retail operations. Such notes bear interest ranging from 0.0% to 8.9% per annum, require monthly payments of approximately \$132,000, and mature on dates between August 2022 to July 2028. As of June 30, 2022, we had \$3.9 million outstanding under the commercial vehicles notes payable.

### **Tax Receivable Agreement**

The Tax Receivable Agreement generally provides for the payment by OneWater Inc. to certain of the OneWater Unit Holders of 85% of the net cash savings, if any, in U.S. federal, state and local income tax and franchise tax (computed using the estimated impact of state and local taxes) that OneWater Inc. actually realizes (or is deemed to realize in certain circumstances) in periods after the IPO as a result of certain tax basis increases and certain tax benefits attributable to imputed interest. OneWater Inc. will retain the benefit of the remaining 15% of these net cash savings. To the extent OneWater LLC has available cash and subject to the terms of any current or future debt or other agreements, the OneWater LLC Agreement will require OneWater LLC to make pro rata cash distributions to OneWater Unit Holders, including OneWater Inc., in an amount sufficient to allow OneWater Inc. to pay its taxes and to make payments under the Tax Receivable Agreement. We generally expect OneWater LLC to fund such distributions out of available cash. However, except in cases where OneWater Inc. elects to terminate the Tax Receivable Agreement early, the Tax Receivable Agreement is terminated early due to certain mergers or other changes of control or OneWater Inc. has available cash but fails to make payments when due, generally OneWater Inc. may elect to defer payments due under the Tax Receivable Agreement if it does not have available cash to satisfy its payment obligations under the Tax Receivable Agreement or if its contractual obligations limit its ability to make these payments. Any such deferred payments under the Tax Receivable Agreement generally will accrue interest. In certain cases, payments under the Tax Receivable Agreement may be accelerated and/or significantly exceed the actual benefits, if any, OneWater Inc. realizes in respect of the tax attributes subject to the Tax Receivable Agreement. In the case of such an acceleration, where applicable, we generally expect the accelerated payments due under the Tax Receivable Agreement to be funded out of the proceeds of the change of control transaction giving rise to such acceleration. OneWater Inc. intends to account for any amounts payable under the Tax Receivable Agreement in accordance with ASC Topic 450, Contingencies.

## Recent Accounting Pronouncements

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

### Item 3. Quantitative and Qualitative Disclosure about Market Risk

#### *Interest Rate Risk*

Our Inventory Financing Facility exposes us to risks caused by fluctuations in interest rates. The interest rate on our Inventory Financing Facility for new boats is calculated using SOFR plus an applicable margin. Based on an outstanding balance of \$217.3 million as of June 30, 2022, a change of 100 basis points in the underlying interest rate would have caused a change in interest expense of \$2.2 million. We do not currently hedge our interest rate exposure. This hypothetical increase does not take into account a corresponding increase to the programs that we may receive from our manufacturers or management's ability to curtail inventory and related floor plan balances, both of which would reduce the impact of the interest rate increase.

Our Credit Facility exposes us to risks caused by fluctuations in interest rates. The interest rate on our Credit Facility is calculated using the one-month LIBOR (with a 0.75% floor) plus an applicable margin. Based on an outstanding balance of \$294.0 million and the one-month LIBOR as of June 30, 2022, a change of 100 basis points in the underlying interest rate would have caused a change in interest expense of approximately \$2.9 million. We do not currently hedge our interest rate exposure.

#### *Foreign Currency Risk*

We purchase certain of our new boat and parts inventories from foreign manufacturers and some of these transactions are denominated in a currency other than the U.S. dollar. Our business is subject to foreign exchange rate risk that may influence manufacturers' ability to provide their products at competitive prices in the United States. From time to time we may enter into foreign currency forward contracts to hedge certain foreign currency exposures to lessen, but not completely eliminate, the effects of foreign currency fluctuations on our financial results. To the extent that we cannot recapture this volatility in prices charged to customers or if this volatility negatively impacts consumer demand for our products, this volatility could adversely affect our future operating results.

### Item 4. Controls and Procedures

#### *Disclosure Controls and Procedures*

Under the supervision and with the participation of our management, including the Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) as of the end of the period covered by this report. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of such date. No system of controls, no matter how well designed and operated, can provide absolute assurance that the objectives of the system of controls are met, and no evaluation of controls can provide absolute assurance that the system of controls has operated effectively in all cases. Our disclosure controls and procedures are designed to provide reasonable assurance that the objectives of disclosure controls and procedures are met and to ensure that information required to be disclosed in the reports we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and that such information is accumulated and communicated to management, including the Chief Executive Officer and Chief Financial Officer, to allow timely decisions regarding required disclosure.

#### *Changes in Internal Control Over Financial Reporting*

There were no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f)) during the three and nine months ended June 30, 2022 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## PART II – OTHER INFORMATION

### Item 1. Legal Proceedings

Due to the nature of our business, we are, from time to time, involved in other routine litigation or subject to disputes or claims related to our business activities, including workers' compensation claims and employment related disputes. Regardless of the outcome, litigation can have an adverse impact on us because of defense and settlement costs, diversion of management resources and other factors. In the opinion of our management, none of the pending litigation, disputes or claims against us, if decided adversely, would have a material adverse effect on our financial condition, cash flows or results of operations.

#### Item 1A. Risk Factors

In addition to the information set forth in this Quarterly Report on Form 10-Q, you should carefully consider the risk factors and other cautionary statements described under the heading "Risk Factors" included in our Annual Report on Form 10-K for the fiscal year ended September 30, 2021, filed with the SEC on December 17, 2021, which could materially affect our businesses, financial condition, or future results. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition, or future results.

Other than the changes set forth below, there have been no material changes in our risk factors from those described in our Annual Report on Form 10-K for the fiscal year ended September 30, 2021, filed with the SEC on December 17, 2021.

***Our certificate of incorporation and bylaws, as well as Delaware law, contain provisions that could discourage acquisition bids or merger proposals, which may adversely affect the market price of our Class A common stock and could deprive our investors of the opportunity to receive a premium for their shares.***

Our certificate of incorporation authorizes our board of directors to issue preferred stock without stockholder approval in one or more series, designate the number of shares constituting any series, and fix the rights, preferences, privileges and restrictions thereof, including dividend rights, voting rights, rights and terms of redemption, redemption price or prices and liquidation preferences of such series. If our board of directors elects to issue preferred stock, it could be more difficult for a third party to acquire us. In addition, some provisions of our certificate of incorporation and bylaws could make it more difficult for a third party to acquire control of us, even if the change of control would be beneficial to our stockholders. These provisions include:

- providing that all vacancies, including newly created directorships, may, except as otherwise required by law or, if applicable, the rights of holders of a series of preferred stock, only be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum;
- permitting any action by stockholders to be taken only at an annual meeting or special meeting rather than by a written consent of the stockholders, subject to the rights of any series of preferred stock with respect to such rights;
- permitting special meetings of our stockholders to be called only by our Chief Executive Officer, the chairman of our board of directors and our board of directors pursuant to a resolution adopted by the affirmative vote of a majority of the total number of authorized directors whether or not there exist any vacancies in previously authorized directorships;
- subject to the rights of the holders of shares of any series of our preferred stock, requiring the affirmative vote of the holders of at least a majority in voting power of all then outstanding common stock entitled to vote generally in the election of directors, voting together as a single class, to remove any of all of the directors from office at any time;
- prohibiting cumulative voting in the election of directors;
- establishing advance notice provisions for stockholder proposals and nominations for elections to the board of directors to be acted upon at meetings of stockholders;
- providing that the board of directors is expressly authorized to adopt, or to alter or repeal our bylaws; and
- On February 23, 2022, following shareholder approval at our 2022 annual meeting, we revised our certificate of incorporation and bylaws to eliminate our staggered board of directors and supermajority voting provisions.

In addition, certain change of control events have the effect of accelerating the payment due under the Tax Receivable Agreement, which could be substantial and accordingly serve as a disincentive to a potential acquirer of our company. Please see “-In certain cases, payments under the Tax Receivable Agreement may be accelerated and/or significantly exceed the actual benefits, if any, OneWater Inc. realizes in respect of the tax attributes subject to the Tax Receivable Agreement.”

***The pending OBCI Acquisitions may not be consummated on a timely basis or at all. Failure to complete the OBCI Acquisitions within the expected timeframe or at all could adversely affect our stock price and our future business and financial results.***

On June 21, 2022, we entered into an agreement and plan of merger with OBCI, an equity purchase agreement with Peter G. Dornau and a real estate sales contract with PEJE, Inc., and certain other parties thereto in connection with the OBCI Acquisitions. We expect the OBCI Acquisitions to close in our fiscal fourth quarter of 2022. The OBCI Acquisitions are subject to certain closing conditions, including, among other things, (i) the expiration or termination of any applicable waiting periods under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, (ii) at least 20 calendar days having elapsed since OBCI mailed to its shareholders an information statement (as contemplated by Regulation 14C of the Exchange Act), (iii) the absence of legal restraints preventing the consummation of the Ocean Bio-Chem Acquisition, (iv) other customary conditions for a transaction of this type, and (v) the closing or satisfaction or waiver of the closing conditions of the SB Europe Acquisition and the Real Estate Acquisition. If these conditions are not satisfied or waived, the OBCI Acquisitions will not be consummated. If the closing of the OBCI Acquisitions is substantially delayed or does not occur at all, or if the terms of the OBCI Acquisitions are required to be modified substantially, we may not realize the anticipated benefits of the OBCI Acquisitions fully or at all or they may take longer to realize than expected. We have incurred and will continue to incur substantial transaction costs whether or not the OBCI Acquisitions are completed. Any failure to complete the OBCI Acquisitions could have a adverse effect on our stock price, our competitiveness and reputation in the marketplace, and our future business and financial results, including our ability to execute on our strategy.

***The OBCI Acquisitions may require management to devote significant attention and resources to integrating the acquired businesses with our business.***

The OBCI Acquisitions may require management to devote significant attention and resources to integrating the acquired businesses with our business. Delays or difficulties in the integration process could adversely affect our business, financial results, financial condition and stock price. Even if we are able to integrate our business operations successfully, there can be no assurance that this integration will result in the realization of the full benefits of synergies, cost savings, margin growth, insulation from cyclicalities and operational efficiencies that we currently expect or have communicated from this integration or that these benefits will be achieved within the anticipated time frame.

## **Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**

On March 30, 2022, the Board authorized a share repurchase program of up to \$50 million of outstanding shares of Class A common stock. Repurchases under the share repurchase program may be made at any time or from time to time, without prior notice, in the open market or in privately negotiated transactions at prevailing market prices, or such other means as will comply with applicable state and federal securities laws and regulations, including the provisions of the Securities Exchange Act of 1934, including Rule 10b5-1 and, to the extent practicable or advisable, Rule 10b-18 thereunder, and consistent with the Company’s contractual limitations and other requirements. The Company made no repurchases in the three and nine months ended June 30, 2022. The Company has \$50 million remaining under the share repurchase program.

## **Item 3. Defaults Upon Senior Securities**

None.

## **Item 4. Mine Safety Disclosures**

Not Applicable.

**Item 5. Other Information**

None.

**Item 6. Exhibits**

**ONEW 10-Q Exhibit Table**

Exhibit No.	Description
<a href="#">2.1</a> <del>Y</del>	Agreement and Plan of Merger, by and among Ocean Bio-Chem, Inc., OneWater Marine Inc. and OBCMS, Inc., dated as of June 21, 2022 (incorporated by reference to Exhibit 2.1 to the Registrant's Current Report on Form 8-K, File Number 001-39213, filed with the Commission on June 22, 2022).
<a href="#">3.1</a>	Second Amended and Restated Certificate of Incorporation of OneWater Marine Inc. (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K, File No. 001-39213, filed with the Commission on February 24, 2022).
<a href="#">3.2</a>	Second Amended and Restated Bylaws of OneWater Marine Inc. (incorporated by reference to Exhibit 3.2 to the Registrant's Current Report on Form 8-K, File No. 001-39213, filed with the Commission on February 24, 2022).
<del>*10.1</del> Y	Equity Purchase Agreement, by and between One Water Assets & Operations, LLC, Peter G. Dornau and Maureen Dornau, dated June 21, 2022.
<del>*10.2</del> Y	Real Estate Sales Contract, by and between One Water Assets & Operations, LLC and PEJE, Inc., dated June 21, 2022.
<a href="#">10.3</a>	Support Agreement, by and among the Ocean Bio-Chem, OneWater Marine Inc. and Peter Dornau, dated as of June 21, 2022 (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K, File Number 001-39213, filed with the Commission on June 22, 2022).
<a href="#">10.4</a>	Support Agreement, by and among the Ocean Bio-Chem, OneWater Marine Inc. and Gregor M. Dornau, dated as of June 21, 2022 (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K, File Number 001-39213, filed with the Commission on June 22, 2022).
<a href="#">10.5</a>	Support Agreement, by and among the Ocean Bio-Chem, OneWater Marine Inc. and Peter Dornau Family LLC, dated as of June 21, 2022 (incorporated by reference to Exhibit 10.3 to the Registrant's Current Report on Form 8-K, File Number 001-39213, filed with the Commission on June 22, 2022).
<del>*31.1</del>	Certification of the Chief Executive Officer required by Rule 13a-14(a) or Rule 15d-14(a).
<del>*31.2</del>	Certification of the Chief Financial Officer required by Rule 13a-14(a) or Rule 15d-14(a).
<del>**32.1</del>	Certification of the Chief Executive Officer required by Rule 13a-14(b) or Rule 15d-14(b) and 18 U.S.C. 1350.
<del>**32.2</del>	Certification of the Chief Financial Officer required by Rule 13a-14(b) or Rule 15d-14(b) and 18 U.S.C. 1350.
101.INS(a)	Inline XBRL Instance Document.
101.SCH(a)	Inline XBRL Schema Document.
101.CAL(a)	Inline XBRL Calculation Linkbase Document.
101.DEF(a)	Inline XBRL Definition Linkbase Document.
101.LAB(a)	Inline XBRL Labels Linkbase Document.
101.PRE(a)	Inline XBRL Presentation Linkbase Document.
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).

\* Filed herewith.

\*\* Furnished herewith.

Y Certain schedules and exhibits to this agreement have been omitted in accordance with Item 601(a)(5) of Regulation S-K. A copy of any omitted schedule and/or exhibit will be furnished to the Securities and Exchange Commission on request.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

**ONEWATER MARINE INC.**  
(Registrant)

By: /s/ Philip Austin Singleton, Jr.

Philip Austin Singleton, Jr.  
Chief Executive Officer

By: /s/ Jack Ezzell

Jack Ezzell  
Chief Financial Officer

August 5, 2022

**EQUITY PURCHASE AGREEMENT**

**by and among**

**PETER G. DORNAU,**

**MAUREEN DORNAU,**

**and**

**ONE WATER ASSETS & OPERATIONS, LLC**

**Dated as of June 21, 2022**

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## EQUITY PURCHASE AGREEMENT

**THIS EQUITY PURCHASE AGREEMENT** (this “*Agreement*”), dated as of June 21, 2022, is entered into by and among **PETER G. DORNAU**, an individual and resident of the State of Florida (“*Peter*”), **MAUREEN DORNAU**, an individual and resident of the State of Florida (“*Maureen*,” and collectively with Peter, the “*Sellers*,” and individually, a “*Seller*”), on the one hand, and **ONE WATER ASSETS & OPERATIONS, LLC**, a Delaware limited liability company (“*Buyer*”), on the other hand. Capitalized terms used herein and not otherwise defined in the body of this Agreement shall have the meanings set forth in **Exhibit A**.

### RECITALS

**WHEREAS**, Sellers, collectively, own all of the issued and outstanding shares of common stock, par value \$1.00 (the “*Shares*”), of Star Brite Europe, Inc., a Florida corporation (the “*Company*”);

**WHEREAS**, prior to the Closing, Sellers intend to and will (i) (x) organize a newly formed Florida corporation (“*SBE Holdco*”) and cause all of the Shares to be contributed to SBE Holdco in exchange for its issuance to the Sellers of one hundred percent (100%) of the outstanding capital stock of SBE Holdco, with such fifty percent (50%) of such stock being issued to each Seller, (y) cause SBE Holdco to timely file a validly completed Form 2553 with the Internal Revenue Service (which shall be noted as “protective” in light of Revenue Ruling 2008-18) to make an election under Section 1362(a) of the Code to be treated as an S corporation for tax purposes, and (z) cause SBE Holdco to timely file a validly completed Form 8869 with the Internal Revenue Service to elect to treat the Company as a qualified subchapter S subsidiary (“*QSub*”), as set forth in Treasury Regulation Section 1.1361-3; (ii) then cause the Company to be converted into a Florida limited liability company (the “*Conversion*”), pursuant to which the Shares will be cancelled and replaced by membership interests, and of which SBE Holdco will be the sole member, and the Company will continue to be treated as a disregarded entity for tax purposes, as provided in Treasury Regulation Section 301.7701-3 (the actions to be taken pursuant to clauses (i) and (ii), the “*Reorganization*”), and (iii) then cause SBE Holdco to sell and transfer all of the issued and outstanding membership interests of the Company (“*Units*”) to Buyer, for the consideration and subject to the terms and conditions set forth herein;

**WHEREAS**, the Reorganization is intended to occur under Section 368(a)(1)(F) of the Code;

**WHEREAS**, subject to the terms and conditions set forth herein, Sellers desires to cause SBE Holdco to sell to Buyer, and Buyer desires to purchase from SBE Holdco, all of the Units;

**WHEREAS**, a portion of the purchase price payable by Buyer to SBE Holdco shall be placed in escrow by Buyer, the release of which shall be contingent upon certain events and conditions, all as set forth in this Agreement and the Escrow Agreement (as defined herein); and

**WHEREAS**, Sellers collectively own a majority of the issued and outstanding capital stock of Ocean Bio-Chem, Inc., a Florida corporation (“*OBCI*”), and will materially benefit from the Public Merger;

**WHEREAS**, in furtherance of the closing of the Public Merger (which is a condition to Closing of the transactions contemplated hereby), the Sellers desire, in their individual capacities, to provide Buyer and its Affiliates with certain indemnities related to State Income Tax Claims (as defined herein).

