

**MIDNIGHT EXPRESS POWER BOATS, INC.  
PURCHASE AND SALE AGREEMENT**

This purchase and sale agreement (the "Agreement") is made as of \_\_\_\_\_, 2009, by and between \_\_\_\_\_ a [citizen/ corporation] with his principal [residence/ business office] located at \_\_\_\_\_ (the "Buyer"), and Midnight Express Power Boats, Inc., a Delaware corporation with its principal business office located at 4800 NW 15<sup>th</sup> Ave., Unit C, Fort Lauderdale, Florida 33309 (the "Seller").

**WHEREAS**, the Seller is engaged in manufacturing, marketing and selling power boats;

**WHEREAS**, the Seller wishes to manufacture a certain power boat and sell it to the Buyer; and

**WHEREAS**, the Buyer wishes to purchase such power boat manufactured by the Seller on the terms and conditions set forth herein;

**NOW, THEREFORE**, in consideration of the Purchase Price and other good and valuable consideration, the Seller and the Buyer, intending to be legally bound, mutually agree as follows:

**1. VESSEL**

The Buyer agrees to purchase and the Seller agrees to manufacture a power boat (the "Vessel") pursuant to the Buyer's specifications as set forth in Exhibit 1 hereto and sell the Vessel to the Buyer pursuant to the manufacturing and payment schedule set forth in Exhibit 2 hereto (the "Schedule"), subject to the terms and conditions contained herein.

Notwithstanding the foregoing paragraph, the Seller reserves the right to make changes in the specifications of the Vessel and substitute comparable materials, appliances, equipment, fixtures and other items as may be, in the Seller's discretion, necessary or appropriate due to design changes, governmental requirements, job conditions or unavailability, including the color or brand name of any items or any other options selected by the Buyer, provided, however, that such changes shall not materially affect the value or functionality of the Vessel. If the Seller requests that the Buyer promptly select an alternative, and the Buyer fails to do so within ten (10) business days after the Seller's request, the Seller may, in its discretion, select an alternative on the Buyer's behalf, without further notice, and such selection shall be binding on the Buyer.

The Seller may, in its sole discretion, accept the Buyer's proposed change or changes to the specifications of the Vessel, including, without limitation, those relating to any material, appliance, equipment, fixture or other items, and the parties shall change the Purchase Price and/or the payment and delivery Schedule as is necessary to reflect such modification to the specifications; provided, however, that the Buyer promptly executes but no later than ten (10) business days an addendum in writing, to be signed by both the Buyer and Seller, to this Agreement reflecting the change or changes in the specifications, the Purchase Price and/or the Schedule.

**2. PURCHASE PRICE; PAYMENTS; TRADE-IN; FINANCING**

(a) Purchase Price. The purchase price of the Vessel and appurtenances (the "Purchase Price") is One Hundred Eighteen Thousand Eight Hundred Twenty and 00/100 Dollars (\$118,820.00) inclusive of delivery of the Vessel to the location specified in Section 8 below but exclusive of the following: (i) any tax, duty, fee or other charge that may be levied by any governmental authority in connection with the purchase and sale (but not the manufacture) of the Vessel contemplated in this Agreement and its registration in the Buyer's name; (ii) any Buyer's modifications to the Vessel; (iii) all expenses incurred by the Seller on the Buyer's behalf; and (iv) interest which may have accrued, as contemplated in Section 5, below.

(b) Deposit. Upon the Buyer's execution of this Agreement, the Buyer shall wire funds in the amount of Thirty Nine Thousand Six Hundred and Six Dollars and Sixty Seven Cents (\$39,606.67) as a non-refundable deposit to a bank account designated by the Seller to be applied toward the Purchase Price (the "Deposit").

