



UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-2(c)

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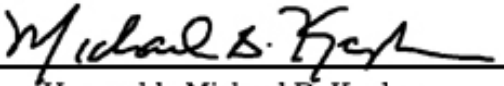
Counsel for the Debtors and Debtors in Possession

In re:	)	Chapter 11
	)	
MORGAN INDUSTRIES CORPORATION, <u>et al.</u> , <sup>1</sup>	)	Case No. 12-21156 (MBK)
	)	
Debtors.	)	(Jointly Administered)

**ORDER (A) APPROVING: (I) THE SALES OF THE DEBTORS' ASSETS  
FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES AND  
RELATED ASSET PURCHASE AGREEMENTS (II) STALKING HORSE  
PROTECTIONS AND SALE PROCEDURES, (III) PROCEDURES RELATED  
TO THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES; AND (IV) FORM AND  
MANNER OF NOTICE; AND (B) GRANTING RELATED RELIEF**

The relief set forth on the following pages is hereby **ORDERED**.

**DATED: 07/26/2012**

  
\_\_\_\_\_  
Honorable Michael B. Kaplan  
United States Bankruptcy Judge

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Morgan Industries Corporation (6758); Hunter Marine Corporation (7926); Hunter Composite Technologies Corporation (7001); Luhrs Corporation (3062); Mainship Corporation (7427); Ovation Yachts Corporation (1476) Salisbury 10 Acres, L.L.C. (1400); Salisbury 20 Acres, L.L.C. (3451); and Silverton Marine Corporation (6842).

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Upon the motion, dated May 29, 2012 (the "Motion"),<sup>2</sup> Morgan Industries Corporation ("Morgan Industries"), on behalf of itself and its affiliated debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors") for entry of an order, pursuant to sections 105(a) and 363 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), (a) approving: (i) the sale of substantially all of the operating assets of the sailboat division, Hunter Marine Corporation (the "Hunter Marine Operating Assets"), and all molds, tooling brand names, websites, intellectual property and dealer agreements required to produce the product lines of Mainship Corporation and Luhrs Corporation (the "Luhrs/Mainship Assets"), and together with the Hunter Marine Operating Assets, the "Lot 1 Purchased Assets") to Tiger International Management Inc., a Florida corporation the "Lot 1 Proposed Purchaser") and the related Asset Purchase Agreement, dated May 29, 2012, a copy of which is annexed to the Motion as Exhibit A (the "Proposed Lot 1 Transaction"); (ii) the sale of the remainder of the Debtors' assets that are not contemplated to be sold pursuant to the Proposed Lot 1 Transaction (the "Remaining Asset Lots") – in any combination that results in the greatest purchase price to the Debtors – to the successful bidders (each a "Remaining Lots Sale" and together with the Proposed Lot 1 Transaction, the "Sales"); (iii) the bidding procedures (collectively, the "Bidding Procedures"), including a break-up fee payable to the Lot 1 Proposed Purchaser; (iv) procedures

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

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relating to the assumption and assignment of certain executory contracts and unexpired leases (the "Assumed Contracts"); and (v) related notice procedures and hearing dates; and (b) granting related relief; and the Court having granted a portion of the relief requested in the Motion at a hearing held on June 1, 2012 (the "Bidding Procedures Hearing"); and the Court having heard the statements of counsel and the evidence presented in support of the balance of the relief requested in the Motion at a hearing before the Court on July [10], 2012 (the "Sale Hearing"); and upon the full and complete record of the Debtors' chapter 11 cases; and it appearing that the Court has jurisdiction over this matter; and it further appearing that the legal and factual bases set forth in the Motion, at the Bidding Procedures Hearing, and at the Sale Hearing establish just cause for the relief granted herein; and it further appearing that the relief requested in the Motion is in the best interests of the Debtors, their creditors, and all other parties in interest in these chapter 11 cases; therefore,

THE COURT HEREBY FINDS AND DETERMINES THAT:

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

B. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

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C. The Court has jurisdiction to grant the relief requested in the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

D. The statutory predicates for the relief sought in the Motion are sections 105(a) and 363 of the Bankruptcy Code, as supplemented by Bankruptcy Rules 2002, 6004 and 9014.

E. Notice of the Sales (the "Sale Notice")<sup>3</sup> has been served upon: (i) the Newark Office of the United States Trustee for Region III; (ii) counsel for the Creditors' Committee; (iii) the Debtors' prepetition and postpetition lender, Bank of America, N.A; (iv) counsel to the Debtors' prepetition and postpetition lender; (v) all entities known to have asserted any lien, interest or encumbrance in or upon the Assets; (vi) counsel for Tiger International Management Inc.; (vii) all parties that previously expressed an interest in purchasing the Assets; (viii) all parties to Assigned Contracts; (ix) the Internal Revenue Service; (x) all applicable state and local taxing authorities; (xi) all applicable federal, state and local realty, servicing and licensing enforcement agencies; (xii) all applicable local regulatory authorities; (xiii) the Office of Attorney General of the State of New Jersey; (xiv) the Office of Attorney General of the State of Florida; and (xv) all parties who have requested notice in the Debtors' chapter 11 cases.<sup>4</sup>

Furthermore, the Debtors published notice of the sale in various electronic trade publications.

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<sup>3</sup> Capitalized terms not defined herein shall have the meanings ascribed to such terms in the Motion, or the Bidding Procedures Order, as applicable.

<sup>4</sup> To the extent the Debtors served any party identified herein via electronic mail, such service of the Sale Notice constitutes good and sufficient notice thereof.

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F. A notice ("Cure Notice"), which among other things, specified the executory contracts and unexpired leases included in the Sale(s) ("Assigned Contracts"), a list of the proposed cure amounts relating to the Assigned Contracts ("Cure Amount Schedule") and the deadline for filing any objections to the proposed cure amount has been served upon the parties to the Assigned Contracts and all parties who have requested notice in the Debtors' chapter 11 cases.

G. As evidenced by the affidavits of service filed with the Court, and based on the representations of counsel at the Sale Hearing, (i) there was proper, timely, adequate and sufficient notice of the Motion, the Sale Hearing and the Sales and assumption and assignment of the Assigned Contracts, (ii) such notice was good and sufficient and appropriate under the circumstances of the Debtors' cases, and reasonably calculated to reach and apprise all holders of Claims and Interests (as hereafter defined) about the Sales, and (iii) no other or further notice of the Motion, the Sale Hearing, or the Sales shall be required.

H. A reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all interested persons and entities in these cases.

I. As demonstrated by: (i) the testimony and other evidence proffered or adduced at the Sale Hearing; and (ii) the representations of counsel made on the record at the Sale Hearing, the Debtors marketed the Assets (as hereafter defined), and conducted the sale process in a non-collusive, fair and good faith manner that was in compliance with that certain order of this Court entered on June 1, 2012, establishing bidding procedures and bid protections in connection with

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the Sales of the Assets (the "Bidding Procedures Order"). A reasonable opportunity has been given to any interested party to make an offer for the Assets.

J. The Debtors diligently and in good faith marketed the Assets to obtain the highest and best offers for the businesses. The Debtors conducted in good faith a formal auction in which Qualified Bidders were invited to participate.

K. After the Auction, the Debtors, in consultation with the Creditors' Committee and BOA, deemed the bid for the Lot 1 Purchased Assets submitted by Marlow Acquisitions, LLC (the "Lot 1 Buyer"), which is set forth in that certain Asset Purchase Agreement by and among Hunter Marine Corporation, Luhrs Corporation and Mainship Corporation and the Lot 1 Buyer attached hereto as Exhibit A (the "Lot 1 APA"), to be the bid most likely to maximize the value of distributable proceeds to the Debtors' stakeholders.<sup>5</sup> The Debtors further deemed the bid for the Lot 1 Purchased Assets submitted by Tiger International Management Inc. (the "Lot 1 Back-Up Bidder"), which is set forth in that certain Asset Purchase Agreement by and between Hunter Marine Corporation, Luhrs Corporation and Mainship Corporation and the Lot 1 Back-Up Bidder (the "Lot 1 Back-Up APA") to be the bid most likely to maximize the value of their estates in the event the Sale to the Lot 1 Buyer was unable to close.

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<sup>5</sup> The Debtors, the Lot 1 Buyer, and the Lot 1 Back-Up Bidder and all other interested parties concede that the sale of the Lot 1 Purchased Assets does not include any molds, parts, tooling, designs or intellectual property for any Gemini Catamarans or the 16 Gemini Molds that were inadvertently listed on the Schedules to Asset Purchase Agreement, dated May 29, 2012, by and between certain of the Debtors and the Tiger International Management Inc.. The aforementioned items have never been property owned or controlled by the Debtors. The exclusion of these assets was announced on the record prior to the commencement of the Auction on July 9, 2012.

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L. The terms and conditions set forth in the Lot 1 APA, and the Sale to the Lot 1 Buyer pursuant thereto, are fair and reasonable and the purchase price payable to the Debtors pursuant to the Lot 1 APA constitutes the highest and best offer obtainable for the Lot 1 Purchased Assets. The Debtors have demonstrated that the sale of the Lot 1 Purchased Assets to the Lot 1 Buyer in accordance with the terms of the Lot 1 APA is based on sound business justifications, and such sale is in the best interests of the Debtors' estates.

M. After the Auction, the Debtors, in consultation with the Creditors' Committee and BOA, deemed the bid for certain items of tangible personal property owned by Silverton Marine Corporation, Luhrs Corporation, Mainship Corporation and Ovation Yachts Corporation including, without limitation, machinery and equipment (the "Lot 2 Purchased Assets") submitted by Hilco Industrial, LLC (the "Lot 2 Buyer"), which is set forth in that certain Asset Purchase Agreement by and among Silverton Marine Corporation, Luhrs Corporation, Mainship Corporation and Ovation Yachts Corporation and the Lot 2 Buyer attached hereto as Exhibit B (the "Lot 2 APA"), to be the bid most likely to maximize the value of distributable proceeds to the Debtors' stakeholders. The Debtors further deemed the bid for the Lot 2 Purchased Assets submitted by Tiger Remarketing Services (the "Lot 2 Back-Up Bidder" and together with the Lot 1 Back-Up Bidder, the "Back-Up Bidders" ), which is set forth in that certain Asset Purchase Agreement by and among Silverton Marine Corporation, Luhrs Corporation, Mainship Corporation and Ovation Yachts Corporation and the Lot 2 Back-Up Bidder (the "Lot 2 Back-Up APA" and together with the Lot 1 Back-Up APA, the "Back-Up Purchase Agreements") to be



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the bid most likely to maximize the value of their estates in the event the Sale to the Lot 2 Buyer was unable to close.

N. The terms and conditions set forth in the Lot 2 APA, and the Sale to the Lot 2 Buyer pursuant thereto, are fair and reasonable and the purchase price payable to the Debtors pursuant to the Lot 2 APA constitutes the highest and best offer obtainable for the Lot 2 Purchased Assets. The Debtors have demonstrated that the sale of the Lot 2 Purchased Assets to the Lot 2 Buyer in accordance with the terms of the Lot 2 APA is based on sound business justifications, and such sale is in the best interests of the Debtors' estates.

O. After the Auction, the Debtors, in consultation with the Creditors' Committee and BOA, deemed the bid for certain items of (i) tangible personal property owned by Silverton Marine Corporation and Ovation Yachts Corporation, including, without limitation, inventory, molds, tooling, spare parts, works in progress and (ii) intangible personal property rights owned by Silverton Marine Corporation and Ovation Yachts Corporation (the "Lot 3 Purchased Assets") and together with the Lot 1 Purchased Assets, the Lot 2 Purchased Assets, the "Assets") submitted by TF Yachts LLC (the "Lot 3 Buyer") and together with the Lot 1 Buyer and Lot 2 Buyer, the "Buyers"), which is set forth in that certain Asset Purchase Agreement by and between Silverton Marine Corporation and Ovation Yachts Corporation and the Lot 3 Buyer attached hereto as Exhibit C (the "Lot 3 APA") and together with the Lot 1 APA and the Lot 2 APA, the "Purchase Agreements"), to be the bid most likely to maximize the value of distributable proceeds to the Debtors' stakeholders.

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P. The terms and conditions set forth in the Lot 3 APA, and the Sale to the Lot 3 Buyer pursuant thereto, are fair and reasonable and the purchase price payable to the Debtors pursuant to the Lot 3 APA constitutes the highest and best offer obtainable for the Lot 3 Purchased Assets. The Debtors have demonstrated that the sale of the Lot 3 Purchased Assets to the Lot 3 Buyer in accordance with the terms of the Lot 3 APA is based on sound business justifications, and such sale is in the best interests of the Debtors' estates.

Q. The Debtors (i) have full corporate or other power to execute, deliver and perform their obligations under the Purchase Agreements and all other documents contemplated thereby or entered into in connection therewith, and the Sales of the Assets by the Debtors have, in each case, been duly and validly authorized by all necessary corporate or similar action, (ii) have all of the corporate or other power and authority necessary to consummate the transactions contemplated by the Purchase Agreements, and such other documents contemplated thereby or entered into in connection therewith, and (iii) have taken all action necessary to authorize and approve the Purchase Agreements and such other documents contemplated thereby and the consummation by them of the transactions contemplated thereby or entered into in connection therewith. No third-party consents or approvals, other than those expressly provided for in the Purchase Agreements, are required for the Debtors to consummate such transactions.

R. Approval of the Debtors' entry into the Purchase Agreements and the consummation of the Sales at this time are in the best interests of the Debtors, their estates, creditors and other parties in interest.

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S. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the Sales prior to, and outside of, a plan of liquidation in that, among other things, the Sales enable the Debtors to yield the highest value for the Assets for the benefit of the Debtors' creditors.

T. The Purchase Agreements and the Sales were negotiated, proposed and entered into by the Debtors and the Buyers without collusion, in good faith, and from arm's-length bargaining positions. Neither the Debtors nor the Buyers have engaged in any conduct that would cause or permit either the Purchase Agreements or any other related agreement to be avoided under section 363(n) of the Bankruptcy Code.

U. Because, among other things, the Sales of the Assets to the Buyers have been proposed in good faith, the Buyers are good faith purchasers under section 363(m) of the Bankruptcy Code and, as such, are entitled to all of the protections afforded thereby. In the absence of a stay pending appeal, the Buyers will be acting in good faith within the meaning of section 363(m) of the Bankruptcy Code in closing the Sales at any time after entry of this Order, notwithstanding the provisions of Bankruptcy Rule 6004(h).

V. No Buyer is an "insider" of the Debtors, as that term is defined under section 101 of the Bankruptcy Code. The consideration provided by the Buyers pursuant to the Purchase Agreements (i) is fair and reasonable, (ii) is the highest and best offer for the Assets being purchased by such Buyer, (iii) will provide a greater recovery to the Debtors' estates than would be provided by any other available alternative, and (iv) constitutes reasonably equivalent value

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and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

W. The Sales of the Assets to the Buyers will be a legal, valid, and effective transfer of the Assets and will vest each Buyer with all right, title, and interest to the applicable Assets free and clear of all (i) claims against and interests in the Debtors, and (ii) liens, claims or encumbrances against, interests in, and pledges of, the Assets (collectively, the “Claims and Interests” or if the context so requires, the “Claims or Interests”).

X. The Debtors may sell the Assets free and clear of all Claims and Interests of any kind or nature whatsoever, because in each case, one or more of the standards set forth in section 363(f)(1) through (5) of the Bankruptcy Code has been satisfied. Those holders of Claims and Interests who did not object, or who withdrew their objections, to the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Claims and Interests who did object fall within one or more of the other subsections of 363(f) of the Bankruptcy Code and are adequately protected by having their Claims and Interests attach to the net proceeds of the Sales ultimately attributable to the property against or in which they assert such Claim or Interest, with the same validity, priority and effect that existed immediately prior to the consummation of the Sales and subject to any and all rights, claims and defenses that the Debtors may have with respect thereto.

Y. The consideration provided by each Buyer pursuant to the applicable Purchase Agreements is fair and adequate, represents consideration deemed valuable in law and

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constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and other applicable law. No Purchase Agreement has been entered into with the intent to hinder, delay or defraud any of the Debtors' creditors or other parties in interest.

Z. If the Sales of the Assets to the Buyers were not free and clear of all Claims and Interests, or if the Buyers would, or in the future could, be liable for any Claims and Interests, the Buyers would not have entered into the Purchase Agreements and would not consummate the Sales, thus adversely affecting the Debtors, their estates and their creditors.

AA. In the event the Debtors are unable to consummate the Sales with one or more of the Buyers, this Order shall be deemed to apply to the transaction contemplated by the Back-Up Purchase Agreements and all references herein to (i) the Buyers shall apply to the applicable Back-Up Bidder and (ii) the Purchase Agreements shall apply to the applicable Back-Up Purchase Agreement, in each case, with equal force and effect.

NOW THEREFORE, THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES  
AS FOLLOWS:

**General Provisions**

1. The Motion, to the extent not already granted by the Bidding Procedures Order, is granted in all respects, as further described herein.

2. All Objections (if any) to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included in such Objections, are overruled on the merits.

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**Approval of the Purchase Agreements**

3. The Purchase Agreements, and all of the documents, agreements (including, but not limited to, the ancillary agreements to be entered into pursuant to the Purchase Agreements), and transactions contemplated thereby or entered into in connection therewith shall be, and hereby are, approved in all respects. The Debtors are authorized and empowered to execute, deliver, and perform under such agreements. The Debtors' Sales of the Assets to the Buyers in accordance with the terms of the Purchase Agreements are hereby approved free and clear of all Claims and Interests in accordance with section 363(f) of the Bankruptcy Code. All Claims and Interests, if any, attach to the net proceeds of the Sales ultimately attributable to the property against or in which they assert such Claim or Interest, with the same validity, priority and effect that existed immediately prior to the consummation of the Sales and subject to any and all rights, claims and defenses that the Debtors may have with respect thereto.

4. Pursuant to section 363(b) of the Bankruptcy Code, the Debtors are authorized and empowered to perform their obligations under and comply with the terms of the Purchase Agreements and all other documents and agreements contemplated thereby or entered into in connection therewith, and to consummate the Sales, pursuant to and in accordance with the terms and conditions of the Purchase Agreements and such documents and agreements.

5. This Order and the Purchase Agreements, upon execution, (including, without limitation, the approval of the Purchase Agreements and the transactions contemplated therein) shall be binding in all respects upon all creditors of and holders of equity interests in the Debtors

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(whether known or unknown), any holders of Claims and Interests, all applicable successors and assigns of Buyers, the Debtors, the Creditors' Committee, and any subsequent trustees appointed in the Debtors' chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code and shall not be subject to rejection.

6. The Sales of the Assets pursuant to the Purchase Agreements shall constitute a legal, valid, and effective transfer of the Assets, and shall vest each Buyer with all right, title, and interest of the Debtors in and to the applicable Assets free and clear of all Claims and Interests in accordance with section 363(f) of the Bankruptcy Code. All Claims and Interests, if any, attach to the net proceeds of the Sales ultimately attributable to the property against or in which they assert such Claim or Interest, with the same validity, priority and effect that existed immediately prior to the consummation of the Sales and subject to any and all rights, claims and defenses that the Debtors may have with respect thereto.

7. Except as expressly permitted or otherwise specifically provided by the Purchase Agreements or this Order, all entities holding Claims or Interests in all or a portion of the Assets (other than any obligations specifically assumed by the Lot 1 Buyer pursuant to the Lot 1 APA) arising under or out of, in connection with, or in any way relating to the Debtors, the Assets, or the operation of the Debtors' businesses prior to the applicable closing dates, hereby are forever barred, estopped and permanently enjoined from asserting such Claims or Interests against the Buyers, their affiliates or their successors or assigns, their property or the Assets.

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**Assumption of Assigned Contracts**

8. Pursuant to section 365 of the Bankruptcy Code, the Debtors are authorized to assume and assign the Assigned Contracts subject to the procedures provided herein, *provided, however*, that there shall be no assumption of any Assigned Contract absent simultaneous assignment thereof to the Lot 1 Buyer.

9. Each counterparty to the Assigned Contracts that disagreed with the Cure Amount in the Cure Notice or the assumption and/or assignment of its Assigned Contract was required to file an Objection on or before July 5, 2012 at 4:00 p.m. (prevailing Eastern Time) as set forth in the Cure Notice. Any counterparty to an Assigned Contract for which an Objection was not properly and timely filed shall be (a) forever barred from objecting to the Cure Amount proposed by the Debtors, and (b) forever barred and stopped from asserting or claiming any additional cure amounts due or defaults existing from the Debtors or any assignee of the relevant contract. The Cure Amounts set forth on the Cure Notice and noticed upon each applicable counterparty to each Assigned Contract for which no Objection was filed shall be deemed sufficient to permit assumption and assignment of each such Assigned Contract.

10. On or promptly after the closing as is practical, the Cure Amounts relating to Assigned Contracts to which no Objections, shall be paid by the Lot 1 Buyer (each a "Cure Payment"). The Cure Payment by the Lot 1 Buyer (shall be deemed to discharge the Debtors' obligations to (a) cure, or provide adequate assurance that the Debtors will promptly cure any defaults under the Assigned Contracts, and (b) compensate or provide adequate assurance that



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Debtor: Morgan Industries Corporation, et al.

Case No. 12-21156 (MBK)

**ORDER (A) APPROVING: (I) THE SALES OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES AND RELATED ASSET PURCHASE AGREEMENTS (II) STALKING HORSE PROTECTIONS AND SALE PROCEDURES, (III) PROCEDURES RELATED TO THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (IV) FORM AND MANNER OF NOTICE; AND (B) GRANTING RELATED RELIEF**

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the Debtors will promptly compensate any non-Debtor party to the Assigned Contracts for any actual pecuniary loss resulting from any default under the Assigned Contracts.

11. Prior to the Closing Date, upon two (2) days' notice to the Debtors, the counter-party to the Assigned Contract, the Creditors' Committee and BOA, the Lot 1 Buyer may assign any executory contract or unexpired lease to the Assigned Contract list not already on the list or reassign any executory contract or unexpired lease as an Assigned Contract from its prior classification, or remove said contract from either list. The counter-party to the Assigned Contract shall have fifteen (15) business days from the filing of the Cure Notice to object to the proposed assumption and assignment of the Assigned Contract or the proposed Cure Amounts.

12. Prior to the Closing Date, upon two (2) days' notice to the Debtors, the counter-party to specified the executory contracts and unexpired leases included in the Lot 3 Sale (the "Lot 3 Assigned Contracts"), the Creditors' Committee and BOA, the Lot 3 Buyer may assign any executory contract or unexpired lease to the Lot 3 Assigned Contracts list. The counter-party to the Lot 3 Assigned Contract shall have fifteen (15) business days from the filing of the Cure Notice to object to the proposed assumption and assignment of the Lot 3 Assigned Contract or the proposed Cure Amounts.

13. In the event the Sale of the Lot 1 Purchased Assets does not close, none of the Debtors' executory contracts and leases shall be assumed or rejected by virtue of this Order and shall remain subject to further administration in this case.

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Debtor: Morgan Industries Corporation, et al.

Case No. 12-21156 (MBK)

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**Additional Provisions**

14. The consideration provided by each Buyer for the Assets pursuant to the respective Purchase Agreements shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia and the Buyer is entitled to the protection of section 363(m) of the Bankruptcy Code. Accordingly, the reversal or modification or appeal of the authorization provided herein to consummate the Purchase Agreements and Sales shall not affect the validity of the Sales to the Buyers, unless such authorization is duly stayed pending such appeal prior to the closings.

15. The consideration provided by each Buyer for the Assets purchased pursuant to the respective Purchase Agreement is fair and reasonable and the Sales may not be avoided under section 363(n) of the Bankruptcy Code or otherwise.