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I  
PURCHASE AND SALE**

**Section 1.01 Purchase and Sale.** Subject to the terms and conditions set forth herein, at the Closing, SBE Holdco shall sell to Buyer, and Buyer shall purchase from SBE Holdco, the Units, free and clear of all Encumbrances, for the consideration specified in Section 1.02.

**Section 1.02 Purchase Price.** The aggregate purchase price for the Units shall be \$7,000,000, subject to adjustment pursuant to Section 1.04 hereof (the "*Purchase Price*").

**Section 1.03 Transactions to be Effected at the Closing.**

(a) At the Closing, Buyer shall:

(i) deliver to SBE Holdco:

(A) the Closing Date Payment *less* (1) the Purchase Price Adjustment Escrow Amount, (2) the Indemnification Escrow Amount, and (3) the Tax Indemnification Escrow Amount, by wire transfer of immediately available funds to an account designated in writing by Sellers to Buyer prior to the Closing Date; and

(B) the Ancillary Documents and all other agreements, documents, instruments or certificates required to be delivered by Buyer at or prior to the Closing pursuant to Section 6.03 of this Agreement.

(ii) pay, on behalf of the Company or Sellers, the following amounts:

(A) the Closing Indebtedness, by wire transfer of immediately available funds to the accounts and in the amounts specified in the Estimated Closing Statement; and

(B) the Closing Transaction Expenses, by wire transfer of immediately available funds to the accounts and in the amounts specified in the Estimated Closing Statement.

(iii) deliver to the Escrow Agent:

(A) the Purchase Price Adjustment Escrow Amount (such amount, including any interest or other amounts earned thereon and less any disbursements therefrom in accordance with the Escrow Agreement, the "***Purchase Price Adjustment Escrow Fund***") by wire transfer of immediately available funds to accounts designated by the Escrow Agent, to be held for the purpose of securing the obligations of Sellers in Section 1.04(d);

(B) the Indemnification Escrow Amount (such amount, including any interest or other amounts earned thereon and less any disbursements therefrom in accordance with the Escrow Agreement, the "***Indemnification Escrow Fund***") by wire transfer of immediately available funds to accounts designated by the Escrow Agent, to be held for the purpose of securing the obligations of Sellers in ARTICLE VII (excluding Section 7.10);

(C) the Tax Indemnification Escrow Amount (such amount, including any interest or other amounts earned thereon and less any disbursements therefrom in accordance with the Escrow Agreement, the "***Tax Indemnification Escrow Fund***") by wire transfer of immediately available funds to accounts designated by the Escrow Agent, to be held for the purpose of securing the obligations of Sellers in Section 7.10; and

(D) the Escrow Agreement.

(b) At the Closing, Sellers shall, or shall cause SBE Holdco to, deliver to Buyer:

(i) an assignment of membership interests assigning the Units to Buyer, free and clear of all Encumbrances, in a form reasonably acceptable to Buyer; and

(ii) the Ancillary Documents and all other agreements, documents, instruments or certificates required to be delivered by Sellers and SBE Holdco, respectively, at or prior to the Closing pursuant to Section 6.02 of this Agreement.

#### **Section 1.04 Purchase Price Adjustment.**

(a) Closing Adjustment.

(i) At least 3 Business Days before the Closing, Sellers shall prepare and deliver to Buyer a certified statement (the “**Estimated Closing Statement**”) setting forth their good faith estimate of (A) Closing Working Capital, calculated in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Unaudited Financial Statements for the most recent fiscal year end (“**Estimated Working Capital**”), (B) an itemized list of all outstanding Indebtedness of the Company as of the Closing Date, including the Persons to whom such outstanding Indebtedness is owed, and an aggregate total of such Indebtedness (“**Closing Indebtedness**”), and (C) the amount of Transaction Expenses remaining unpaid as of the Closing Date (“**Closing Transaction Expenses**”), including an itemized list of each such unpaid Transaction Expense with a description of the nature of such expense and the person to whom such expense is.

(ii) At the Closing, the Purchase Price shall be adjusted in the following manner:

(A) either (1) an increase by the amount, if any, by which the Estimated Working Capital is greater than the Target Working Capital, or (2) a decrease by the amount, if any, by which the Estimated Working Capital is less than the Target Working Capital;

(B) a decrease by the amount of Closing Indebtedness; and

(C) a decrease by the amount of Closing Transaction Expenses.

The net amount after giving effect to the adjustments listed above shall be the “**Closing Date Payment.**”

(b) Post-Closing Adjustment.

(i) Within 90 days after the Closing Date, Buyer shall prepare and deliver to Sellers a certified statement (the “**Closing Statement**”) setting forth its calculation of Closing Working Capital, calculated in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Unaudited Financial Statements for the most recent fiscal year end.

(ii) The post-closing adjustment shall be an amount equal to the Closing Working Capital (as finally determined pursuant to Section 1.04(c)) minus the Estimated Closing Working Capital (the “**Post-Closing Adjustment**”).

(c) Examination and Review.

(i) Examination. After receipt of the Closing Statement, Sellers shall have 30 days (the “**Review Period**”) to review the Closing Statement. During the Review Period, Sellers shall have full access to the books and records of the Company, the personnel of, and work papers prepared by, Buyer to the extent that they relate to the Closing Statement and to such historical financial information (to the extent in Buyer’s possession) relating to the Closing Statement as Sellers may reasonably request for the purpose of reviewing the Closing Statement and to prepare a Statement of Objections (defined below), *provided, that* such access shall be in a manner that does not interfere with the normal business operations of Buyer or the Company.

(ii) Objection. On or prior to the last day of the Review Period, Sellers may object to the Closing Statement by delivering to Buyer a written statement setting forth Sellers’ objections in reasonable detail, indicating each disputed item or amount and the basis for Sellers’ disagreement therewith (the “**Statement of Objections**”). If Sellers fail to deliver the Statement of Objections before the expiration of the Review Period, the Closing Working Capital and the Post-Closing Adjustment, as the case may be, reflected in the Closing Statement shall be deemed to have been accepted by Sellers. If Sellers deliver the Statement of Objections before the expiration of the Review Period, Buyer and Sellers shall negotiate in good faith to resolve such objections within 30 days after the delivery of the Statement of Objections (the “**Resolution Period**”), and, if the same are so resolved within the Resolution Period, the Post-Closing Adjustment and the Closing Statement with such changes as may have been previously agreed in writing by Buyer and Sellers, shall be final and binding.

(iii) Resolution of Disputes. If Sellers and Buyer fail to reach an agreement with respect to all of the matters set forth in the Statement of Objections before expiration of the Resolution Period, then any amounts remaining in dispute (“**Disputed Amounts**” and any amounts not so disputed, the “**Undisputed Amounts**”) shall be submitted for resolution to the offices of an accounting firm mutually acceptable to the parties (the “**Independent Accountant**”) who, acting as experts and not arbitrators, shall resolve the Disputed Amounts only and make any adjustments to the Post-Closing Adjustment, as the case may be, and the Closing Statement. The parties hereto agree that all adjustments shall be made without regard to materiality. The Independent Accountant shall only decide the specific items under dispute by the parties and their decision for each Disputed Amount must be within the range of values assigned to each such item in the Closing Statement and the Statement of Objections, respectively.

(iv) Fees of the Independent Accountant. The fees and expenses of the Independent Accountant shall be paid by Sellers, on the one hand, and by Buyer, on the other hand, based upon the percentage that the amount actually contested but not awarded to Sellers or Buyer, respectively, bears to the aggregate amount actually contested by Sellers and Buyer.

(v) Determination by Independent Accountant. The Independent Accountant shall make a determination as soon as practicable within 30 days (or such other time as the parties hereto shall agree in writing) after their engagement, and their resolution of the Disputed Amounts and their adjustments to the Closing Statement and/or the Post-Closing Adjustment shall be conclusive and binding upon the parties hereto.

(d) Payments of Post-Closing Adjustment.

(i) Except as otherwise provided herein, any payment of the Post-Closing Adjustment shall (A) be due (x) within 5 Business Days of acceptance of the applicable Closing Statement, or (y) if there are Disputed Amounts, then within 5 Business Days of the resolution described in clause (v) above; and (B) be paid by wire transfer of immediately available funds to such account as is directed by Buyer or Sellers, as the case may be.

(ii) Any payment of the Post-Closing Adjustment owed by Sellers to Buyer shall be paid by the Escrow Agent pursuant to the terms of the Escrow Agreement from the Purchase Price Adjustment Escrow Fund. In the event that the amount of such Post-Closing Adjustment is less than the amount of the Purchase Price Adjustment Escrow Fund, such excess amount shall be paid by the Escrow Agent to SBE Holdco pursuant to the terms of the Escrow Agreement. In the event that the amount of such Post-Closing Adjustment is greater than the amount of the Purchase Price Adjustment Escrow Fund, such excess amount shall be paid by the Escrow Agent to the Buyer from the Indemnification Escrow Fund pursuant to the terms of the Escrow Agreement. For the avoidance of doubt, in the event that any payment of the Post-Closing Adjustment is owed by Buyer to the Sellers, the entire amount of the Escrow Fund shall be paid by the Escrow Agent to SBE Holdco pursuant to the terms of the Escrow Agreement.

(e) Adjustments for Tax Purposes. Any payments made pursuant to Section 1.04 shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by Law.

**Section 1.05 Closing.** Subject to the terms and conditions of this Agreement, the purchase and sale of the Units contemplated hereby shall take place at a closing (the “Closing”) to be held at 10:00 a.m., Atlanta, Georgia time, no later than 2 Business Days after the last of the conditions to Closing set forth in ARTICLE VI have been satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date), remotely by exchange of documents and signatures (or their electronic counterparts), or at such other time or on such other date or at such other place as Sellers and Buyer may mutually agree upon in writing (the day on which the Closing takes place being the “Closing Date”).

**Section 1.06 Withholding Tax.** Buyer and the Company shall be entitled to deduct and withhold from the Purchase Price all Taxes that Buyer and the Company may be required to deduct and withhold under any provision of Tax Law. All such withheld amounts shall be treated as delivered to SBE Holdco hereunder to the extent timely paid over to the applicable Governmental Entity on their behalf in accordance with applicable Law. Notwithstanding the foregoing, Buyer and the Company shall provide each Seller and SBE Holdco with at least three Business Days prior written notice prior to withholding any amounts pursuant to this Section 1.06, and shall work in good faith with each Seller and SBE Holdco to minimize any such withheld amounts; and provided further, that, so long as SBE Holdco shall have delivered to Buyer a properly prepared certificate of nonforeign status under Treas. Reg. §1.1445-2(b)(2) and Section 1446(f)(2) of the Code and an IRS Form W-9, duly executed by SBE Holdco, there shall be no withholding on account of U.S. federal Income Tax with respect to payments made to SBE Holdco on account of the Purchase Price.

## ARTICLE II REPRESENTATIONS AND WARRANTIES OF SELLERS AND SBE HOLDCO

Except as set forth in the correspondingly numbered Section of the Disclosure Schedules, Sellers and SBE Holdco, jointly and severally, represent and warrant to Buyer that the statements contained in this ARTICLE II are true and correct as of the date hereof.

**Section 2.01 Authority.**

(a) Each Seller has full power and authority to enter into this Agreement and the Ancillary Documents to which such Seller is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by each Seller, and (assuming due authorization, execution and delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of each Seller enforceable against him or her in accordance with its terms. When each other Ancillary Document to which a Seller is or will be a party has been duly executed and delivered by such Seller (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Document will constitute a legal and binding obligation of such Seller enforceable against him or her in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

(b) As of the Closing, all actions taken by SBE Holdco in connection with this Agreement and the Ancillary Documents to which it is a party will have been duly authorized, and all such Ancillary Documents will have been duly executed and delivered by SBE Holdco and assuming that such Ancillary Documents constitute valid and binding obligations of Buyer and each Seller a party thereto, as applicable, such Ancillary Documents shall constitute valid and binding obligations of SBE Holdco, enforceable in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, or moratorium laws, other similar Laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies.

### **Section 2.02 Organization, Authority and Qualification.**

(a) As of the date hereof, the Company is a corporation duly organized, validly existing and in good standing under the Laws of the State of Florida and has full corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it has been and is currently conducted. Section 2.02 of the Disclosure Schedules sets forth each jurisdiction in which the Company is licensed or qualified to do business, and the Company is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business as currently conducted makes such licensing or qualification necessary, except where the failure to be so licensed, qualified or in good standing would not have a Material Adverse Effect. All corporate actions taken by the Company in connection with this Agreement and the Ancillary Documents will be duly authorized on or prior to the Closing.

(b) At the Closing, SBE Holdco will be a corporation duly organized, validly existing and in good standing under the Laws of the Commonwealth of Florida and will have the full corporate power and authority to own the Units.

### **Section 2.03 Capitalization.**

(a) As of the date hereof, the authorized capital stock of the Company consists of 100 shares of common stock, par value \$1.00 ("**Common Stock**"), of which 100 shares are issued and outstanding and constitute the Shares. All of the Shares have been duly authorized, are validly issued, fully paid and non-assessable, and are owned of record and beneficially by Sellers, free and clear of all Encumbrances.



(b) There are no outstanding or authorized options, warrants, convertible securities or other rights, agreements, arrangements or commitments of any character relating to the capital stock of the Company or obligating Sellers or the Company to issue or sell any shares of capital stock of, or any other interest in, the Company. The Company does not have outstanding or authorized any stock appreciation, phantom stock, profit participation or similar rights. There are no voting trusts, shareholder agreements, proxies or other agreements or understandings in effect with respect to the voting or transfer of any of the Shares.

(c) As of the Closing, SBE Holdco will have no Subsidiaries other than the Company which will be wholly-owned by it, and all of the outstanding capital stock of SBE Holdco shall have been issued in compliance with applicable Laws, and none of such outstanding capital stock shall have been issued or transferred in violation of any agreement, assignment or commitment to which Seller, the Company or SBE Holdco shall be a party or shall be subject to or in violation of any preemptive or similar rights.

(d) The Units will be validly issued and Buyer will acquire the Units free and clear of all Encumbrances at Closing.

**Section 2.04 No Subsidiaries.** The Company does not own, or have any interest in any shares or have an ownership interest in any other Person.

**Section 2.05 No Conflicts; Consents.** The execution, delivery and performance by Sellers and SBE Holdco of this Agreement and the Ancillary Documents to which they are, respectively, each a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, bylaws or other organizational documents of the Company or SBE Holdco; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Sellers, SBE Holdco, or the Company; (c) except as set forth in Section 2.05 of the Disclosure Schedules, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Contract to which Sellers, SBE Holdco, or the Company is a party or by which Sellers, SBE Holdco, or the Company is bound or to which any of their respective properties and assets are subject (including any Material Contract) or any Permit affecting the properties, assets or business of the Company; or (d) result in the creation or imposition of any Encumbrance other than Permitted Encumbrances on any properties or assets of the Company, except in the cases of clauses (b) and (c), where the violation, breach, conflict, default, acceleration or failure to give notice would not have a Material Adverse Effect. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Sellers, SBE Holdco, or the Company in connection with the execution and delivery of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, except as related to any applicable filings required by the U.S. Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “*HSR Act*”).

**Section 2.06 Financial Statements.** Complete copies of the Company’s unaudited financial statements consisting of the balance sheet of the Company as at December 31 in each of the years 2019, 2020 and 2021 and the related statements of income and retained earnings, shareholders’ equity and cash flow for the years then ended (the “*Unaudited Financial Statements*”), and unaudited financial statements consisting of the balance sheet of the Company as at March 31, 2022 and the related statements of income and retained earnings, shareholders’ equity and cash flow for the 3-month period then ended (the “*Interim Financial Statements*” and together with the Unaudited Financial Statements, the “*Financial Statements*”) have been delivered to Buyer. The Financial Statements are based on the books and records of the Company, and fairly present in all material respects the financial condition of the Company as of the respective dates they were prepared and the results of the operations of the Company for the periods indicated. The balance sheet of the Company as of December 31, 2021 is referred to herein as the “*Balance Sheet*” and the date thereof as the “*Balance Sheet Date*” and the balance sheet of the Company as of March 31, 2022 is referred to herein as the “*Interim Balance Sheet*” and the date thereof as the “*Interim Balance Sheet Date*”.

**Section 2.07 Undisclosed Liabilities.** The Company has no liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise (“*Liabilities*”), except (a) those which are adequately reflected or reserved against in the Balance Sheet as of the Balance Sheet Date, and (b) those which have been incurred in the ordinary course of business consistent with past practice since the Balance Sheet Date and which are not, individually or in the aggregate, material in amount.