(c) Progressive Payments. The Buyer shall make in the same manner as in Section 2(b) above subsequent partial payments toward the Purchase Price in accordance with the payment terms of the Schedule attached hereto as Exhibit 2 until the Purchase Price is paid in full. Apart from and in addition to the Deposit and payments toward the Purchase Price stipulated in Section 2(b) above and the foregoing sentence, the Buyer hereby agrees to pay in connection with the purchase and sale (but not the manufacture) of the Vessel hereunder (i) all taxes, duties, fees and charges levied by governmental authorities, before or when due, and (ii) any and all expenses paid by the Seller on the Buyer's behalf, upon the Seller's demand. In the event that an increase in the Purchase Price occurs pursuant to Section 1, said increase shall be made promptly by the Buyer prior to delivery of the Vessel to Buyer.

(d) Trade-In. If this Agreement is contingent upon the trade-in of a particular vessel owned by the Buyer, the Buyer shall promptly furnish the Seller with evidence of title to the trade-in vessel free and clear of all debts, claims, liens and encumbrances of any kind whatsoever. Buyer warrants and will defend that the Buyer has good and marketable title to the trade-in. The Buyer also agrees that this Agreement is subject to the completion of a satisfactory survey and sea trial of the trade-in vessel in the Seller's discretion. The Buyer further agrees that all costs and expenses reasonably incurred by the Seller in connection with such survey and sea trial are at the Buyer's expense and additional to the Purchase Price and payable upon completion of the survey and sea trial regardless of their results. The trade-in will include any personal property present aboard the trade-in at the time of survey. No portion of the Purchase Price shall be allocated to any personal property and the presence, absence or condition of any items of personal property aboard the trade-in at the time of Closing shall not affect the sale of the Vessel.

(f) Financing. Buyer understands and agrees that Buyer is obligated to pay all cash under this Agreement and that Buyer's obligations under this Agreement to purchase the Vessel will not depend upon the Buyer obtaining a mortgage from any lender or any conditions imposed by such lender. Buyer will be solely responsible for making Buyer's own financial arrangements. Seller is under no obligation to arrange for the availability of a mortgage loan to the Buyer. Seller agrees, however, to provide information to the lender and to coordinate closing with it, but only if the lender meets

Seller's closing schedule and pays the proceeds of its mortgage at closing. In the event that the lender does not pay Seller these proceeds, Buyer will not be allowed to take possession of the Vessel until Seller actually receives the funds, and they have cleared.

### **3. RISK OF LOSS; DELAY IN DELIVERY**

The risk of loss, damage or destruction of the Vessel shall be borne by the Seller until the delivery of the Vessel unless such loss, damage or destruction is caused by the Buyer's negligence or misconduct. Notwithstanding the foregoing sentence, the Seller shall not be responsible for any delay in delivery due to causes beyond its control, including, but not limited to acts of God, acts of governmental authority, strikes, lockouts or other labor conditions or shortages, inability to obtain materials or supplies, machinery breakdowns, inability to obtain shipping space or transportation, delays of carriers or suppliers, fires, floods, war or other outbreak of hostilities, mobilization, civil commotion, riots, embargoes or any other matter beyond the Seller's reasonable control. If such a delay occurs or the Vessel is destroyed prior to the delivery due to any of the aforementioned causes or another cause beyond the Seller's reasonable control, the Seller may at its sole discretion (i) cancel this Agreement and return to the Buyer all monies or deposits paid to the Seller hereunder without interest or (ii) complete or rebuild the Vessel as promptly as reasonably practicable, as the case may be. If the Seller elects option (i) above and returns all monies and deposits to the Buyer, this Agreement shall become null and void and the parties shall be relieved of all further obligations hereunder. If the Seller elects option (ii) above, on the other hand, this Agreement shall remain in full force and effect except that the completion and delivery dates shall be extended to dates as shall then be determined in good faith by the Seller and the Schedule shall be modified accordingly.