16. This Court retains jurisdiction to enforce and implement the terms and provisions of this Order, the Purchase Agreements, any waivers and consents thereunder, and of each of the agreements and documents executed pursuant to or in connection therewith in all respects, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Assets to the Buyers, (b) compel delivery of the applicable purchase price or performance of other obligations under the Purchase Agreement owed by or to the Debtors, (c) resolve any disputes arising under or related to the Purchase Agreements, except as otherwise provided therein, or any of the agreements and documents executed pursuant thereto or in connection therewith, (d) interpret,

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**ORDER (A) APPROVING: (I) THE SALES OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES AND RELATED ASSET PURCHASE AGREEMENTS (II) STALKING HORSE PROTECTIONS AND SALE PROCEDURES, (III) PROCEDURES RELATED TO THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (IV) FORM AND MANNER OF NOTICE; AND (B) GRANTING RELATED RELIEF**

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implement, and enforce the provisions of this Order against any person, and (e) protect each Buyer against the assertion of any Claims and Interests against the Assets.

17. The terms and provisions of the Purchase Agreements and all related ancillary documents shall be binding on the parties thereto, and the provisions of this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, their estate and creditors, the Buyers and their affiliates, successors, and assigns, and any affected third parties including, but not limited to, all persons asserting a Claim or Interest in the Assets, notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding. Nothing in this Order shall relieve each Buyer or the Debtors from any liability it may have to the other under any express, unambiguous writing by either party in connection with the Purchase Agreements or the transactions contemplated thereby.

18. The failure specifically to include any particular provisions of any of the Purchase Agreements in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that each Purchase Agreement be authorized and approved in its entirety.

19. The Debtors are authorized to execute the Purchase Agreements and any other related documents and agreements contemplated thereby or entered into in connection therewith and to consummate all transactions, and take any other actions, contemplated by, or necessary or appropriate to effectuate, the Purchase Agreements and the transactions contemplated therein.

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Debtor: Morgan Industries Corporation, et al.

Case No. 12-21156 (MBK)

**ORDER (A) APPROVING: (I) THE SALES OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES AND RELATED ASSET PURCHASE AGREEMENTS (II) STALKING HORSE PROTECTIONS AND SALE PROCEDURES, (III) PROCEDURES RELATED TO THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (IV) FORM AND MANNER OF NOTICE; AND (B) GRANTING RELATED RELIEF**

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20. The Purchase Agreements and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto and in accordance with the terms hereof, without further order of the Court, prior to the closing of the applicable transaction, provided that any such modification, amendment, or supplement does not have a material adverse effect on the Debtors' estates. The Debtors will provide the Creditors' Committee and BOA with notice of any such modification, amendment, or supplement.

21. To the extent the Debtors or their successors and assigns seek to sell, lease or otherwise dispose of the Locations during the License Term (each as defined in the Lot 2 APA), prior to September 30, 2012, any such transfer must be made explicitly subject to the Lot 2 Buyer's occupancy rights in accordance with the Lot 2 APA, and the Debtors shall provide advance written notice of any such transfer to the Lot 2 Buyer, in accordance with the notice provisions in the Lot 2 APA.

22. The provisions of this Order are non-severable and mutually dependent and, pursuant to Bankruptcy Rule 6004, this Order shall not be stayed for 10 days and shall be effective immediately upon entry.

## **EXHIBIT A**

### **MARLOW ASSET PURCHASE AGREEMENT**

## ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** (the "**Agreement**") is made and entered into as of this 19 day of July, 2012 (the "**Agreement Date**"), by and between Marlow Acquisitions, LLC, a Florida limited liability company (the "**Buyer**"), on the one hand, and Hunter Marine Corporation, a New Jersey corporation ("**Hunter**"), Luhrs Corporation, a New Jersey corporation ("**Luhrs**"), and Mainship Corporation, a New Jersey corporation ("**Mainship**," and together with Hunter and Luhrs, the "**Sellers**" and, together with Buyer, the "**Parties**"). Each of the Sellers being a Debtor and Debtor in Possession under Case No. 12-21156 (MBK) (the "**Case**") in the United States Bankruptcy Court for the District of New Jersey (the "**Bankruptcy Court**").

### RECITALS

A. Collectively, the Sellers are in the business of producing and selling recreational powerboats and sailboats (the "**Business**").

B. Sellers wish to sell to Buyer, pursuant to Sections 363 of Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**"), substantially all of the assets of Hunter and certain assets of Mainship and Luhrs, which are used primarily in connection with or arising out of the operation of the Business, all at the price and on the other terms and conditions specified in detail below and Buyer wishes to so purchase and acquire such assets from Sellers.

C. Capitalized terms used but not otherwise defined herein have the respective meanings set forth in **Exhibit "E"** hereto.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

#### 1. Transfer of Assets.

1.1 **Purchase and Sale of Assets.** On the Closing Date, as hereinafter defined, in consideration of the covenants, representations and obligations of Buyer hereunder, and subject to the conditions set forth in this Agreement and entry of the Approval Order (as defined below), Sellers shall sell, assign, transfer, convey and deliver (pursuant to Sections 363 and 365 of the Bankruptcy Code) to Buyer, free and clear of all Liens to the extent provided in the Approval Order, and Buyer shall purchase from Sellers, the Sellers' right, title and interest as of the Closing Date in and to those assets of Sellers as set forth herein, including, without limitation, the following (collectively, excluding the Excluded Assets (as defined in Section 1.2 below), the "**Property**"):

1.1.1 **Leases and Contracts.** Each Seller's right, title and interest in and to (i) the lessee's interest under those equipment, personal property and intangible property leases, rental agreements, licenses, contracts, agreements and similar arrangements, if any, described on **Schedule 1.1.1-(i)** attached to this Agreement and incorporated herein by this reference (collectively, the "**Leases**") and (ii) those other contracts, leases, orders, purchase orders, dealer agreements, licenses, contracts, agreements and similar arrangements described on

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**Schedule 1.1.1-(ii)** attached to this Agreement and incorporated herein by this reference (collectively, the **"Other Contracts"** and together with the Leases, the **"Leases and Contracts"**).

1.1.2 Personal Property. Items of equipment and tangible personal property owned by any of the Sellers and used exclusively in connection with the Business including, without limitation, all such furniture, vehicles, boats, machinery, molds, equipment, tools, spare parts, computers, fixtures and furnishings and other items of tangible personal property listed or described in **Schedule 1.1.2** attached to this Agreement and incorporated herein by this reference (collectively, the **"Personal Property"**). The Personal Property shall also expressly exclude any equipment or other tangible property, if any, held by any Sellers pursuant to a lease, rental agreement, contract, license or similar arrangement (a **"Contract"**) where Buyer does not assume the underlying Contract relating to such personal property at the Closing, in accordance with Section 1.2 below.

1.1.3 Intangible Property. Intangible personal property owned, licensed to or held by any Seller to the extent heretofore used in connection with the Business, but in all cases only to the extent of such Seller's interest and only to the extent transferable, together with all books, records and like items pertaining to the Business, the goodwill of the Business, patents, processes, trademarks, brand names, websites, service marks, copyrights, designs (all of the foregoing, whether registered or unregistered), catalogues, customer lists and other customer data bases, correspondence with present or prospective customers and suppliers, advertising materials, software programs, and telephone exchange numbers and facsimile numbers, domain names, URL addresses, identified with the Business and any right, title and interest of Sellers in and to those items described on **Schedule 1.1.3** attached hereto and incorporated herein by this reference (collectively, the **"Intangible Property"**). As used in this Agreement, Intangible Property shall in all events exclude (i) any materials containing privileged communications or other information about employees, disclosure of which would violate an employee's reasonable expectation of privacy and any other materials which are subject to attorney-client or any other privilege or precluded from disclosure by applicable law, and (ii) any software or other item of intangible property held by Sellers pursuant to a license or other Contract where Buyer is not assuming the underlying Contract relating to such intangible personal property at the Closing.

1.1.4 Governmental Permits. To the extent transferable and assignable, each Seller's interest in all licenses, certificates of occupancy, permits, registrations, certificates of public convenience and necessity, approvals, licenses, easements, authorizations and operating rights, if any, issued or granted by any governmental or similar authority having jurisdiction over the Business to the extent relating primarily to the operation of the Business, including, without limitation, those described on **Schedule 1.1.4** attached hereto and incorporated herein by this reference (collectively, the **"Permits and Licenses"**).

1.1.5 Inventory. All supplies, goods, materials, work in process, finished goods, replacement parts, maintenance supplies, inventory and stock in trade owned and held by any Sellers or consigned to Sellers for use in connection with the operation of the Business, wherever located (collectively, the **"Inventory"**).

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1.1.6 Vendor Items. All promotional allowances and vendor rebates and deposits and similar items relating primarily to the operation of the Business (collectively, the “Vendor-Related Assets”).

1.1.7 Claims, Etc. All claims, prepayments, deposits, warranties, guarantees, refunds, reimbursements, causes of action, rights of recovery, rights of set-off and rights of recoupment to the extent specifically listed or described on **Schedule 1.1.7** attached hereto and incorporated herein by this reference (collectively, the “Claims”). For the avoidance of doubt, any claim or related item not expressly listed on Schedule 1.1.7 is not being assumed by Buyer.

1.1.8 Certain Insurance Rights. Sellers’ rights under insurance policies to the extent they cover Assumed Liabilities, or if the policies may not be assigned or transferred, the proceeds of any claims made thereunder to the extent relating to the foregoing.

1.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, the Property shall exclude (collectively, the “Excluded Assets”): (i) those items excluded pursuant to the provisions of Section 1.1 above; (ii) Sellers’ rights under this Agreement and all cash and non-cash consideration payable or deliverable to Sellers pursuant to the terms and provisions hereof; (iii) except only as described on **Schedule 1.1.7** hereto, all cash deposits and prepaid items, except that deposits related to obligations arising from purchase orders placed on or before the Closing Date, as set forth on **Schedule 2.4.1-(vii)** will not be considered excluded assets and will be transferred to Buyer in conjunction with Buyer’s assumption of such contracts; (iv) all cash and cash equivalents (including checking account balances, certificates of deposit and other time deposits and petty cash) and marketable and other securities relating to or arising in connection with the operation of the Business, (v) all tax liabilities, refunds, rebates, credits and similar items relating to or arising out of the operation of the Business and to any period, or portion of any period, on or prior to the Closing Date; (vi) all insurance proceeds (including, without limitation, any insurance policies held by any Sellers which insure the directors and officers of any Seller against liability and any and all proceeds of any such insurance policies), claims and causes of action other than those described in Section 1.1.8 above; (vii) any Lease or Other Contract to which any Seller is a party which is not listed or described on **Schedule 1.1.1-(i)** and **Schedule 1.1.1-(ii)** and any Lease or Other Contract that is not assumable and assignable as a matter of applicable law (including, without limitation, any with respect to which any consent requirement in favor of the counter-party thereto may not be overridden pursuant to Section 365 of the Bankruptcy Code) (collectively, “Excluded Contracts”), (viii) all securities, whether capital stock or debt, of any Seller; (ix) all tax records, minute books, stock transfer books and corporate seal of each Seller; (x) any letters of credit or similar financial accommodations issued to any third party(ies) for the account of any Seller and any collateral therefor and other collateral deposits and prepaid items associated with the Property; (xi) except only as described on **Schedule 1.1.7** hereto, all rights, claims and causes of action of Sellers against any person or entity including without limitation any former officers, directors, employees, members, principals, agents, and representatives of any Seller, including, without limitation, any and all claims asserted by third parties against such persons which may result in the payment of proceeds to any Seller; (xii) all preference or avoidance claims and actions of any of the Sellers, including, without limitation, any such claims and actions arising

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under Sections 544, 547, 548, 549, and 550 of the Bankruptcy Code; (xiii) all rights, claims and causes of action of any Seller asserted or which may hereafter be asserted in any of the litigation proceedings described on **Schedule 1.2(xiii)** attached hereto and incorporated herein by this reference; and (xiv) those additional assets, if any, listed on **Schedule 1.2(xiv)** attached hereto and incorporated herein by this reference.

1.3 Instruments of Transfer. The sale, assignment, transfer, conveyance and delivery of the Property to Buyer shall be made by assignments, bill of sale, and other instruments of assignment, transfer and conveyance provided for in Section 3 below and such other instruments as may reasonably be requested by Buyer to transfer, convey, assign and deliver the Property free and clear of liens and encumbrances to Buyer, but in all events only to the extent that the same do not impose any monetary obligations upon Sellers or in any other respect increase in any material way the burdens imposed by the other provisions of this Agreement upon Sellers, or any of them, except as provided in this Section 1.3.

1.3.1 The Sellers will transfer to the Buyer all of the Leases and Contracts, Intangible Property, Permits and Licenses, Claims and insurance rights by Sellers' delivery of the duly executed Assignment of Leases, Bill of Sale, Assignment of Intangible Property at the Closing, as provided in Section 2.9 below.

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1.3.2 Not less than five (5) days prior to the Closing Date Sellers will grant Buyer access to Sellers' facilities located in St. Augustine, Florida, Alachua, Florida, and Millville, New Jersey for the purpose of taking an inventory and photographs of the Personal Property, the Inventory and the Vendor-Related Assets (collectively, the "**Tangible Assets**") that are being purchased hereunder. Buyer shall only be granted access to the foregoing facilities when accompanied by an agent of Seller.

## 2. Consideration.

2.1 Purchase Price. The cash consideration to be paid by Buyer to Sellers for the Property (the "**Purchase Price**") shall be One Million Nine Hundred Forty-Five Thousand Dollars (\$1,945,000.00).

### 2.2 Deposit.

2.2.1 Concurrently with the mutual execution and delivery of this Agreement (the date of such mutual execution and delivery is sometimes referred to herein as the "**Execution Date**"), Buyer shall deposit into an attorneys trust account (the "**Escrow**") with Sellers' counsel, Arent Fox, LLP (the "**Escrow Holder**"), One Hundred and Ninety-Four Thousand Five Hundred Dollars (\$194,500.00) (the "**Deposit**") in immediately available funds. Escrow Holder shall immediately deposit the Deposit into an interest-bearing attorneys trust account.

2.2.2 Upon the termination of this Agreement for any reason other than proper termination by Sellers pursuant to Section 10.1.6(B), the Parties shall instruct the Escrow Holder to immediately refund the Deposit, together with all interest earned thereon, to Buyer.

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The Deposit shall become nonrefundable upon the proper termination of this Agreement by Sellers pursuant to Section 10.1.6(B). Upon such proper termination pursuant to Section 10.1.6(B), the Parties shall instruct the Escrow Holder to immediately disburse the Deposit and all interest accrued thereon to Sellers to be retained by Sellers for their own account.

2.2.3 At the Closing, as defined below, the Deposit (and any accrued interest thereon) shall be credited and applied against amounts due and owing to Sellers.

2.3 Intentionally Omitted.

2.4 Assumed Liabilities.

2.4.1. Effective as of the Closing Date, Buyer shall assume the following liabilities and obligations of Sellers: (i) all obligations of Sellers existing as of the Agreement Date or thereafter arising or accruing under the Leases and Contracts actually assigned to Buyer at the Closing, (ii) employment contract obligations, identified in **Schedule 2.4.1-(ii)** (the "Employment Contracts") of Seller, if any, existing as of the Petition filing date for a period of thirty (30) days following Closing, during which time Buyer and the respective employee shall determine if the employment relationship should continue and, if so, on what terms, (iii) with respect to trade payables (for the purposes herein trade payable shall include only those expenses directly necessary for the production of inventory, but shall not include any payroll expenses, taxes, costs to own or maintain real estate, or professional fees and in no event shall exceed the amount of \$120,000.00) of the Business, all obligations of Sellers existing as of the Agreement Date or thereafter arising or accruing to the extent incurred in the ordinary course after the commencement of the Case and obligations to customers of Sellers for refunds, rebates, returns, discounts and the like existing as of the Closing Date, (iv) cure obligations required to be paid pursuant to the Approval Order as a condition to Sellers' assignment of the Leases and Contracts listed on **Schedules 1.1.1-(i) and 1.1.1(ii)** provided that, if such amounts have to be paid at Closing as a condition to Sellers' ability to assign the applicable Leases and Contracts, then Buyer shall pay such cure obligations concurrently with the Closing rather than assuming such obligations, (v) all accrued vacation, of employees of the Sellers which remain unpaid or unused as of the Closing Date, (vi) known warranty programs and obligations of Sellers as set forth on **Schedule 2.4.1-(vi)**, (vii) all obligations arising from purchase orders placed on or before the Closing Date, as set forth on **Schedule 2.4.1-(vii)** and (viii) with respect to any such additional liabilities and obligations as may be set forth or described on **Schedule 2.4.1-(viii)** hereto (collectively, the "**Assumed Liabilities**").

2.5 Purchase Price Allocation. Not later than August 1, 2012, Buyer shall prepare and deliver to Sellers for their review and consideration a schedule (the "**Allocation Schedule**") allocating the Purchase Price among the various assets comprising the Property in accordance with Treasury Regulation 1.1060-1 (or any comparable provisions of state or local tax law) or any successor provision. If Sellers disagree with or raise objections to the Allocation Schedule, Buyer and Sellers will negotiate in good faith to resolve such objections. If the Parties are able to agree upon the allocation of the Purchase Price, Buyer and Sellers shall report and file all tax returns (including any amended tax returns and claims for refund) consistent with such mutually agreed Purchase Price allocation, and shall take no position contrary thereto or

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inconsistent therewith (including in any audits or examinations by any taxing authority or any other proceedings). Buyer and Sellers shall file or cause to be filed any and all forms (including U.S. Internal Revenue Service Form 8594), statements and schedules with respect to such allocation, including any required amendments to such forms. If, on the other hand, the Parties are unable to mutually agree upon the manner in which the Purchase Price should be allocated, Buyer and Sellers shall be free to make their own respective allocations of the Purchase Price for tax purposes.

2.6 Intentionally Omitted.

2.7 Intentionally Omitted.

2.8 Closing Transactions.

2.8.1 Closing. The Closing of the transactions provided for herein (the “Closing”) shall take place at such place or places as the Parties may mutually agree upon.

2.8.2 Closing Date. The date of the Closing (the “Closing Date”) shall be held upon the second (2<sup>nd</sup>) Business Day following the satisfaction of the last of the conditions set forth in Sections 3.1 and 3.2 below.

2.9 Sellers’ Deliveries to Buyer at Closing. On the Closing Date, Sellers shall deliver to Buyer:

2.9.1 An Assignment and Assumption of Leases and Contracts substantially in the form and content attached as **Exhibit “A”** hereto, duly executed by Sellers pursuant to which each Seller shall assign to Buyer such Seller’s respective interest in the Leases and Contracts (the “**Assignment of Leases**”).

2.9.2 A Bill of Sale and Assignment, duly executed by Sellers in the form and on the terms of the bill of sale attached hereto as **Exhibit “B,”** pursuant to which each Seller transfers and assigns to Buyer such Seller’s right, title and interest in and to the Personal Property (the “**Bill of Sale**”).

2.9.3 A counterpart Assignment of Intangible Property, duly executed by Sellers, in the form and content of the assignment of intangible property attached as **Exhibit “C”** hereto, pursuant to which each Seller transfers and assigns to Buyer such Seller’s right, title and interest in and to the Intangible Property (the “**Assignment of Intangible Property**”).

2.9.4 Possession and control of the Property, free and clear of all Liens to the extent provided in the Approval Order, excluding, in all events, Buyer’s obligations under this Agreement. Sellers shall deliver to Buyer possession of all of the Tangible Assets in the same physical location where such Tangible Assets are located as of the Agreement Date and as such physical location is indicated on the written inventory of the Tangible Assets provided under Section 1.3.2 above.

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2.9.5 A copy of the Approval Order, which shall be a Final Order, authorizing and approving the execution and delivery and performance of this Agreement, all other documents contemplated herein and the transactions contemplated hereby and thereby and the acts of the officers of Sellers in carrying out the terms and provisions hereof.

2.9.6 Any consents, approvals and authorizations of third parties that are necessary, including authorization by the Bankruptcy Court, for the execution, delivery and consummation of this Agreement, but specifically excluding any such consents, approvals and/or authorizations the need for which is obviated by the entry of the Approval Order.

2.9.7 A counterpart Assumption of Liabilities with respect to the Assumed Liabilities, in the form and content attached as **Exhibit "D"** duly-executed by Sellers (the "**Assumption of Liabilities**").

2.9.8 A non disturbance agreement executed by Bank of America in a form and substance reasonably acceptable to Buyer (the "NDA").

Any such other documents, funds or other things reasonably contemplated by this Agreement to be delivered by Sellers to Buyer at the Closing.

2.10 Buyer's Deliveries to Sellers at Closing. On the Closing Date, Buyer shall make or cause the following deliveries to Sellers or the Escrow Holder, as applicable:

2.10.1 Payment of the Purchase Price

2.10.2 A counterpart of the Assignment of Leases, duly executed by Buyer.

2.10.3 A counterpart to the Assumption of Liabilities, duly executed by Buyer.

2.10.4 Any such other documents, funds or other things reasonably contemplated by this Agreement to be delivered by Buyer to Sellers at the Closing.

2.11 Sales, Use and Other Taxes. Any sales, purchase, transfer, stamp, documentary stamp, use or similar taxes under the laws of the states in which any portion of the Property is located, or any subdivision of any such state, or under any federal law or the laws or regulations of any federal agency or authority, which may be payable by reason of the sale or transfer of the Property under this Agreement or the transactions contemplated herein shall be disclosed to Buyer at least five (5) business days before Closing and borne by and paid by Buyer.

2.12 Possession. Right to possession of the Property shall transfer to Buyer on the Closing Date. Sellers shall transfer and deliver to Buyer on the Closing Date such items as Buyer may reasonably require to obtain occupation and control of the Property, and shall also make available to Buyer, at Sellers' facility in Alachua, Florida, the originals of all documents in Sellers' actual possession that are required to be transferred to Buyer by this Agreement. All costs associated with moving the Property from any locations at which the Property is located as

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of the Closing Date shall be borne by Buyer. Seller shall take all reasonable actions necessary to assist Buyer in obtaining physical possession of the Property. To the extent that there is a dispute to any comingled property located in Millville, New Jersey or St. Augustine, Florida with another buyer of assets of this Seller or another affiliate of the Seller, Seller shall assist Buyer in obtaining possession including but not limited to filing any motions necessary with the Court to assure transfer of the Property.

2.13 Care and Custody of Tangible Assets. During the period from the Agreement Date through the Closing Date, Sellers are solely responsible to maintain the Tangible Assets and to take appropriate and reasonable steps to secure and protect the Tangible Assets from theft, vandalism, pilferage, damage and casualty. Seller shall be responsible to exercise the same level of care and maintain insurance over all of the Tangible Assets as Sellers would take or maintains for valuable personal property which is used and useful in Sellers' operating business.

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2.13.1 Not in limitation of the foregoing, Buyer and Seller acknowledge that some of the Tangible Assets are located in Millville, New Jersey and/or St. Augustine, Florida and is, or may be, comingled with personal property which has been sold to third parties. Sellers will exercise commercial best efforts to separate the Tangible Assets which Buyer is purchasing under this Agreement from the personal property which has been sold to third parties by not later than July 31, 2012.

2.13.2 Buyer shall have the right, for itself and/or any agents of Buyer, to observe the separation of the Tangible Assets from the personal property which has been sold to third parties.

3. Conditions Precedent to Closing.

3.1 Conditions to Sellers' Obligations. Sellers' obligation to make the deliveries required of Sellers at the Closing Date and otherwise consummate the transaction contemplated herein shall be subject to the satisfaction or waiver by Sellers of each of the following conditions:

3.1.1 All of the representations and warranties of Buyer contained herein shall continue to be true and correct at the Closing in all material respects.

3.1.2 Buyer shall have executed and delivered to Sellers the Assignment of Leases and the Assumption of Liabilities.

3.1.3 Buyer shall have delivered, or shall be prepared to deliver to Sellers at the Closing, all cash and other documents required of Buyer to be delivered at the Closing.