**Section 2.08 Absence of Certain Changes, Events and Conditions.** Prior to the Closing, SBE Holdco shall have conducted no operations and its sole assets shall be (i) prior to the Conversion, the Shares (which will be cancelled pursuant to the Conversion), and (ii) following the Conversion, all of the Units. Since the Balance Sheet Date, and other than in the ordinary course of business consistent with past practice or pursuant to the Reorganization, there has not been, with respect to the Company, any:

- (a) event, occurrence or development that has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;
- (b) amendment of the charter, bylaws or other organizational documents of the Company;
- (c) split, combination or reclassification of any shares of its capital stock;
- (d) issuance, sale or other disposition of any of its capital stock, or grant of any options, warrants or other rights to purchase or obtain (including upon conversion, exchange or exercise) any of its capital stock;
- (e) declaration or payment of any dividends or distributions on or in respect of any of its capital stock or redemption, purchase or acquisition of its capital stock;
- (f) material change in any method of accounting or accounting practice of the Company, except as required by GAAP or as disclosed in the notes to the Financial Statements;
- (g) entry into any Contract that would constitute a Material Contract;
- (h) incurrence, assumption or guarantee of any indebtedness for borrowed money except unsecured current obligations and Liabilities incurred in the ordinary course of business consistent with past practice;
- (i) transfer, assignment, sale or other disposition of any of the assets shown or reflected in the Balance Sheet or cancellation of any debts or entitlements;
- (j) acceleration, termination, material modification to or cancellation of any Material Contract (other than termination for expiration of term in accordance with the terms of such Material Contract);
- (k) any material capital expenditures;

(l) imposition of any Encumbrance (other than Permitted Encumbrances) upon any of the Company properties, capital stock or assets, tangible or intangible;

(m) grant of any bonuses, whether monetary or otherwise, or increase in the compensation of its current employees, officers, directors, independent contractors or consultants, other than as provided for in any written agreements or in the ordinary course of business;

(n) adoption, material modification or termination of any: (i) employment, severance, retention or other agreement with any current or former employee, officer, director, independent contractor or consultant other than offer letters and employment agreements in the ordinary course of business, (ii) Benefit Plan that would materially increase the cost of providing employee benefits to the employees of the Company, or (iii) collective bargaining or other agreement with a Union, in each case whether written or oral;

(o) any loan to (or forgiveness of any loan to), or entry into any other transaction with, any of its shareholders or current or former directors, officers and employees;

(p) acquisition by merger or consolidation with, or by purchase of a substantial portion of the assets or stock of, or by any other manner, any business or any Person or any division thereof; or

(q) any Contract to do any of the foregoing.

### **Section 2.09 Material Contracts.**

(a) Section 2.09(a) of the Disclosure Schedules lists each of the following Contracts of the Company (such Contracts, being "**Material Contracts**"):

(i) each Contract of the Company involving aggregate consideration in excess of \$25,000 and which, in each case, cannot be cancelled by the Company without penalty or without more than 90 days' notice;

(ii) all Contracts that relate to the acquisition or disposition of any business, a material amount of stock or assets of any other Person or any Real Property (whether by merger, sale of stock, sale of assets or otherwise);

(iii) all broker, distributor, dealer, manufacturer's representative, franchise, agency, sales promotion, market research, marketing consulting and advertising Contracts to which the Company is a party;

(iv) all employment agreements and Contracts with independent contractors or consultants (or similar arrangements) to which the Company is a party and which the Company cannot terminate without material penalty or payment or without more than 90 days' notice;

(v) all Contracts providing for the inbound or outbound right or license to use any Company Intellectual Property (excluding licenses for Off-the-Shelf Software and nonexclusive licenses granted in the ordinary course of business);

(vi) except for Contracts relating to trade payables, all Contracts relating to indebtedness for borrowed money (including, without limitation, guarantees) of the Company;

- (vii) all Contracts with any Governmental Authority to which the Company is a party (“**Government Contracts**”);
- (viii) all Contracts that limit or purport to limit the ability of the Company to compete in any line of business or with any Person or in any geographic area or during any period of time;
- (ix) any Contracts to which the Company is a party that provide for any joint venture, partnership or similar arrangement by the Company;
- (x) all Contracts between or among the Company on the one hand and a Seller or any Affiliate of a Seller (other than the Company) on the other hand; and
- (xi) all collective bargaining agreements or Contracts with any Union to which the Company is a party.
- (b) Each Material Contract is valid and binding on the Company in accordance with its terms and is in full force and effect. None of the Company or, to the Knowledge of Sellers, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under) in any material respect, or has provided or received any notice of any intention to terminate, any Material Contract. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. Complete and correct copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been made available to Buyer.

**Section 2.10 Title to Assets; Real Property.**

- (a) The Company has good and valid (and, in the case of owned Real Property, good and marketable fee simple) title to, or a valid leasehold interest in, all Real Property and personal property and other assets reflected in the Unaudited Financial Statements or acquired after the Balance Sheet Date, other than properties and assets sold or otherwise disposed of in the ordinary course of business consistent with past practice since the Balance Sheet Date. All such properties and assets are free and clear of Encumbrances except for the following (collectively referred to as “**Permitted Encumbrances**”):
- (i) liens for Taxes not yet due and payable;
- (ii) mechanics, carriers’, workmen’s, repairmen’s or other like liens arising or incurred in the ordinary course of business consistent with past practice or amounts that are not delinquent and which are not, individually or in the aggregate, material to the business of the Company;
- (iii) easements, rights of way, zoning ordinances and other similar encumbrances affecting Real Property which are not, individually or in the aggregate, material to the business of the Company; or
- (iv) other than with respect to owned Real Property, liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business consistent with past practice which are not, individually or in the aggregate, material to the business of the Company.

(b) Section 2.10(b) of the Disclosure Schedules lists the street address of each parcel of Real Property, and identifies whether such parcel of Real Property is owned or leased by the Company. With respect to owned Real Property, Sellers have delivered or made available to Buyer true, complete and correct copies of the deeds and other instruments (as recorded) by which the Company acquired such Real Property, and copies of all title insurance policies, opinions, abstracts and surveys in the possession of Sellers or the Company and relating to the Real Property. With respect to leased Real Property, Sellers have delivered or made available to Buyer true, complete and correct copies of any leases affecting the Real Property.

(c) The leases delivered to Buyer by Company or Sellers regarding the leased Real Property identified in Section 2.10(b) of the Disclosure Schedules (each a "**Lease**") represents all Real Property leased by Company and contain the entire agreement between the landlord of each of the leased premises and the Company, and there is no other Contract between the landlord and the Company affecting such leased Real Property. With respect to each of the Leases: (i) such Lease is legal, valid, binding, enforceable, and in full force and effect; (ii) neither the Company nor any Sellers nor, to the Knowledge of Sellers, any other party to the Lease, is in default under such Lease, and no event has occurred or circumstance exists which, with or without notice, lapse of time, or both, would constitute a default under such Lease; and (iii) the Company's or Seller's possession and quiet enjoyment of the leased Real Property under such Lease has not been disturbed, and to the Knowledge of Sellers, there are no disputes with respect to such Lease. Neither the Company nor any Sellers has assigned, pledged, mortgaged, hypothecated, or otherwise transferred any Lease or any interest therein nor has the Company or any Seller subleased, licensed, or otherwise granted any Person a right to use or occupy such leased Real Property or any portion thereof. The leased Real Property is in compliance in all material respects with all applicable Laws pertaining thereto and the operations conducted thereat. The Company has not received written notice from any Governmental Authority of any alleged violation or assertion of any violation of any applicable Laws pertaining to the leased Real Property and the operations conducted thereat.

**Section 2.11 Condition and Sufficiency of Assets.** The buildings, plants, structures, fixtures, machinery, equipment, vehicles and other items of tangible personal property of the Company are in good operating condition and repair, and are adequate for the uses to which they are being put, and, to Sellers Knowledge, none of such buildings, plants, structures, fixtures, machinery, equipment, vehicles and other items of tangible personal property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost. The buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property currently owned or leased by the Company, together with all other properties and assets of the Company, are sufficient for the continued conduct of the Company's business after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property and assets necessary to conduct the business of the Company as currently conducted.

**Section 2.12 Intellectual Property; Company IT Systems.**

(a) Section 2.12(a) of the Disclosure Schedules lists all patents, patent applications, trademark registrations and pending applications for registration, copyright registrations and pending applications for registration and internet domain name registrations owned by the Company. Except as set forth in Section 2.12(a) of the Disclosure Schedules, the Company owns or has the right to use all Intellectual Property necessary for the conduct of the Company's business as currently conducted.

(b) To the Knowledge of the Sellers: (i) the conduct of the Company's business as currently conducted does not infringe, misappropriate or otherwise violate the Intellectual Property of any Person; and (ii) no Person is infringing, misappropriating or otherwise violating any Owned Intellectual Property.

(c) All Company IT Systems are in good working condition and are sufficient for the operation of the Company's business as currently conducted. In the past 3 years, there has been no malfunction, failure, continued substandard performance, denial-of-service, or other cyber incident, including any cyberattack, or to the Knowledge of the Seller, other impairment of the Company IT Systems. The Company has taken all commercially reasonable steps to safeguard the confidentiality, availability, security, and integrity of the Company IT Systems, including implementing and maintaining appropriate backup, disaster recovery, and Software and hardware support arrangements.

(d) The Company has materially complied with all applicable Laws and all publicly posted policies, notices, and statements concerning the collection, use, processing, storage, transfer, and security of personal information in the conduct of the Company's business. In the past 3 years, the Company has not (i) experienced any actual, alleged, or suspected data breach or other security incident involving personal information in its possession or control or (ii) received any written notice of any audit, investigation, complaint, or other Action by any Governmental Authority or other Person concerning the Company's collection, use, processing, storage, transfer, or protection of personal information or actual, alleged, or suspected violation of any applicable Law concerning privacy, data security, or data breach notification, and to the Knowledge of Sellers, there are no facts or circumstances that could reasonably be expected to give rise to any such Action.

**Section 2.13 Inventory.** All inventory of the Company, whether or not reflected in the Balance Sheet, consists of a quality and quantity usable and salable in the ordinary course of business consistent with past practice, except for obsolete, damaged, defective or slow-moving items that have been written off or written down to fair market value or for which adequate reserves have been established. All such inventory is owned by the Company free and clear of all Encumbrances, and no inventory is held on a consignment basis. The quantities of each item of inventory (whether raw materials, work-in-process or finished goods) are not excessive, but are reasonable in the present circumstances of the Company.

**Section 2.14 Accounts Receivable.** The accounts receivable reflected on the Interim Balance Sheet and the accounts receivable arising after the date thereof (a) have arisen from bona-fide transactions entered into by the Company involving the sale of goods or the rendering of services in the ordinary course of business consistent with past practice; (b) constitute only valid, undisputed claims of the Company not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the ordinary course of business consistent with past practice; and (c) subject to a reserve for bad debts shown on the Interim Balance Sheet or, with respect to accounts receivable arising after the Interim Balance Sheet Date, on the accounting records of the Company, are collectible in full within 90 days after billing.

**Section 2.15 Customers and Suppliers.**

(a) Section 2.15(a) of the Disclosure Schedules sets forth (i) each customer who has paid aggregate consideration to the Company for goods or services rendered in an amount greater than or equal to \$25,000 for each of the 2 most recent fiscal years (collectively, the "**Material Customers**"); and (ii) the amount of consideration paid by each Material Customer during such periods. The Company has not received any notice, and has no reason to believe, that any of its Material Customers has ceased, or intends to cease after the Closing, to use its goods or services or to otherwise terminate or materially reduce its relationship with the Company.

(b) Section 2.15(b) of the Disclosure Schedules sets forth (i) each supplier to whom the Company has paid consideration for goods or services rendered in an amount greater than or equal to \$10,000 for each of the 2 most recent fiscal years (collectively, the “**Material Suppliers**”); and (ii) the amount of purchases from each Material Supplier during such periods. The Company has not received any notice, and has no reason to believe, that any of its Material Suppliers has ceased, or intends to cease, to supply goods or services to the Company or to otherwise terminate or materially reduce its relationship with the Company.

**Section 2.16 Insurance.** Section 2.16 of the Disclosure Schedules sets forth a true and complete list of all current policies or binders of fire, liability, product liability, umbrella liability, real and personal property, workers’ compensation, vehicular, directors’ and officers’ liability, fiduciary liability and other casualty and property insurance maintained by Sellers or its Affiliates (including the Company) and relating to the assets, business, operations, employees, officers and directors of the Company (collectively, the “**Insurance Policies**”) and true and complete copies of such Insurance Policies have been made available to Buyer. Such Insurance Policies are in full force and effect and shall remain in full force and effect following the consummation of the transactions contemplated by this Agreement. Neither the Sellers nor any of their Affiliates (including the Company) have received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any of such Insurance Policies. All premiums due on such Insurance Policies have either been paid or, if due and payable prior to Closing, will be paid prior to Closing in accordance with the payment terms of each Insurance Policy. The Insurance Policies do not provide for any retrospective premium adjustment or other experience-based liability on the part of the Company. All such Insurance Policies (a) are valid and binding in accordance with their terms; (b) are provided by carriers who are financially solvent; and (c) have not been subject to any lapse in coverage. There are no claims related to the business of the Company pending under any such Insurance Policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights. None of the Sellers nor any of their Affiliates (including the Company) is in default under, or has otherwise failed to comply with, in any material respect, any provision contained in any such Insurance Policy. The Insurance Policies are of the type and in the amounts customarily carried by Persons conducting a business similar to the Company and are sufficient for compliance with all applicable Laws and Contracts to which the Company is a party or by which it is bound.

**Section 2.17 Legal Proceedings; Governmental Orders.**

(a) Except as set forth in Section 2.17(a) of the Disclosure Schedules, there are no Actions pending or, to the Knowledge of Sellers, threatened (a) against or by the Company affecting any of its properties or assets (or by or against Sellers or any Affiliate thereof and relating to the Company); or (b) against or by the Company, Sellers or any Affiliate of Sellers that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. To the Knowledge of Sellers, no event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

(b) There are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting the Company or any of its properties or assets.

**Section 2.18 Compliance with Laws; Permits.**

(a) The Company has at all times since January 1, 2019 complied, and is now complying, in all material respects, with all Laws applicable to it or its business, properties or assets.

(b) All Permits required for the Company to conduct its business have been obtained by it and are valid and in full force and effect, except where the failure to obtain such Permits would not have a Material Adverse Effect. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit issued to the Company, except as would not have a Material Adverse Effect.

## **Section 2.19 Environmental Matters.**

(a) The Company is currently and since January 1, 2019 has been in material compliance with all Environmental Laws, except as would not have a Material Adverse Effect, and the Company has not, and the Sellers have not, received from any Person any: (i) Environmental Notice or Environmental Claim; or (ii) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing material obligations or requirements as of the Closing Date.

(b) The Company holds, has been since January 1, 2019, and is currently in compliance with all Environmental Permits (each of which is disclosed in Section 2.19(b) of the Disclosure Schedules) necessary for the ownership, lease, operation or use of the business or assets of the Company, except where the failure to hold or comply with any such Environmental Permit would not have a Material Adverse Effect.

(c) To the Knowledge of the Sellers, no Real Property currently or formerly owned, operated or leased by the Company is listed on, or has been proposed for listing on, the National Priorities List (or CERCLIS) under CERCLA, or any similar state list.

(d) To the Knowledge of Sellers, there has been no Release of Hazardous Materials in contravention of Environmental Law with respect to the business or assets of the Company or any Real Property currently or formerly owned, operated or leased by the Company, and neither the Company nor Sellers have received an Environmental Notice that any Real Property currently or formerly owned, operated or leased in connection with the business of the Company (including, but not limited to, soils, groundwater, surface water, buildings and other structure located on any such Real Property) has been contaminated with any Hazardous Material, in each case, which would reasonably be expected to result in an Environmental Claim against, or a violation of Environmental Law or term of any Environmental Permit by, Sellers or the Company that would reasonably be expected to result in a material liability to the Company.

(e) Section 2.19(e) of the Disclosure Schedules contains a complete and accurate list of all underground storage tanks and all above-ground storage tanks that require registration with any Governmental Authority that, in each case, are, or to the Knowledge of Sellers have been, owned or operated by the Company at any Real Property.

(f) Sellers have provided or otherwise made available to Buyer any and all material third party environmental reports, site assessments and Environmental Permits since January 1, 2019, and other similar documents with respect to any currently owned, operated or leased Real Property which are in the possession or control of the Sellers or Company.

(g) The representations and warranties contained in this Section 2.19 are the sole and exclusive representations and warranties of the Company in this Agreement relating to environmental, health and safety matters, including Environmental Laws, Hazardous Materials, or Environmental Permits required under Environmental Laws.



(a) Section 2.20(a) of the Disclosure Schedules contains a list of each material benefit, retirement, employment, consulting, compensation, incentive, bonus, stock option, restricted stock, stock appreciation right, phantom equity, change in control, severance, vacation, paid time off, welfare and fringe-benefit agreement, plan, policy and program, in effect and covering one or more Employees, current directors of the Company or the beneficiaries or dependents of any such Persons, and is maintained, sponsored, contributed to, or required to be contributed to by the Company, or under which the Company has any material liability, including a material liability for premiums or benefits (as listed on Section 2.20(a) of the Disclosure Schedules, each, a “**Benefit Plan**”).

(b) Except as set forth in Section 2.20(b) of the Disclosure Schedules, each Benefit Plan and related trust complies in all material respects with all applicable Laws (including ERISA and the Code). Each Benefit Plan that is intended to be qualified under Section 401(a) of the Code (a “**Qualified Benefit Plan**”) has received a favorable determination letter from the Internal Revenue Service, or with respect to a prototype plan, can rely on an opinion letter from the Internal Revenue Service to the prototype plan sponsor, to the effect that such Qualified Benefit Plan is so qualified and that the plan and the trust related thereto are exempt from federal income Taxes under Sections 401(a) and 501(a), respectively, of the Code, and, to the Knowledge of Sellers, nothing has occurred that could reasonably be expected to cause the revocation of such determination letter from the Internal Revenue Service or the unavailability of reliance on such opinion letter from the Internal Revenue Service. Except as would not result in a material liability to Buyer or the Company after the Closing, (i) all benefits, contributions and premiums required by and due under the terms of each Benefit Plan or applicable Law have been timely paid in accordance with the terms of such Benefit Plan and the terms of all applicable Laws and (ii) with respect to any Benefit Plan, to the Knowledge of Sellers, no event has occurred or is reasonably expected to occur that has resulted in or would subject the Company to a Tax under Section 4971 of the Code or the assets of the Company to a lien under Section 430(k) of the Code.