### **4. RISK OF PERSONAL INJURIES AND DEATHS**

The Buyer hereby agrees that liability and responsibility for any personal injury or death of any person arising out of the use or operation of the Vessel and/or equipment thereon shall be borne solely by the Buyer unless such personal injury or death is caused by the Seller's gross negligence or willful misconduct. The Buyer shall defend, indemnify and save the Seller harmless from and against any and all damages and losses sustained by the Seller as a result of any claim or action brought against the Seller in connection with any such personal injury or death, including, without limitation, reasonable attorney's fees and court costs.

### **5. BUYER'S DEFAULT**

If the Buyer fails to perform any of his obligations hereunder and such failure is not cured within five (5) business days after a notice by the Seller to the Buyer, such failure shall constitute a material default hereof and the Seller may retain any and all funds paid by the Buyer to the Seller as liquidated and agreed damages and additionally, the Seller may pursue any remedies against the Buyer at law or in equity. Furthermore all expenses incurred by the Seller on the Buyer's behalf shall become immediately payable by the Buyer to the Seller. In addition, if the Buyer fails to make any of the partial payments toward the Purchase Price in accordance with the payment terms of the Schedule, interest shall accrue on the unpaid balance at the rate of eighteen percent (18%) per annum from the date of such notification and shall be payable together with the payment of the balance in full.

### **6. SELLER'S DEFAULT**

In the event the Closing is not consummated because of Seller's breach or non-performance of its material obligations hereunder and such failure is not cured within thirty (30) days after written notice by the Buyer to the Seller, all money paid or deposited by the Buyer pursuant to this Agreement shall be returned to the Buyer upon the Buyer's written demand, less all expenses incurred by the Seller on behalf of the Buyer. Otherwise, the Buyer shall have the right of specific performance only. In no event shall the Seller be liable to the Buyer or any third party for any punitive, consequential, incidental or other indirect damages, including damages for loss of use, loss of time, or loss of profits or income. Written notice of the Buyer under this Clause to the Seller shall be sent via U.S. mail or facsimile to:

Midnight Express Power Boats, Inc.  
4800 NW 15th. Ave  
Unit C  
Fort Lauderdale, FL 33309  
Fax: [REDACTED]

### **7. NO LIENS**

The Seller hereby represents and warrants that the Vessel is being purchased free and clear of all debts, claims, liens and encumbrances of any kind granted or otherwise caused by the Seller, and the Seller warrants and will defend that it has good and marketable title to the Vessel and will deliver to the Buyer on or before the delivery the bill of sale and all other documents necessary for transfer of title to the Vessel to the Buyer and registration thereof in Buyer's name.

### **8. DELIVERY**

The Seller shall furnish the Buyer with a bill of sale transferring title to the Vessel and deliver the Vessel as soon as practicable after the completion of the manufacture of the Vessel and the Buyer's full payment of (i) the Purchase Price to the Seller, (ii) all taxes, duties, fees and charges to the applicable governmental authority or authorities, (iii) all expenses incurred by the Seller on the Buyer's behalf, (iv) any underpayments due to an increase in the Purchase Price pursuant to Section 1, and (v) any and all interest accrued, if applicable. The Vessel shall be delivered to the Buyer at Fort Lauderdale, Florida together with all gear, machinery, equipment, furnishings and all other articles, appurtenances and other items listed in Exhibit I hereto. If the Buyer wishes the Vessel to be delivered to a different location, the Buyer shall bear any and all reasonable costs incurred in connection with the change of the delivery location.

## 9. "AS-IS" PURCHASE

The Buyer hereby acknowledges, understands and agrees that the Vessel is being sold to Buyer "as is, where is." SELLER EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF USE OR WORKMANLIKE PERFORMANCE. THE SELLER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR THE SELLER ANY LIABILITY IN CONNECTION HERewith. The Buyer hereby additionally acknowledges, understands and agrees that THE BUYER SHALL NOT BE ENTITLED TO RECOVER FROM THE SELLER ANY CONSEQUENTIAL DAMAGES TO PROPERTY, DAMAGES FOR LOSS OF USE, LOSS OF TIME, LOSS OF PROFITS OR INCOME OR ANY OTHER INCIDENTAL OR INDIRECT DAMAGES.