3.1.4 No action, suit or other proceedings shall be pending before any court, tribunal or governmental authority seeking or threatening to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or seeking to obtain

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injunctive relief or substantial damages in respect thereof, or involving a claim that consummation thereof would result in the violation of any law, decree or regulation of any governmental authority having appropriate jurisdiction.

3.1.5 Buyer shall have substantially performed or tendered performance of each and every material covenant on Buyer's part to be performed which, by its terms, is required to be performed at or before the Closing.

3.1.6 The Bankruptcy Court shall have entered an order in substantially the form attached hereto as **Exhibit "F"** (the "**Approval Order**") and the Approval Order shall not have been stayed as of the Closing Date and shall have become a Final Order.

3.2 Conditions to Buyer's Obligations. Buyer's obligation to make the deliveries required of Buyer at the Closing and otherwise consummate the purchase of the Property contemplated herein shall be subject to the satisfaction or waiver by Buyer of each of the following conditions:

3.2.1 Sellers shall have substantially performed or tendered performance of each and every covenant on Sellers' part to be performed which, by its terms, is required to be performed or capable of performance at or before the Closing.

3.2.2 All of the representations and warranties of Sellers contained herein shall continue to be true and correct at the Closing in all material respects.

3.2.3 Sellers shall have executed and be prepared to deliver to Buyer the Assignment of Leases, the Assumption of Liabilities, the Bill of Sale, and the Assignment of Intangible Property.

3.2.4 Sellers shall have delivered, or shall be prepared to deliver to Buyer at the Closing, all other documents required of Sellers to be delivered at the Closing.

3.2.5 No action, suit or other proceedings shall be pending before any court, tribunal or governmental authority seeking or threatening to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or involving a claim that consummation thereof would result in the violation of any law, decree or regulation of any governmental authority having appropriate jurisdiction.

3.2.6 The Bankruptcy Court shall have entered the Approval Order and the Approval Order shall have become a Final Order.

3.2.7 The Leases and Contracts assigned to Buyer at the Closing (whether by virtue of the effect of the Approval Order rendering consent to assignment unnecessary or by virtue of written consents to assignment obtained from the applicable counterparties) shall include all of the Leases and Contracts described on **Schedules 1.1.1-(i) and 1.1.1-(ii)** attached hereto and incorporated herein by this reference) provided, however, to the extent that any Lease or Contract described on **Schedules 1.1.1-(i) and 1.1.1-(ii)** cannot be

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assigned to Buyer at the Closing solely because the Bankruptcy Court has determined that Buyer has failed to demonstrate "adequate assurance of future performance" as to that Lease or Contract pursuant to Section 365 of the Bankruptcy Code, then **Schedules 1.1.1-(i) and 1.1.1-(ii)** shall automatically be deemed amended to eliminate such Lease or Contract, as applicable (collectively, "**Dropped Contracts**") and Buyer and Sellers shall proceed as though Sellers' interest in such Dropped Contracts had never been part of the Property or the transactions contemplated herein.

3.2.8 Sellers having, on or prior to July 31, 2012, entered into a triple-net lease ("Lease") for the entire premises owned or occupied by Hunter in Alachua, Florida which is generally described in Schedule 3.2.8 attached hereto for a period of one (1) year ("**Initial Term**"), at the rental rate of One Hundred Thousand Dollars (\$100,000.00) plus real estate taxes, utilities, insurance and routine maintenance, which such lease shall contain an option to renew the lease for a period of one (1) year (the "**Renewal Term**"), exercisable not less than ninety (90) days prior to the end of the Initial Term. The rental rate payable during the Renewal Term shall be One Hundred Thousand Dollars (\$100,000.00). Buyer and Seller each acknowledge and agree that either the lessor or the lessee shall have the right to terminate the lease during the Renewal Term, without penalty, upon not less than six (6) months' prior notice to the other party. The Lease shall be drafted by Seller's counsel and shall contain such terms as are customary for comparable commercial leases of real property in the State of Florida. The Lease shall be subject to Buyer's reasonable approval. The Parties acknowledge that Sellers are actively marketing for sale their Alachua, Florida real property and that the Lease must be protective of Buyer's rights as tenant of a to-be-identified new owner of the real property. Sellers shall also deliver a customary form of NDA, executed by Bank of America, N.A. in favor of Buyer, as tenant regarding the Lease. It is expressly agreed to by the Buyer and Seller that the lease described in this subparagraph is a material condition for Buyer entering into this agreement.

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3.3 Waiver of Condition. Any waiver of a condition shall be effective only if such waiver is stated in writing and signed by the waiving Party; provided, however, that the consent of a Party to the Closing shall constitute a waiver by such Party of any conditions to Closing not satisfied as of the Closing Date.

4. Sellers' Representations and Warranties. Sellers hereby make (each as to themselves only) the following representations and warranties to Buyer:

4.1 Organization, Standing and Power. Sellers are duly organized, validly existing and in good standing under the laws of the states of their respective organization set forth in the preamble to this Agreement. Sellers have all requisite entity power and authority to own, lease and, subject to the provisions of the Bankruptcy Code applicable to debtors in possession, operate the Property, to carry on Sellers' business as now being conducted. Subject to entry of the Approval Order, Sellers have the power and authority to execute, deliver and perform this Agreement and all writings relating hereto.

4.2 Validity and Execution. This Agreement has been duly executed and delivered by Sellers and, upon entry of the Approval Order, will constitute the valid and binding

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obligation of Sellers enforceable against them in accordance with its terms, except as may be limited by any fraudulent transfer law.

4.3 No Conflict. Subject to the entry of the Approval Order, the consummation of the transactions herein contemplated, and the performance of, fulfillment of and compliance with the terms and conditions hereof by Sellers do not and will not: (i) conflict with or result in a breach of the articles of incorporation, by-laws or operating agreement, as applicable, of Sellers; (ii) violate any statute, law, rule or regulation, or any order, writ, injunction or decree of any court or governmental authority, or (iii) violate or conflict with or constitute a default under any agreement, instrument or writing of any nature to which any Seller is a Party or by which Buyer or its assets or properties may be bound.

4.4 Litigation. Except for the Case and as set forth on **Schedule 4.4** hereto, to Sellers' Knowledge (which, for purposes of this Agreement means and refers only to the actual knowledge of John Peterson after reasonable inquiry), there is no material Litigation or investigation pending or threatened against or affecting the Property, before any court, arbitrator or governmental authority. To Sellers' Knowledge, except for the Case, Sellers are not subject to any outstanding Litigation or Order, which, individually or in the aggregate, would prevent, or materially delay Sellers from consummating the transactions contemplated by this Agreement, or which would be pursuant to its terms binding on Buyer or the Property.

4.5 No Other Agreements to Purchase. Sellers have not entered into any agreement with any other Person (written or oral) which grants such third party the right or option purchase or acquire from Sellers any of the Property, other than purchase orders for Inventory accepted by Sellers in the ordinary course of business, consistent with past practice.

4.6 Financial Advisors. No Person has acted, directly or indirectly, as a broker, finder or financial advisor for the Sellers in connection with the transactions contemplated by this Agreement, and no Person is entitled to any fee or commission or like payment from the Buyer or the Sellers in respect thereof, in each case other than as set forth on **Schedule 4.7**. In any event, Buyer shall not be liable for any broker's commissions, finder fees or success fees of the Sellers.

5. Buyer's Warranties and Representations. In addition to the representations and warranties contained elsewhere in this Agreement, Buyer hereby makes the following representations and warranties to Sellers:

5.1 Organization, Standing and Power. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of Florida. Buyer has all requisite entity power and authority to own, lease and operate its properties, to carry on its business as now being conducted and to execute, deliver and perform this Agreement and all writings relating hereto. Buyer has the power and authority to execute, deliver and perform this Agreement.

5.2 Validity and Execution. This Agreement has been duly executed and delivered by Buyer and constitutes the valid and binding obligation of Buyer enforceable against

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it in accordance with its terms, except as may be limited by any bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other laws (whether statutory, regulatory or decisional), now or hereafter in effect, relating to or affecting the rights of creditors generally or by equitable principles (regardless of whether considered in a proceeding at law or in equity).

5.3 No Conflict. The execution, delivery and performance of this Agreement and all writings relating hereto by Buyer have been duly and validly authorized. The execution and delivery of this Agreement, the consummation of the transactions herein contemplated, and the performance of, fulfillment of and compliance with the terms and conditions hereof by Buyer do not and will not: (i) conflict with or result in a breach of the certificate of formation or operating agreement of Buyer or, if applicable, other organizational documents or agreements of Buyer; (ii) violate any statute, law, rule or regulation, or any order, writ, injunction or decree of any court or governmental authority; or (iii) violate or conflict with or constitute a default under any agreement, instrument or writing of any nature to which Buyer is a party or by which Buyer or its assets or properties may be bound.

5.4 Litigation. To Buyer's knowledge, there is no material Litigation or investigation pending or threatened against or affecting the Buyer, before any court, arbitrator or governmental authority which, individually or in the aggregate, would prevent, or materially delay Buyer from consummating the transactions contemplated by this Agreement.

5.5 Financial Capability. Buyer (i) has, as of the Agreement Date, and will have as of the Closing, sufficient funds to pay the Purchase Price and to assume the Assumed Liabilities, (ii) has, as of the Agreement Date, and will have as of the Closing, the resources and capabilities (financial or otherwise) to perform its obligations hereunder and (iii) has not, as of the Agreement Date, and will not have as of the Closing, incurred any obligation, commitment, restriction or liability of any kind which would impair or adversely affect such resources and capabilities.

6. "AS IS" Transaction. Buyer hereby acknowledges and agrees that, except only as provided in Section 4 above, Sellers makes no representations or warranties whatsoever, express or implied, with respect to any matter relating to the Property (including, without limitation, income to be derived or expenses to be incurred in connection with the Property, the physical condition of the Personal Property or Inventory, the environmental condition or other matter relating to the physical condition of any of the Property, the value of the Property (or any portion thereof), or any portion thereof, the terms, amount, validity, collectability or enforceability of the Accounts Receivable or any Assumed Liabilities or Lease or Contract, the merchantability or fitness of the Personal Property, the Inventory or any other portion of the Property for any particular purpose, whether the assignment of any Lease or Contract without the consent of the counterparties thereto or any Lease or Contract would constitute a breach or default under such Lease or Contract). Without in any way limiting the foregoing, Sellers hereby disclaim any warranty (express or implied) of merchantability or fitness for any particular purpose as to any portion of the Property. Buyer further acknowledges that Buyer has conducted an independent inspection and investigation of the physical condition of all portions the Property and all such other matters relating to or affecting or comprising the Property and/or the Assumed Liabilities (including, without limitation, those matters, if any, disclosed to Buyer pursuant to Schedule 6

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attached hereto and incorporated herein by this reference) as Buyer deemed necessary or appropriate and that in proceeding with its acquisition of the Property, Buyer is doing so based solely upon such independent inspections and investigations, together with Seller's performance of their agreements specified herein. Accordingly, Buyer will accept the Property at the Closing "AS IS," "WHERE IS," and "WITH ALL FAULTS."

7. Books and Records of Sellers.

7.1 Sellers shall provide Buyer and Buyer's counsel, accountants, employees and other representatives, during normal business hours from the Agreement Date until the Closing Date, reasonable access to the personnel, facilities, customers, vendors, all of the Acquired Assets and all of the liabilities of Sellers, including the organizational books and records of Sellers; provided, however, such access shall not materially interfere with the ongoing business operations of Sellers, and such access shall not include privileged communications, confidential information or information about any employee, the disclosure of which might violate such employee's reasonable expectation of privacy or applicable law.

8. Other Covenants of the Parties.

8.1 Bankruptcy Court Approval.

8.1.1 Sellers and Buyer acknowledge that under the Bankruptcy Code, this Agreement and the sale of the Property have received the approval of the Bankruptcy Court. Sellers and Buyer acknowledge and agree, that on or July 10, 2012, the Court having heard sufficient evidence entered a Bench Order approving the sale of the Property by the Seller to the Buyer subject to execution of a final form of this Agreement and the Court's entry of an Order approving the sale.

8.1.2 [Intentionally Omitted].

8.1.3 [Intentionally Omitted].

8.2 Other Filings. Sellers and Buyer shall, if required in connection with the transactions contemplated hereby, (i) promptly take all actions necessary to make the filings required of it or its affiliates by any governmental or quasi-governmental entities (domestic and foreign), (ii) comply at the earliest practicable date with any request for additional information received by it or its affiliates from any governmental or quasi-governmental entities (domestic or foreign), (iii) cooperate with the other Parties in connection with resolving any investigation or other inquiry concerning the transactions contemplated by this Agreement commenced by state attorneys general, and (iv) cooperate with the other Parties in connection with any other Party's filing, (other than as provided for in subsection (iii) above) as may be required by any governmental or quasi-governmental entities (domestic or foreign) and (v) Seller shall execute at Buyer's request, and Buyer's sole cost and expense, any and all documents which may be reasonably necessary to transfer ownership of record for any intellectual property with the United States Patent Office, the Library of Congress or any foreign country's filing office. All

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fees required to be paid in connection with any filings hereunder shall be borne by the Party incurring such expense.

8.3 Confidentiality. Following the Closing, Sellers agree to maintain, and shall cause those of their respective Affiliates over whom Sellers have control to maintain, unless disclosure is required by applicable law, the confidentiality of any information in the nature of trade secrets of the Business or other information that Sellers treated as proprietary in the ordinary course of their businesses (collectively, "**Proprietary Information**"), which is in Sellers' or any of such respective Affiliates' possession or control. While they remain in existence, Sellers hereby further agree, unless disclosure is required by applicable law or is otherwise necessary for Sellers to effect their reorganization, to take all appropriate steps, consistent with Sellers' past practice, and to cause each of such respective Affiliates to take all reasonable steps taking into account Sellers' and such Affiliates' financial condition and circumstances (and specifically excluding any obligation to initiate, pursue or defend any action or proceeding of any kind in connection with the enforcement of any rights in connection therewith against any third party, except that Buyer may elect to do so at its expense) to safeguard the Proprietary Information and to protect it against disclosure, misuse, espionage, loss and theft. In furtherance and not in limitation of the foregoing, Sellers shall not, and shall cause such Affiliates not to, unless required by applicable law, disclose to any Person any Proprietary Information regarding the Business, provided, that Proprietary Information shall not include information that becomes generally available to the public other than as a result of the breach of this Section 8.3 or information not otherwise known by the Sellers that becomes available to any Seller from a Person other than Buyer, provided, that Sellers shall be entitled to disclose (i) any information required or reasonably believed by the Sellers to necessarily be disclosed by Sellers to the Bankruptcy Court, the United States Trustee, parties in interest in the Case or other Persons bidding on assets of Sellers, (ii) any information required to be disclosed by Sellers pursuant to any applicable law (including, without limitation, the Bankruptcy Code), legal proceeding or governmental authority, or (iii) any information to Sellers' counsel and financial advisor; provided, that, in each case, such disclosure shall be limited to the information that is so required or appropriate to be disclosed and the Person(s) to whom such disclosure is required.

8.4 Schedules. All schedules referenced in this Agreement shall be finalized not later than ten (10) days following the execution of this Agreement by the parties.

#### 9. Employee Matters.

9.1 Prior to the Closing and at Buyer's sole and absolute discretion, Buyer shall offer to employ, commencing immediately following the Closing, a sufficient number of all employees of Hunter (at salaries and compensation levels and on terms and conditions of employment applicable to their employment by Buyer). For a period of thirty (30) days following Closing, Buyer and the respective employee shall determine if the employment relationship should continue and, if so, on what terms. Such employees who become employees of Buyer shall be collectively referred to as the "**Transferred Employees**."

9.2 To the extent permitted by the Sellers defined benefit pension plan for the employees of Hunter, Luhrs and Mainship (the "Plans"), Buyer shall give Transferred

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Employees full credit for purposes of eligibility and vesting and benefit accrual (other than benefit accrual under a defined benefit pension plan) under the employee benefit plans or arrangements maintained by the Buyer in which such Transferred Employees participate for such Transferred Employees' service with Hunter, Luhrs and Mainship.

9.3 With respect to any welfare benefit plans maintained by Buyer for the benefit of Transferred Employees on and after the Closing Date, to the extent permitted by such plans, Buyer shall (i) cause there to be waived any eligibility requirements or pre-existing condition limitations, and (ii) take into consideration, in determining any deductible and maximum out-of-pocket limitations, amounts paid by such Transferred Employees with respect to the plans heretofore maintained by the Sellers.

9.4 Buyer shall comply with the requirements of COBRA, to all of Sellers' employees, former and current employees of ~~Silverton Marine Corporation and Morgan Industries Corporation~~, former employees of Sellers receiving group health plan continuation coverage from Sellers on the Closing Date, and former employees of Sellers who are in a COBRA-election period on the Closing Date, all as set forth on **Schedule 9.4**, and each only to the extent that such persons: (i) properly request such coverage; (ii) will not be hired by Buyer; and (iii) timely pay for such coverage.

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#### 10. Termination.

10.1 Optional Termination. This Agreement may be terminated at any time prior to the Closing Date:

10.1.1 Intentionally Omitted;

10.1.2 Intentionally Omitted;

10.1.3 by Buyer or Sellers, if the Closing shall not have occurred on or before July 31, 2012 (the "**Outside Date**"); provided, that if the Closing shall not have occurred on or before the Outside Date due to (ii) a breach of any material representations, warranties, covenants or agreements contained in this Agreement by a party hereto, then such party may not terminate this Agreement pursuant to this Section 10.1.4, and (ii) Buyer's requirement that the Approval Order become a Final Order and the appeal period with respect thereto has not yet run, then neither Buyer nor Sellers shall have the right to terminate, it being expressly understood that (xx) nothing herein shall be deemed to alter or waive any condition to Buyer's or Sellers' obligations to close set forth elsewhere in this Agreement, and (yy) the Outside Date shall be extended to the date which is three (3) business days following expiration of such appeal period;

10.1.4 by Sellers and Buyer by mutual written consent;

10.1.5 (A) by Buyer, in the event of a Seller Material Breach; provided, that Buyer shall not have the right to terminate this Agreement under this Section 10.1.6(A) at a time when Sellers have (or would have after the passage of time (without regard to whether any required notice has actually been given)) the right to terminate this Agreement due to a Buyer

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Material Breach, and (B) by Sellers, in the event of a Buyer Material Breach; provided, that Sellers shall not have the right to terminate this Agreement under this Section 10.1.6(B) at a time when Buyer has (or would have after the passage of time (without regard to whether any required notice has actually been given)) the right to terminate this Agreement due to a Seller Material Breach;

10.1.6 by Sellers if the Bankruptcy Court shall have entered an Order approving an Alternative Transaction, and by Buyer in the event that (i) an Alternative Transaction is approved by the Bankruptcy Court, and (ii) the transactions contemplated herein have not been consummated by the Outside Closing Date, it being agreed that unless Sellers have theretofore terminated this Agreement as provided above, this Agreement shall constitute a "back-up bid" following approval of an Alternative Transaction which shall remain open for acceptance by Sellers and consummation by the Parties up to and including the Outside Closing Date, but subject and subordinate in all respects to the rights of the purchaser in the Alternative Transaction;

10.1.7 by Buyer, upon the conversion of the Case to a Chapter 7 liquidation, the dismissal of the Case, or the appointment of a trustee or examiner with extended powers; or

10.1.8 by Buyer or Sellers, by written notice to the other Parties if there shall be in effect an order of a governmental authority of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby, or the Bankruptcy Court or another court of competent jurisdiction shall stay the Approval Order.

10.2 Intentionally Omitted.

10.3 Notice of Termination. Notice of termination of this Agreement pursuant to Section 10.1 shall be given by the Party or Parties so terminating to the other Parties in writing in accordance with Section 12.2.

10.4 Effect of Termination. Upon termination of this Agreement, the Parties may abandon the transactions contemplated hereby and, to the extent practicable, shall withdraw all filings, applications and other submissions made pursuant to the transactions contemplated hereby from the governmental authority or Person to which made. Except as otherwise provided in this Section 10.4, upon termination of this Agreement, this Agreement shall cease to have any force or effect and the Parties under this Agreement shall cease to have any further obligations or liabilities under this Agreement. Notwithstanding the foregoing, all rights and obligations of any Party pursuant to Section 11 hereof shall survive such termination unimpaired.

#### 11. Certain Definitions.

11.1 As used in this Agreement:

"**Alternative Transaction**" means any agreement or transaction which involves the sale (in a single transaction or a series of transactions) of all or substantially all of

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the Property (as a going concern), or the issuance or sale (in a single transaction or a series of transactions) of all or substantially all of the equity interests, of Sellers or any of their successors, to any Person other than Buyer or a designee of Buyer, or filing of a Chapter 11 Plan of Reorganization. For the avoidance of doubt, the disposition of the Property in a liquidation, whether pursuant to a Chapter 7 proceeding or a Chapter 11 liquidating plan (a "**Liquidating Plan**") or otherwise, shall not be deemed to be an "Alternative Transaction" for purposes of this Agreement.

"**Buyer Material Breach**" means any inaccuracy in any of Buyer's representations or warranties contained in this Agreement or any breach of any of Buyer's covenants or agreements contained in this Agreement which, individually or in the aggregate with all other such inaccuracies and breaches, (i) would result in a failure of a condition set forth in Section 3.1, and (ii) is either incapable of being cured or, if capable of being cured, is not cured in all material respects within the earlier of (x) fifteen (15) calendar days after written notice thereof and (y) the Outside Date.

"**Chapter 11 Plan**" means any Chapter 11 plan in the Case with respect to any of the debtors other than a Liquidating Plan.

"**Seller Material Breach**" means any inaccuracy in any of Sellers' representations or warranties contained in this Agreement or any breach of any of Sellers' covenants or agreements contained in this Agreement which, individually or in the aggregate with all other such inaccuracies and breaches, (i) would result in a failure of a condition set forth in Section 3.1, and (ii) is either incapable of being cured or, if capable of being cured, is not cured in all material respects within the earlier of (x) fifteen (15) calendar days after written notice thereof and (y) the Outside Date.

## 12. Miscellaneous.

12.1 Attorneys' Fees. In the event that either Party hereto brings an action or other proceeding to enforce or interpret the terms and provisions of this Agreement, the prevailing Party in that action or proceeding shall be entitled to have and recover from the non-prevailing Party all fees, costs and expenses (including, without limitation, all court costs and reasonable attorneys' fees) as the prevailing Party may incur in the pursuit or defense of such action or proceeding.

12.2 Notices. Unless otherwise provided herein, any notice, tender, or delivery to be given hereunder by any Party to the other may be effected by personal delivery in writing, or by prepaid overnight commercial courier service such as Federal Express or by email. Notices shall be deemed effective as of the next successive business day following the date of the courier waybill or as of the date of email transmission (with answer back confirmation of such transmission). Notices shall be addressed as set forth below, but each Party may change its address by written notice in accordance with this Section 12.2.

To Sellers:                    Hunter Marine Corporation  
                                     Mainship Corporation

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Luhrs Corporation  
Route 441  
P.O. Box 1030  
Alachua, Florida 32615  
Attn: John Peterson  
Fax Number: (386) 462-4077

With a copy to: Arent Fox LLP  
1675 Broadway  
New York, New York 10019  
Attn: Robert M. Hirsh, Esq.  
Fax Number: (212) 484-3990  
Email: [Hirsh.Robert@arentfox.com](mailto:Hirsh.Robert@arentfox.com)

To Buyer: Marlow Acquisitions, LLC  
5212 Snead Island Road  
Palmetto, Florida 34221  
Attn: David E. Marlow  
Fax Number: (305) 374-7071  
Email: [davidemarlow@gmail.com](mailto:davidemarlow@gmail.com)

With a copy to: Lynn B. Lewis, P.A.  
501 Brickell Key Drive, Suite 505  
Miami, Florida 33131  
Attn: Lynn B. Lewis, Esq.  
Fax Number: (305) 374-7071  
Email: [lynnlewis@lblpa.com](mailto:lynnlewis@lblpa.com)

12.3 Entire Agreement. This instrument and the documents to be executed pursuant hereto contain the entire agreement between the Parties relating to the sale of the Property. Any oral representations or modifications concerning this Agreement or any such other document shall be of no force and effect excepting a subsequent modification in writing, signed by the Party to be charged.