(c) Except as set forth in Section 2.20(c) of the Disclosure Schedules, no Benefit Plan: (i) is subject to the minimum funding standards of Section 302 of ERISA or Section 412 of the Code; or (ii) is a “multi-employer plan” (as defined in Section 3(37) of ERISA). Neither the Sellers, the Company, nor any ERISA Affiliate: (i) have withdrawn from any pension plan under circumstances resulting (or expected to result) in a liability to the Pension Benefit Guaranty Corporation; or (ii) have engaged in any transaction which would give rise to a liability of the Company or Buyer under Section 4069 or Section 4212(c) of ERISA.

(d) Other than as required under Section 4980B of the Code or other applicable Law or provided for as a severance entitlement under any individual employment agreement or Benefit Plan, no Benefit Plan provides benefits or coverage in the nature of health, life or disability insurance following retirement or other termination of employment (other than death benefits when termination occurs upon death).

(e) (i) There is no pending or, to the Knowledge of the Sellers, threatened, action relating to a Benefit Plan; and (ii) no Benefit Plan has within the 3 years prior to the date hereof been the subject of an examination or audit by a Governmental Authority.

(f) The Company does not have any obligation to gross up, indemnify or otherwise reimburse any individual for any excise taxes, interest or penalties incurred pursuant to Section 409A of the Code.

(g) Except as set forth in Section 2.20(g) of the Disclosure Schedules, neither the execution of this Agreement nor any of the transactions contemplated by this Agreement will directly: (i) entitle any current or former director, officer, employee, independent contractor or consultant of the Company to severance pay or any other payment; (ii) accelerate the time of payment, funding or vesting, or increase the amount of compensation (including stock-based compensation) due to any such individual; (iii) limit or restrict the right of the Company to merge, amend, or terminate any Benefit Plan; (iv) increase the amount payable under or result in any other material obligation pursuant to any Benefit Plan; (v) result in “excess parachute payments” within the meaning of Section 280G(b) of the Code; or (vi) require a “gross-up” or other payment to any “disqualified individual” within the meaning of Section 280G(c) of the Code.

**Section 2.21 Employment Matters.**

(a) Section 2.21(a) of the Disclosure Schedules contains a list of all persons who are employees, independent contractors or consultants of the Company as of the date hereof, including any employee who is on a leave of absence of any nature, paid or unpaid, authorized or unauthorized, and sets forth for each such individual the following: (i) name; (ii) title or position (including whether full-time or part-time); (iii) hire or retention date; (iv) current annual base compensation rate or contract fee; (v) and commission, bonus or other incentive-based compensation.

(b) The Company is not, and has never been, a party to, bound by, or negotiating any collective bargaining agreement or other Contract with a union, works council or labor organization (collectively, “*Union*”), and there is not, and has not been for the past 3 years, any Union representing or, to the Company’s Knowledge, purporting to represent any employee of the Company. In the past 3 years, there has not been, nor to the Company’s Knowledge is there any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor disruption or dispute affecting the Company or any of its employees.

**Section 2.22 Taxes.** Except as set forth in Section 2.22 of the Disclosure Schedules:

(a) The Company has filed (taking into account any valid extensions) all Tax Returns required to be filed by the Company. Such Tax Returns are true, complete and correct in all material respects. The Company is not currently the beneficiary of any extension of time within which to file any Tax Return other than extensions of time to file Tax Returns obtained in the ordinary course of business. All Taxes due and owing by the Company have been paid or accrued.

(b) No extensions or waivers of statutes of limitations have been given or requested with respect to any Taxes of the Company.

(c) All deficiencies asserted, or assessments made, against the Company as a result of any examinations by any taxing authority have been fully paid.

(d) The Company is not a party to any Action by any taxing authority. There are no pending or, to the Knowledge of Sellers, threatened, Actions by any taxing authority.

(e) There are no Encumbrances for Taxes (other than for current Taxes not yet due and payable) upon the assets of the Company.

(f) The Company is not a party to, or bound by, any Tax indemnity, Tax sharing or Tax allocation agreement.

(g) The Company has not been a member of an affiliated, combined, consolidated or unitary Tax group for Tax purposes. The Company has no Liability for Taxes of any Person (other than the Company) under Treasury Regulations Section 1.1502-6 (or any corresponding provision of state, local or foreign Law), as transferee or successor, by contract or otherwise.

(h) Each Seller is not a “foreign person” as that term is used in Treasury Regulations Section 1.1445-2. The Company is not, nor has it been, a United States real property holding corporation (as defined in Section 897(c)(2) of the Code) during the applicable period specified in Section 897(c)(1)(a) of the Code.

(i) At Closing, SBE Holdco will not be a “foreign person” as that term is used in Treasury Regulations Section 1.1445-2, or a United States real property holding corporation (as defined in Section 897(c)(2) of the Code) during the applicable period specified in Section 897(c)(1)(a) of the Code

(j) The Company has not been a “distributing corporation” or a “controlled corporation” in connection with a distribution described in Section 355 of the Code.

(k) The Company is not, and has not been, a party to, or a promoter of, a “reportable transaction” within the meaning of Section 6707A(c)(1) of the Code and Treasury Regulations Section 1.6011 4(b).

(l) The Company has been a validly electing S corporation within the meaning of Section 1361 of the Code at all times since its effective date of formation. Other than as contemplated by the Reorganization, neither Seller nor the Company has taken any action that would invalidate the Company’s election to be treated as an S corporation within the meaning of Section 1361 of the Code.

(m) Prior to the Closing, SBE Holdco will have timely made an election to be treated as an S corporation within the meaning of Section 1361 of the Code (and all corresponding provisions of state and local Law, if applicable) effective on, and will be qualified as an S corporation for federal income Tax purposes (and all corresponding provisions of state and local Tax Law, if applicable) since, the date on which it acquires the Shares (which election shall be noted as “protective” in light of Revenue Ruling 2008-18). As of the Closing, no issue shall have been raised by any Governmental Authority with respect to SBE Holdco’s qualification as an S corporation under federal income Tax Law or any corresponding provisions of state and local Tax Law, if applicable.

(n) Prior to the Closing, pursuant to Treasury Regulation Section 1.1361-3, the Company will have taken all steps and made all filings on a timely basis to become a QSub within the meaning of Section 1361(b)(3)(B) of the Code at the time Sellers contribute the Shares to SBE Holdco and will retain such status at all times until the Conversion (after which no election will be made by SBE Holdco to treat the Company as an association taxable as corporation pursuant to Treasury Regulation Section 301.7701-3).

(o) Section 2.22(o) of the Disclosure Schedules sets forth all foreign jurisdictions in which the Company is subject to Tax, is engaged in business or has a permanent establishment. No written claim has been made by any taxing authority in any jurisdiction where the Company does not file Tax Returns that it is, or may be, subject to Tax by that jurisdiction, and, to the Knowledge of Sellers, no such claim has otherwise been made, asserted or threatened by any such taxing authority.

**Section 2.23 Books and Records.** The minute books and stock record books of the Company, all of which have been made available to Buyer, are complete and correct in all material respects and have been maintained in accordance with sound business practices. The minute books of the Company contain accurate and complete records of all meetings, and actions taken by written consent of, the shareholders, members, the board of directors, managers and any committees of the Company, and no meeting, or action taken by written consent, of any such shareholders, members, board of directors, managers or committee has been held for which minutes have not been prepared and are not contained in such minute books. At the Closing, all of those books and records will be in the possession of the Company.

**Section 2.24 Product Liability Claims.** Section 2.24 of the Disclosure Schedules sets forth all pending or, to the Knowledge of Sellers, threatened, Actions relating to any alleged hazard or defect in any product manufactured, distributed or sold by or on behalf of the Company. Section 2.24 of the Disclosure Schedules sets forth any such claim asserted since December 31, 2019 from which the Company or any of its Affiliates has incurred material costs. Other than as set forth on Section 2.24 of the Disclosure Schedules, each product manufactured, distributed, or sold by the Company has been in material conformity with all applicable contractual commitments and the Company has no liability (and, to the Knowledge of the Sellers, there is no basis for any present or future action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand against the Company giving rise to any liability) for indemnification with respect thereto, recall or return thereof or other Losses in connection therewith. Except as set forth on Section 2.24 of the Disclosure Schedules, no product manufactured, distributed or sold by the Company is subject to any indemnification obligation of the Company.

**Section 2.25 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Ancillary Document based upon arrangements made by or on behalf of Sellers or SBE Holdco.

### **ARTICLE III REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Sellers that the statements contained in this ARTICLE III are true and correct as of the date hereof.

**Section 3.01 Organization and Authority of Buyer.** Buyer is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware. Buyer has full corporate power and authority to enter into this Agreement and the Ancillary Documents to which Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and any Ancillary Document to which Buyer is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Sellers) this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms. When each Ancillary Document to which Buyer is or will be a party has been duly executed and delivered by Buyer (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Document will constitute a legal and binding obligation of Buyer enforceable against it in accordance with its terms.

**Section 3.02 No Conflicts; Consents.** The execution, delivery and performance by Buyer of this Agreement and the Ancillary Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of formation, operating agreement or other organizational documents of Buyer; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer; or (c) require the consent, notice or other action by any Person under any Contract to which Buyer is a party, except in the cases of clauses (b) and (c), where the violation, breach, conflict, default, acceleration or failure to give notice would not have a Material Adverse Effect. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby.

**Section 3.03 Investment Purpose.** Buyer is acquiring the Units solely for its own account for investment purposes and not with a view to, or for offer or sale in connection with, any distribution thereof. Buyer acknowledges that the Units are not registered under the Securities Act of 1933, as amended, or any state securities laws, and that the Units may not be transferred or sold except pursuant to the registration provisions of the Securities Act of 1933, as amended or pursuant to an applicable exemption therefrom and subject to state securities laws and regulations, as applicable.

**Section 3.04 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any Ancillary Document based upon arrangements made by or on behalf of Buyer.

**Section 3.05 Legal Proceedings.** There are no Actions pending or, to Buyer's knowledge, threatened against or by Buyer or any Affiliate of Buyer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise or serve as a basis for any such Action.

**Section 3.06 Solvency.**

(a) Immediately after giving effect to the transactions contemplated by this Agreement, Buyer will be solvent and will: (i) be able to pay its debts as they become due; (ii) own property that has a fair saleable value greater than the amounts required to pay its debts (including a reasonable estimate of the amount of all contingent liabilities); and (iii) have adequate capital to carry on its business. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated by this Agreement with the intent to hinder, delay or defraud either present or future creditors of Buyer. In connection with the transactions contemplated hereby, Buyer has not incurred, nor plans to incur, debts beyond its ability to pay as they become absolute and matured.

(b) Buyer has sufficient cash funds or existing credit facilities with availability for the satisfaction of all of its obligations under this Agreement, including the payment of the Purchase Price and the payment of all associated costs and expenses. Buyer acknowledges and agrees that its obligations under this Agreement are not subject to any financing condition.

**ARTICLE IV  
COVENANTS**

**Section 4.01 Conduct of Business Prior to the Closing.** From the date hereof until the Closing, except as otherwise provided in this Agreement or consented to in writing by Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), Sellers and SBE Holdco shall, and shall cause the Company to, conduct the business of the Company in the ordinary course of business, and use commercially reasonable efforts to maintain and preserve intact the current organization, business and franchise of the Company and to preserve the rights, franchises, goodwill and relationships of its employees, customers, lenders, suppliers, regulators and others having business relationships with the Company. Without limiting the foregoing, from the date hereof until the Closing Date, Sellers and SBE Holdco shall cause the Company not to take or permit any action that would cause any of the changes, events or conditions described in Section 2.08 to occur.

**Section 4.02 Access to Information.** From the date hereof until the Closing, Sellers and SBE Holdco shall, and shall cause the Company to, (a) afford Buyer and its Representatives full and free access to and the right to inspect all of the Real Property, properties, assets, premises, books and records, Contracts and other documents and data related to the Company; (b) furnish Buyer and its Representatives with such financial, operating and other data and information related to the Company as Buyer or any of its Representatives may reasonably request; and (c) instruct the Representatives of Sellers, SBE Holdco, and the Company to cooperate with Buyer in its investigation of the Company. Any investigation pursuant to this Section 4.02 shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of Sellers, SBE Holdco, or the Company. No investigation by Buyer or other information received by Buyer shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Sellers or SBE Holdco in this Agreement. Notwithstanding anything to the contrary herein, such access to the Real Properties shall not include the right to conduct any invasive or intrusive investigation, testing or sampling of any environmental media or building materials, including, soil, groundwater, surface water, soil vapor, sediment or air.

**Section 4.03 No Solicitation of Other Bids.**

(a) Sellers shall not, and shall not authorize or permit any of their Affiliates (including SBE Holdco and the Company) or any of their Representatives to, directly or indirectly, (i) encourage, solicit, initiate, facilitate or continue inquiries regarding an Acquisition Proposal; (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Acquisition Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Acquisition Proposal. Sellers shall immediately cease and cause to be terminated, and shall cause their Affiliates (including SBE Holdco and the Company) and all of their Representatives to immediately cease and cause to be terminated, all existing discussions or negotiations with any Persons conducted heretofore with respect to, or that could lead to, an Acquisition Proposal. For purposes hereof, "**Acquisition Proposal**" shall mean any inquiry, proposal or offer from any Person (other than Buyer or any of its Affiliates) concerning (i) a merger, consolidation, liquidation, recapitalization, share exchange or other business combination transaction involving the Company; (ii) the issuance or acquisition of shares of capital stock or other equity securities of the Company; or (iii) the sale, lease, exchange or other disposition of any significant portion of the Company's properties or assets.

(b) In addition to the other obligations under this Section 4.03, Sellers shall promptly (and in any event within 3 Business Days after receipt thereof by Sellers or their Representatives) advise Buyer orally and in writing of any Acquisition Proposal, any request for information with respect to any Acquisition Proposal, or any inquiry with respect to or which could reasonably be expected to result in an Acquisition Proposal, the material terms and conditions of such request, Acquisition Proposal or inquiry, and the identity of the Person making the same.

(c) Sellers agree that the rights and remedies for noncompliance with this Section 4.03 shall include having such provision specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to Buyer and that money damages would not provide an adequate remedy to Buyer.

**Section 4.04 Notice of Certain Events.**

(a) From the date hereof until the Closing, Sellers and SBE Holdco shall promptly notify Buyer in writing of:

(i) any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (B) has resulted in, or could reasonably be expected to result in, any representation or warranty made by Sellers or SBE Holdco hereunder not being true and correct or (C) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in Section 6.02 to be satisfied;

(ii) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(iii) any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; and

(iv) any Actions commenced or, to the Knowledge of Sellers, threatened against, relating to or involving or otherwise affecting Sellers, SBE Holdco, or the Company that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 2.17 or that relates to the consummation of the transactions contemplated by this Agreement.

(b) Buyer's receipt of information pursuant to this Section 4.04 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Sellers or SBE Holdco in this Agreement (including Section 7.02 and Section 8.01(b)) and shall not be deemed to amend or supplement the Disclosure Schedules.

**Section 4.05 Resignations.** Sellers shall deliver to Buyer written resignations, effective as of the Closing Date, of the officers and directors of the Company set forth on Section 4.05 of the Disclosure Schedules.

**Section 4.06 Confidentiality.** From and after the Closing, Sellers shall, and shall cause their Affiliates to, hold, and shall use its reasonable best efforts to cause their respective Representatives to hold, in confidence any and all information, whether written or oral, concerning the Company, except to the extent that Sellers can show that such information (a) is generally available to and known by the public through no fault of Sellers, any of their Affiliates or their respective Representatives; or (b) is lawfully acquired by Sellers, any of their Affiliates or their respective Representatives from and after the Closing from sources which are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation. If Sellers or any of their Affiliates or their respective Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Law, Sellers shall promptly notify Buyer in writing and shall disclose only that portion of such information which Sellers are legally required to be disclosed, *provided that* Sellers shall use reasonable best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information.

**Section 4.07 Non-Competition; Non-Solicitation.** Other than in connection with the employment of any Seller or Affiliate of Sellers following the Closing by OBCI, the Company or any of their respective Affiliates:

(a) For a period of 5 years commencing on the Closing Date (the "**Restricted Period**"), Sellers shall not, and shall not permit any of their Affiliates to, directly or indirectly, (i) engage in or assist others in engaging in the Restricted Business in the Territory; (ii) have an interest in any Person that engages directly or indirectly in the Restricted Business in the Territory in any capacity, including as a partner, shareholder, member, employee, principal, agent, trustee or consultant; or (iii) intentionally interfere in any material respect with the business relationships (whether formed prior to or after the date of this Agreement) between the Company and customers or suppliers of the Company. Notwithstanding the foregoing, Sellers may own, directly or indirectly, solely as an investment, securities of any Person traded on any national securities exchange if Sellers are not a controlling Person of, or a member of a group which controls, such Person and does not, directly or indirectly, own 5% or more of any class of securities of such Person.

(b) During the Restricted Period, Sellers shall not, and shall not permit any of their Affiliates to, directly or indirectly, hire or solicit any employee of the Company or encourage any such employee to leave such employment or hire any such employee who has left such employment, except pursuant to a general solicitation which is not directed specifically to any such employees; provided, that nothing in this Section 4.07(b) shall prevent Sellers or any of their Affiliates from hiring (i) any employee whose employment has been terminated by the Company or Buyer or (ii) after 180 days from the date of termination of employment, any employee whose employment has been terminated by the employee.

(c) During the Restricted Period, Sellers shall not, and shall not permit any of their Affiliates to, directly or indirectly, solicit or entice, or attempt to solicit or entice, any clients or customers of the Company or potential clients or customers of the Company for purposes of diverting their business or services from the Company.

(d) Sellers acknowledge that a breach or threatened breach of this Section 4.07 would give rise to irreparable harm to Buyer, for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by Sellers of any such obligations, Buyer shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

(e) Sellers acknowledge that the restrictions contained in this Section 4.07 are reasonable and necessary to protect the legitimate interests of Buyer and constitute a material inducement to Buyer to enter into this Agreement and consummate the transactions contemplated by this Agreement. In the event that any covenant contained in this Section 4.07 should ever be adjudicated to exceed the time, geographic, product or service, or other limitations permitted by applicable Law in any jurisdiction, then any court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service, or other limitations permitted by applicable Law. The covenants contained in this Section 4.07 and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

#### **Section 4.08 Governmental Approvals and Consents.**

(a) Each party shall cooperate fully with the other party and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals, including but not limited to any applicable filings required by the HSR Act, that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the Ancillary Documents. The parties hereto shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.