## 10. DISPUTES

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by binding arbitration administered by the American Arbitration Association (the "AAA") in accordance with the AAA's Commercial Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Either party may initiate such arbitration by sending written notice to the other party of election to the right of arbitration. The requesting party shall file the demand for arbitration and pay the required filing fee. The arbitration hearing shall be held before a panel of three arbitrators at a place designated by the arbitrators in Broward County, Florida. Each party shall have the right to select one arbitrator, and the third arbitrator shall be selected by mutual agreement of the parties, or, if the parties are unable to reach such mutual agreement, by mutual agreement of the two arbitrators selected by the parties. The arbitrators shall observe the Code of Ethics for Arbitrators in Commercial Disputes promulgated by the AAA and the American Bar Association, or any successor code. The arbitrators shall prepare a reasoned award decision within thirty (30) days of the conclusion of the arbitral proceeding. The prevailing party in the arbitration shall be entitled to recover its costs and reasonable attorney's fees as part of the award.

## 11. MISCELLANEOUS

(a) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without giving effect to any choice or conflict of law provision or rule that would cause the application of the domestic or foreign substantive laws of another jurisdiction.

(b) Entire Agreement. This Agreement, including any Schedules, Exhibits or Attachments hereto, constitutes the entire agreement between the parties hereto and it is agreed and understood that there are no other duties, obligations, liabilities or warranties of the Seller, implied or otherwise, all of which are expressly disclaimed and waived by the Buyer.

(c) Severability. If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable for any reason, the remaining terms and conditions of this Agreement shall be and remain valid and enforceable, or at the Seller's sole discretion, the Seller may cancel this Agreement and refund to the Buyer all monies paid or deposited under this Agreement without any further liability on the part of either party to the other.

(d) Survival. The Parties agree that the terms of this Agreement shall survive the delivery of the bill of sale and the Vessel.

(e) Successors and Assigns. This Agreement and the rights and obligations hereunder shall not be assignable by either party except with the prior written consent of the other. The provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto.

(f) Notices. All notices, consents, requests, reports and other documents which may be or are required to be given pursuant to this Agreement shall be in writing and shall be deemed to have been duly given or made (i) if sent by mail, within five days after the posting thereof with first class postage attached, or (ii) if sent by hand or overnight delivery, upon the delivery thereof, in each case addressed to the respective parties at the addresses set forth in the first paragraph of this Agreement or at such other address as furnished by each party to the other in writing.

(g) Counterparts. This Agreement may be executed in separate counterparts, each of which shall constitute an original but all of which together shall constitute one and the same instrument. A facsimile signature shall be deemed an original signature.

(h) Amendment. This Agreement shall not be amended without the written consent of both parties.

(i) Authority. The undersigned representing the Buyer hereby represents and warrants that he is at least 21 years of age and is a bona fide resident of the State of \_\_\_\_\_, that the Buyer has the requisite corporate power and authorization to enter into and be bound by this Agreement and that the undersigned is authorized to execute this Agreement for and on behalf of the Buyer.

(j) No Brokerage. No third party shall be entitled to receive any brokerage commissions, finder's fees, fees for financial advisory services or similar compensation in connection with this Agreement based on any arrangement or agreement made by or on behalf of the Buyer.

(k) Taxes. The Buyer shall be responsible for all United States, State, County, City, sales, use, excise taxes and other taxes, assessments and duties lawfully assessed or levied on the Vessel.

**IN WITNESS WHEREOF**, this Agreement has been duly executed and delivered by the parties as of the date first above written.

**BUYER:**

Jeffrey Epstein

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**SELLER:**  
MIDNIGHT EXPRESS POWER BOATS, INC.

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Harris Glaser  
Vice President

\*NOT VALID UNLESS SIGNED AND ACCEPTED BY AN OFFICER OF THE COMPANY