12.4 Modification. This Agreement may be modified, amended or supplemented only by a written instrument duly executed by all the Parties hereto.

12.5 Closing Date. All actions to be taken on the Closing pursuant to this Agreement shall be deemed to have occurred simultaneously, and no act, document or transaction shall be deemed to have been taken, delivered or effected until all such actions, documents and transactions have been taken, delivered or effected.

12.6 Severability. Should any term, provision or paragraph of this Agreement be determined to be illegal or void or of no force and effect, the balance of this Agreement shall survive.

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12.7 Captions. All captions and headings contained in this Agreement are for convenience of reference only and shall not be construed to limit or extend the terms or conditions of this Agreement.

12.8 Further Assurances. Each Party hereto will execute, acknowledge and deliver any further assurance, documents and instruments reasonably requested by any other Party for the purpose of giving effect to the transactions contemplated herein or the intentions of the Parties with respect thereto; provided that nothing herein shall be deemed to require any Party to execute or deliver any such further assurance, document or instrument to the extent that the same could in any material way increase the burdens, obligations or liabilities otherwise imposed upon such Party by this Agreement.

12.9 Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

12.10 Brokerage Obligations. Sellers and the Buyer each represent and warrant to the other that, other than any success fee to which Katz, Kane & Co., LLC (the "**Broker**") may be entitled in connection with the consummation of the transactions contemplated herein, such Party has incurred no liability to any broker or agent with respect to the payment of any commission or other compensation regarding the consummation of the transaction contemplated hereby. It is agreed that if any claims for commissions, fees or other compensation, including, without limitation, brokerage fees, finder's fees, or commissions are ever asserted against Buyer or Sellers in connection with this transaction by any party other than the Broker (for whose commission or other compensation Sellers shall be solely responsible), all such claims shall be handled and paid by the Party whose actions form the basis of such claim and such Party shall indemnify, defend (with counsel reasonably satisfactory to the Party entitled to indemnification), protect and save and hold the other harmless from and against any and all such claims or demands asserted by any person, firm or corporation in connection with the transaction contemplated hereby. Seller is solely responsible to pay, or to cause to be paid, any fee owing to the Brokers.

12.11 Payment of Fees and Expenses. Except as provided in Sections 11 and 12.1 and 12.10, above, each Party to this Agreement shall be responsible for, and shall pay, all of its own fees and expenses, including those of its counsel, incurred in the negotiation, preparation and consummation of this Agreement and the transaction described herein.

12.12 Survival. The respective representations and warranties of Buyer and Sellers under this Agreement shall lapse and cease to be of any further force or effect effective upon the Closing. Except as provided in the immediately preceding sentence, the covenants and agreements of Sellers and Buyer herein, or in any certificates or other documents delivered prior to or at the Closing, shall not be deemed waived or otherwise affected by the Closing.

12.13 Assignments. This Agreement shall not be assigned by any Party hereto without the prior written consent of the other Party hereto, which consent the Parties may grant

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or withhold in their sole and absolute discretion; provided, that the Buyer shall be permitted to assign its right to purchase all or any portion of the Property to any one or more directly or indirectly wholly-owned subsidiaries of the Buyer; provided, further, that the Buyer or such assignee(s) may pledge this Agreement and the rights of the Buyer hereunder to a lender or other financing source as collateral security for loans made to the Buyer or such assignee(s).

12.14 Binding Effect. Subject to the provisions of Section 12.13, above, this Agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors, and assigns of the Parties hereto, including, without limitation, any chapter 11 trustee hereinafter appointed in the Case or any trustee appointed in a chapter 7 case if the Case is converted from chapter 11.

12.15 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

12.16 Good Faith. All Parties shall do all acts and execute all documents required to carry out the terms of this Agreement and act in good faith with respect to the terms and conditions contained herein before and after Closing.

12.17 Construction. In the interpretation and construction of this Agreement, the Parties acknowledge that the terms hereof reflect extensive negotiations between the Parties and that this Agreement shall not be deemed, for the purpose of construction and interpretation, drafted by either Party hereto.

12.18 Counterparts. This Agreement may be signed in counterparts, provided each of the Parties executes an identical counterpart. The Parties further agree that this Agreement may be executed by the exchange of facsimile or electronically Agreements provided that by doing so the Parties agree to undertake to provide original signatures as soon thereafter as reasonable in the circumstances.

12.19 Bankruptcy Court Jurisdiction. **IF ANY DISPUTE ARISES OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE DOCUMENTS EXECUTED HEREUNDER OR IN CONNECTION HERewith, THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE PERSONAL AND SUBJECT MATTER JURISDICTION AND SHALL BE THE EXCLUSIVE VENUE TO RESOLVE ANY AND ALL DISPUTES RELATING TO THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT. SUCH COURT SHALL HAVE SOLE JURISDICTION OVER SUCH MATTERS AND THE PARTIES AFFECTED THEREBY AND BUYER AND SELLERS EACH HEREBY CONSENT AND SUBMIT TO SUCH JURISDICTION.**

12.20 Time is of the Essence. Time is of the essence in this Agreement, and all of the terms, covenants and conditions hereof.

12.21 Interpretation and Rules of Construction. In this Agreement, except to the extent that the context otherwise requires:

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12.21.1 when a reference is made in this Agreement to an Article, Section, Exhibit or Schedule, such reference is to an Article or Section of, or an Exhibit or a Schedule to, this Agreement unless otherwise indicated;

12.21.2 the headings and captions used in this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement;

12.21.3 whenever the words "include," "includes" or "including" are used in this Agreement, they are deemed to be followed by the words "without limitation";

12.21.4 the words "hereof," "herein" and "hereunder" and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement;

12.21.5 all terms defined in this Agreement have the defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein;

12.21.6 the definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms;

12.21.7 any law defined or referred to herein or in any agreement or instrument that is referred to herein means such law or statute as from time to time amended, modified or supplemented, including by succession of comparable successor laws;

12.21.8 references to a person are also to its permitted successors and assigns; and

12.21.9 the use of "or" is not intended to be exclusive unless expressly indicated otherwise.

MA/USC

**In Witness Whereof**, Buyer and Sellers have executed this Asset Purchase Agreement as of the day and year first above written.

**BUYER:**

**Marlow Acquisitions, LLC,**  
**a Florida limited liability company**

By: D. E. Marlow *Attorney-in-fact*  
Name: David E. Marlow  
Its: Manager

**SELLERS:**

**Hunter Marine Corporation,**  
**a New Jersey Corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Luhrs Marine Corporation,**  
**a New Jersey Corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Mainship Corporation,**  
**a New Jersey Corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_



**In Witness Whereof**, Buyer and Sellers have executed this Asset Purchase Agreement as of the day and year first above written.

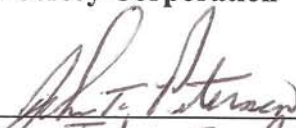
**BUYER:**

**Marlow Acquisitions, LLC,  
a Florida limited liability company**

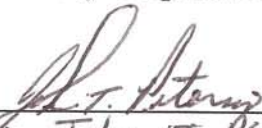
By: \_\_\_\_\_  
Name: **David E. Marlow**  
Its: **Manager**

**SELLERS:**

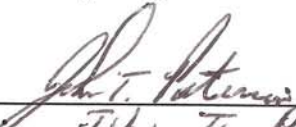
**Hunter Marine Corporation,  
a New Jersey Corporation**

By:   
Name: John T. PETERSEN  
Its: President/Treasurer

**Luhrs Marine Corporation,  
a New Jersey Corporation**

By:   
Name: John T. PETERSEN  
Its: Treasurer

**Mainship Corporation,  
a New Jersey Corporation**

By:   
Name: John T. PETERSEN  
Its: Treasurer

**Schedule 1.1.1-(i)**

**Leases**

MA/USA

Schedule 1.1.1-(ii)

**Other Contracts**

MA/USL

Schedule 1.1.2

**Personal Property**

MA/USL

**Schedule 1.1.2**

**Personal Property**

MIT/USE

**Schedule 1.1.3**

**Intangible Property**

MA/USL



Schedule 1.1.4

**Permits and Licenses**

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MA/USE

**Schedule 1.1.7**

**Claims**

MA/usc

**Schedule 1.2(xiii)**

**Litigation Proceedings**

MA/USA

Schedule 1.2(xiv)

**Additional Excluded Assets**

MA/USL



Schedule 2.4.1-(ii)

Employment Contracts

None.

MA/usc

Schedule 2.4.1-(vi)

**Warranty Programs**

mt/usc

Schedule 2.4.1-(vii)

**Outstanding Purchase Orders**

MA/URL

Schedule 2.4.1-(viii)

**Additional Assumed Liabilities**

MA/USC



**Schedule 4.4**

**Litigation**

MA/USL

**Schedule 4.7**

**Financial Advisors**

MA/USL

**Schedule 6**

**Additional Assumed Liabilities**

MA/USC

**Schedule 9.4**

**Employees Receiving and to Receive COBRA**

MTA/UBA



Exhibit "A"

**ASSIGNMENT AND ASSUMPTION OF LEASES AND CONTRACTS**

This Assignment and Assumption of Leases and Contracts (this "**Assignment**") is entered into as of this \_\_\_\_ day of July, 2012, between Marlow Acquisitions, LLC, a Florida limited liability company (the "**Assignee**"), on the one hand, and Hunter Marine Corporation, a New Jersey corporation ("**Hunter**"), Luhrs Corporation, a New Jersey corporation ("**Luhrs**"), and Mainship Corporation, a New Jersey corporation ("**Mainship**," and together with Hunter and Luhrs, the "**Assignors**"), each of the Assignors being a Debtor and Debtor in Possession under Case No. 12-21156 (MBK) in the United States Bankruptcy Court for the District of New Jersey, with respect to the following facts and circumstances:

A. Assignors, as the Sellers, and Assignee, as Buyer, have heretofore entered into that certain Asset Purchase Agreement dated July \_\_, 2012 (the "**Purchase Agreement**"). Except for terms specifically defined herein, the capitalized terms used in this Assignment shall have the same meanings as capitalized terms used in the Purchase Agreement.

B. Concurrently with the mutual execution and delivery of this Assignment, Sellers and Assignee are consummating the transactions contemplated by the Purchase Agreement. Assignors and Assignee are executing and delivering this Assignment in satisfaction of their respective obligations pursuant to Sections 2.9.1 and 2.10.2 of the Purchase Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and adequacy of which Assignors and Assignee hereby acknowledge, Assignors and Assignee hereby agree as follows:

1. **Assignment.** Effective as of the Closing Date, Assignors hereby assign to Assignee all of its right, title and interest in and to the Leases and Contracts (collectively, the "**Assigned Contracts**").
2. **Assumption.** Effective as of the Closing Date, Assignee hereby accepts the foregoing assignment and assumes and agrees to be bound by the terms and provisions of the Assigned Contracts and to faithfully perform all of Assignors' obligations thereunder to be performed from and after the Closing Date as though Assignee had been the original contracting Party thereunder.
3. **Attorneys' Fees.** In the event that any Party hereto brings an action or other proceeding to enforce or interpret the terms and provisions of this Assignment, the prevailing Party in that action or proceeding shall be entitled to have and recover from the non-prevailing Party therein all such fees, costs and expenses (including, without limitation, all court costs and reasonable attorneys' fees) as the prevailing Party may suffer or incur in the pursuit or defense of such action or proceeding.

MMH / UBL

4. Amendments. This Assignment may only be amended by a writing signed by both Assignors and Assignee.

5. Execution in Counterparts. Provided each of the Parties has executed an identical counterpart, this Assignment may be executed in counterparts.

6. Delivery Pursuant to Purchase Agreement. Notwithstanding anything to the contrary herein, Assignors and Assignee are executing and delivering this Assignment in accordance with and subject to all of the terms and provisions of the Purchase Agreement (including, without limitation, the acknowledgement and disclaimer set forth in Section 6).

7. Governing Law. This Assignment shall be governed by and construed and enforced in accordance with the laws of the State of New Jersey.

MA/USL

**IN WITNESS WHEREOF**, Assignors and Assignee have executed this Assignment as of the day and year first set forth above.

**ASSIGNOR:**

**Hunter Marine Corporation,  
a New Jersey Corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Luhrs Marine Corporation,  
a New Jersey Corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Mainship Corporation,  
a New Jersey Corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**ASSIGNEE:**

**Marlow Acquisitions, LLC,  
a Florida limited liability company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

*MMA/USC*

**Exhibit "B"**

**BILL OF SALE AND ASSIGNMENT**

Pursuant to Section 2.9.2 of that certain Asset Purchase Agreement dated July \_\_, 2012 (the "**Purchase Agreement**"), by and between Marlow Acquisitions, LLC, a Florida limited liability company ("**Buyer**"), on the one hand, and Hunter Marine Corporation, a New Jersey corporation ("**Hunter**"), Luhrs Corporation, a New Jersey corporation ("**Luhrs**"), and Mainship Corporation, a New Jersey corporation ("**Mainship**," and together with Hunter and Luhrs, the "**Sellers**"), each of the Sellers being a Debtor and Debtor in Possession under Case No. 12-21156 (MBK) in the United States Bankruptcy Court for the District of New Jersey, on the other hand, and for good and valuable consideration, the receipt and sufficiency of which Sellers hereby expressly acknowledges, Sellers, each as to their respective interest therein, hereby sells, transfers, assigns and delivers to Buyer Sellers' right, title and interest in and to the Personal Property, including, but not limited to, its general intangibles, inventory work in process and as may be otherwise covered by certain assignment and assumption agreements made as part of this transaction.

Except for terms specifically defined in this Bill of Sale, all capitalized terms used in herein shall have the same meanings as such terms have when utilized in the Purchase Agreement.

Sellers covenant and agree to execute and deliver further instruments of transfer and assignment and take such other action as Buyer may reasonably request to more effectively transfer and assign to and vest in Buyer the Personal Property; provided that nothing herein shall be deemed to require Sellers to execute or deliver any such further document or instrument or take any such action to the extent that the same could in any material way increase the burdens, obligations or liabilities otherwise imposed upon Sellers by the Purchase Agreement.

Notwithstanding anything to the contrary herein, Sellers are executing and delivering this Bill of Sale and Assignment in accordance with and subject to all of the terms and provisions of the Purchase Agreement (including, without limitation, the acknowledgement and disclaimer set forth in Section 6 of the Purchase Agreement).

MA/UR



IN WITNESS WHEREOF, Sellers has caused this Bill of Sale and Assignment to be executed as of the \_\_\_\_\_ day of July, 2012.

**SELLERS:**

**Hunter Marine Corporation,  
a New Jersey Corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Luhrs Marine Corporation,  
a New Jersey Corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Mainship Corporation,  
a New Jersey Corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

MA/WR

**Exhibit "C"**

**ASSIGNMENT OF INTANGIBLE PROPERTY**

This Assignment of Intangible Property (this "**Assignment**") is entered into as of this \_\_\_\_ day of July, 2012, by and between Marlow Acquisitions, LLC, a Florida limited liability company (the "**Assignee**"), on the one hand, and Hunter Marine Corporation, a New Jersey corporation ("**Hunter**"), Luhrs Corporation, a New Jersey corporation ("**Luhrs**"), and Mainship Corporation, a New Jersey corporation ("**Mainship**," and together with Hunter and Luhrs, the "**Assignors**"), each of the Assignors being a Debtor and Debtor in Possession under Case No. 12-21156 (MBK) in the United States Bankruptcy Court for the District of New Jersey, with respect to the following facts and circumstances:

(A) Assignors and Assignee have heretofore entered into that certain Asset Purchase Agreement dated July \_\_, 2012 (the "**Purchase Agreement**"). Except for terms specifically defined in this Assignment, the capitalized terms used in this Assignment shall have the same meanings as such terms when used in the Purchase Agreement.

(B) Concurrently with the execution and delivery of this Assignment, Sellers and Assignee are consummating the transactions contemplated by the Purchase Agreement. Pursuant to Sections 2.9.3 of the Purchase Agreement, Assignors and Assignee are required to execute and deliver this Assignment at the Closing.

**NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which Assignors hereby expressly acknowledge, each Assignor, as to itself, hereby assigns, conveys, transfers and sets over unto Assignee, all of its right, title and interest, if any, in and to all Intangible Property. This Assignment shall inure to the benefit of, and be binding upon, the successors, executors, administrators, legal representatives and assigns of Assignors and Assignee.

Notwithstanding anything to the contrary herein, Assignors and Assignee are executing and delivering this Assignment in accordance with and subject to all of the terms and provisions of the Purchase Agreement (including, without limitation, the acknowledgement and disclaimer set forth in Section 6).

In the event that Assignors or Assignee brings an action or other proceeding to enforce or interpret the terms and provisions of this Assignment, the prevailing Party(ies) in that action or proceeding shall be entitled to have and recover from the non-prevailing Party(ies) all such fees, costs and expenses (including, without limitation, all court costs and reasonable attorneys' fees) as the prevailing Party(ies) may suffer or incur in the pursuit or defense of such action or proceeding.

This Assignment shall be governed by and construed and enforced in accordance with the laws of the State of New Jersey.

*MA/USA*

IN WITNESS WHEREOF, Assignors and Assignee have executed this Assignment as of the \_\_\_\_ day of July, 2012.

**ASSIGNOR:**

**Hunter Marine Corporation,  
a New Jersey Corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Luhrs Marine Corporation,  
a New Jersey Corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Mainship Corporation,  
a New Jersey Corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**ASSIGNEE:**

**Marlow Acquisitions, LLC,  
a Florida limited liability company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

MA/USA

Exhibit "D"

ASSUMPTION AGREEMENT

This Assumption Agreement (this "**Assumption**") is entered into as of this \_\_\_\_ day of July, 2012, by and between Marlow Acquisitions, LLC, a Florida limited liability company ("**Buyer**"), on the one hand, and Hunter Marine Corporation, a New Jersey corporation ("**Hunter**"), Luhrs Corporation, a New Jersey corporation ("**Luhrs**"), and Mainship Corporation, a New Jersey corporation ("**Mainship**," and together with Hunter and Luhrs, the "**Sellers**"), each of the Assignors being a Debtor and Debtor in Possession under Case No. 12-21156 (MBK) in the United States Bankruptcy Court for the District of New Jersey, with respect to the following facts and circumstances:

A. Sellers and Buyer have heretofore entered into that certain Asset Purchase Agreement dated July \_\_, 2012 (the "**Purchase Agreement**"). Except for terms specifically defined herein, the capitalized terms used in this Assumption shall have the same meanings as capitalized terms used in the Purchase Agreement.

B. Concurrently with the execution and delivery of this Assumption, Buyer and Sellers are consummating the transactions contemplated by the Purchase Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and adequacy of which Buyer hereby acknowledges, Buyer hereby agrees as follows:

1. Assumption. Effective as of the Closing Date, Buyer hereby assumes and agrees fully and faithfully to perform all of the Assumed Liabilities.

2. Attorneys' Fees. In the event that either Party(ies) hereto brings an action or other proceeding to enforce or interpret the terms and provisions of this Assumption, the prevailing Party(ies) in that action or proceeding shall be entitled to have and recover from the non-prevailing Party(ies) therein all such fees, costs and expenses (including, without limitation, all court costs and reasonable attorneys' fees) as the prevailing Party(ies) may suffer or incur in the pursuit or defense of such action or proceeding.

3. Amendments. This Assumption may only be amended by a writing signed by both Buyer and Sellers.

4. Governing Law. This Assumption shall be governed by and construed and enforced in accordance with the laws of the State of New Jersey.

5. Execution in Counterparts. Provided each of the Buyer and Sellers has executed an identical counterpart, this Assumption may be executed in counterparts.

MIA/UBL



IN WITNESS WHEREOF, Buyer has executed this Assumption as of the day and year first set forth above.

**BUYER:**

**Marlow Acquisitions, LLC,  
a Florida limited liability company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**SELLERS:**

**ASSIGNOR:**

**Hunter Marine Corporation,  
a New Jersey Corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Luhrs Marine Corporation,  
a New Jersey Corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Mainship Corporation,  
a New Jersey Corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

MA/USL

**Exhibit "E"**

**ADDITIONAL DEFINITIONS**

In addition to the terms defined elsewhere in this Agreement, the following terms when used in this Agreement shall have the respective meanings set forth below

- (1) "Affiliates" as to any person or entity means, with respect to any Person, any Person Controlling, Controlled by, or under common Control with such Person, (ii) the term "Control" (and any form thereof, such as "Controlled" or "Controlling") means with respect to any Person the possession directly or indirectly, through one or more intermediaries, of the power to (1) to vote more than fifty percent (50%) of the voting stock of such Person or (2) to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, membership interests, partnership interests, by contract or otherwise, and (iii) the term "Person" means any individual, firm, corporation, general or limited partnership, limited liability company, incorporated or unincorporated association, joint venture, joint stock company, trust, governmental agency or instrumentality, or other entity of any kind, or any combination of the foregoing.
- (2) "Alternative Transaction" means any agreement or transaction which involves the sale (in a single transaction or a series of transactions) of all or substantially all of the Property (as a going concern), or the issuance or sale (in a single transaction or a series of transactions) of all or substantially all of the equity interests, of Sellers or any of their successors, to any Person other than Buyer or a designee of Buyer, or filing of a Chapter 11 Plan of Reorganization. For the avoidance of doubt, the disposition of the Property in a liquidation, whether pursuant to a Chapter 7 proceeding or a Chapter 11 liquidating plan (a "Liquidating Plan") or otherwise, shall not be deemed to be an "Alternative Transaction" for purposes of this Agreement.
- (3) "Bidding Procedures Order" means an Order of the United States Bankruptcy Court for the District of New Jersey approving (a) bid procedures and stalking horse protections regarding the proposed sales of the debtors' assets; (b) procedures related to the assumption and assignment of certain executory contracts and unexpired leases; (c) form and manner of notice; and (d) granting related relief.
- (4) "Employees" means all individuals, as of the date hereof, whether or not actively at work as of the date hereof, who are employed by the Sellers in connection with the Business, together with individuals, if any, who are hired in respect of the Business after the date hereof and prior to the Closing.
- (5) "Environmental Law" means any law or regulation pertaining to: (a) the protection of health, safety and the indoor or outdoor environment; (b) the conservation, management or use of natural resources and wildlife; (c) the protection or use of

*MIA/USA*

surface water and ground water; (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, emission, discharge, Release, threatened Release, abatement, removal, remediation or handling of, or exposure to, any hazardous substance; or (e) pollution (including any emission, discharge or Release to air, land, surface water and ground water of any material); and includes, without limitation, CERCLA and the Solid Waste Disposal Act, as amended 42 U.S.C. § 6901 et seq.