(b) Sellers and SBE Holdco shall use reasonable best efforts to give all notices to, and obtain all consents from, all third parties that are described in Section 2.05 of the Disclosure Schedules.

(c) If any consent, approval or authorization necessary to preserve any right or benefit under any Contract to which the Company is a party is not obtained prior to the Closing, Sellers and SBE Holdco shall, subsequent to the Closing, cooperate with Buyer and the Company in attempting to obtain such consent, approval or authorization as promptly thereafter as practicable. If such consent, approval or authorization cannot be obtained, Sellers and SBE Holdco shall use its reasonable best efforts to provide the Company with the rights and benefits of the affected Contract for the term thereof, and, if Sellers and SBE Holdco provide such rights and benefits, the Company shall assume all obligations and burdens thereunder.

#### **Section 4.09 Books and Records.**

(a) In order to facilitate the resolution of any claims made against or incurred by Sellers or SBE Holdco prior to the Closing, or for any other reasonable purpose, for a period of 6 years after the Closing, Buyer shall:

(i) retain the books and records (including personnel files) of the Company relating to periods prior to the Closing in a manner reasonably consistent with the prior practices of the Company; and

(ii) upon reasonable notice, afford the Representatives of Sellers or SBE Holdco reasonable access (including the right to make, at Sellers' or SBE Holdco's, as applicable, expense, photocopies), during normal business hours, to such books and records;

*provided, however*, that any books and records related to Tax matters shall be retained pursuant to the periods set forth in ARTICLE V.

(b) In order to facilitate the resolution of any claims made by or against or incurred by Buyer or the Company after the Closing, or for any other reasonable purpose, for a period of 6 years following the Closing, Sellers and SBE Holdco shall:

(i) retain the books and records (including personnel files) of Sellers and SBE Holdco which relate to the Company and its operations for periods prior to the Closing; and

(ii) upon reasonable notice, afford the Representatives of Buyer or the Company reasonable access (including the right to make, at Buyer's expense, photocopies), during normal business hours, to such books and records;

*provided, however*, that any books and records related to Tax matters shall be retained pursuant to the periods set forth in ARTICLE V.

(c) None of Buyer nor Sellers nor SBE Holdco shall be obligated to provide the other party with access to any books or records (including personnel files) pursuant to this Section 4.09 where such access would violate any Law.

**Section 4.10 Closing Conditions.** From the date hereof until the Closing, each party hereto shall, and Sellers and SBE Holdco shall cause the Company to, use reasonable best efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in ARTICLE VI hereof.

**Section 4.11 Public Announcements.** Unless otherwise required by applicable Law or stock exchange requirements (based upon the reasonable advice of counsel), no party to this Agreement shall make any public announcements in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of the other party (which consent shall not be unreasonably withheld, conditioned or delayed), and the parties shall cooperate as to the timing and contents of any such announcement.

**Section 4.12 Further Assurances; Release.** Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement. As of the Closing, each of the Sellers and SBE Holdco each hereby irrevocably waives and releases the Company, Buyer, and their respective present and former Representatives, from any and all actions, claims, causes of action or liabilities, in law or equity, known or unknown, and whether or not heretofore asserted, which such Seller or SBE Holdco ever had, now has or hereafter can, shall or may have against any of the foregoing for, upon or by reason of any matter, cause or thing whatsoever since the formation of the Company to the Closing.

## ARTICLE V TAX MATTERS

**Section 5.01 Intended Tax Treatment.** The parties hereto acknowledge and agree as to their intent for Tax Purposes (i) that the treatment of the Reorganization be as set forth in the recitals, and (ii) that the purchase and sale of the Units in exchange for the Purchase Price be treated as a taxable purchase by Buyer and taxable sale by SBE Holdco of an undivided interest in the assets of the Company (collectively, the “*Intended Tax Treatment*”). No party hereto shall take or permit others to take on its behalf any position, whether in connection with a Tax audit, a Tax Return, or otherwise, that is inconsistent with the Intended Tax Treatment unless required to do so pursuant to a final determination within the meaning of Section 1313(a) of the Code or other applicable Law.

**Section 5.02 Purchase Price Allocation.** The Purchase Price (including any assumed liabilities and other items treated as taxable consideration for Tax Purposes) (the “*Allocable Consideration*”), shall be allocated among the assets of the Company for Tax Purposes in accordance with the methodology set forth in Exhibit B (the “*Allocation Schedule Methodology*”), which is consistent with the principles of Section 1060 of the Code and the Treasury Regulations promulgated thereunder. Within ninety (90) days following the determination of the Post-Closing Adjustment, Buyer shall deliver to Sellers a draft allocation schedule of the Allocable Consideration among the assets of the Company (the “*Allocation Schedule*”), which shall be prepared in accordance with the Allocation Schedule Methodology. Within thirty (30) days after the receipt of such draft Allocation Schedule, Sellers will propose to Buyer in writing any objections or proposed changes to such draft Allocation Schedule. In the event of objections or proposed changes, Sellers and Buyer shall attempt in good faith to resolve any differences between them with respect to the Allocation Schedule within ten (10) days after Buyer’s receipt of a timely written notice of objection or proposed changes from Sellers. If Sellers and Buyer fail to reach an agreement despite their good faith efforts within such time period, then those matters and amounts remaining in dispute shall be referred to the Independent Accountant for resolution in a manner consistent with the Allocation Schedule Methodology, with costs to be shared by each party in the percentage inversely proportionate to the percentage of the total amount submitted for dispute resolution that is resolved in such party’s favor. The parties agree to file all federal, state, and local Tax Returns in accordance with the Allocation Schedule (as finally determined in accordance with this Section 5.02). No party shall take or permit others to take on its behalf any position, whether in connection with a Tax audit, a Tax Return, or otherwise, that is inconsistent with the Allocation Schedule (as finally determined) unless required to do so pursuant to a final determination within the meaning of Section 1313(a) of the Code or other applicable Law.

### **Section 5.03 Tax Covenants.**

(a) Without the prior written consent of Buyer (which consent shall not be unreasonably withheld or delayed), Sellers, SBE Holdco and their respective Affiliates and Representatives (and, prior to the Closing, Sellers, SBE Holdco, the Company, and their respective Affiliates and Representatives) shall not, to the extent it may affect, or relate to, the Company, make, change or rescind any Tax election, amend any Tax Return or take any position on any Tax Return that would have the effect of materially increasing the Tax liability or reducing any Tax asset of Buyer or the Company in respect of any Post-Closing Tax Period.

(b) All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the Ancillary Documents (including any real property transfer Tax and any other similar Tax) shall be borne and paid by SBE Holdco when due. SBE Holdco shall, at its own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and Buyer shall cooperate with respect thereto as necessary).

### **Section 5.04 Tax Returns.**

(a) Sellers, at Sellers' expense, shall prepare or cause to be prepared and timely file or cause to be timely filed all Income Tax Returns required to be filed by the Company and SBE Holdco for all Pre-Closing Tax Periods regardless of when they are to be filed. Such Tax Returns shall be prepared in a manner consistent with the past practices of the Company except as required by applicable Law and in a manner consistent with Sections 5.01 and 5.02 as well as the allocation of all Transaction Expenses to the Pre-Closing Tax Period. Sellers shall deliver or cause to be delivered a copy of each such Income Tax Return to Buyer at least thirty (30) days prior to the date on which such Income Tax Return is required to be filed (taking into consideration applicable extensions) for Buyer's review and comment. Buyer shall review such Income Tax Returns within fifteen (15) days after the delivery of such Income Tax Returns. In connection with Buyer's review, Sellers shall provide or cause to be provided promptly to Buyer information reasonably requested by Buyer or its Affiliates. If Buyer does not submit comments within such review period, Buyer will be deemed to have accepted such Income Tax Returns as prepared by Sellers. If Buyer submits comments to Sellers within such review period, Buyer and Seller shall negotiate in good faith to resolve any such items disputed in such comments. If Buyer and Seller are unable to resolve any such dispute within ten (10) days after Buyer provides its comments, the parties shall resolve the dispute in accordance with Section 5.04(c) (as well as Sections 5.01 and 5.02 and the allocation of all Transaction Expenses to the Pre-Closing Tax Period).

(b) The Buyer, at the Sellers' expense, shall prepare or cause to be prepared and timely file or cause to be timely filed (i) all Non-Income Tax Returns required to be filed after the Closing Date for the Company for all Pre-Closing Tax Periods and (ii) any and all Tax Returns required to be filed for the Company for a Straddle Period. Buyer shall deliver a copy of such Tax Returns to the Sellers at least thirty (30) days prior to the date on which such Tax Return is required to be filed (taking into consideration applicable extensions) for the Sellers' review and comment; provided, however, if such thirty (30) day period is not practical for such Non-Income Tax Return, the Buyer shall provide a copy of such Tax Return to the Sellers as soon as commercially reasonable. Sellers shall review such Tax Returns within fifteen (15) days after the delivery of such Tax Returns. In connection with Sellers' review, Buyer shall provide or cause to be provided promptly to Sellers information reasonably requested by Sellers. If Sellers do not submit comments within such review period, Sellers will be deemed to have accepted such Tax Returns as prepared by Buyer. If Sellers submit comments to Buyer within such review period, Buyer and Sellers shall negotiate in good faith to resolve any such items disputed in such comments. If Buyer and Sellers are unable to resolve any such dispute within ten (10) days after Seller provides its comments, the parties shall resolve the dispute in accordance with Section 5.04(c). Seller shall bear and pay (i) the amount of Taxes due and owing on the Tax Returns for a Pre-Closing Tax Period of the Company and (ii) the amount of Taxes attributable to any Pre-Closing Straddle Period determined in accordance with Section 5.06, due and owing on the Tax Returns for a Straddle Period of the Company.

(c) In the event that Buyer and Sellers are unable to agree on any timely-raised issue raised by the other party pursuant to Section 5.04(a) or Section 5.04(b), Buyer and Sellers shall engage the Independent Accountant to resolve the matter, and the Independent Accountant's determination shall be final and binding on the parties. The Independent Accountant shall resolve the dispute within twenty (20) days after the item has been referred to it. Notwithstanding anything to the contrary in this Section 5.04(c), the party responsible pursuant to Section 5.04(a) or Section 5.04(b) for preparing the disputed Tax Return shall be entitled to file on behalf of the Company, or cause to be filed, the applicable Tax Return without having incorporated the disagreed-upon changes to avoid a late filing of such Tax Return. If the Independent Accountant's resolution of the dispute necessitates that a Tax Return filed in accordance with the previous sentence be amended, then the party responsible pursuant to Section 5.04(a) or Section 5.04(b) for preparing the disputed Tax Return shall cause an amended Tax Return to be filed that reflects such resolution. The fees and expenses of the Independent Accountant shall be borne by each party in the percentage inversely proportionate to the percentage of the total amount submitted for dispute resolution that is resolved in such party's favor.

**Section 5.05 Termination of Existing Tax Sharing Agreements.** Any and all existing Tax sharing agreements (whether written or not) binding upon the Company shall be terminated as of the Closing Date. After such date none of the Company, Sellers nor any of Sellers' Affiliates and their respective Representatives shall have any further rights or liabilities thereunder.

**Section 5.06 Straddle Period.** In the case of Taxes that are payable with respect to a taxable period that begins before and ends after the Closing Date (each such period, a "*Straddle Period*"), the portion of any such Taxes that are treated as Pre-Closing Taxes for purposes of this Agreement shall be:

(a) in the case of Taxes (i) based upon, or related to, income, receipts, profits, wages, capital or net worth, (ii) imposed in connection with the sale, transfer or assignment of property, or (iii) required to be withheld, deemed equal to the amount which would be payable if the taxable year ended with the Closing Date; and

(b) in the case of other Taxes, deemed to be the amount of such Taxes for the entire Straddle Period multiplied by a fraction the numerator of which is the number of days in the portion of the Straddle Period ending on the Closing Date and the denominator of which is the number of days in the entire Straddle Period

**Section 5.07 Additional Restrictions for Income Tax Matters.**

(a) With respect to all Income Taxes related to the Pre-Closing Tax Period, Buyer shall not, without prior written consent of the Sellers (which consent shall not be unreasonably withheld, conditioned or delayed) or as required by applicable Law, except as contemplated by this Section 5.07 (i) re-file or amend, or permit the Company to re-file or amend, any Income Tax Return of the Company filed by the Company prior to Closing, (ii) enter or permit the Company to enter into discussions regarding any voluntary disclosure, (iii) extend or waive, or cause to be extended or waived, or permit the Company to extend or waive, any statute of limitations or other period for the assessment of any Income Tax or deficiency, or (iv) make (or cause to be made), or permit the Company to make, any Tax election affecting Income Taxes related to the Pre-Closing Tax Period.

(b) If a claim shall be made by any Governmental Entity, which, if successful, could increase the Income Taxes of the Sellers or otherwise is with respect to any Income Taxes related to the Pre-Closing Tax Period, then Buyer shall give written notice to the Sellers in writing of such claim (a “**Tax Claim**”). Sellers shall, solely at Sellers’ cost and expense, control all proceedings in connection with such Tax Claim (including selection of counsel); provided, however, that the Buyer also may jointly participate in such Tax Claim at the expense of the Buyer, and Sellers shall reasonably cooperate with Buyer as to the joint management of the Tax Claim. Notwithstanding the foregoing, neither Sellers nor any of their respective Affiliates or Representatives shall settle any such Tax Claim without the prior written consent of the Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

**Section 5.08 Cooperation and Exchange of Information.** Sellers, SBE Holdco, and Buyer shall provide each other with such cooperation and information as either of them reasonably may request of the other in filing any Tax Return pursuant to this ARTICLE V or in connection with any audit or other proceeding in respect of Taxes of the Company. Such cooperation and information shall include providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings or other determinations by tax authorities. Sellers, SBE Holdco, and Buyer shall retain all Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Company for any taxable period beginning before the Closing Date until the expiration of the statute of limitations of the taxable periods to which such Tax Returns and other documents relate, without regard to extensions except to the extent notified by the other party in writing of such extensions for the respective Tax periods. Prior to transferring, destroying or discarding any Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Company for any taxable period beginning before the Closing Date, Sellers, SBE Holdco, or Buyer (as the case may be) shall provide the other party with reasonable written notice and offer the other party the opportunity to take custody of such materials.

## ARTICLE VI CONDITIONS TO CLOSING

**Section 6.01 Conditions to Obligations of All Parties.** The obligations of each party to consummate the transactions contemplated by this Agreement shall be conditioned on the fact that, at or prior to the Closing, no Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

**Section 6.02 Conditions to Obligations of Buyer.** The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer’s waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of Sellers and SBE Holdco contained in Section 2.01, Section 2.02, Section 2.03, Section 2.06 and Section 2.25 (collectively, the “***Seller Fundamental Representations***”), the representations and warranties of Sellers and SBE Holdco contained in this Agreement, the Ancillary Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The Seller Fundamental Representations shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

- (b) The Company, SBE Holdco, and Sellers will have performed, in all material respects, all of the covenants and agreements under this Agreement that are required to be performed by them at or prior to the Closing for completion of the Reorganization.
- (c) Sellers and SBE Holdco shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the Ancillary Documents to be performed or complied with by it prior to or on the Closing Date; provided, that, with respect to agreements, covenants and conditions that are qualified by materiality, Sellers and SBE Holdco shall have performed such agreements, covenants and conditions, as so qualified, in all respects.
- (d) No Action shall have been commenced against Buyer, Sellers, SBE Holdco, or the Company, which would prevent the Closing. No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any transaction contemplated hereby.
- (e) All approvals, consents and waivers that are listed on Section 2.05 of the Disclosure Schedules shall have been received, and executed counterparts thereof shall have been delivered to Buyer at or prior to the Closing.
- (f) From the date of this Agreement, there shall not have occurred any Material Adverse Effect, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect.
- (g) The Ancillary Documents shall have been executed and delivered by the parties thereto and true and complete copies thereof shall have been delivered to Buyer.
- (h) Buyer shall have received resignations of the directors and officers of the Company pursuant to Section 4.05.
- (i) Sellers shall have delivered to Buyer the Estimated Closing Statement contemplated in Section 1.04(a)(i).
- (j) Sellers shall have delivered to Buyer a good standing certificate (or its equivalent) for the Company from the secretary of state or similar Governmental Authority of the jurisdiction under the Laws in which the Company is organized.
- (k) Sellers and SBE Holdco shall each have delivered to Buyer a certificate pursuant to Treasury Regulations Section 1.1445-2(b) that each Seller and SBE Holdco is not a foreign person within the meaning of Section 1445 of the Code.
- (l) SBE Holdco will have delivered to Buyer a duly executed assignment of the Units in a form reasonably acceptable to Buyer.

(m) Buyer shall have received a certificate, dated the Closing Date and signed by each of the Sellers and SBE Holdco, that each of the conditions set forth in Section 6.02(a) – (c) and Section 6.02(f) have been satisfied, to which are attached copies of (i) the resolutions of the board of directors of SBE Holdco and Sellers, as the sole shareholders of SBE Holdco, authorizing the sale by SBE Holdco of the Units, (ii) the resolutions of the sole member and the manager(s) of the Company approving this Agreement and the transactions contemplated herein, (iii) the organizational documents of each of the Company and SBE Holdco, (iv) certificates of good standing issued by the Secretary of State of the State of Florida as of a recent date for each of the Company and SBE Holdco, and (v) all of the documents comprising the Reorganization (the “**Reorganization Documents**”), including a certificate of the Conversion issued by the Secretary of State of the State of Florida and the cancelled stock certificates in the names of Sellers, evidencing their prior ownership of the Shares, as applicable, in each case certified as accurate and complete as of the Closing Date.

(n) The Public Merger shall either (i) have closed, or (ii) had all conditions to the closing thereof satisfied or waived by the parties thereto.

(o) Sellers and SBE Holdco shall have delivered to Buyer customary and executed payoff letters, Encumbrance releases, and other instruments of discharge or termination, in form and substance satisfactory to Buyer, so as to allow, as of the Closing, for the payoff, release, discharge, or termination, as applicable, of all of the Closing Indebtedness.

(p) Sellers and SBE Holdco shall have delivered to Buyer such other documents or instruments as Buyer reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

(q) The applicable HSR Act waiting period shall have expired or been terminated.

**Section 6.03 Conditions to Obligations of Sellers.** The obligations of Sellers to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Sellers’ waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of Buyer contained in Section 3.01 and Section 3.04 (the “**Buyer Fundamental Representations**,” and collectively with the Seller Fundamental Representations, the “**Fundamental Representations**”), the representations and warranties of Buyer contained in this Agreement, Ancillary Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The Buyer Fundamental Representations shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date.

(b) Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the Ancillary Documents to be performed or complied with by it prior to or on the Closing Date; provided, that, with respect to agreements, covenants and conditions that are qualified by materiality, Buyer shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any material transaction contemplated hereby.

(d) The Ancillary Documents shall have been executed and delivered by the parties thereto and true and complete copies thereof shall have been delivered to Sellers.

(e) Sellers shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer, that each of the conditions set forth in Section 6.03(a) and Section 6.03(b) have been satisfied.

(f) Buyer shall have delivered to Sellers such other documents or instruments as Sellers reasonably request and are reasonably necessary to consummate the transactions contemplated by this Agreement.

## ARTICLE VII INDEMNIFICATION

**Section 7.01 Survival.** Except in the case of fraud or willful misconduct, and subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein, and Sellers' obligation to indemnify Buyer with respect thereto, shall survive the Closing and shall remain in full force and effect until the date that is 12 months from the Closing Date; *provided*, that the Fundamental Representations shall survive until the date that is 5 years from the Closing Date; and (b) Section 2.22 (the "*Tax Representations*") shall survive for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof) plus 60 days. All covenants and agreements of the parties contained herein (other than any covenants or agreements contained in ARTICLE V which are subject to ARTICLE V) shall survive the Closing until the first to occur of (i) the date that is 7 years from the Closing Date, (ii) the period explicitly specified therein or (iii) the full performance thereof. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

**Section 7.02 Indemnification by Sellers.** Subject to the other terms and conditions of this ARTICLE VII, Sellers shall, jointly and severally, indemnify and defend each of Buyer and its Affiliates (including the Company) (collectively, the "*Buyer Indemnitees*") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Sellers or SBE Holdco contained in this Agreement or in any certificate or instrument delivered by or on behalf of Sellers or SBE Holdco pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);



(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Sellers or SBE Holdco pursuant to this Agreement;

(c) without duplication of amounts deducted from the Purchase Price in the determination of the Closing Date Payment pursuant to Section 1.04(a)(i) or taken into account in the Post-Closing Adjustment, any Pre-Closing Taxes; or

(d) any Transaction Expenses or Indebtedness of the Company or Sellers or SBE Holdco outstanding as of the Closing to the extent not deducted from the Purchase Price in the determination of the Closing Date Payment pursuant to Section 1.04(a)(i) or taken into account in the Post-Closing Adjustment.

**Section 7.03 Indemnification by Buyer.** Subject to the other terms and conditions of this ARTICLE VII, Buyer shall indemnify and defend Sellers and their Affiliates (collectively, the “*Seller Indemnitees*”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Seller Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement or in any certificate or instrument delivered by or on behalf of Buyer pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement; or

(c) Post-Closing Taxes.

**Section 7.04 Certain Limitations.** The indemnification provided for in Section 7.02 and Section 7.03 shall be subject to the following limitations:

(a) Subject to Section 7.04(c) and Section 7.04(d), (i) Sellers shall not be liable to the Buyer Indemnitees for indemnification under Section 7.02(a) until the aggregate amount of all Losses in respect of indemnification under Section 7.02(a) exceeds \$50,000 (the “*Basket*”), in which event Sellers shall be required to pay or be liable for all such Losses in excess of the Basket; and (ii) the aggregate amount of all Losses for which Sellers shall be liable pursuant to Section 7.02(a) shall not exceed the Indemnification Escrow Amount (the “*Non-Fundamental Cap*”).

(b) Subject to Section 7.04(c), (i) Buyer shall not be liable to the Seller Indemnitees for indemnification under Section 7.03(a) until the aggregate amount of all Losses in respect of indemnification under Section 7.03(a) exceeds the Basket, in which event Buyer shall be required to pay or be liable for all such Losses in excess of the Basket; and (ii) the aggregate amount of all Losses for which Buyer shall be liable pursuant to Section 7.03(a) shall not exceed the Non-Fundamental Cap.

(c) Notwithstanding the foregoing, the limitations set forth in Section 7.04(a) and Section 7.04(b) shall not apply to Losses based upon, arising out of, with respect to or by reason of (i) fraud or willful misconduct; (ii) any inaccuracy in or breach of the Tax Representations or the Fundamental Representations; (iii) Section 7.02(b)-(d); and (iv) Section 7.03(b)-(c).

(d) Notwithstanding the foregoing, (i) the aggregate amount of all Losses based upon, arising out of, with respect to or by reason of any inaccuracy in or breach of the Tax Representations for which Sellers shall be liable pursuant to Section 7.02(a) shall not exceed \$3,500,000 (the “*Tax Cap*”); and (ii) the aggregate amount of all Losses based upon, arising out of, with respect to or by reason of (A) any inaccuracy in or breach of the Seller Fundamental Representations for which Sellers shall be liable pursuant to Section 7.02(a) or (B) Section 7.02(b)-(d) shall not exceed the Purchase Price (the “*Fundamental Cap*,” and together with the Non-Fundamental Cap and the Tax Cap, the “*Cap*”).

(e) For purposes of this ARTICLE VII, any inaccuracy in or breach of any representation or warranty shall be determined without regard to any materiality, Material Adverse Effect or other similar qualification contained in or otherwise applicable to such representation or warranty.

**Section 7.05 Indemnification Procedures.** The party making a claim under this ARTICLE VII is referred to as the “*Indemnified Party*”, and the party against whom such claims are asserted under this ARTICLE VII is referred to as the “*Indemnifying Party*”.

(a) Third-Party Claims. If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a “*Third-Party Claim*”) against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than 30 calendar days after receipt of such notice of such Third-Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third-Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third-Party Claim at the Indemnifying Party’s expense and by the Indemnifying Party’s own counsel, and the Indemnified Party shall cooperate in good faith in such defense; *provided, that* if the Indemnifying Party is Seller, such Indemnifying Party shall not have the right to defend or direct the defense of any such Third-Party Claim that (x) is asserted directly by or on behalf of a Person that is a supplier or customer of the Company, or (y) seeks an injunction or other equitable relief against the Indemnified Party. In the event that the Indemnifying Party assumes the defense of any Third-Party Claim, subject to Section 7.05(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third-Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third-Party Claim with counsel selected by it subject to the Indemnifying Party’s right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party, *provided, that* if in the reasonable opinion of counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (B) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required. If the Indemnifying Party elects not to compromise or defend such Third-Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third-Party Claim, the Indemnified Party may, subject to Section 7.05(b), pay, compromise, defend such Third-Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third-Party Claim. Sellers and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third-Party Claim, including making available (subject to the provisions of Section 4.06) records relating to such Third-Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third-Party Claim.

(b) **Settlement of Third-Party Claims.** Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third-Party Claim without the prior written consent of the Indemnified Party, except as provided in this Section 7.05(b). If a firm offer is made to settle a Third-Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third-Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within 10 days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third-Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third-Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third-Party Claim, the Indemnifying Party may settle the Third-Party Claim upon the terms set forth in such firm offer to settle such Third-Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 7.05(a), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld, conditioned or delayed).

(c) **Direct Claims.** Any Action by an Indemnified Party on account of a Loss which does not result from a Third-Party Claim (a “**Direct Claim**”) shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than 30 days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have 30 days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party’s investigation by giving such information and assistance (including access to the Company’s premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such 30-day period, the Indemnifying Party shall be deemed to have accepted such claim, at which point the Indemnified Party shall be entitled to such remedies as may be available to it on the terms and subject to the provisions of this Agreement.

#### **Section 7.06      Payments; Indemnification Escrow Fund.**

(a) Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this ARTICLE VII, the Indemnifying Party shall satisfy its obligations within 10 Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds.

(b) Any Losses payable to a Buyer Indemnitee pursuant to this ARTICLE VII shall be satisfied: (i) first, against the Basket, if applicable, then (ii) second, from the Indemnification Escrow Fund, subject to the applicable Cap (if any); then (ii) third, to the extent the amount of Losses exceeds the amounts available to the Buyer Indemnitee in the Indemnification Escrow Fund, from Sellers, subject to the applicable Cap (if any).

## **Section 7.07 Tax Treatment of Indemnification Payments; Insurance Proceeds.**

(a) All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

(b) All indemnification payments made under this Agreement shall be limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds and any indemnity, contribution or other similar payment received or reasonably expected to be received by the Indemnified Party in respect of any such claim.

**Section 7.08 Duty to Mitigate.** Each Indemnified Party shall take, and cause its Affiliates to take, all reasonable steps to mitigate any Loss upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto, including incurring costs only to the minimum extent necessary to remedy the breach that gives rise to such Loss.

**Section 7.09 Exclusive Remedies.** Subject to Section 1.04(b), Section 4.07 and Section 9.11, the parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud or willful misconduct on the part of a party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this ARTICLE VII. In furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in ARTICLE V and this ARTICLE VII. Nothing in this Section 7.09 shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any party's fraudulent or intentional misconduct.

## **Section 7.10 Tax Indemnification.**

(a) Notwithstanding any other indemnification provision(s) in this Agreement, the Sellers agree, jointly and severally, to indemnify and defend each of the Buyer Indemnitees (including, without limitation, Ocean Bio-Chem, LLC, as a successor by conversion to OBCI, and its subsidiaries) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees based upon, arising out of, with respect to or by reason of, any state income Taxes of or imposed on Ocean Bio-Chem, LLC, as a successor by conversion to OBCI, or any of its subsidiaries, with respect to any Pre-Closing Tax Period, in any jurisdiction by any Governmental Authority as a result of failure by OBCI or any of its subsidiaries to: (i) file a state Income Tax return in any such jurisdiction, or (ii) properly report, apportion or allocate income to any such jurisdiction (each a "**State Income Tax Claim**").

(b) If any Buyer Indemnitee receives notice of the assertion or commencement of any State Income Tax Claim, the Buyer Indemnitee shall give the Sellers reasonably prompt written notice thereof, but in any event not later than 30 calendar days after receipt of such notice of such State Income Tax Claim. The failure to give such prompt written notice shall not, however, relieve the Sellers of their indemnification obligations, except and only to the extent that the Sellers forfeit rights or defenses by reason of such failure. Such notice by the Buyer Indemnitee shall describe the State Income Tax Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Buyer Indemnitee. The Sellers shall not have the right to participate in or to assume the defense of any State Income Tax Claim. Sellers and the Buyer Indemnitee shall cooperate with each other in all reasonable respects in connection with the defense of any State Income Tax Claim, including making available (subject to the provisions of Section 4.06) records relating to such State Income Tax Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such State Income Tax Claim.

(c) The Buyer Indemnitee shall have the authority to enter into a settlement of any State Income Tax Claim without the prior written consent of the Sellers.

(d) Once a Loss related to a State Income Tax Claim is agreed to by the Sellers, settled by the Buyer Indemnitee(s) pursuant to Section 7.10(c), or finally adjudicated to be payable pursuant to this Section 7.10, the Sellers shall satisfy their obligations within 10 Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds. Any Losses payable to a Buyer Indemnitee pursuant to this Section 7.10 shall be satisfied solely from the Tax Indemnification Escrow Fund. The aggregate amount of all Losses for which Sellers shall be liable pursuant to this Section 7.10 shall not exceed the Tax Indemnification Escrow Amount. Sellers' obligations under this Section 7.10 shall survive Closing for a period of twenty-four (24) months (the "**State Income Tax Indemnification Period**"); provided that any such State Income Tax Claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the Buyer Indemnitee(s) to the Sellers prior to the expiration date of the State Income Tax Indemnification Period shall not thereafter be barred by the expiration of the State Income Tax Indemnification Period and such State Income Tax Claims shall survive until finally resolved. Upon the expiration of the State Income Tax Indemnification Period, any remaining Tax Indemnification Escrow Amount, if any, shall be released to Sellers.

(e) For the avoidance of doubt, the provisions of Sections 7.01-7.09 shall not apply to any State Income Tax Claim.

## **ARTICLE VIII TERMINATION**

**Section 8.01 Termination.** This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of Sellers and Buyer;

(b) by Buyer by written notice to Sellers if:

(i) Buyer is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Sellers pursuant to this Agreement that would give rise to the failure of any of the conditions specified in ARTICLE VI and such breach, inaccuracy or failure has not been cured by Sellers within 10 days of Sellers' receipt of written notice of such breach from Buyer; or

(ii) any of the conditions set forth in Section 6.01 or Section 6.02 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by September 30, 2022, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

(c) by Sellers by written notice to Buyer if:

(i) Sellers are not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in ARTICLE VI and such breach, inaccuracy or failure has not been cured by Buyer within 10 days of Buyer's receipt of written notice of such breach from Sellers; or

(ii) any of the conditions set forth in Section 6.01 or Section 6.03 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by September 30, 2022, unless such failure shall be due to the failure of Sellers to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or

(d) by Buyer or Sellers in the event that (i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited, or (ii) any Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement.

**Section 8.02 Effect of Termination.** In the event of the termination of this Agreement in accordance with this Article, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except:

(a) as set forth in this ARTICLE VIII and Section 4.06 and ARTICLE IX hereof; and

(b) that nothing herein shall relieve any party hereto from liability for any willful breach of any provision hereof.

## ARTICLE IX MISCELLANEOUS

**Section 9.01 Expenses.** Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred.

**Section 9.02 Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 9.02):

If to Buyer, to:

One Water Assets & Operations, LLC  
Lanier Islands Parkway  
Buford, Georgia 30518  
Attention: Jack Ezzell  
Jeff Huntley  
Email:

with a copy (which shall not constitute notice) to:

Butler Snow LLP  
1020 Highland Colony Parkway  
Suite 1400  
Ridgeland, Mississippi 39158-6010  
Attention: Robert B. Harwell; Jim Lawless  
Email: bo.harwell@butlersnow.com  
jim.lawless@butlersnow.com

If to the Sellers or SBE Holdco,  
to:

Peter G. Dornau

Email:

with a copy (which shall not  
constitute notice) to:

Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, Pennsylvania 19103-2921  
Attention: Justin W. Chairman  
Email: justin.chairman@morganlewis.com

**Section 9.03 Interpretation.** For purposes of this Agreement, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole; and (c) the term “made available” means made available in the Data Room and accessible by Buyer and its Representatives at least 2 Business Days prior to the date hereof. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

**Section 9.04 Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

**Section 9.05 Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Except as provided in Section 4.07(e), upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**Section 9.06**      **Entire Agreement.** This Agreement and the Ancillary Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the Ancillary Documents, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

**Section 9.07**      **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed; *provided, however*, that prior to the Closing Date, Buyer may, without the prior written consent of Seller, assign all or any portion of its rights under this Agreement to (a) one or more of its direct or indirect wholly-owned subsidiaries; and (ii) any Person (including Buyer's lender(s)) as collateral security. No assignment shall relieve the assigning party of any of its obligations hereunder.

**Section 9.08**      **No Third-Party Beneficiaries.** Except as provided in ARTICLE VII or as contemplated by Section 9.07, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 9.09**      **Amendment and Modification; Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**Section 9.10**      **Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.**

(a)      This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction).

(b)      ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE ANCILLARY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF DELAWARE IN EACH CASE LOCATED IN THE CITY OF WILMINGTON AND COUNTY OF NEW CASTLE, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.



(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE ANCILLARY DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE ANCILLARY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.10(c).

**Section 9.11 Specific Performance.** The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

**Section 9.12 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**BUYER:**

**ONE WATER ASSETS & OPERATIONS,LLC,**  
a Delaware limited liability company

By: /s/ Jack Ezzell

Name: Jack Ezzell

Title: Chief Financial Officer

**SELLERS:**

/s/ Peter G Dornau

Peter G. Dornau

/s/ Maureen Dornau

Maureen Dornau

[Signature Page to Stock Purchase Agreement (Project Ocean)]

## Exhibit A

### Defined Terms

“**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Ancillary Documents**” means the Escrow Agreement, Estimated Closing Statement, Closing Statement, and any other agreements, documents, or instruments to be delivered in connection with this Agreement.

“**Business Day**” means any day except Saturday, Sunday or any other day on which commercial banks located in Atlanta, Georgia are authorized or required by Law to be closed for business.

“**CERCLA**” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.

“**Closing Working Capital**” means: (a) the Current Assets of the Company, less (b) the Current Liabilities of the Company, determined as of the open of business on the Closing Date.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Company Intellectual Property**” means, collectively, all Owned Intellectual Property and Licensed Intellectual Property.

“**Company IT Systems**” means all software, computer hardware, servers, networks, platforms, peripherals, and similar or related items of automated, computerized, or other information technology (IT) networks and systems (including telecommunications networks and systems for voice, data and video) owned, leased, licensed, or used (including through cloud-based or other third-party service providers) by the Company.

“**Contracts**” means all contracts, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral.