- (6) “Final Order” means, with respect to any order or other action of a governmental authority (including, but not limited to, the Bankruptcy Court), an order or other action (a) as to which no appeal, notice of appeal, motion to amend or make additional findings of fact, motion to alter or amend judgment, motion for rehearing or motion for new trial has been timely filed or, if any of the foregoing has been timely filed, it has been disposed of in a manner that upholds and affirms the subject order in all material respects without the possibility for further appeal or rehearing thereon; and (b) as to which the time for instituting or filing an appeal, motion for rehearing or motion for new trial shall have expired.
- (7) “GAAP” means U.S. generally accepted accounting principles, consistently applied in accordance with Sellers’ historical practices.
- (8) “Indebtedness” means, with respect to any Person, (a) all indebtedness of such Person, whether or not contingent, for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services, (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of Sellers or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all obligations of such Person as lessee under leases that have been or should be, in accordance with generally accepted accounting principles (GAAP), recorded as capital leases, (f) all obligations, contingent or otherwise, of such Person under acceptance, letter of credit or similar facilities, (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value any capital stock of such Person or any warrants, rights or options to acquire such capital stock, valued, in the case of redeemable preferred stock, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends, (h) all Indebtedness of others referred to in clauses (a) through (g) above guaranteed directly or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (1) to pay or purchase such Indebtedness or to advance or supply funds for the payment or purchase of such Indebtedness, (2) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss, (3) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of

WMA/USL



whether such property is received or such services are rendered) or (4) otherwise to assure a creditor against loss and all Indebtedness referred to in clauses (a) through (f) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property (including, without limitation, accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.

- (9) “Liens” means all liens or other interests as defined in 11 U.S.C. § 363(f), encumbrances, rights of third parties (express or implied), claims (as defined in Section 101(5) of the Bankruptcy Code), Indebtedness, obligations, liabilities, judgments, demands, subleases, contractual commitments, mortgages, pledges, guarantees, security interests, conditional sale or other title retention agreements, charges, options, rights of first refusal, reservations, restrictions or interests of any kind, rights of others of every type and description, whether arising prior to or subsequent to the commencement of the Chapter 11, and whether imposed by agreement, understanding, law, equity or otherwise, whether secured or unsecured, including without limitation:
- (a) any and all claims, demands, damages, actions, causes of action, contracts, agreements, charges, sums of money, claims for attorney's fees, claim of any violation of any state or federal statutes, rules or regulations, and lawsuits of every kind and description, whether known or unknown, now existing, or which may hereafter arise against Sellers; and
  - (b) employment contracts, accrued wages, salary or vacation pay, or unemployment compensation or severance pay to any present or former employee of Sellers, any obligation to hire or otherwise employ any employees of Sellers whether under any union agreements or otherwise, or obligations under any other employee benefit plan maintained by or for which any Seller is obligated or bound including, without limitation, those based upon length of service with any Seller or any and all other obligations owed to the former or present employees of any Seller, provided, however, (i) the term “Liens” shall specifically exclude any of the foregoing which comprise part of the Assumed Liabilities pursuant to Section 2.4 hereof and (ii) and in no event shall any provision of this Agreement requiring the removal of Liens be deemed to limit or affect Buyer’s obligations with respect to the Assumed Liabilities (or any of them) or under the any of the provisions of Article 9 hereof in any way; and
  - (c) any and all liabilities and obligations under any Environmental Law; and
  - (d) any claims based on or asserting that Buyer is a successor in interest to Sellers.
- (10) “Litigation” means any suit, action, arbitration, cause of action, claim, complaint, criminal prosecution, investigation, inquiry, demand letter, governmental or other administrative proceeding, whether at law or at equity, before or by any court, governmental authority, arbitrator or other tribunal.

MA/432

- (11) "Order" shall mean any judgment, order, writ, injunction, ruling, stipulation, determination, award or decree of or by, or any settlement under the jurisdiction of, any court or governmental authority.
- (12) "Person" means any natural person, corporation, limited liability company, unincorporated organization, partnership, association, joint stock company, joint venture, trust or any other entity.
- (13) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, seeping, migrating, dumping or disposing of any Hazardous Substance (including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Substance) into the indoor or outdoor environment, including, without limitation, the movement of Hazardous Substances through or in the ambient air, soil, surface or ground water, or property.

MA/UBL



**Exhibit "F"**

**Approval Order**

*ms/usa*

**Exhibit "G"**

**Bidding Procedures Order**

MA/USL

## **EXHIBIT B**

### **HILCO ASSET PURCHASE AGREEMENT**

## ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** (the “**Agreement**”) is made and entered into as of this 18<sup>th</sup> day of July, 2012 (the “**Agreement Date**”), by and between Hilco Industrial, LLC, a Delaware limited liability company (the “**Buyer**”), on the one hand, and Silverton Marine Corporation, a New Jersey corporation, (“**Silverton**”), Luhrs Corporation, a New Jersey corporation (“**Luhrs**”), Mainship Corporation, a New Jersey corporation (“**Mainship**”), and Ovation Yachts Corporation, a New Jersey corporation (“**Ovation**,” and together with Silverton, Luhrs and Mainship, the “**Sellers**” and, together with Buyer, the “**Parties**”), each of the Sellers being a Debtor and Debtor in Possession under Case No. 12-21156 (MBK) (the “**Case**”) in the United States Bankruptcy Court for the District of New Jersey (the “**Bankruptcy Court**”).

### RECITALS

A. Collectively, the Sellers are in the business of producing and selling recreational powerboats and sailboats (the “**Business**”).

B. Sellers wish to sell to Buyer, pursuant to Section 363 of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”), certain assets of Sellers, which are used primarily in connection with or arising out of the operation of the Business, all at the price and on the other terms and conditions specified in detail below and Buyer wishes to so purchase and acquire such assets from Sellers.

C. Capitalized terms used but not otherwise defined herein have the respective meanings set forth in **Exhibit “B”** hereto.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

#### 1. Transfer of Assets.

1.1 Purchase and Sale of Assets. On the Closing Date, as hereinafter defined, in consideration of the covenants, representations and obligations of Buyer hereunder, and subject to the conditions set forth in this Agreement and entry of the Approval Order (as defined below), Sellers shall sell, assign, transfer, convey and deliver (pursuant to Section 363 of the Bankruptcy Code) to Buyer, free and clear of all Liens to the extent provided in the Approval Order, and Buyer shall purchase from Sellers, the Sellers’ right, title and interest as of the Closing Date in and to those assets set forth on **Schedule 1.1** attached to this Agreement (collectively, the “**Assets**”).

1.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, the Assets shall exclude all of the following (collectively, the “**Excluded Assets**”): (i) Sellers’ rights under this Agreement and all cash and non-cash consideration payable or deliverable to Sellers pursuant to the terms and provisions hereof; (ii) all cash deposits and prepaid items; (iii) all cash and cash equivalents (including checking account balances, certificates of deposit and other time deposits and petty cash) and marketable and other securities



relating to or arising in connection with the operation of the Business, (iv) all tax refunds, rebates, credits and similar items relating to or arising out of the operation of the Business and to any period, or portion of any period, on or prior to the Closing Date; (v) all insurance proceeds (including, without limitation, any insurance policies held by any Sellers which insure the directors and officers of any Seller against liability and any and all proceeds of any such insurance policies), claims and causes of action; (vi) any Lease or Other Contract to which any Seller is a party, (vii) all securities, whether capital stock or debt, of any Seller; (viii) all tax records, minute books, stock transfer books and corporate seal of each Seller; (ix) any letters of credit or similar financial accommodations issued to any third party(ies) for the account of any Seller and any collateral therefor and other collateral deposits and prepaid items associated with the Assets; (x) all rights, claims and causes of action of Sellers against any person or entity including without limitation any former officers, directors, employees, members, principals, agents, and representatives of any Seller, including, without limitation, any and all claims asserted by third parties against such persons which may result in the payment of proceeds to any Seller; (xi) all preference or avoidance claims and actions of any of the Sellers, including, without limitation, any such claims and actions arising under Sections 544, 547, 548, 549, and 550 of the Bankruptcy Code; (xii) all rights, claims and causes of action of any Seller asserted or which may hereafter be asserted in any of the litigation proceedings described on **Schedule 1.2(xiii)** attached hereto and incorporated herein by this reference; and (xiii) those additional assets, if any, listed on **Schedule 1.2(xiv)** attached hereto and incorporated herein by this reference.

1.3 Instruments of Transfer. The sale, assignment, transfer, conveyance and delivery of the Assets to Buyer shall be made by assignments, bill of sale, and other instruments of assignment, transfer and conveyance provided for in Section 3 below and such other instruments as may reasonably be requested by Buyer to transfer, convey, assign and deliver the Assets to Buyer, but in all events only to the extent that the same do not impose any material monetary obligations upon Sellers or in any other respect increase in any material way the burdens imposed by the other provisions of this Agreement upon Sellers, or any of them.

## 2. Consideration.

2.1 Purchase Price. The cash consideration to be paid by Buyer to Sellers for the Assets (the “**Purchase Price**”) shall be Two Hundred Sixty-Five Thousand Dollars (\$265,000).

### 2.2 Deposit.

2.2.1 Upon the mutual execution and delivery of this Agreement (the date of such mutual execution and delivery is sometimes referred to herein as the “**Execution Date**”) and the entry of the Approval Order, Buyer shall, pursuant to a separate escrow agreement, deposit into an escrow account (the “**Escrow**”) with an escrow holder (the “**Escrow Holder**”) designated by Sellers and reasonably acceptable to Buyers, \$26,500 (the “**Deposit**”) in immediately available funds. In turn, the Escrow Holder shall immediately deposit the Deposit into an interest-bearing account.

2.2.2 Upon the termination of this Agreement for any reason other than termination by Sellers pursuant to Section 10.1.4, the Parties shall instruct the Escrow Holder to immediately refund the Deposit, together with all interest earned thereon, to Buyer. The Deposit shall become nonrefundable upon the termination of this Agreement by Sellers pursuant to Section 10.1.4. Upon such termination pursuant to Section 10.1.4, the Parties shall instruct the Escrow Holder to immediately disburse the Deposit and all interest accrued thereon to Sellers to be retained by Sellers for their own account.

2.2.3 The Deposit (and any accrued interest thereon) shall be credited and applied against amounts due and owing to Sellers.

2.3 Intentionally Omitted.

2.4 Assumed Liabilities.

2.4.1. No Assumption of Liabilities. Except for any liabilities arising out of ownership of the Assets after the Closing, Buyer does not and shall not be deemed to assume any liabilities in connection with the transactions contemplated by this Agreement. Buyer shall not be the successor to any or all of the Sellers and each Seller acknowledges and agrees that pursuant to the terms and provisions of this Agreement, Buyer will not be liable or responsible for any claim or liability of any Seller, whether relating to or arising out of the Assets, the Excluded Assets or otherwise.

2.5 Purchase Price Allocation. Not later than fifteen (15) business days following the date of the auction described in the Bidding Procedures Order, Buyer shall prepare and deliver to Sellers for their review and consideration a schedule (the “**Allocation Schedule**”) allocating the Purchase Price among the various assets comprising the Property in accordance with Treasury Regulation 1.1060-1 (or any comparable provisions of state or local tax law) or any successor provision. If Sellers disagree with or raise objections to the Allocation Schedule, Buyer and Sellers will negotiate in good faith to resolve such objections. If the Parties are able to agree upon the allocation of the Purchase Price, Buyer and Sellers shall report and file all tax returns (including any amended tax returns and claims for refund) consistent with such mutually agreed Purchase Price allocation, and shall take no position contrary thereto or inconsistent therewith (including in any audits or examinations by any taxing authority or any other proceedings). Buyer and Sellers shall file or cause to be filed any and all forms (including U.S. Internal Revenue Service Form 8594), statements and schedules with respect to such allocation, including any required amendments to such forms. If, on the other hand, the Parties are unable to mutually agree upon the manner in which the Purchase Price should be allocated, Buyer and Sellers shall be free to make their own respective allocations of the Purchase Price for tax purposes.

2.6 Intentionally Omitted.

2.7 Intentionally Omitted.

2.8 Closing Transactions.

2.8.1 Closing. The Closing of the transactions provided for herein (the “**Closing**”) shall take place at such place or places as the Parties may mutually agree upon.

2.8.2 Closing Date. The date of the Closing (the “Closing Date”) shall be held upon the second (2<sup>nd</sup>) Business Day following the satisfaction of the last of the conditions set forth in Sections 3.1 and 3.2 below.

2.9 Sellers’ Deliveries to Buyer at Closing. On the Closing Date, Sellers shall deliver to Buyer:

2.9.1 Intentionally Omitted.

2.9.2 A Bill of Sale and Assignment, duly executed by Sellers in the form and on the terms of the bill of sale attached hereto as **Exhibit “A,”** pursuant to which each Seller transfers and assigns to Buyer such Seller’s right, title and interest in and to the Assets (the “**Bill of Sale**”).

2.9.3 Intentionally Omitted.

2.9.4 Possession and control of the Assets, free and clear of all Liens to the extent provided in the Approval Order, excluding, in all events, Buyer’s obligations under this Agreement.

2.9.5 A certified copy of the Approval Order authorizing and approving the execution and delivery and performance of this Agreement, all other documents contemplated herein and the transactions contemplated hereby and thereby and the acts of the officers of Sellers in carrying out the terms and provisions hereof.

2.9.6 Any consents, approvals and authorizations of third parties that are necessary, including authorization by the Bankruptcy Court, for the execution, delivery and consummation of this Agreement, but specifically excluding any such consents, approvals and/or authorizations the need for which is obviated by the entry of the Approval Order.

2.9.7 Intentionally Omitted.

2.9.8 Any such other documents or other things reasonably contemplated by this Agreement to be delivered by Sellers to Buyer at the Closing, or that Buyer reasonably requests in order to consummate the Buyer’s purchase and subsequent disposition of the Assets as contemplated herein or to vest in Buyer title to the Assets.

2.10 Buyer’s Deliveries to Sellers at Closing. On the Closing Date, Buyer shall make or cause the following deliveries to Sellers or the Escrow Holder, as applicable:

2.10.1 Payment of the Purchase Price.

2.10.2 Intentionally Omitted.

2.10.3 Intentionally Omitted.

2.10.4 Any such other documents, funds or other things reasonably contemplated by this Agreement to be delivered by Buyer to Sellers at the Closing.

2.11 Sales, Use and Other Taxes. Any sales, purchase, transfer, stamp, documentary stamp, use or similar taxes under the laws of the states in which any portion of the Assets is located, or any subdivision of any such state, or under any federal law or the laws or regulations of any federal agency or authority, which may be payable by reason of the sale or transfer of the Assets under this Agreement or the transactions contemplated herein shall be borne and paid by Buyer.

2.12 Possession. Right to possession of the Assets shall transfer to Buyer on the Closing Date. Sellers shall transfer and deliver to Buyer on the Closing Date such items as Buyer may reasonably require to obtain occupation and control of the Assets, and shall also make available to Buyer at their then existing locations the originals of all documents in Sellers' actual possession that are required to be transferred to Buyer by this Agreement. All costs associated with moving the Assets from any locations at which the Assets is located as of the Closing Date shall be borne by Buyer.

### 3. Conditions Precedent to Closing.

3.1 Conditions to Sellers' Obligations. Sellers' obligation to make the deliveries required of Sellers at the Closing Date and otherwise consummate the transaction contemplated herein shall be subject to the satisfaction or waiver by Sellers of each of the following conditions:

3.1.1 All of the representations and warranties of Buyer contained herein shall continue to be true and correct at the Closing in all material respects.

3.1.2 Intentionally Omitted.

3.1.3 Buyer shall have delivered, or shall be prepared to deliver to Sellers at the Closing, all cash and other documents required of Buyer to be delivered at the Closing.

3.1.4 Buyer shall have delivered to Sellers evidence (in form and content reasonably satisfactory to Sellers) of all necessary entity action by Buyer in connection with the transactions contemplated hereby, including, without limitation: (i) certified copies of resolutions duly adopted by Buyer's manager and/or board of directors approving the transactions contemplated by this Agreement and authorizing the execution, delivery, and performance by Buyer of this Agreement; and (ii) a certificate as to the incumbency of those managers and/or officers of Buyer executing this Agreement and any instrument or other document delivered in connection with the transactions contemplated by this Agreement.

3.1.5 No action, suit or other proceedings shall be pending before any court, tribunal or governmental authority seeking or threatening to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or seeking to obtain substantial damages in respect thereof, or involving a claim that consummation thereof would result in the violation of any law, decree or regulation of any governmental authority having appropriate jurisdiction.

3.1.6 Buyer shall have substantially performed or tendered performance of each and every material covenant on Buyer's part to be performed which, by its terms, is required to be performed at or before the Closing.

3.1.7 The Bankruptcy Court shall have entered an order in substantially the form attached hereto as **Exhibit "C"** (the "**Approval Order**") and the Approval Order shall not have been stayed as of the Closing Date.

3.2 Conditions to Buyer's Obligations. Buyer's obligation to make the deliveries required of Buyer at the Closing and otherwise consummate the transaction contemplated herein shall be subject to the satisfaction or waiver by Buyer of each of the following conditions:

3.2.1 Sellers shall have substantially performed or tendered performance of each and every covenant on Sellers' part to be performed which, by its terms, is required to be performed or capable of performance at or before the Closing.

3.2.2 All of the representations and warranties of Sellers contained herein shall continue to be true and correct at the Closing in all material respects.

3.2.3 Sellers shall have executed and be prepared to deliver to Buyer the Bill of Sale.

3.2.4 Sellers shall have delivered, or shall be prepared to deliver to Buyer at the Closing, all other documents required of Sellers to be delivered at the Closing.

3.2.5 No action, suit or other proceedings shall be pending before any court, tribunal or governmental authority seeking or threatening to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or involving a claim that consummation thereof would result in the violation of any law, decree or regulation of any governmental authority having appropriate jurisdiction.

3.2.6 The Bankruptcy Court shall have entered the Approval Order and the Approval Order shall have become a Final Order.

3.2.7 Intentionally Omitted.

3.3 Waiver of Condition. Any waiver of a condition shall be effective only if such waiver is stated in writing and signed by the waiving Party; provided, however, that the consent



of a Party to the Closing shall constitute a waiver by such Party of any conditions to Closing not satisfied as of the Closing Date.

4. Sellers' Representations and Warranties. Sellers hereby make (each as to themselves only) the following representations and warranties to Buyer:

4.1 Organization, Standing and Power. Sellers are duly organized, validly existing and in good standing under the laws of the states of their respective organization set forth in the preamble to this Agreement. Sellers have all requisite entity power and authority to own, lease and, subject to the provisions of the Bankruptcy Code applicable to debtors in possession, operate its properties, to carry on Sellers' business as now being conducted. Subject to entry of the Approval Order, Sellers have the power and authority to execute, deliver and perform this Agreement and all writings relating hereto.

4.2 Validity and Execution. This Agreement has been duly executed and delivered by Sellers and, upon entry of the Approval Order, will constitute the valid and binding obligation of Sellers enforceable against them in accordance with its terms, except as may be limited by any bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other laws (whether statutory, regulatory or decisional), now or hereafter in effect, relating to or affecting the rights of creditors generally or by equitable principles (regardless of whether considered in a proceeding at law or in equity).

4.3 No Conflict. Subject to the entry of the Approval Order, the consummation of the transactions herein contemplated, and the performance of, fulfillment of and compliance with the terms and conditions hereof by Sellers do not and will not: (i) conflict with or result in a breach of the articles of incorporation, by-laws or operating agreement, as applicable, of Sellers; (ii) violate any statute, law, rule or regulation, or any order, writ, injunction or decree of any court or governmental authority, or (iii) violate or conflict with or constitute a default under any agreement, instrument or writing of any nature to which any Seller is a Party or by which Buyer or its assets or properties may be bound.

4.4 Litigation. Except for the Case and except as set forth on **Schedule 4.4** hereto, to Sellers' Knowledge (which, for purposes of this Agreement means and refers only to the actual knowledge of John Peterson after reasonable inquiry), there is no material Litigation or investigation pending or threatened against or affecting the Assets, before any court, arbitrator or governmental authority. To Sellers' Knowledge, except for the Case, Sellers are not subject to any outstanding Litigation or Order, which, individually or in the aggregate, would prevent, or materially delay Sellers from consummating the transactions contemplated by this Agreement, or which would be pursuant to its terms binding on Buyer or the Assets.

4.5 No Other Agreements to Purchase. Sellers have not entered into any agreement with any other Person (written or oral) which grants such third party the right or option purchase or acquire from Sellers any of the Assets, other than purchase orders for Inventory accepted by Sellers in the ordinary course of business, consistent with past practice.

4.6 Financial Advisors. No Person has acted, directly or indirectly, as a broker, finder or financial advisor for the Sellers in connection with the transactions contemplated by this Agreement, and no Person is entitled to any fee or commission or like payment from the Buyer or the Sellers in respect thereof, in each case other than as set forth on **Schedule 4.7**.

4.7 Condition of the Assets. Since the date of this Agreement, the Assets shall have been subject to no more than an immaterial loss or casualty, if any. For the avoidance of doubt, ordinary wear and tear shall not constitute any loss or casualty.

5. Buyer's Warranties and Representations. In addition to the representations and warranties contained elsewhere in this Agreement, Buyer hereby makes the following representations and warranties to Sellers:

5.1 Organization, Standing and Power. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware. Buyer has all requisite entity power and authority to own, lease and operate its properties, to carry on its business as now being conducted and to execute, deliver and perform this Agreement and all writings relating hereto. Buyer has the power and authority to execute, deliver and perform this Agreement.

5.2 Validity and Execution. This Agreement has been duly executed and delivered by Buyer and constitutes the valid and binding obligation of Buyer enforceable against it in accordance with its terms, except as may be limited by any bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other laws (whether statutory, regulatory or decisional), now or hereafter in effect, relating to or affecting the rights of creditors generally or by equitable principles (regardless of whether considered in a proceeding at law or in equity).

5.3 No Conflict. The execution, delivery and performance of this Agreement and all writings relating hereto by Buyer have been duly and validly authorized. The execution and delivery of this Agreement, the consummation of the transactions herein contemplated, and the performance of, fulfillment of and compliance with the terms and conditions hereof by Buyer do not and will not: (i) conflict with or result in a breach of the certificate of formation or operating agreement of Buyer or, if applicable, other organizational documents or agreements of Buyer; (ii) violate any statute, law, rule or regulation, or any order, writ, injunction or decree of any court or governmental authority; or (iii) violate or conflict with or constitute a default under any agreement, instrument or writing of any nature to which Buyer is a party or by which Buyer or its assets or properties may be bound.

5.4 Litigation. To Buyer's knowledge, there is no material Litigation or investigation pending or threatened against or affecting the Buyer, before any court, arbitrator or governmental authority which, individually or in the aggregate, would prevent, or materially delay Buyer from consummating the transactions contemplated by this Agreement.

5.5 Financial Capability. Buyer (i) has, or has firm commitments for, as of the date hereof, and will have as of the Closing, sufficient funds to pay the Purchase Price and to

assume the Assumed Liabilities, (ii) has, as of the date hereof, and will have as of the Closing, the resources and capabilities (financial or otherwise) to perform its obligations hereunder and (iii) has not, as of the date hereof, and will not have as of the Closing, incurred any obligation, commitment, restriction or liability of any kind which would impair or adversely affect such resources and capabilities.

6. “AS IS” Transaction. Buyer hereby acknowledges and agrees that, except only as provided in Section 4 above, Sellers makes no representations or warranties whatsoever, express or implied, with respect to any matter relating to the Assets (including, without limitation, income to be derived or expenses to be incurred in connection with the Assets, the physical condition of the Assets, the environmental condition or other matter relating to the physical condition of any of the Assets, the value of the Assets (or any portion thereof), the transferability of the Assets or any portion thereof, the merchantability or fitness of the Assets for any particular purpose. Without in any way limiting the foregoing, Sellers hereby disclaim any warranty (express or implied) of merchantability or fitness for any particular purpose as to any portion of the Assets. Buyer further acknowledges that Buyer has conducted an independent inspection and investigation of the physical condition of all portions the Assets and all such other matters relating to or affecting or comprising the Assets (including, without limitation, those matters, if any, disclosed to Buyer pursuant to **Schedule 6** attached hereto and incorporated herein by this reference) as Buyer deemed necessary or appropriate and that in proceeding with its acquisition of the Assets, Buyer is doing so based solely upon such independent inspections and investigations. Accordingly, Buyer will accept the Assets at the Closing **“AS IS,” “WHERE IS,” and “WITH ALL FAULTS.”**

7. Books and Records of Sellers.

7.1 Sellers shall provide Buyer and Buyer’s counsel, accountants, lenders, employees and other representatives, during normal business hours from the Agreement Date until the Closing Date, reasonable access to the personnel, facilities, customers, vendors, all of the Assets, including the organizational books and records of Sellers; provided, however, such access shall not materially interfere with the ongoing business operations of Sellers, and such access shall not include privileged communications, confidential information or information about any former employee, the disclosure of which might violate such former employee’s reasonable expectation of privacy or applicable law.