“**Current Assets**” means accounts receivable, inventory and prepaid expenses, but excluding (a) cash and cash equivalents, (b) the portion of any prepaid expense of which Buyer will not receive the benefit following the Closing, (c) deferred Tax assets, and (d) receivables from any of the Company’s Affiliates, directors, employees, officers or stockholders and any of their respective Affiliates, determined in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Unaudited Financial Statements for the most recent fiscal year end as if such accounts were being prepared and audited as of a fiscal year end.

“**Current Liabilities**” means accounts payable, accrued Taxes and accrued expenses, but excluding payables to any of the Company’s Affiliates, directors, employees, officers or stockholders and any of their respective Affiliates, deferred Tax liabilities, Transaction Expenses and the current portion of any Indebtedness of the Company, determined in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Unaudited Financial Statements for the most recent fiscal year end as if such accounts were being prepared and audited as of a fiscal year end.

**“Data Room”** means that certain virtual data room hosted by Firmex with the project name “Project Ocean” and made accessible to Buyer and its Representatives.

**“Disclosure Schedules”** means the Disclosure Schedules delivered by Sellers and Buyer concurrently with the execution and delivery of this Agreement.

**“Encumbrance”** means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

**“Environmental Claim”** means any Action, Governmental Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

**“Environmental Law”** means any applicable Law or and any Governmental Order in effect on the Closing Date: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, worker health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term “Environmental Law” includes, without limitation, the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.; and the Federal Insecticide, Fungicide, and Rodenticide Act of 1996, as amended, 7 U.S.C. §§ 136 et seq.

**“Environmental Notice”** means any written directive, notice of violation or infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

**“Environmental Permit”** means any Permit issued pursuant to Environmental Law.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

**“ERISA Affiliate”** means any entity that is included in a controlled group of corporations within which the Company is also included, as provided in Section 414(b) of the Code; or which is a trade or business under common control with the Company, as provided in Section 414(c) of the Code; or which constitutes a member of an affiliated service group within which the Company is also included, as provided in Section 414(m) or (o) of the Code.

**“Escrow Agent”** means Citibank, N.A.

**“Escrow Agreement”** means the Escrow Agreement to be entered into by Buyer, Sellers and Escrow Agent at the Closing.

**“GAAP”** means United States generally accepted accounting principles in effect from time to time.

**“Governmental Authority”** means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

**“Governmental Order”** means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

**“Hazardous Materials”** means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation, polychlorinated biphenyls, and per-and polyfluoroalkyl substances.

**“Income Tax”** means any federal, state, local or foreign Tax measured or imposed on net income, including any interest, penalty or addition thereto, whether disputed or not.

**“Income Tax Return”** means any Tax Return relating to Income Taxes, including any schedule or attachment thereto.

**“Indebtedness”** means, without duplication and with respect to the Company, all (a) indebtedness for borrowed money; (b) obligations for the deferred purchase price of property or services (other than Current Liabilities taken into account in the calculation of Closing Working Capital), (c) long or short-term obligations evidenced by notes, bonds, debentures or other similar instruments; (d) obligations under any interest rate, currency swap or other hedging agreement or arrangement; (e) capital lease obligations; (f) reimbursement obligations under any letter of credit, banker’s acceptance or similar credit transactions; (g) guarantees made by the Company on behalf of any third party in respect of obligations of the kind referred to in the foregoing clauses (a) through (f); and (h) any unpaid interest, prepayment penalties, premiums, costs and fees that would arise or become due as a result of the prepayment of any of the obligations referred to in the foregoing clauses (a) through (g).

**“Indemnification Escrow Amount”** means \$700,000.

**“Intellectual Property”** means any and all of the following arising pursuant to the Laws of any jurisdiction throughout the world: (i) trademarks, service marks, trade names, and similar indicia of source or origin, all registrations and applications for registration thereof, and the goodwill connected with the use of and symbolized by the foregoing; (ii) copyrights and all registrations and applications for registration thereof; (iii) trade secrets and know-how; (iv) patents and patent applications; (v) internet domain name registrations; and (vi) other intellectual property and related proprietary rights.

**“Intended Tax Treatment”** shall have the meaning set forth in Section 5.01.

**“Knowledge of Sellers or Knowledge of the Sellers”** or any other similar knowledge qualification, means the actual knowledge of the Sellers, after due inquiry.

**“Law”** means any statute, law, ordinance, regulation, rule, code, Governmental Order, constitution, treaty, common law, judgment, other legally enforceable requirements or rule of law of any Governmental Authority.

**“Licensed Intellectual Property”** means Intellectual Property that is owned by a third Person and that the Company uses in the conduct of its business.

**“Losses”** means losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of pursuing any insurance providers; *provided, however*, that “Losses” shall not include punitive damages, except to the extent actually awarded to a Governmental Authority or other third party.

**“Material Adverse Effect”** means any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the business, results of operations, condition (financial or otherwise) or assets of the Company, or (b) the ability of Sellers to consummate the transactions contemplated hereby on a timely basis; *provided, however*, that “Material Adverse Effect” shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industries in which the Company operates; (iii) any changes in financial or securities markets in general; (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) any action required or permitted by this Agreement, except pursuant to Section 2.05 and Section 4.08; (vi) any changes in applicable Laws or accounting rules, including GAAP; or (vii) the public announcement, pendency or completion of the transactions contemplated by this Agreement; *provided further, however*, that any event, occurrence, fact, condition or change referred to in clauses (i) through (iv) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or could reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change has a disproportionate effect on the Company compared to other participants in the industries in which the Company conducts its businesses.

**“Non-Income Tax Return”** means any Tax Return relating solely to Taxes other than Income Taxes and, for the avoidance of doubt, shall not mean or include any Income Tax Return.

**“Off-the-Shelf Software”** means licenses for commercially available, unmodified, prepackaged, off-the-shelf software used by the Company.

**“Owned Intellectual Property”** means Intellectual Property owned by the Company.

**“Permits”** means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

**“Person”** means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

**“Post-Closing Tax Period”** means any taxable period beginning after the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period beginning after the Closing Date.

**“Post-Closing Taxes”** means Taxes of the Company for any Post-Closing Tax Period.

**“Pre-Closing Tax Period”** means any taxable period ending on or before the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period ending on and including the Closing Date.

**“Pre-Closing Taxes”** means Taxes of the Company for any Pre-Closing Tax Period.

**“Public Merger”** means the transactions contemplated by that certain Agreement and Plan of Merger, dated as of June 21, 2022, by and among OneWater Marine Inc., OBCMS, Inc., and OBCI.

**“Purchase Price Adjustment Escrow Amount”** means \$450,000.

**“Real Property”** means the real property owned, leased or subleased by the Company, together with all buildings, structures and facilities located thereon.

**“Release”** means any actual release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing or migrating into or through the environment (including, without limitation, ambient outdoor air, surface water, groundwater, land surface or subsurface strata).

**“Representative”** means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

**“Restricted Business”** means the manufacturing, distribution, and marketing of appearance, performance, and maintenance chemicals and accessories for the marine, automotive, RV, and home care market.

**“Target Working Capital”** means \$1,400,000.

**“Taxes”** means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

**“Tax Indemnification Escrow Amount”** means \$1,500,000.

**“Tax Purposes”** shall mean for U.S. federal income tax purposes together with all applicable state and local income tax purposes.

**“Tax Return”** means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

**“Territory”** means (i) the United States; (ii) Europe; and (iii) Africa.

**“Transaction Expenses”** means all fees and expenses incurred by the Company or Sellers at or prior to the Closing in connection with the preparation, negotiation and execution of this Agreement and the Ancillary Documents, and the performance and consummation of the transactions contemplated hereby and thereby, including, without limitation, any sale, success, retention, change in control, transaction or similar bonus to be paid by the Company or its Affiliates to any current or former employee, director, manager, officer, individual independent contractor or other individual service provider of the Company or its Affiliates that is or becomes payable solely as a result of the execution of this Agreement or the consummation of the transactions contemplated hereby.

**REAL ESTATE SALES CONTRACT**

THIS REAL ESTATE SALES CONTRACT (this “*Agreement*”) is made effective as of June 21, 2022 (the “*Effective Date*”) by and between PEJE, Inc., a Florida corporation (the “*Seller*”), and One Water Assets & Operations, LLC, a Delaware limited liability company (the “*Purchaser*”).

**R E C I T A L S:**

WHEREAS, Seller is the owner of the Property (as hereinafter defined); and

WHEREAS, subject to the terms and conditions hereof, Seller desires to sell to Purchaser the Property and Purchaser desires to purchase the Property from Seller.

NOW THEREFORE, in consideration of the terms, covenants and conditions hereinafter set forth, to be kept and performed by the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

**SECTION 1. Sale of Property; Purchase Price:**

(a) Seller hereby agrees to sell and Purchaser hereby agrees to purchase that certain real property located at Tract Twelve, New Town Commerce Center, 4041 S.W. 47 S Avenue, Ft. Lauderdale, Florida 33314 in Broward County, Florida, more particularly described on Exhibit A attached hereto, together with all buildings, improvements and fixtures thereon and all appurtenances, rights of way, privileges, easements and other rights benefiting or pertaining thereto and all right, title and interest of the Seller thereto (collectively, the “*Property*”), subject to the terms and conditions of this Agreement.

(b) The purchase price for the Property shall be \$3,600,000 (the “*Purchase Price*”), subject to prorations, credits and other adjustments provided herein.

**SECTION 2. Inspection Period:**

(a) From the Effective Date until the Closing (the “*Inspection Period*”) Purchaser shall have the right to conduct all reasonable investigations and inspections of the Property that Purchaser deems necessary or desirable, including, without limitation, inspections and investigations regarding all matters concerning title, survey, zoning, special use permits, variances, subdivision laws, environmental matters (including a Phase 1 environmental assessment), review and approval of contracts and financial matters affecting the Property, existence of all required licenses, permits and approvals to permit operation of Purchaser’s or its assignee’s business on the Property, approval of the condition of the Property, all soil, landscaping and other physical conditions of the Property, availability and sufficient quantities of all utilities, and other matters relating to the suitability of the Property for Purchaser’s or its successors’ intended use, as determined by Purchaser in its sole discretion.

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(b) During the Inspection Period, Seller hereby grants to Purchaser and its agents and contractors full access to the Property, upon reasonable advance written notice to Seller (but not less than 24 hours), in order to conduct such inspections and tests as Purchaser deems reasonably necessary or appropriate. In performing its due diligence, Purchaser agrees not to unreasonably damage the Property or unreasonably interfere with the business operations conducted at the Property.

(c) Seller shall cooperate in good faith with Purchaser during the Inspection Period.

(d) No later than five (5) business days following the Effective Date, Seller shall provide to Purchaser for its review, all information and documentation regarding the Property that is in the possession or control of Seller, its affiliates and property managers (the “**Due Diligence Materials**”), including, but not limited to, any existing survey, deed, title insurance policy, copies of title exception documents of record, existing environmental, property condition and engineering reports, plans and specifications, declarations, reciprocal easement agreements, restrictive covenant agreements, zoning letters, variances, exceptions, special use permits, development agreements, impact fee agreements, warranties and third party reports or agreements related to the Property and in Seller’s possession. Seller represents to the best of Seller’s knowledge that the Due Diligence Materials constitute all of the information and documentation relating to the Property that is in Seller’s possession or control.

(e) If, during the Inspection Period, Purchaser’s due diligence discloses any condition or circumstance with respect to the Property that, in Purchaser’s reasonable discretion, would be expected to constitute a material liability under, or violation of, any law, rule or regulation (including any Environmental Law) or materially impair, or increase the cost of, the operation of the business of the Target Company (as defined below) as currently conducted, then Purchaser may, at Purchaser’s election, terminate this Agreement, in which event the parties will have no further obligations hereunder, except as to matters which expressly survive as set forth in this Agreement.

(f) Purchaser shall restore any damage to the Property caused by Purchaser’s due diligence. Purchaser hereby indemnifies and holds Seller harmless from all claims, damages, liabilities, losses, costs and expenses (including, without limitation, attorneys’ fees and court costs and any mechanic’s liens or claims of lien) arising from any inspections, examinations and/or tests (including, without limitation, the Phase I) conducted by or on behalf of Purchaser in connection with the Property. The foregoing indemnity provisions shall survive the Closing and any termination of this Agreement.

(g) Purchaser will have during the Inspection Period the opportunity to investigate such matters pertaining to the Property and to inspect the Property to the extent that Purchaser has deemed necessary. Accordingly, if Purchaser does not timely terminate this Agreement in accordance with subsection 2(e) above, Purchaser shall accept the Property in its “AS IS” condition on the Closing Date, “with all faults” and specifically and expressly without any reduction in the Purchase Price for any change in such condition for any reason subsequent to the date of this Agreement. The provisions of this subsection 2(g) shall survive Closing and any earlier termination of this Agreement. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, SELLER HAS NOT, DOES NOT AND WILL NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL WARRANTIES AND REPRESENTATIONS WITH RESPECT TO THE PROPERTY, WHETHER EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF CONDITION, MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, OR WITH RESPECT TO THE VALUE, PROFITABILITY, MARKETABILITY OR ACREAGE OF THE PROPERTY. In entering into this Agreement, Purchaser has not been induced by and has not relied upon any such representations, warranties or statements, whether express or implied, written or oral, made by Seller. The provisions of this subsection 2(g) shall survive Closing and any earlier termination of this Agreement.

SECTION 3. Title Insurance and Survey:

(a) Purchaser shall have the right to obtain (i) an owner's title insurance commitment in the amount of the Purchase Price (the "**Title Commitment**") and (ii) a survey of the Property (the "**Survey**"). Such matters as are disclosed by the Title Commitment or Survey and not objected to by Purchaser (or objected to and later waived by Purchaser) are herein referred to as the "**Permitted Exceptions**". The title insurance company ("**Title Company**") engaged for the issuance of the Title Commitment, and performance of other title company related matters and closing services, shall be selected by Purchaser.

(b) During the Inspection Period, Purchaser shall advise Seller in writing of any defects or objections affecting the title to the Property or the use thereof by Purchaser disclosed by the Title Commitment or the Survey, or any updates thereto (the "**Title Objections**"). Seller shall use best efforts to eliminate all Title Objections by the Closing Date including, without limitation by taking such actions as are reasonable and necessary to satisfy all the B-1 requirements in the Title Commitment within its control. Notwithstanding the foregoing, Seller shall be required to cause to be released, satisfied, and removed of record as of the Closing Date: (i) any Title Objections which have been voluntarily recorded or otherwise placed, or permitted to be placed, by Seller against the Property (other than with the prior written approval of Purchaser); (ii) any mortgages, deeds of trust, security instruments, financing statements, or other instruments which evidence or secure indebtedness, judgments, and liens against the Property, including, without limitation, mechanics' liens, tax liens and real estate taxes, water rates, and sewer rents and taxes, in each case, which are due and payable but which remain unpaid or of record as of the Closing Date (subclauses (i) and (ii), collectively, the "**Voluntary Liens**"); and (iii) any Title Objections which would not constitute Voluntary Liens, but which can be removed by the payment of a liquidated sum of money (items set forth in this subclause (iii), collectively, "**Monetary Liens**"; and, together with the Voluntary Liens, the "**Mandatory Title Removal Items**").

(c) If Seller satisfies all Title Objections prior to Closing Date, then the transaction contemplated hereby shall be closed in accordance with its terms. If Seller fails to eliminate any Title Objection by the Closing Date, Purchaser may, at Purchaser's election, (i) terminate this Agreement, in which event the parties will have no further obligations hereunder, except as to matters which expressly survive as set forth in this Agreement, or (ii) close the transaction contemplated hereby without regard to such unsatisfied Title Objections, in which event such unsatisfied Title Objections shall constitute Permitted Exceptions.

(d) Notwithstanding Section 3(c) above, if Seller fails to eliminate any Mandatory Title Removal Items by the Closing Date, such failure shall, at Purchaser's election, constitute a default of Seller pursuant to Section 6(a) below and, in addition to the remedies set forth in Section 3(c) above and all other remedies available under this Agreement, shall entitle Purchaser to reduce the Purchase Price by an amount equal to the costs and reasonable expenses incurred by Purchaser to eliminate such outstanding Mandatory Title Removal Items.

(e) As a condition to Purchaser's obligation to close the transaction contemplated hereby, the Title Company shall be irrevocably committed, as reasonably determined by Purchaser, to issue the Title Insurance Owner's Policy for the Property at Closing in the amount of the Purchase Price subject only to the Permitted Exceptions. In the event of the non-fulfillment of the foregoing condition precedent, Purchaser, at Purchaser's option, may elect to terminate this Agreement at any time without penalty by notice in writing to Seller.

**SECTION 4. Representations, Warranties, and Condition of Property:**

(a) Seller represents and warrants to Purchaser as of the Effective Date and the Closing Date that:

(i) Seller is not a "foreign person" as such term is defined in Section 1445 of the Internal Revenue Code.

(ii) Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida and has full corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it has been and is currently conducted. Seller has the power and authority to execute, deliver and perform this Agreement and consummate the transactions contemplated hereby. Furthermore, the execution and delivery of this Agreement by Seller, and the compliance by Seller with the terms and provisions of this Agreement, will not conflict with any law or regulation to which Seller is subject, or any agreement or instrument to which Seller is a party or by which it is bound, or any order or decree applicable to Seller. Seller has not granted any third-party, and the Property is not subject to, any option, right of first offer, right of first refusal or similar right or option to purchase the Property or any portion thereof or interest therein.

(iii) Seller has not received notice and has no knowledge of any pending condemnation, expropriation, eminent domain or similar proceeding affecting all or any portion of the Property.

(iv) There is no litigation, action, arbitration, condemnation, or eminent domain proceeding, or any other proceeding or investigation pending or, to the knowledge of Seller, threatened against the Property or Seller or to which Seller is otherwise a party, which may affect the Property or the sale transaction contemplated hereby.

(v) Seller owns the Property in fee, has good and marketable title as to all of the Property, free and clear of any and all liens, encumbrances, restrictions or easements except as may be herein excepted or approved by Purchaser in writing, and may sell the same without the consent or approval of anyone else.