8. Other Covenants of the Parties.

8.1 Bankruptcy Court Approval. Sellers and Buyer acknowledge that under the Bankruptcy Code, this Agreement and the sale of the Assets are subject to Bankruptcy Court approval. Sellers and Buyer acknowledge and agree that to obtain such approval, Sellers must demonstrate that they have taken reasonable steps to obtain the highest and best price possible for the Assets, including giving notice of the transactions contemplated by this Agreement to creditors and other interested parties as ordered by the Bankruptcy Court, providing information about the Assets to responsible bidders, entertaining higher and better offers from responsible bidders and conducting an auction.

8.2 Schedules. Sellers shall deliver a preliminary draft of all schedules referenced in this Agreement not later than ten (10) days following the execution of this Agreement by the parties.

9. Intentionally Omitted.

10. Termination.

10.1 Methods of Optional Termination. This Agreement may be terminated at any time prior to the Closing Date:

10.1.1 by Buyer or Sellers, if either (A) the Bankruptcy Court hearing on Sellers' motion seeking entry of the Approval Order is not held within five (5) business days following the auction described in the Bidding Procedures Order or (B) the Bankruptcy Court has not entered the Approval Order within ten (10) business days following such hearing;

10.1.2 by Buyer or Sellers, if the Closing shall not have occurred by the close of business on July 31, 2012 (the "**Outside Date**"); provided, that if the Closing shall not have occurred on or before the Outside Date due to (i) a breach of any material representations, warranties, covenants or agreements contained in this Agreement by a party hereto, then such party may not terminate this Agreement pursuant to this Section 10.1.2, and (ii) Buyer's requirement that the Approval Order become a Final Order and the appeal period with respect thereto has not yet run, then neither Buyer nor Sellers shall have the right to terminate, it being expressly understood that (xx) nothing herein shall be deemed to alter or waive any condition to Buyer's or Sellers' obligations to close set forth elsewhere in this Agreement, and (yy) the Outside Date shall be extended to the date which is three (3) business days following expiration of such appeal period;

10.1.3 by Sellers and Buyer by mutual written consent;

10.1.4 (A) by Buyer, in the event of a Seller Material Breach; provided, that Buyer shall not have the right to terminate this Agreement under this Section 10.1.4(A) at a time when Sellers have (or would have after the passage of time (without regard to whether any required notice has actually been given)) the right to terminate this Agreement due to a Buyer Material Breach, and (B) by Sellers, in the event of a Buyer Material Breach; provided, that Sellers shall not have the right to terminate this Agreement under this Section 10.1.4(B) at a time when Buyer has (or would have after the passage of time (without regard to whether any required notice has actually been given)) the right to terminate this Agreement due to a Seller Material Breach;

10.1.5 Intentionally Omitted;

10.1.6 by Buyer, upon the conversion of the Case to a Chapter 7 liquidation, the dismissal of the Case, or the appointment of a trustee or examiner with extended powers; or

10.1.7 by Buyer or Sellers, by written notice to the other Parties if there shall be in effect an order of a governmental authority of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby, or the Bankruptcy Court or another court of competent jurisdiction shall stay the Approval Order.

10.2 Notice of Termination. Notice of termination of this Agreement pursuant to Section 10.1 shall be given by the Party or Parties so terminating to the other Parties in writing in accordance with Section 12.2.

10.3 Effect of Termination. Upon termination of this Agreement, the Parties may abandon the transactions contemplated hereby and, to the extent practicable, shall withdraw all filings, applications and other submissions made pursuant to the transactions contemplated hereby from the governmental authority or Person to which made. Except as otherwise provided in this Section 10.3, upon termination of this Agreement, this Agreement shall cease to have any force or effect and the Parties under this Agreement shall cease to have any further obligations or liabilities under this Agreement.

10.4 Rights and Remedies Upon Termination. If this Agreement is terminated by Seller under section 10.1.4, the Deposit shall be deemed NON-REFUNDABLE, and the Seller shall retain the Deposit in lieu of and in full and complete satisfaction of any and all other claims, legal and equitable rights and remedies, including (without limitation) the right to collect from the Buyer the difference between the Purchase Price and the ultimate price(s) at which the Assets are sold to one or more parties together with all costs and expenses associated with such subsequent sale(s). If this Agreement is terminated by Buyer under section 10.1.4, the Buyer shall be entitled to the return of the Deposit.

11. Intentionally Omitted.

12. Miscellaneous.

12.1 Attorneys' Fees. In the event that either Party hereto brings an action or other proceeding to enforce or interpret the terms and provisions of this Agreement, the prevailing Party in that action or proceeding shall be entitled to have and recover from the non-prevailing Party all fees, costs and expenses (including, without limitation, all court costs and reasonable attorneys' fees) as the prevailing Party may incur in the pursuit or defense of such action or proceeding.

12.2 Notices. Unless otherwise provided herein, any notice, tender, or delivery to be given hereunder by any Party to the other may be effected by personal delivery in writing, or by registered or certified mail, postage prepaid, return receipt requested or by facsimile, and shall be deemed communicated as of the date of mailing or facsimile transmission (with answer back confirmation of such transmission). Mailed notices shall be addressed as set forth below, but each Party may change its address by written notice in accordance with this Section 12.2.

To Sellers:                      Silverton Marine Corporation  
Mainship Corporation



Luhrs Corporation  
Ovation Yachts Corporation  
Route 441  
P.O. Box 1030  
Alachua, Florida 32615  
Attn: John Peterson  
Fax Number: (386) 462-4077

With a copy to: Arent Fox LLP  
1675 Broadway  
New York, New York 10019  
Attn: Robert M. Hirsh, Esq.  
Fax Number: (212) 484-3990

To Buyer: Hilco Industrial, LLC  
5 Revere Drive, Suite 206  
Northbrook, IL 60062  
Attn: Ian S. Fredericks  
Fax Number: (847) 897-0859

12.3 Entire Agreement. This instrument and the documents to be executed pursuant hereto contain the entire agreement between the Parties relating to the sale of the Assets. Any oral representations or modifications concerning this Agreement or any such other document shall be of no force and effect excepting a subsequent modification in writing, signed by the Party to be charged.

12.4 Modification. This Agreement may be modified, amended or supplemented only by a written instrument duly executed by all the Parties hereto.

12.5 Closing Date. All actions to be taken on the Closing pursuant to this Agreement shall be deemed to have occurred simultaneously, and no act, document or transaction shall be deemed to have been taken, delivered or effected until all such actions, documents and transactions have been taken, delivered or effected.

12.6 Severability. Should any term, provision or paragraph of this Agreement be determined to be illegal or void or of no force and effect, the balance of this Agreement shall survive.

12.7 Captions. All captions and headings contained in this Agreement are for convenience of reference only and shall not be construed to limit or extend the terms or conditions of this Agreement.

12.8 Further Assurances. Each Party hereto will execute, acknowledge and deliver any further assurance, documents and instruments reasonably requested by any other Party for the purpose of giving effect to the transactions contemplated herein or the intentions of the Parties with respect thereto; provided that nothing herein shall be deemed to require any

Party to execute or deliver any such further assurance, document or instrument to the extent that the same could in any material way increase the burdens, obligations or liabilities otherwise imposed upon such Party by this Agreement.

12.9 Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

12.10 Brokerage Obligations. Sellers and the Buyer each represent and warrant to the other that, other than any success fee to which Katz, Kane & Co., LLC (the “**Broker**”) may be entitled in connection with the consummation of the transactions contemplated herein, such Party has incurred no liability to any broker or agent with respect to the payment of any commission or other compensation regarding the consummation of the transaction contemplated hereby. It is agreed that if any claims for commissions, fees or other compensation, including, without limitation, brokerage fees, finder’s fees, or commissions are ever asserted against Buyer or Sellers in connection with this transaction by any party other than the Broker (for whose commission or other compensation Sellers shall be solely responsible), all such claims shall be handled and paid by the Party whose actions form the basis of such claim and such Party shall indemnify, defend (with counsel reasonably satisfactory to the Party entitled to indemnification), protect and save and hold the other harmless from and against any and all such claims or demands asserted by any person, firm or corporation in connection with the transaction contemplated hereby.

12.11 Payment of Fees and Expenses. Except as provided in Sections 11 and 12.1 above, each Party to this Agreement shall be responsible for, and shall pay, all of its own fees and expenses, including those of its counsel, incurred in the negotiation, preparation and consummation of this Agreement and the transaction described herein.

12.12 Survival. The respective representations and warranties of Buyer and Sellers under this Agreement shall lapse and cease to be of any further force or effect effective upon the Closing. Except as provided in the immediately preceding sentence, the covenants and agreements of Sellers and Buyer herein, or in any certificates or other documents delivered prior to or at the Closing, shall not be deemed waived or otherwise affected by the Closing.

12.13 Assignments. This Agreement shall not be assigned by any Party hereto without the prior written consent of the other Party hereto, which consent the Parties may grant or withhold in their sole and absolute discretion; provided, that the Buyer shall be permitted to assign its right to purchase all or any portion of the Assets to any one or more directly or indirectly wholly-owned subsidiaries, affiliates, or joint ventures of the Buyer; provided, further, that the Buyer or such assignee(s) may pledge this Agreement and the rights of the Buyer hereunder to a lender or other financing source as collateral security for loans made to the Buyer or such assignee(s).

12.14 Binding Effect. Subject to the provisions of Section 12.13, above, this Agreement shall bind and inure to the benefit of the respective heirs, personal representatives,

successors, and assigns of the Parties hereto, including, without limitation, any chapter 11 trustee hereinafter appointed in the Case or any trustee appointed in a chapter 7 case if the Case is converted from chapter 11.

12.15 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

12.16 Good Faith. All Parties shall do all acts and execute all documents required to carry out the terms of this Agreement and act in good faith with respect to the terms and conditions contained herein before and after Closing.

12.17 Construction. In the interpretation and construction of this Agreement, the Parties acknowledge that the terms hereof reflect extensive negotiations between the Parties and that this Agreement shall not be deemed, for the purpose of construction and interpretation, drafted by either Party hereto.

12.18 Counterparts. This Agreement may be signed in counterparts. The Parties further agree that this Agreement may be executed by the exchange of facsimile signature pages provided that by doing so the Parties agree to undertake to provide original signatures as soon thereafter as reasonable in the circumstances.

12.19 Bankruptcy Court Jurisdiction. **IF ANY DISPUTE ARISES OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE DOCUMENTS EXECUTED HEREUNDER OR IN CONNECTION HERewith, THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE PERSONAL AND SUBJECT MATTER JURISDICTION AND SHALL BE THE EXCLUSIVE VENUE TO RESOLVE ANY AND ALL DISPUTES RELATING TO THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT. SUCH COURT SHALL HAVE SOLE JURISDICTION OVER SUCH MATTERS AND THE PARTIES AFFECTED THEREBY AND BUYER AND SELLERS EACH HEREBY CONSENT AND SUBMIT TO SUCH JURISDICTION.**

12.20 Time is of the Essence. Time is of the essence in this Agreement, and all of the terms, covenants and conditions hereof.

12.21 Public and Private Sale. Immediately upon the Closing, Buyer may, in Buyer's sole and absolute discretion, make preparations for and conduct one or more private or public sales (including, but not limited to, one or more public auction sales) of the Assets at the location(s) (the "**Location(s)**") set forth on **Schedule 12.21** (each a "**Future Sale**" and collectively, the "**Future Sales**").

12.22 Advertising. The Buyer shall be permitted to implement an advertising and marketing plan with respect to the Future Sales, including without limitation, advertising the sale of the Assets through print media (including major newspapers, color brochures and direct mail flyers), web site promotion and electronic mail.

12.23 Access to the Locations. Notwithstanding anything to the contrary herein, prior to Closing and during the License Period described in Section 12.24, Seller shall permit Buyer reasonable access to the Locations and Assets. All access will be conducted at reasonable times agreed upon in advance by Seller and Buyer. Buyer shall have the right to disseminate and duplicate such photograph(s) and video(s) in connection with any Future Sales and advertising, all without any liability or payment to Seller or any other party.

12.24 License. In consideration of Buyer's agreement to purchase the Assets, effective as of the date of the Closing and ending on the date that is seventy five (75) days after the Closing (such period, the "**License Term**"), Seller hereby grants the Buyer a license to use the Location(s) for the sole purposes of conducting the Future Sales, removing the Assets from the Location(s) (either by the Buyer or one or more third parties who purchase the Assets from the Buyer), and all other actions that are related thereto.

12.25 Rent and Utilities. During the License Term, the Buyer shall be permitted to use the Location(s) free of all rents, but Buyer shall be required to pay \$2,000 per month for utility and other costs associated with the Buyer's use of the Locations, provided, however, that the aggregate amount of such payments shall not exceed \$5,000, which aggregate amount shall be paid to Seller in arrears upon execution of this Agreement. The utilities that Seller shall make available for Buyer shall only include electricity for lighting. Seller shall be obligated to pay for and ensure that such utility services are provided at the Location(s) at all times during the License Term and Seller's failure to do so shall entitle Buyer to an administrative expense claim in the Case equal to the amount of Buyer's out of pocket expenses for the provision of such utilities at the Location(s).

12.26 Condition of Location at the Conclusion of Disposition Periods. Upon expiration of the License Term, Buyer is not required to return the Locations to any prior condition and shall have the right to abandon any unsold Assets at or Assets not removed from the Location(s) without liability to the Seller or any other party.

12.27 Interpretation and Rules of Construction. In this Agreement, except to the extent that the context otherwise requires:

12.27.1 when a reference is made in this Agreement to an Article, Section, Exhibit or Schedule, such reference is to an Article or Section of, or an Exhibit or a Schedule to, this Agreement unless otherwise indicated;

12.27.2 the headings and captions used in this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement;

12.27.3 whenever the words "include," "includes" or "including" are used in this Agreement, they are deemed to be followed by the words "without limitation";

12.27.4 the words "hereof," "herein" and "hereunder" and works of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement;

12.27.5 all terms defined in this Agreement have the defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein;

12.27.6 the definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms;

12.27.7 any law defined or referred to herein or in any agreement or instrument that is referred to herein means such law or statute as from time to time amended, modified or supplemented, including by succession of comparable successor laws;

12.27.8 references to a person are also to its permitted successors and assigns; and

12.27.9 the use of "or" is not intended to be exclusive unless expressly indicated otherwise.

12.28 No Third Party Beneficiaries. This Agreement is solely for the benefit of the parties hereto and nothing contained herein, express or implied, is intended to confer on any person other than the parties hereto or their successors and permitted assigns, any rights, remedies, obligations, claims, or causes of action under or by reason of this Agreement.

12.29 Closing Actions. All deliveries, payments and other transactions and documents relating to the Closing shall be interdependent, and none shall be effective unless and until all are effective (except to the extent that the party entitled to the benefit thereof has waived satisfaction or performance thereof as a condition precedent to the Closing).

[signatures appear on the following page]



**In Witness Whereof**, Buyer and Sellers have executed this Asset Purchase Agreement as of the day and year first above written.

**BUYER:**

**HILCO INDUSTRIAL, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

Name: Tan S. Fedender

Its: VP, AGC, Mgr in Mkt

**SELLERS:**

**Silverton Marine Corporation,**  
a New Jersey Corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**Luhrs Marine Corporation,**  
a New Jersey Corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**Mainship Corporation,**  
a New Jersey Corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**Ovation Yachts Corporation,**  
a New Jersey Corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**In Witness Whereof**, Buyer and Sellers have executed this Asset Purchase Agreement as of the day and year first above written.

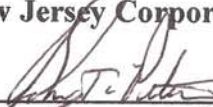
**BUYER:**

**HILCO INDUSTRIAL, LLC,**  
a Delaware limited liability company

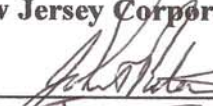
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**SELLERS:**


**Silverton Marine Corporation,**  
a New Jersey Corporation

By:   
Name: JOHN T. PETERSON  
Its: Treasurer


**Luhrs Marine Corporation,**  
a New Jersey Corporation

By:   
Name: JOHN T. PETERSON  
Its: TREASURER

**Mainship Corporation,**  
a New Jersey Corporation

By:   
Name: JOHN T. PETERSON  
Its: TREASURER

**Ovation Yachts Corporation,**  
a New Jersey Corporation

By:   
Name: JOHN T. PETERSON  
Its: TREASURER

**Schedule 1.1**

**Assets**

**Schedule 1.2(xiii)**

**Litigation Proceedings**

**Schedule 1.2(xiv)**

**Additional Excluded Assets**



**Schedule 4.4**

**Litigation**

**Schedule 4.7**

**Financial Advisors**

**Schedule 6**

**Additional Assumed Liabilities**

**Schedule 12.21**

**Auction Locations**

**Exhibit "A"**

**BILL OF SALE AND ASSIGNMENT**

Pursuant to Section 2.9.2 of that certain Asset Purchase Agreement dated July 10, 2012 (the "**Purchase Agreement**"), by and between Hilco Industrial, LLC, a Delaware limited liability company ("**Buyer**"), on the one hand, and Silverton Marine Corporation, a New Jersey corporation, ("**Silverton**"), Luhrs Corporation, a New Jersey corporation ("**Luhrs**"), Mainship Corporation, a New Jersey corporation ("**Mainship**"), and Ovation Yachts Corporation, a New Jersey corporation ("**Ovation**," and together with Silverton, Luhrs and Mainship, the "**Sellers**"), each of the Sellers being a Debtor and Debtor in Possession under Case No. 12-21156 (MBK) in the United States Bankruptcy Court for the District of New Jersey, on the other hand, and for good and valuable consideration, the receipt and sufficiency of which Sellers hereby expressly acknowledges, Sellers, each as to their respective interest therein, hereby sells, transfers, assigns and delivers to Buyer Sellers' right, title and interest in and to the Assets.

Except for terms specifically defined in this Bill of Sale, all capitalized terms used in herein shall have the same meanings as such terms have when utilized in the Purchase Agreement.

Sellers covenant and agree to execute and deliver further instruments of transfer and assignment and take such other action as Buyer may reasonably request to more effectively transfer and assign to and vest in Buyer the Assets; provided that nothing herein shall be deemed to require Sellers to execute or deliver any such further document or instrument or take any such action to the extent that the same could in any material way increase the burdens, obligations or liabilities otherwise imposed upon Sellers by the Purchase Agreement.

Notwithstanding anything to the contrary herein, Sellers are executing and delivering this Bill of Sale and Assignment in accordance with and subject to all of the terms and provisions of the Purchase Agreement (including, without limitation, the acknowledgement and disclaimer set forth in Section 6 of the Purchase Agreement).

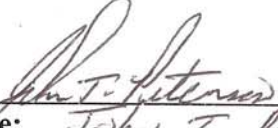


IN WITNESS WHEREOF, Sellers has caused this Bill of Sale and Assignment to be executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

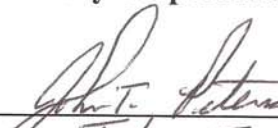
**SELLERS:**

**SELLERS:**

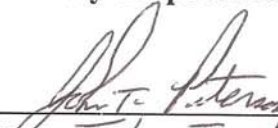
**Silverton Marine Corporation,  
a New Jersey Corporation**

By:   
Name: John T. PETERSON  
Its: Treasurer

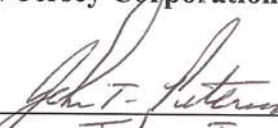
**Luhrs Marine Corporation,  
a New Jersey Corporation**

By:   
Name: John T. PETERSON  
Its: Treasurer

**Mainship Corporation,  
a New Jersey Corporation**

By:   
Name: John T. PETERSON  
Its: Treasurer

**Ovation Yachts Corporation,  
a New Jersey Corporation**

By:   
Name: John T. PETERSON  
Its: Treasurer

**Exhibit “B”**

**ADDITIONAL DEFINITIONS**

In addition to the terms defined elsewhere in this Agreement, the following terms when used in this Agreement shall have the respective meanings set forth below

- (1) “Affiliates” as to any person or entity means, with respect to any Person, any Person Controlling, Controlled by, or under common Control with such Person, (ii) the term “Control” (and any form thereof, such as “Controlled” or “Controlling”) means with respect to any Person the possession directly or indirectly, through one or more intermediaries, of the power to (1) to vote more than fifty percent (50%) of the voting stock of such Person or (2) to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, membership interests, partnership interests, by contract or otherwise, and (iii) the term “Person” means any individual, firm, corporation, general or limited partnership, limited liability company, incorporated or unincorporated association, joint venture, joint stock company, trust, governmental agency or instrumentality, or other entity of any kind, or any combination of the foregoing.
- (2) “Bidding Procedures Order” means an Order of the United States Bankruptcy Court for the District of New Jersey approving (a) bid procedures and stalking horse protections regarding the proposed sales of the debtors’ assets; (b) procedures related to the assumption and assignment of certain executory contracts and unexpired leases; (c) form and manner of notice; and (d) granting related relief.
- (3) “Buyer Material Breach” means any inaccuracy in any of Buyer’s representations or warranties contained in this Agreement or any breach of any of Buyer’s covenants or agreements contained in this Agreement which, individually or in the aggregate with all other such inaccuracies and breaches, (i) would result in a failure of a condition set forth in Section 3.1, and (ii) is either incapable of being cured or, if capable of being cured, is not cured in all material respects within the earlier of (x) fifteen (15) calendar days after written notice thereof and (y) the Outside Date.
- (4) “Environmental Law” means any law or regulation pertaining to: (a) the protection of health, safety and the indoor or outdoor environment; (b) the conservation, management or use of natural resources and wildlife; (c) the protection or use of surface water and ground water; (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, emission, discharge, Release, threatened Release, abatement, removal, remediation or handling of, or exposure to, any Hazardous Substance; or (e) pollution (including any emission, discharge or Release to air, land, surface water and ground water of any material); and includes, without limitation, CERCLA and the Solid Waste Disposal Act, as amended 42 U.S.C. § 6901 et seq.

- (5) “Final Order” means, with respect to any order or other action of a governmental authority (including, but not limited to, the Bankruptcy Court), an order or other action (a) as to which no appeal, notice of appeal, motion to amend or make additional findings of fact, motion to alter or amend judgment, motion for rehearing or motion for new trial has been timely filed or, if any of the foregoing has been timely filed, it has been disposed of in a manner that upholds and affirms the subject order in all material respects without the possibility for further appeal or rehearing thereon; and (b) as to which the time for instituting or filing an appeal, motion for rehearing or motion for new trial shall have expired.
- (6) “GAAP” means U.S. generally accepted accounting principles, consistently applied in accordance with Sellers’ historical practices.
- (7) “Indebtedness” means, with respect to any Person, (a) all indebtedness of such Person, whether or not contingent, for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services, (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of Sellers or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all obligations of such Person as lessee under leases that have been or should be, in accordance with generally accepted accounting principles (GAAP), recorded as capital leases, (f) all obligations, contingent or otherwise, of such Person under acceptance, letter of credit or similar facilities, (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value any capital stock of such Person or any warrants, rights or options to acquire such capital stock, valued, in the case of redeemable preferred stock, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends, (h) all Indebtedness of others referred to in clauses (a) through (g) above guaranteed directly or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (1) to pay or purchase such Indebtedness or to advance or supply funds for the payment or purchase of such Indebtedness, (2) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss, (3) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered) or (4) otherwise to assure a creditor against loss and all Indebtedness referred to in clauses (a) through (f) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property (including, without limitation, accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.

- (8) “Hazardous Substances” means air pollutants, water pollutants, solid wastes or process waste water contaminants, hazardous wastes, materials, or substances, or toxic substances (as those or similar terms are defined by applicable environmental Laws).
- (9) “Liens” means all liens or other interests as defined in 11 U.S.C. § 363(f), encumbrances, rights of third parties (express or implied), claims (as defined in Section 101(5) of the Bankruptcy Code), Indebtedness, obligations, liabilities, judgments, demands, subleases, contractual commitments, mortgages, pledges, guarantees, security interests, conditional sale or other title retention agreements, charges, options, rights of first refusal, reservations, restrictions or interests of any kind, rights of others of every type and description, whether arising prior to or subsequent to the commencement of the Chapter 11, and whether imposed by agreement, understanding, law, equity or otherwise, whether secured or unsecured, including, without limitation:
- (a) any and all claims, demands, damages, actions, causes of action, contracts, agreements, charges, sums of money, claims for attorney's fees, claim of any violation of any state or federal statutes, rules or regulations, and lawsuits of every kind and description, whether known or unknown, now existing, or which may hereafter arise against Sellers; and
  - (b) any and all liabilities and obligations under any Environmental Law; and
  - (c) any claims based on or asserting that Buyer is a successor in interest to Sellers.
- (10) “Litigation” means any suit, action, arbitration, cause of action, claim, complaint, criminal prosecution, investigation, inquiry, demand letter, governmental or other administrative proceeding, whether at law or at equity, before or by any court, governmental authority, arbitrator or other tribunal.
- (11) “Order” shall mean any judgment, order, writ, injunction, ruling, stipulation, determination, award or decree of or by, or any settlement under the jurisdiction of, any court or governmental authority.
- (12) “Person” means any natural person, corporation, limited liability company, unincorporated organization, partnership, association, joint stock company, joint venture, trust or any other entity.
- (13) “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, seeping, migrating, dumping or disposing of any Hazardous Substance (including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Substance) into the indoor or outdoor environment, including, without limitation, the movement of Hazardous Substances through or in the ambient air, soil, surface or ground water, or property.

- (14) “Seller Material Breach” means any inaccuracy in any of Sellers’ representations or warranties contained in this Agreement or any breach of any of Sellers’ covenants or agreements contained in this Agreement which, individually or in the aggregate with all other such inaccuracies and breaches, (i) would result in a failure of a condition set forth in Section 3.1, and (ii) is either incapable of being cured or, if capable of being cured, is not cured in all material respects within the earlier of (x) fifteen (15) calendar days after written notice thereof and (y) the Outside Date.



**Exhibit “C”**

**Approval Order**

**Exhibit “D”**

**Bidding Procedures Order**

## **EXHIBIT C**

### **TROCKI ASSET PURCHASE AGREEMENT**

## ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** (the “**Agreement**”) is made and entered into as of this \_\_\_\_ day of July, 2012 (the “**Agreement Date**”), by and between TF Yachts LLC, a New Jersey limited liability company (the “**Buyer**”), on the one hand, and Silverton Marine Corporation, a New Jersey corporation, (“**Silverton**”) and Ovation Yachts Corporation, a New Jersey corporation (“**Ovation**,” and together with Silverton, the “**Sellers**” and, together with Buyer, the “**Parties**”), each of the Sellers being a Debtor and Debtor in Possession under Case No. 12-21156 (MBK) (the “**Case**”) in the United States Bankruptcy Court for the District of New Jersey (the “**Bankruptcy Court**”).

### RECITALS

A. Collectively, the Sellers are in the business of producing and selling recreational powerboats and sailboats (the “**Business**”).

B. Sellers wish to sell to Buyer, pursuant to Sections 363 of Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”), certain assets of Sellers, which are used primarily in connection with or arising out of the operation of the Business, all at the price and on the other terms and conditions specified in detail below and Buyer wishes to so purchase and acquire such assets from Sellers.

C. Capitalized terms used but not otherwise defined herein have the respective meanings set forth in **Exhibit “B”** hereto.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

#### 1. Transfer of Assets.

1.1 Purchase and Sale of Assets. On the Closing Date, as hereinafter defined, in consideration of the covenants, representations and obligations of Buyer hereunder, and subject to the conditions set forth in this Agreement and entry of the Approval Order (as defined below), Sellers shall sell, assign, transfer, convey and deliver (pursuant to Sections 363 and 365 of the Bankruptcy Code) to Buyer, free and clear of all Liens to the extent provided in the Approval Order, and Buyer shall purchase from Sellers, the Sellers’ right, title and interest as of the Closing Date in and to certain items of (i) tangible personal property owned by any of the Sellers, including, without limitation, inventory, molds, tooling, spare parts, works in progress and other items of tangible personal property listed or described in **Schedule 1.1** attached to this Agreement and incorporated herein by this reference (collectively, the “**Personal Property**”) and (ii) intangible personal property owned, licensed to or held by any Seller to the extent heretofore used in connection with the Business, but in all cases only to the extent of such Seller’s interest and only to the extent transferable, together with all books, records and like items pertaining to the Business, the goodwill of the Business, patents, processes, trademarks, brand names, websites, service marks, copyrights, designs (all of the foregoing, whether

registered or unregistered), catalogues, advertising materials, software programs, and telephone exchange numbers and facsimile numbers, domain names, URL addresses, identified with the Business, all as more specifically set forth on **Schedule 1.1** attached hereto and incorporated herein by this reference (collectively, the “**Intangible Property**,” and together with the Personal Property, the “**Assets**”). For the avoidance of doubt, Intangible Property shall in all events exclude any materials containing privileged communications and any other materials which are subject to attorney-client or any other privilege or precluded from disclosure by applicable law.

1.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, the Assets shall exclude all of the following (collectively, the “**Excluded Assets**”): (i) those items excluded pursuant to the provisions of Section 1.1 above; (ii) Sellers’ rights under this Agreement and all cash and non-cash consideration payable or deliverable to Sellers pursuant to the terms and provisions hereof; (iii) all cash deposits and prepaid items; (iv) all cash and cash equivalents (including checking account balances, certificates of deposit and other time deposits and petty cash) and marketable and other securities relating to or arising in connection with the operation of the Business, (v) all tax refunds, rebates, credits and similar items relating to or arising out of the operation of the Business and to any period, or portion of any period, on or prior to the Closing Date; (vi) all insurance proceeds (including, without limitation, any insurance policies held by any Sellers which insure the directors and officers of any Seller against liability and any and all proceeds of any such insurance policies), claims and causes of action; (vii) any Lease or Other Contract to which any Seller is a party, (viii) all securities, whether capital stock or debt, of any Seller; (ix) all tax records, minute books, stock transfer books and corporate seal of each Seller; (x) any letters of credit or similar financial accommodations issued to any third party(ies) for the account of any Seller and any collateral therefor and other collateral deposits and prepaid items associated with the Assets; (xi) all rights, claims and causes of action of Sellers against any person or entity including without limitation any former officers, directors, employees, members, principals, agents, and representatives of any Seller, including, without limitation, any and all claims asserted by third parties against such persons which may result in the payment of proceeds to any Seller; (xii) all preference or avoidance claims and actions of any of the Sellers, including, without limitation, any such claims and actions arising under Sections 544, 547, 548, 549, and 550 of the Bankruptcy Code; (xiii) all rights, claims and causes of action of any Seller asserted or which may hereafter be asserted in any of the litigation proceedings described on **Schedule 1.2(xiii)** attached hereto and incorporated herein by this reference; and (xiv) those additional assets, if any, listed on **Schedule 1.2(xiv)** attached hereto and incorporated herein by this reference.

1.3 Instruments of Transfer. The sale, assignment, transfer, conveyance and delivery of the Assets to Buyer shall be made by assignments, bill of sale, and other instruments of assignment, transfer and conveyance provided for in Section 3 below and such other instruments as may reasonably be requested by Buyer to transfer, convey, assign and deliver the Assets to Buyer, but in all events only to the extent that the same do not impose any monetary obligations upon Sellers or in any other respect increase in any material way the burdens imposed by the other provisions of this Agreement upon Sellers, or any of them.

## 2. Consideration.



2.1 Purchase Price. The cash consideration to be paid by Buyer to Sellers for the Assets (the “**Purchase Price**”) shall be Two Hundred Fifty Thousand Dollars (\$250,000).

2.2 Deposit.

2.2.1 Concurrently with the mutual execution and delivery of this Agreement (the date of such mutual execution and delivery is sometimes referred to herein as the “**Execution Date**”), Buyer shall, pursuant to a separate escrow agreement, deposit into an escrow account (the “**Escrow**”) with an escrow holder (the “**Escrow Holder**”) designated by Sellers and reasonably acceptable to Buyers, \$25,000 (the “**Deposit**”) in immediately available funds. In turn, the Escrow Holder shall immediately deposit the Deposit into an interest-bearing account.

2.2.2 Upon the termination of this Agreement for any reason other than termination by Sellers pursuant to Section 10.1.4, the Parties shall instruct the Escrow Holder to immediately refund the Deposit, together with all interest earned thereon, to Buyer. The Deposit shall become nonrefundable upon the termination of this Agreement by Sellers pursuant to Section 10.1.4. Upon such termination pursuant to Section 10.1.4, the Parties shall instruct the Escrow Holder to immediately disburse the Deposit and all interest accrued thereon to Sellers to be retained by Sellers for their own account.

2.2.3 The Deposit (and any accrued interest thereon) shall be credited and applied against amounts due and owing to Sellers.

2.3 Intentionally Omitted.

2.4 Assumed Liabilities.

2.4.1. No Assumption of Liabilities. Except for any liabilities arising out of ownership of the Assets after the Closing, Buyer does not and shall not be deemed to assume any liabilities in connection with the transactions contemplated by this Agreement.

2.5 Purchase Price Allocation. Not later than fifteen (15) business days following the date of the auction described in the Bidding Procedures Order, Buyer shall prepare and deliver to Sellers for their review and consideration a schedule (the “**Allocation Schedule**”) allocating the Purchase Price among the various assets comprising the Property in accordance with Treasury Regulation 1.1060-1 (or any comparable provisions of state or local tax law) or any successor provision. If Sellers disagree with or raise objections to the Allocation Schedule, Buyer and Sellers will negotiate in good faith to resolve such objections. If the Parties are able to agree upon the allocation of the Purchase Price, Buyer and Sellers shall report and file all tax returns (including any amended tax returns and claims for refund) consistent with such mutually agreed Purchase Price allocation, and shall take no position contrary thereto or inconsistent therewith (including in any audits or examinations by any taxing authority or any other proceedings). Buyer and Sellers shall file or cause to be filed any and all forms (including U.S. Internal Revenue Service Form 8594), statements and schedules with respect to such allocation, including any required amendments to such forms. If, on the other hand, the Parties are unable

to mutually agree upon the manner in which the Purchase Price should be allocated, Buyer and Sellers shall be free to make their own respective allocations of the Purchase Price for tax purposes.

2.6 Intentionally Omitted.

2.7 Intentionally Omitted.

2.8 Closing Transactions.

2.8.1 Closing. The Closing of the transactions provided for herein (the “Closing”) shall take place at such place or places as the Parties may mutually agree upon.

2.8.2 Closing Date. The date of the Closing (the “Closing Date”) shall be held upon the second (2<sup>nd</sup>) Business Day following the satisfaction of the last of the conditions set forth in Sections 3.1 and 3.2 below.

2.9 Sellers’ Deliveries to Buyer at Closing. On the Closing Date, Sellers shall deliver to Buyer:

2.9.1 Intentionally Omitted.

2.9.2 A Bill of Sale and Assignment, duly executed by Sellers in the form and on the terms of the bill of sale attached hereto as **Exhibit “A,”** pursuant to which each Seller transfers and assigns to Buyer such Seller’s right, title and interest in and to the Assets (the “**Bill of Sale**”).

2.9.3 Intentionally Omitted.

2.9.4 Possession and control of the Assets, free and clear of all Liens to the extent provided in the Approval Order, excluding, in all events, Buyer’s obligations under this Agreement.

2.9.5 A copy of the Approval Order authorizing and approving the execution and delivery and performance of this Agreement, all other documents contemplated herein and the transactions contemplated hereby and thereby and the acts of the officers of Sellers in carrying out the terms and provisions hereof.

2.9.6 Any consents, approvals and authorizations of third parties that are necessary, including authorization by the Bankruptcy Court, for the execution, delivery and consummation of this Agreement, but specifically excluding any such consents, approvals and/or authorizations the need for which is obviated by the entry of the Approval Order.

2.9.7 Intentionally Omitted.

2.9.8 Any such other documents or other things reasonably contemplated by this Agreement to be delivered by Sellers to Buyer at the Closing.

2.10 Buyer's Deliveries to Sellers at Closing. On the Closing Date, Buyer shall make or cause the following deliveries to Sellers or the Escrow Holder, as applicable:

2.10.1 Payment of the Purchase Price.

2.10.2 Intentionally Omitted.

2.10.3 Intentionally Omitted.

2.10.4 Any such other documents, funds or other things reasonably contemplated by this Agreement to be delivered by Buyer to Sellers at the Closing.

2.11 Sales, Use and Other Taxes. Any sales, purchase, transfer, stamp, documentary stamp, use or similar taxes under the laws of the states in which any portion of the Assets is located, or any subdivision of any such state, or under any federal law or the laws or regulations of any federal agency or authority, which may be payable by reason of the sale or transfer of the Assets under this Agreement or the transactions contemplated herein shall be borne and paid by Buyer.

2.12 Possession. Right to possession of the Assets shall transfer to Buyer on the Closing Date. Sellers shall transfer and deliver to Buyer on the Closing Date such items as Buyer may reasonably require to obtain occupation and control of the Assets, and shall also make available to Buyer at their then existing locations the originals of all documents in Sellers' actual possession that are required to be transferred to Buyer by this Agreement. All costs associated with moving the Assets from any locations at which the Assets is located as of the Closing Date shall be borne by Buyer.

### 3. Conditions Precedent to Closing.

3.1 Conditions to Sellers' Obligations. Sellers' obligation to make the deliveries required of Sellers at the Closing Date and otherwise consummate the transaction contemplated herein shall be subject to the satisfaction or waiver by Sellers of each of the following conditions:

3.1.1 All of the representations and warranties of Buyer contained herein shall continue to be true and correct at the Closing in all material respects.

3.1.2 Intentionally Omitted.

3.1.3 Buyer shall have delivered, or shall be prepared to deliver to Sellers at the Closing, all cash and other documents required of Buyer to be delivered at the Closing.

3.1.4 Buyer shall have delivered to Sellers evidence (in form and content reasonably satisfactory to Sellers) of all necessary entity action by Buyer in connection with the transactions contemplated hereby, including, without limitation: (i) certified copies of resolutions duly adopted by Buyer's manager and/or board of directors approving the

transactions contemplated by this Agreement and authorizing the execution, delivery, and performance by Buyer of this Agreement; and (ii) a certificate as to the incumbency of those managers and/or officers of Buyer executing this Agreement and any instrument or other document delivered in connection with the transactions contemplated by this Agreement.

3.1.5 No action, suit or other proceedings shall be pending before any court, tribunal or governmental authority seeking or threatening to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or seeking to obtain substantial damages in respect thereof, or involving a claim that consummation thereof would result in the violation of any law, decree or regulation of any governmental authority having appropriate jurisdiction.

3.1.6 Buyer shall have substantially performed or tendered performance of each and every material covenant on Buyer's part to be performed which, by its terms, is required to be performed at or before the Closing.

3.1.7 The Bankruptcy Court shall have entered an order in substantially the form attached hereto as **Exhibit "C"** (the "**Approval Order**") and the Approval Order shall not have been stayed as of the Closing Date.

3.2 Conditions to Buyer's Obligations. Buyer's obligation to make the deliveries required of Buyer at the Closing and otherwise consummate the transaction contemplated herein shall be subject to the satisfaction or waiver by Buyer of each of the following conditions:

3.2.1 Sellers shall have substantially performed or tendered performance of each and every covenant on Sellers' part to be performed which, by its terms, is required to be performed or capable of performance at or before the Closing.

3.2.2 All of the representations and warranties of Sellers contained herein shall continue to be true and correct at the Closing in all material respects.

3.2.3 Sellers shall have executed and be prepared to deliver to Buyer the Bill of Sale.

3.2.4 Sellers shall have delivered, or shall be prepared to deliver to Buyer at the Closing, all other documents required of Sellers to be delivered at the Closing.

3.2.5 No action, suit or other proceedings shall be pending before any court, tribunal or governmental authority seeking or threatening to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or involving a claim that consummation thereof would result in the violation of any law, decree or regulation of any governmental authority having appropriate jurisdiction.

3.2.6 The Bankruptcy Court shall have entered the Approval Order and the Approval Order shall have become a Final Order.

3.2.7 Intentionally Omitted.

3.3 Waiver of Condition. Any waiver of a condition shall be effective only if such waiver is stated in writing and signed by the waiving Party; provided, however, that the consent of a Party to the Closing shall constitute a waiver by such Party of any conditions to Closing not satisfied as of the Closing Date.

4. Sellers' Representations and Warranties. Sellers hereby make (each as to themselves only) the following representations and warranties to Buyer:

4.1 Organization, Standing and Power. Sellers are duly organized, validly existing and in good standing under the laws of the states of their respective organization set forth in the preamble to this Agreement. Sellers have all requisite entity power and authority to own, lease and, subject to the provisions of the Bankruptcy Code applicable to debtors in possession, operate its properties, to carry on Sellers' business as now being conducted. Subject to entry of the Approval Order, Sellers have the power and authority to execute, deliver and perform this Agreement and all writings relating hereto.

4.2 Validity and Execution. This Agreement has been duly executed and delivered by Sellers and, upon entry of the Approval Order, will constitute the valid and binding obligation of Sellers enforceable against them in accordance with its terms, except as may be limited by any bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other laws (whether statutory, regulatory or decisional), now or hereafter in effect, relating to or affecting the rights of creditors generally or by equitable principles (regardless of whether considered in a proceeding at law or in equity).

4.3 No Conflict. Subject to the entry of the Approval Order, the consummation of the transactions herein contemplated, and the performance of, fulfillment of and compliance with the terms and conditions hereof by Sellers do not and will not: (i) conflict with or result in a breach of the articles of incorporation, by-laws or operating agreement, as applicable, of Sellers; (ii) violate any statute, law, rule or regulation, or any order, writ, injunction or decree of any court or governmental authority, or (iii) violate or conflict with or constitute a default under any agreement, instrument or writing of any nature to which any Seller is a Party or by which Buyer or its assets or properties may be bound.

4.4 Litigation. Except for the Case and except as set forth on **Schedule 4.4** hereto, to Sellers' Knowledge (which, for purposes of this Agreement means and refers only to the actual knowledge of John Peterson after reasonable inquiry), there is no material Litigation or investigation pending or threatened against or affecting the Assets, before any court, arbitrator or governmental authority. To Sellers' Knowledge, except for the Case, Sellers are not subject to any outstanding Litigation or Order, which, individually or in the aggregate, would prevent, or materially delay Sellers from consummating the transactions contemplated by this Agreement, or which would be pursuant to its terms binding on Buyer or the Assets.

4.5 No Other Agreements to Purchase. Sellers have not entered into any agreement with any other Person (written or oral) which grants such third party the right or



option purchase or acquire from Sellers any of the Assets, other than purchase orders for Inventory accepted by Sellers in the ordinary course of business, consistent with past practice.

4.6 Financial Advisors. No Person has acted, directly or indirectly, as a broker, finder or financial advisor for the Sellers in connection with the transactions contemplated by this Agreement, and no Person is entitled to any fee or commission or like payment from the Buyer or the Sellers in respect thereof, in each case other than as set forth on **Schedule 4.7**.

5. Buyer's Warranties and Representations. In addition to the representations and warranties contained elsewhere in this Agreement, Buyer hereby makes the following representations and warranties to Sellers:

5.1 Organization, Standing and Power. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of New Jersey. Buyer has all requisite entity power and authority to own, lease and operate its properties, to carry on its business as now being conducted and to execute, deliver and perform this Agreement and all writings relating hereto. Buyer has the power and authority to execute, deliver and perform this Agreement.

5.2 Validity and Execution. This Agreement has been duly executed and delivered by Buyer and constitutes the valid and binding obligation of Buyer enforceable against it in accordance with its terms, except as may be limited by any bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other laws (whether statutory, regulatory or decisional), now or hereafter in effect, relating to or affecting the rights of creditors generally or by equitable principles (regardless of whether considered in a proceeding at law or in equity).

5.3 No Conflict. The execution, delivery and performance of this Agreement and all writings relating hereto by Buyer have been duly and validly authorized. The execution and delivery of this Agreement, the consummation of the transactions herein contemplated, and the performance of, fulfillment of and compliance with the terms and conditions hereof by Buyer do not and will not: (i) conflict with or result in a breach of the certificate of formation or operating agreement of Buyer or, if applicable, other organizational documents or agreements of Buyer; (ii) violate any statute, law, rule or regulation, or any order, writ, injunction or decree of any court or governmental authority; or (iii) violate or conflict with or constitute a default under any agreement, instrument or writing of any nature to which Buyer is a party or by which Buyer or its assets or properties may be bound.

5.4 Litigation. To Buyer's knowledge, there is no material Litigation or investigation pending or threatened against or affecting the Buyer, before any court, arbitrator or governmental authority which, individually or in the aggregate, would prevent, or materially delay Buyer from consummating the transactions contemplated by this Agreement.

5.5 Financial Capability. Buyer (i) has, or has firm commitments for, as of the date hereof, and will have as of the Closing, sufficient funds to pay the Purchase Price and to assume the Assumed Liabilities, (ii) has, as of the date hereof, and will have as of the Closing,

the resources and capabilities (financial or otherwise) to perform its obligations hereunder and (iii) has not, as of the date hereof, and will not have as of the Closing, incurred any obligation, commitment, restriction or liability of any kind which would impair or adversely affect such resources and capabilities.

6. “AS IS” Transaction. Buyer hereby acknowledges and agrees that, except only as provided in Section 4 above, Sellers makes no representations or warranties whatsoever, express or implied, with respect to any matter relating to the Assets (including, without limitation, income to be derived or expenses to be incurred in connection with the Assets, the physical condition of the Assets, the environmental condition or other matter relating to the physical condition of any of the Assets, the value of the Assets (or any portion thereof), the transferability of the Assets or any portion thereof, the merchantability or fitness of the Assets for any particular purpose. Without in any way limiting the foregoing, Sellers hereby disclaim any warranty (express or implied) of merchantability or fitness for any particular purpose as to any portion of the Assets. Buyer further acknowledges that Buyer has conducted an independent inspection and investigation of the physical condition of all portions the Assets and all such other matters relating to or affecting or comprising the Assets (including, without limitation, those matters, if any, disclosed to Buyer pursuant to **Schedule 6** attached hereto and incorporated herein by this reference) as Buyer deemed necessary or appropriate and that in proceeding with its acquisition of the Assets, Buyer is doing so based solely upon such independent inspections and investigations. Accordingly, Buyer will accept the Assets at the Closing **“AS IS,” “WHERE IS,” and “WITH ALL FAULTS.”**

7. Books and Records of Sellers.

7.1 Sellers shall provide Buyer and Buyer’s counsel, accountants, lenders, employees and other representatives, during normal business hours from the Agreement Date until the Closing Date, reasonable access to the personnel, facilities, customers, vendors, all of the Assets, including the organizational books and records of Sellers; provided, however, such access shall not materially interfere with the ongoing business operations of Sellers, and such access shall not include privileged communications, confidential information or information about any former employee, the disclosure of which might violate such former employee’s reasonable expectation of privacy or applicable law.