(vi) Seller has not filed for bankruptcy or reorganization or made a general assignment for the benefit of creditors, and Seller is not insolvent or otherwise unable to pay its debts as they become due and no party has any unsatisfied judgment against Seller.

(vii) Seller has, to its knowledge, complied with all laws, regulations, and ordinances affecting the Property.

(viii) Seller has paid all due and accrued taxes and fees that relate to the Property. Seller has filed with the appropriate governmental agencies all tax returns required to be filed in connection with the Property and Seller has paid all taxes required to be paid for the periods covered by said returns and are not delinquent in the payment of any such taxes. To Seller's knowledge, there are no pending issues relating to, or claims for, taxes or assessments assessed against the Seller or the Property. Seller shall timely pay all taxes that will be payable as shown on any return required to be filed after the Closing that relates to a period prior to the Closing.

(ix) To Seller's knowledge, there are no underground storage tanks on the Property, and Seller has no knowledge of the existence of any Hazardous Substances (defined below), toxic materials, or hydrocarbon or other environmental pollutants upon the Property. Seller has not received any written notice from any governmental agency having jurisdiction over the Property advising Seller that (i) the Property is in violation of any Environmental Laws (as defined below) or (ii) that there are Hazardous Substances on, under or about the Property in a manner or quantity that presently violates any Environmental Law. To Seller's knowledge, no toxic or Hazardous Substances have been generated, released stored or deposited over, beneath or on the Property or forming any part of any improvement or structure located on the Property. The term "**Hazardous Substance**" means any hazardous or toxic substance, material or waste, pollutants or contaminants, as presently defined, listed or regulated by any federal, state or local law, ordinance, code, regulation, rule, order or decree regulating, relating to or imposing liability or standards of conduct concerning, any environmental conditions, health or industrial hygiene (collectively, "**Environmental Laws**"), including without limitation, (i) chlorinated solvents, (ii) petroleum products or by-products, (iii) asbestos, (iv) polychlorinated biphenyls, and (v) anything that would be a hazardous waste, material or substance, toxic substance or pollutant, as defined under the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 et. seq.; Hazardous Materials Transportation Act, 49 U.S.C. 1801 et. seq.; Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq., the Clean Water Act, 42 U.S.C. 1251, et. seq., any applicable state or local environmental statute, and the regulations promulgated thereunder.

(x) The Property is connected to sewer and all connection fees have been paid.

(xi) There are no material defects known to Seller in, on, under, or about the Property. Seller has no knowledge of any fact or condition which would result in the termination or reduction of the current access from the Property to existing roads.

(xii) There are no tenancies, leases, subleases, occupancies, or parties in possession of the Property as of the Closing other than under and in accordance with that certain Net Lease, dated as of May 1, 1998, by and between Seller and Star Brite Distributing, Inc.

(xiii) Seller has delivered to Purchaser true and complete copies of all material agreements with respect to the operation of the Property. All of such agreements, including all leases and contracts are valid and are in full force and effect.

(xiv) The Property is all of the real property located in Broward County, Florida that is used by Star Brite Europe, Inc. (the “**Target Company**”) in the connection with the Target Company’s business operations.

(xv) None of the information contained in the representations and warranties of Seller set forth in this Agreement or in any other instruments delivered, or to be delivered, to Purchaser, contains any untrue statement, or omits to state a material fact necessary to make the statements contained herein or therein not misleading. The representations and warranties of Seller contained herein are and shall be true as of the Closing and the date hereof, and shall not be discharged or dissolved upon, but shall survive the Closing and delivery of the Deed. Notwithstanding any provision herein to the contrary, (i) such representations and warranties shall be unaffected by any investigation made by any party at any time and (ii) such representations and warranties shall not be affected or deemed waived by reason of the fact that any party knew or should have known that any of the same is or might be inaccurate in any respect.

(b) Seller hereby covenants and agrees that from and after the Effective Date until the earlier of the termination of this Agreement or the Closing, Seller: (i) shall operate the Property in its normal course and maintain the Property in as good condition as of the Effective Date without any material modification to the existing operation or condition thereof, reasonable wear and tear excepted; and (ii) shall not, without the prior written consent of Purchaser, grant or otherwise voluntarily create or consent to the creation of any easement, restriction, lien or encumbrance affecting the Property.

(c) All payments received by Seller from any tenant for rent, if any, shall be prorated as of the Closing Date, with Purchaser receiving the rent payable with respect to such Closing Date and for all periods thereafter. As permitted by law, any security deposits held by Seller or any third-party property manager retained by Seller with respect to the Property shall be transferred to Purchaser at the Closing.

(d) So long as the Closing remains pending under this Agreement, Seller shall not, and shall not cause or permit any of its principals, officers or any other person to, (i) negotiate with any other persons not affiliated with Purchaser with respect to a lease, sale transfer or other similar transaction pursuant to which any portion of the Property would be leased, sold or transferred (each, an “**Acquisition Proposal**”), (ii) engage in, initiate, solicit or respond to any bids, inquiries, offers or negotiations with respect to an Acquisition Proposal, (iii) furnish or make available to any such persons any information of any kind whatsoever regarding the Property, or (iv) proceed or continue with negotiations regarding any other Acquisition Proposal that may be in progress as of the Effective Date.

(e) Seller and Purchaser shall make or have made any applicable filing under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as Amended ("**HSR Act**").

**SECTION 5. Closing:**

(a) The purchase and sale of the Property contemplated by this Agreement shall close (the "**Closing**") on the same date of consummation of the transactions contemplated in the Merger Agreement (as defined below) or on such other date as the parties hereto may mutually agree upon in writing (the "**Closing Date**").

(b) At Closing, Seller shall execute and deliver to Purchaser: (i) an original special warranty deed in form and substance reasonably acceptable to Purchaser, and in proper form for recording, sufficient to vest in Purchaser title to the Property in accordance with this Agreement, subject only to the Permitted Exceptions (the "**Deed**"); (ii) such Owner's or Seller's Affidavits as may be required by the title insurance company or otherwise reasonably requested by Purchaser; (iii) such affidavits of title, lien and possession as may be reasonably required by Purchaser; (iv) such FIRPTA Affidavits as reasonably requested by Purchaser; (v) a written consent of the directors and shareholders of Seller authorizing the transaction contemplated hereby and the execution and delivery of the documents required to be executed and delivered hereunder; and (vi) such other documents and deliverables as may be reasonably required by Purchaser or the applicable Title Company.

(c) Purchaser shall pay the cost of the title policy to be issued pursuant to the Title Commitment, as well as any and all costs related to its due diligence investigation.

(d) Seller shall pay all clerk's and indexing fees and taxes on the deed, documentary stamp taxes, and all costs of recording the Deed.

(e) Seller and Purchaser shall each pay an equal share of the Title Commitment, escrow fees, all closing fees, and any other fees and costs as is customary.

(f) The obligation of Purchaser to purchase the Property hereunder shall be conditioned upon the closing of the transactions contemplated in (i) that certain Agreement and Plan of Merger, dated as of June 21, 2022, by and among OneWater Marine Inc., OBCMS, Inc., and Ocean Bio-Chem, Inc. (the "**Merger Agreement**") and (ii) that certain Equity Purchase Agreement, dated as of June 21, 2022, by and among Peter G. Dornau, Maureen Dornau and Purchaser (the "**Equity Purchase Agreement**"). Provided further, the applicable HSR Act waiting period shall have expired or been terminated. In the event of the non-fulfillment of the foregoing condition precedent, Purchaser, at Purchaser's option, may elect to terminate this Agreement at any time without penalty by notice in writing to Seller.

(g) Each party shall pay its own legal fees. Each party is responsible for any brokerage fees, finder fees, or others acting on its behalf who may have a claim or entitlement to a fee or commission on or after Closing relating to the contemplated transaction(s) described herein.

(h) Ad valorem taxes and utilities are to be prorated between Purchaser and Seller as of the date of the Closing, and if the amount of such for the month or year in which the Closing occurs cannot reasonably be determined, the apportionment shall be reasonably based at Closing upon the amount of such for the next preceding applicable period, and no further tax or utility prorations shall be conducted between the parties. All items customarily prorated and adjusted in connection with the closing of real estate similar to the Property are to be prorated between Seller and Purchaser as of the Closing Date. Any assessments, whether due or not, levied against the Property shall be paid in full by Seller at Closing. The provisions of this paragraph shall expressly survive Closing.

**SECTION 6. Default:** If either Seller or Purchaser fails to perform their obligations under this Agreement, then the following provisions shall apply:

(a) *Default by Seller.* If Seller defaults, violates or breaches any of its covenants, obligations, representations and warranties herein or refuses to close, then, in addition to all remedies available at law, Purchaser (a) may declare this Agreement cancelled and of no further force and effect or (b) shall have the remedy of specific performance.

(b) *Default by Purchaser.* In the event that all conditions hereunder to Purchaser's obligation to purchase the Property have been satisfied and Purchaser should default in its obligation to purchase the Property in accordance herewith, Seller may, as its sole and exclusive remedy, terminate this Agreement and require Purchaser to pay Seller \$500.00, which sum shall serve as liquidated damages for the failure of Purchaser to perform the duties and obligations imposed upon it by this Agreement because of the difficulty, inconvenience, and uncertainty of ascertaining actual damages.

**SECTION 7. Real Estate Commission:** Purchaser and Seller each represent to the other that no third party is entitled to a sales commission or fee upon the Closing of this transaction. Seller and Purchaser each hereby agree to indemnify the other against and shall hold the other harmless from any and all claims, damages, costs, or expenses of or for any such fee or commission to the extent that either shall have been responsible for the creation of such claim and shall pay all costs incurred by the other in defending any action or lawsuit brought to recover any such fee or commission.

**SECTION 8. Assignment:** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs or successors and permitted assigns. Purchaser shall have the right to assign, transfer, or convey, in whole or in part, its rights and obligations under this Agreement or in the Property without the prior written consent of Seller.

**SECTION 9. Casualty; Condemnation:**

(a) Subject to the provisions hereof, the risk of loss from casualty or condemnation shall remain with Seller until the Closing Date. Seller agrees to give Purchaser prompt notice of any damage or destruction caused by fire or other casualty to the Property or any portion thereof prior to Closing. If prior to Closing there shall occur any loss or damage, Purchaser, at Purchaser's option, may (a) terminate this Agreement, in which case Purchaser shall have no further obligations under this Agreement, or (b) agree to accept title to the Property in its damaged condition; subject, however, to the assignment by Seller to Purchaser at Closing of any insurance proceeds payable or paid as a consequence of such casualty and Seller's payment of any applicable deductible related thereto.

(b) Should any entity having the power of eminent domain or condemnation decide, prior to the time of Closing, to acquire any portion of or interest in the Property, Purchaser, at Purchaser's sole option, may elect to (a) terminate Purchaser's obligation to purchase the Property by giving written notice to Seller at any time prior to the time of Closing and receive a prompt refund of all sums paid hereunder, or (b) complete the purchase of the Property with Seller immediately appointing Purchaser its attorney in fact to negotiate with said condemning entity and assigning to Purchaser all sums to be awarded.

**SECTION 10. Entire Agreement:** This Agreement constitutes the entire agreement between Purchaser and Seller regarding the Property, and supersedes all prior discussions, negotiations, and agreements between Purchaser and Seller, whether oral or written. Neither Purchaser nor Seller shall be bound by any understanding, agreement, promise or representation concerning the Property, expressed or implied, not specified herein. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions herein set forth, and that no modification of this Agreement and no waiver of any of its terms and conditions shall be effective unless made in writing and duly executed by the parties hereto

**SECTION 11. Notices:** All notices, requests, demands, and other communications (collectively, "**Notices**") hereunder shall be in writing and delivered to the parties hereto by (a) hand-delivery, (b) established express delivery service that maintains delivery records, (c) certified or registered U.S. mail, postage prepaid, return receipt requested, or (d) electronic means with confirmation of delivery and follow up delivery by a method set forth in subsections (a) – (c) at the such party's primary place of business, or at such other address as the parties hereto may designate pursuant to this Section. Each such notice or other communication shall be deemed given upon receipt or refusal to accept receipt. Notices by way of electronic means are deemed received upon confirmed delivery. Each of the parties hereto may change the address set forth above by providing written notice to the other parties hereto.

**SECTION 12. Attorneys' Fees:** Except as otherwise provided herein, if any suit be instituted to compel compliance with the provisions of this Agreement or to recover damages for the breach thereof, the prevailing party shall be entitled, in addition to any other remedies, to reimbursement of all reasonable litigation expenses, including reasonable attorneys' fees.

**SECTION 13. No Waiver:** No failure or delay by a party to exercise any right it may have by reason of the default of the other party shall operate as a waiver of default or modification of this Agreement or shall prevent the exercise of any right by the first party while the other party continues to be so in default. Except as otherwise expressly provided herein, any approval or consent required to be given by a party hereunder may be given or withheld in the absolute discretion of such party.

**SECTION 14. Miscellaneous:**

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida. This Agreement and all its provisions shall be binding on and inure to the benefit of each Party and its successors and assigns. As used herein, the terms "Seller" and "Purchaser" shall be deemed to include their respective successors, legal representatives and assigns.



(b) No modification of this Agreement shall be binding unless it is in writing and is signed by an authorized representative of each of the parties hereto.

(c) In the event that any of the terms of this Agreement are or become or are declared to be invalid or void by any court or tribunal of competent jurisdiction, such term or terms shall be null and void and shall be deemed severed from this Agreement and all the remaining terms of this Agreement shall remain in full force and effect.

(d) The captions or headings in this Agreement are made for convenience and general reference only and shall not be construed to describe, define or limit the scope or intent of the provisions of this Agreement.

(e) Each of the parties acknowledges that it has a right to be represented at all times in connection with this Agreement and at the Closing by an attorney of its own choosing, at its own expense.

(f) Time is of the essence with respect to the performance of each and every term, condition and obligation of this Agreement. The calculation of the number of days that have passed during any time period referenced herein shall be based on calendar days, unless otherwise specified, and any such period shall commence on the day immediately following the action or event giving rise to the commencement of the period and shall expire at 5:00 p.m. Pacific Time, on the last day of the time period. Furthermore, any time period provided for herein which shall end on Saturday, Sunday or a legal holiday shall extend to 5:00 p.m. Pacific Time, of the next regular business day.

(g) This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which, collectively, shall be one and the same instrument. In addition, this Agreement may be transmitted between the parties via electronic mail, and signatures transmitted by electronic mail shall be deemed originals and shall be binding upon the parties.

(h) EACH PARTY HEREBY WAIVES TRIAL BY JURY IN ANY PROCEEDINGS BROUGHT BY THE OTHER PARTY IN CONNECTION WITH ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE TRANSACTION, THIS AGREEMENT, THE PROPERTY OR THE RELATIONSHIP OF PURCHASER AND SELLER HEREUNDER.

(i) In the event the conditions related to COVID-19 or any other force majeure event render it impossible or commercially unreasonable to meet any deadline established in this Agreement, the Parties shall be entitled to an extension of any such deadline provided in this Agreement for a period equal in length of time to such delays and not less than five (5) days without penalty, provided such extension is provided in writing to the opposing Party prior to the expiration of the time period for which an extension is applicable.

(j) Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the Broward County health department.

(k) Each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances, and assurances and take such further actions as may be reasonably required to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby.

[Remainder of Page Intentionally left blank]

[Signatures on following page(s)]

IN WITNESS WHEREOF, each of Seller and Purchaser has caused this Agreement to be executed as of the Effective Date by its duly authorized representative.

**SELLER:**

**PEJE, Inc.**, a Florida corporation

By: /s/ Peter G. Dornau

Name: Peter G. Dornau

Its: President

**Witness:**

/s/ William Dudman

Signature:

Name: William Dudman

**PURCHASER:**

**One Water Assets & Operations, LLC**,  
a Delaware limited liability company

By: /s/ Jack Ezzell

Name: Jack Ezzell

Its: Chief Financial Officer

**Witness:**

/s/ Jeff W. Huntley, Sr.

Signature:

Name: Jeff W. Huntley, Sr.

[Signature Page to Real Estate Sales Contract]

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**CERTIFICATION**  
**PURSUANT TO EXCHANGE ACT RULE 13A-14(a) OR RULE 15D-14(a)**  
**AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Philip Austin Singleton, Jr., certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of OneWater Marine Inc. (the “registrant”) for the quarter ended June 30, 2022;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant’s other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and
5. The registrant’s other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Dated: August 5, 2022

By: /s/ Philip Austin Singleton, Jr.  
Philip Austin Singleton, Jr.  
Chief Executive Officer  
(Principal Executive Officer)

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**CERTIFICATION**  
**PURSUANT TO EXCHANGE ACT RULE 13A-14(a) OR RULE 15D-14(a)**  
**AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Jack Ezzell, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of OneWater Marine Inc. (the “registrant”) for the quarter ended June 30, 2022;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant’s other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and
5. The registrant’s other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Dated: August 5, 2022

By: /s/ Jack Ezzell

Jack Ezzell  
Chief Financial Officer  
(Principal Financial Officer)

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**CERTIFICATION**  
**PURSUANT TO 18 U.S.C. § 1350,**  
**AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of OneWater Marine Inc. (the "Company") for the quarter ended June 30, 2022, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Philip Austin Singleton, Jr., Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
2. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: August 5, 2022

By: /s/ Philip Austin Singleton, Jr.  
Philip Austin Singleton, Jr.  
Chief Executive Officer  
(Principal Executive Officer)

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**CERTIFICATION**  
**PURSUANT TO 18 U.S.C. § 1350,**  
**AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of OneWater Marine Inc. (the “Company”) for the quarter ended June 30, 2022, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Jack Ezzell, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
2. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: August 5, 2022

By: /s/ Jack Ezzell

Jack Ezzell  
Chief Financial Officer  
*(Principal Financial Officer)*

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