8. Other Covenants of the Parties.

8.1 Bankruptcy Court Approval. Sellers and Buyer acknowledge that under the Bankruptcy Code, this Agreement and the sale of the Assets are subject to Bankruptcy Court approval. Sellers and Buyer acknowledge and agree that to obtain such approval, Sellers must demonstrate that they have taken reasonable steps to obtain the highest and best price possible for the Business, including giving notice of the transactions contemplated by this Agreement to creditors and other interested parties as ordered by the Bankruptcy Court, providing information about the Business to responsible bidders, entertaining higher and better offers from responsible bidders and conducting an auction.

8.2 Other Filings. Sellers and Buyer shall, if required in connection with the transactions contemplated hereby, (i) promptly take all actions necessary to make the filings required of it or its affiliates by any governmental or quasi-governmental entities (domestic and foreign), (ii) comply at the earliest practicable date with any request for additional information received by it or its affiliates from any governmental or quasi-governmental entities (domestic or foreign), (iii) cooperate with the other Parties in connection with resolving any investigation or other inquiry concerning the transactions contemplated by this Agreement commenced by state attorneys general, and (iv) cooperate with the other Parties in connection with any other Party's filing, (other than as provided for in subsection (iii) above) as may be required by any governmental or quasi-governmental entities (domestic or foreign). All fees required to be paid in connection with any filings hereunder shall be borne by the Party incurring such expense.

8.3 Confidentiality. Following the Closing, Sellers agree to maintain, and shall cause those of their respective Affiliates over whom Sellers have control to maintain, unless disclosure is required by applicable law, the confidentiality of any information in the nature of trade secrets of the Business or other information that Sellers treated as proprietary in the ordinary course of their businesses (collectively, "**Proprietary Information**"), which is in Sellers' or any of such respective Affiliates' possession or control. While they remain in existence, Sellers hereby further agree, unless disclosure is required by applicable law or is otherwise necessary for Sellers to effect their reorganization, to take all appropriate steps, consistent with Sellers' past practice, and to cause each of such respective Affiliates to take all reasonable steps taking into account Sellers' and such Affiliates' financial condition and circumstances (and specifically excluding any obligation to initiate, pursue or defend any action or proceeding of any kind in connection with the enforcement of any rights in connection therewith against any third party) to safeguard the Proprietary Information and to protect it against disclosure, misuse, espionage, loss and theft. In furtherance and not in limitation of the foregoing, Sellers shall not, and shall cause such Affiliates not to, unless required by applicable law, disclose to any Person any Proprietary Information regarding the Business, provided, that Proprietary Information shall not include information that becomes generally available to the public other than as a result of the breach of this Section 8.3 or information not otherwise known by the Sellers that becomes available to any Seller from a Person other than Buyer, provided, that Sellers shall be entitled to disclose (i) any information required or reasonably believed by the Sellers to necessarily be disclosed by Sellers to the Bankruptcy Court, the United States Trustee, parties in interest in the Case or other Persons bidding on assets of Sellers, (ii) any information required to be disclosed by Sellers pursuant to any applicable law (including, without limitation, the Bankruptcy Code), legal proceeding or governmental authority, or (iii) any information to Sellers' counsel and financial advisor; provided, that, in each case, such disclosure shall be limited to the information that is so required or appropriate to be disclosed and the Person(s) to whom such disclosure is required.

8.4 Schedules. Sellers shall deliver a preliminary draft of all schedules referenced in this Agreement not later than twenty (20) days following the execution of this Agreement by the parties.

9. Intentionally Omitted.

10. Termination.

10.1 Methods of Optional Termination. This Agreement may be terminated at any time prior to the Closing Date:

10.1.1 by Buyer or Sellers, if either (A) the Bankruptcy Court hearing on Sellers' motion seeking entry of the Approval Order is not held within five (5) business days following the auction described in the Bidding Procedures Order or (B) the Bankruptcy Court has not entered the Approval Order within ten (10) business days following such hearing;

10.1.2 by Buyer or Sellers, if the Closing shall not have occurred by the close of business on the date that is thirty (30) days after the auction described in the Bidding Procedures Order (the "**Outside Date**"); provided, that if the Closing shall not have occurred on or before the Outside Date due to (ii) a breach of any material representations, warranties, covenants or agreements contained in this Agreement by a party hereto, then such party may not terminate this Agreement pursuant to this Section 10.1.2, and (ii) Buyer's requirement that the Approval Order become a Final Order and the appeal period with respect thereto has not yet run, then neither Buyer nor Sellers shall have the right to terminate, it being expressly understood that (xx) nothing herein shall be deemed to alter or waive any condition to Buyer's or Sellers' obligations to close set forth elsewhere in this Agreement, and (yy) the Outside Date shall be extended to the date which is three (3) business days following expiration of such appeal period;

10.1.3 by Sellers and Buyer by mutual written consent;

10.1.4 (A) by Buyer, in the event of a Seller Material Breach; provided, that Buyer shall not have the right to terminate this Agreement under this Section 10.1.4(A) at a time when Sellers have (or would have after the passage of time (without regard to whether any required notice has actually been given)) the right to terminate this Agreement due to a Buyer Material Breach, and (B) by Sellers, in the event of a Buyer Material Breach; provided, that Sellers shall not have the right to terminate this Agreement under this Section 10.1.4(B) at a time when Buyer has (or would have after the passage of time (without regard to whether any required notice has actually been given)) the right to terminate this Agreement due to a Seller Material Breach;

10.1.5 Intentionally Omitted;

10.1.6 by Buyer, upon the conversion of the Case to a Chapter 7 liquidation, the dismissal of the Case, or the appointment of a trustee or examiner with extended powers; or

10.1.7 by Buyer or Sellers, by written notice to the other Parties if there shall be in effect an order of a governmental authority of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby, or the Bankruptcy Court or another court of competent jurisdiction shall stay the Approval Order.

10.2 Notice of Termination. Notice of termination of this Agreement pursuant to Section 10.1 shall be given by the Party or Parties so terminating to the other Parties in writing in accordance with Section 12.2.

10.3 Effect of Termination. Upon termination of this Agreement, the Parties may abandon the transactions contemplated hereby and, to the extent practicable, shall withdraw all filings, applications and other submissions made pursuant to the transactions contemplated hereby from the governmental authority or Person to which made. Except as otherwise provided in this Section 10.3, upon termination of this Agreement, this Agreement shall cease to have any force or effect and the Parties under this Agreement shall cease to have any further obligations or liabilities under this Agreement.

11. Intentionally Omitted.

12. Miscellaneous.

12.1 Attorneys' Fees. In the event that either Party hereto brings an action or other proceeding to enforce or interpret the terms and provisions of this Agreement, the prevailing Party in that action or proceeding shall be entitled to have and recover from the non-prevailing Party all fees, costs and expenses (including, without limitation, all court costs and reasonable attorneys' fees) as the prevailing Party may incur in the pursuit or defense of such action or proceeding.

12.2 Notices. Unless otherwise provided herein, any notice, tender, or delivery to be given hereunder by any Party to the other may be effected by personal delivery in writing, or by registered or certified mail, postage prepaid, return receipt requested or by facsimile, and shall be deemed communicated as of the date of mailing or facsimile transmission (with answer back confirmation of such transmission). Mailed notices shall be addressed as set forth below, but each Party may change its address by written notice in accordance with this Section 12.2.

To Sellers:                      Silverton Marine Corporation  
    Ovation Yachts Corporation  
    Route 441  
    P.O. Box 1030  
    Alachua, Florida 32615  
    Attn: John Peterson  
    Fax Number: (386) 462-4077

With a copy to:                Arent Fox LLP  
    1675 Broadway  
    New York, New York 10019  
    Attn: Robert M. Hirsh, Esq.  
    Fax Number: (212) 484-3990

To Buyer:                        TF Yachts LLC  
    631 Tilton Road



Northfield, New Jersey 08225  
Attn: Dr. Ira Trocki  
Fax Number: (609) 645-0253

12.3 Entire Agreement. This instrument and the documents to be executed pursuant hereto contain the entire agreement between the Parties relating to the sale of the Assets. Any oral representations or modifications concerning this Agreement or any such other document shall be of no force and effect excepting a subsequent modification in writing, signed by the Party to be charged.

12.4 Modification. This Agreement may be modified, amended or supplemented only by a written instrument duly executed by all the Parties hereto.

12.5 Closing Date. All actions to be taken on the Closing pursuant to this Agreement shall be deemed to have occurred simultaneously, and no act, document or transaction shall be deemed to have been taken, delivered or effected until all such actions, documents and transactions have been taken, delivered or effected.

12.6 Severability. Should any term, provision or paragraph of this Agreement be determined to be illegal or void or of no force and effect, the balance of this Agreement shall survive.

12.7 Captions. All captions and headings contained in this Agreement are for convenience of reference only and shall not be construed to limit or extend the terms or conditions of this Agreement.

12.8 Further Assurances. Each Party hereto will execute, acknowledge and deliver any further assurance, documents and instruments reasonably requested by any other Party for the purpose of giving effect to the transactions contemplated herein or the intentions of the Parties with respect thereto; provided that nothing herein shall be deemed to require any Party to execute or deliver any such further assurance, document or instrument to the extent that the same could in any material way increase the burdens, obligations or liabilities otherwise imposed upon such Party by this Agreement.

12.9 Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

12.10 Brokerage Obligations. Sellers and the Buyer each represent and warrant to the other that, other than any success fee to which Katz, Kane & Co., LLC (the "**Broker**") may be entitled in connection with the consummation of the transactions contemplated herein, such Party has incurred no liability to any broker or agent with respect to the payment of any commission or other compensation regarding the consummation of the transaction contemplated hereby. It is agreed that if any claims for commissions, fees or other compensation, including, without limitation, brokerage fees, finder's fees, or commissions are ever asserted against Buyer

or Sellers in connection with this transaction by any party other than the Broker (for whose commission or other compensation Sellers shall be solely responsible), all such claims shall be handled and paid by the Party whose actions form the basis of such claim and such Party shall indemnify, defend (with counsel reasonably satisfactory to the Party entitled to indemnification), protect and save and hold the other harmless from and against any and all such claims or demands asserted by any person, firm or corporation in connection with the transaction contemplated hereby.

12.11 Payment of Fees and Expenses. Except as provided in Sections 11 and 12.1 above, each Party to this Agreement shall be responsible for, and shall pay, all of its own fees and expenses, including those of its counsel, incurred in the negotiation, preparation and consummation of this Agreement and the transaction described herein.

12.12 Survival. The respective representations and warranties of Buyer and Sellers under this Agreement shall lapse and cease to be of any further force or effect effective upon the Closing. Except as provided in the immediately preceding sentence, the covenants and agreements of Sellers and Buyer herein, or in any certificates or other documents delivered prior to or at the Closing, shall not be deemed waived or otherwise affected by the Closing.

12.13 Assignments. This Agreement shall not be assigned by any Party hereto without the prior written consent of the other Party hereto, which consent the Parties may grant or withhold in their sole and absolute discretion; provided, that the Buyer shall be permitted to assign its right to purchase all or any portion of the Assets to any one or more directly or indirectly wholly-owned subsidiaries of the Buyer; provided, further, that the Buyer or such assignee(s) may pledge this Agreement and the rights of the Buyer hereunder to a lender or other financing source as collateral security for loans made to the Buyer or such assignee(s).

12.14 Binding Effect. Subject to the provisions of Section 12.13, above, this Agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors, and assigns of the Parties hereto, including, without limitation, any chapter 11 trustee hereinafter appointed in the Case or any trustee appointed in a chapter 7 case if the Case is converted from chapter 11.

12.15 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

12.16 Good Faith. All Parties shall do all acts and execute all documents required to carry out the terms of this Agreement and act in good faith with respect to the terms and conditions contained herein before and after Closing.

12.17 Construction. In the interpretation and construction of this Agreement, the Parties acknowledge that the terms hereof reflect extensive negotiations between the Parties and that this Agreement shall not be deemed, for the purpose of construction and interpretation, drafted by either Party hereto.

12.18 Counterparts. This Agreement may be signed in counterparts. The Parties further agree that this Agreement may be executed by the exchange of facsimile signature pages provided that by doing so the Parties agree to undertake to provide original signatures as soon thereafter as reasonable in the circumstances.

12.19 Bankruptcy Court Jurisdiction. **IF ANY DISPUTE ARISES OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE DOCUMENTS EXECUTED HEREUNDER OR IN CONNECTION HERewith, THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE PERSONAL AND SUBJECT MATTER JURISDICTION AND SHALL BE THE EXCLUSIVE VENUE TO RESOLVE ANY AND ALL DISPUTES RELATING TO THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT. SUCH COURT SHALL HAVE SOLE JURISDICTION OVER SUCH MATTERS AND THE PARTIES AFFECTED THEREBY AND BUYER AND SELLERS EACH HEREBY CONSENT AND SUBMIT TO SUCH JURISDICTION.**

12.20 Time is of the Essence. Time is of the essence in this Agreement, and all of the terms, covenants and conditions hereof.

12.21 Interpretation and Rules of Construction. In this Agreement, except to the extent that the context otherwise requires:

12.21.1 when a reference is made in this Agreement to an Article, Section, Exhibit or Schedule, such reference is to an Article or Section of, or an Exhibit or a Schedule to, this Agreement unless otherwise indicated;

12.21.2 the headings and captions used in this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement;

12.21.3 whenever the words “include,” “includes” or “including” are used in this Agreement, they are deemed to be followed by the words “without limitation”;

12.21.4 the words “hereof,” “herein” and “hereunder” and works of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement;

12.21.5 all terms defined in this Agreement have the defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein;

12.21.6 the definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms;

12.21.7 any law defined or referred to herein or in any agreement or instrument that is referred to herein means such law or statute as from time to time amended, modified or supplemented, including by succession of comparable successor laws;

12.21.8 references to a person are also to its permitted successors and assigns; and

12.21.9 the use of “or” is not intended to be exclusive unless expressly indicated otherwise.

[signatures appear on the following page]

**In Witness Whereof**, Buyer and Sellers have executed this Asset Purchase Agreement as of the day and year first above written.

**BUYER:**

**TF YACHTS LLC,**  
a New Jersey limited liability company

By: 

Name: Dr. TRA M. TAOCE

Its: Managing partner

**SELLERS:**

**Silverton Marine Corporation,**  
a New Jersey Corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**Ovation Yachts Corporation,**  
a New Jersey Corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_



**In Witness Whereof**, Buyer and Sellers have executed this Asset Purchase Agreement as of the day and year first above written.

**BUYER:**

**TF YACHTS LLC,  
a New Jersey limited liability company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**SELLERS:**

**Silverton Marine Corporation,  
a New Jersey Corporation**

By: \_\_\_\_\_  
Name: JOHN T. PETERSON  
Its: TREASURER

**Ovation Yachts Corporation,  
a New Jersey Corporation**

By: \_\_\_\_\_  
Name: JOHN T. PETERSON  
Its: TREASURER

**Schedule 1.1**

**Assets**

**Schedule 1.2(xiii)**

**Litigation Proceedings**

**Schedule 1.2(xiv)**

**Additional Excluded Assets**

**Schedule 4.4**

**Litigation**

**Schedule 4.7**

**Financial Advisors**



**Schedule 6**

**Additional Assumed Liabilities**

**Exhibit “A”**

**BILL OF SALE AND ASSIGNMENT**

Pursuant to Section 2.9.2 of that certain Asset Purchase Agreement dated July 10, 2012 (the “**Purchase Agreement**”), by and between TF Yachts LLC, a New Jersey limited liability company (“**Buyer**”), on the one hand, and Silverton Marine Corporation, a New Jersey corporation, (“**Silverton**”) and Ovation Yachts Corporation, a New Jersey corporation (“**Ovation**,” and together with Silverton, the “**Sellers**”), each of the Sellers being a Debtor and Debtor in Possession under Case No. 12-21156 (MBK) in the United States Bankruptcy Court for the District of New Jersey, on the other hand, and for good and valuable consideration, the receipt and sufficiency of which Sellers hereby expressly acknowledges, Sellers, each as to their respective interest therein, hereby sells, transfers, assigns and delivers to Buyer Sellers’ right, title and interest in and to the Assets.

Except for terms specifically defined in this Bill of Sale, all capitalized terms used in herein shall have the same meanings as such terms have when utilized in the Purchase Agreement.

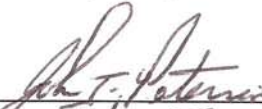
Sellers covenant and agree to execute and deliver further instruments of transfer and assignment and take such other action as Buyer may reasonably request to more effectively transfer and assign to and vest in Buyer the Assets; provided that nothing herein shall be deemed to require Sellers to execute or deliver any such further document or instrument or take any such action to the extent that the same could in any material way increase the burdens, obligations or liabilities otherwise imposed upon Sellers by the Purchase Agreement.

Notwithstanding anything to the contrary herein, Sellers are executing and delivering this Bill of Sale and Assignment in accordance with and subject to all of the terms and provisions of the Purchase Agreement (including, without limitation, the acknowledgement and disclaimer set forth in Section 6 of the Purchase Agreement).


IN WITNESS WHEREOF, Sellers have caused this Bill of Sale and Assignment to be executed as of the \_\_\_\_ day of \_\_\_\_\_, 2012.

**SELLERS:**

**Silverton Marine Corporation,  
a New Jersey Corporation**

By:   
Name: John T. PETERSON  
Its: Treasurer

**Ovation Yachts Corporation,  
a New Jersey Corporation**

By:   
Name: John T. PETERSON  
Its: Treasurer

**Exhibit “B”**

**ADDITIONAL DEFINITIONS**

In addition to the terms defined elsewhere in this Agreement, the following terms when used in this Agreement shall have the respective meanings set forth below

- (1) “Affiliates” as to any person or entity means, with respect to any Person, any Person Controlling, Controlled by, or under common Control with such Person, (ii) the term “Control” (and any form thereof, such as “Controlled” or “Controlling”) means with respect to any Person the possession directly or indirectly, through one or more intermediaries, of the power to (1) to vote more than fifty percent (50%) of the voting stock of such Person or (2) to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, membership interests, partnership interests, by contract or otherwise, and (iii) the term “Person” means any individual, firm, corporation, general or limited partnership, limited liability company, incorporated or unincorporated association, joint venture, joint stock company, trust, governmental agency or instrumentality, or other entity of any kind, or any combination of the foregoing.
- (2) “Bidding Procedures Order” means an Order of the United States Bankruptcy Court for the District of New Jersey approving (a) bid procedures and stalking horse protections regarding the proposed sales of the debtors’ assets; (b) procedures related to the assumption and assignment of certain executory contracts and unexpired leases; (c) form and manner of notice; and (d) granting related relief.
- (3) “Buyer Material Breach” means any inaccuracy in any of Buyer’s representations or warranties contained in this Agreement or any breach of any of Buyer’s covenants or agreements contained in this Agreement which, individually or in the aggregate with all other such inaccuracies and breaches, (i) would result in a failure of a condition set forth in Section 3.1, and (ii) is either incapable of being cured or, if capable of being cured, is not cured in all material respects within the earlier of (x) fifteen (15) calendar days after written notice thereof and (y) the Outside Date.
- (4) “Environmental Law” means any law or regulation pertaining to: (a) the protection of health, safety and the indoor or outdoor environment; (b) the conservation, management or use of natural resources and wildlife; (c) the protection or use of surface water and ground water; (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, emission, discharge, Release, threatened Release, abatement, removal, remediation or handling of, or exposure to, any Hazardous Substance; or (e) pollution (including any emission, discharge or Release to air, land, surface water and ground water of any material); and includes, without limitation, CERCLA and the Solid Waste Disposal Act, as amended 42 U.S.C. § 6901 et seq.

- (5) “Final Order” means, with respect to any order or other action of a governmental authority (including, but not limited to, the Bankruptcy Court), an order or other action (a) as to which no appeal, notice of appeal, motion to amend or make additional findings of fact, motion to alter or amend judgment, motion for rehearing or motion for new trial has been timely filed or, if any of the foregoing has been timely filed, it has been disposed of in a manner that upholds and affirms the subject order in all material respects without the possibility for further appeal or rehearing thereon; and (b) as to which the time for instituting or filing an appeal, motion for rehearing or motion for new trial shall have expired.
- (6) “GAAP” means U.S. generally accepted accounting principles, consistently applied in accordance with Sellers’ historical practices.
- (7) “Indebtedness” means, with respect to any Person, (a) all indebtedness of such Person, whether or not contingent, for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services, (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of Sellers or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all obligations of such Person as lessee under leases that have been or should be, in accordance with generally accepted accounting principles (GAAP), recorded as capital leases, (f) all obligations, contingent or otherwise, of such Person under acceptance, letter of credit or similar facilities, (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value any capital stock of such Person or any warrants, rights or options to acquire such capital stock, valued, in the case of redeemable preferred stock, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends, (h) all Indebtedness of others referred to in clauses (a) through (g) above guaranteed directly or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (1) to pay or purchase such Indebtedness or to advance or supply funds for the payment or purchase of such Indebtedness, (2) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss, (3) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered) or (4) otherwise to assure a creditor against loss and all Indebtedness referred to in clauses (a) through (f) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property (including, without limitation, accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.

- (8) “Hazardous Substances” means air pollutants, water pollutants, solid wastes or process waste water contaminants, hazardous wastes, materials, or substances, or toxic substances (as those or similar terms are defined by applicable environmental Laws).
- (9) “Liens” means all liens or other interests as defined in 11 U.S.C. § 363(f), encumbrances, rights of third parties (express or implied), claims (as defined in Section 101(5) of the Bankruptcy Code), Indebtedness, obligations, liabilities, judgments, demands, subleases, contractual commitments, mortgages, pledges, guarantees, security interests, conditional sale or other title retention agreements, charges, options, rights of first refusal, reservations, restrictions or interests of any kind, rights of others of every type and description, whether arising prior to or subsequent to the commencement of the Chapter 11, and whether imposed by agreement, understanding, law, equity or otherwise, whether secured or unsecured, including, without limitation:
- (a) any and all claims, demands, damages, actions, causes of action, contracts, agreements, charges, sums of money, claims for attorney's fees, claim of any violation of any state or federal statutes, rules or regulations, and lawsuits of every kind and description, whether known or unknown, now existing, or which may hereafter arise against Sellers; and
  - (b) any and all liabilities and obligations under any Environmental Law; and
  - (c) any claims based on or asserting that Buyer is a successor in interest to Sellers.
- (10) “Litigation” means any suit, action, arbitration, cause of action, claim, complaint, criminal prosecution, investigation, inquiry, demand letter, governmental or other administrative proceeding, whether at law or at equity, before or by any court, governmental authority, arbitrator or other tribunal.
- (11) “Order” shall mean any judgment, order, writ, injunction, ruling, stipulation, determination, award or decree of or by, or any settlement under the jurisdiction of, any court or governmental authority.
- (12) “Person” means any natural person, corporation, limited liability company, unincorporated organization, partnership, association, joint stock company, joint venture, trust or any other entity.
- (13) “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, seeping, migrating, dumping or disposing of any Hazardous Substance (including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Substance) into the indoor or outdoor environment, including, without limitation, the movement of Hazardous Substances through or in the ambient air, soil, surface or ground water, or property.



- (14) “Seller Material Breach” means any inaccuracy in any of Sellers’ representations or warranties contained in this Agreement or any breach of any of Sellers’ covenants or agreements contained in this Agreement which, individually or in the aggregate with all other such inaccuracies and breaches, (i) would result in a failure of a condition set forth in Section 3.1, and (ii) is either incapable of being cured or, if capable of being cured, is not cured in all material respects within the earlier of (x) fifteen (15) calendar days after written notice thereof and (y) the Outside Date.

**Exhibit “C”**

**Approval Order**

**Exhibit “D”**

**Bidding Procedures Order**