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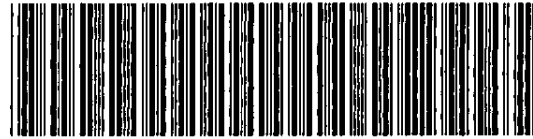
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Merger
@ 3/9/12

COVER LETTER

TO: Amendment Section
Division of Corporations

SUBJECT: M.D. Moody & Sons, Inc.
Name of Surviving Corporation

The enclosed Articles of Merger and fee are submitted for filing.

Please return all correspondence concerning this matter to following:

Eric N. McKay, Esq.
Contact Person

Stutsman Thames & Markey, P.A.
Firm/Company

50 North Laura Street, Suite 1600
Address

Jacksonville, Florida 32202
City/State and Zip Code

enm@stmlaw.net
E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

Shelley A. Jenkins
Name of Contact Person

At (904) 358-4000
Area Code & Daytime Telephone Number

☐ Certified copy (optional) \$8.75 (Please send an additional copy of your document if a certified copy is requested)

STREET ADDRESS:
Amendment Section
Division of Corporations
Clifton Building
2661 Executive Center Circle
Tallahassee, Florida 32301

MAILING ADDRESS:
Amendment Section
Division of Corporations
P.O. Box 6327
Tallahassee, Florida 32314

**ARTICLES OF MERGER
OF
M.D. MOODY & SONS, INC.,
A FLORIDA CORPORATION,
AND
MOODY MACHINERY CORPORATION,
A FLORIDA CORPORATION
AND
SOUTHEAST CRANE PARTS, INC.,
A FLORIDA CORPORATION
AND
MOODY FABRICATION & MACHINE, INC.,
A FLORIDA CORPORATION**

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
12 MAR -6 PM 12:52

Pursuant to the Florida Business Corporation Act, Section 607.1105, the undersigned corporations do hereby submit these Articles of Merger:

1. A copy of the Agreement and Plan of Merger (the "Plan") among M.D. Moody & Sons, Inc., a Florida Corporation (the "M.D. Moody"), Moody Machinery Corporation, a Florida corporation ("MMC"), Southeast Crane Parts, Inc., a Florida corporation ("SCP"), and Moody Fabrication & Machine, Inc., a Florida corporation ("MFM"; and together with MMC and SCP, the "Merging Corporations"), is attached to these Articles of Merger as Exhibit "A" and incorporated herein. (M.D. Moody and the Merging Corporations are referred to herein collectively as the "Constituent Corporations.")

2. Pursuant to the terms of the Plan, the Merging Corporations shall be merged with and into M.D. Moody, which shall be the surviving corporation.

3. In accordance with the Plan, the effective date of the merger shall be the date of the filing of these Articles of Merger with the Florida Secretary of State.

4. The Plan was duly approved by the shareholders of M.D. Moody by written consent dated March 1, 2011.

5. The Plan was duly approved by the board of directors of each of Constituent Corporations by written consent dated March 1, 2011.

[Balance of page intentionally left blank; signatures appearing on next page]

IN WITNESS WHEREOF, these Articles of Merger have been executed on behalf of each corporation this 1ST day of March, 2011.

MOODY MACHINERY CORPORATION

By: Elizabeth A. Moody
Elizabeth A. Moody, President
("MMC")

SOUTHEAST CRANE PARTS, INC.

By: Elizabeth A. Moody
Elizabeth A. Moody, President
("SCP")

MOODY FABRICATION & MACHINE, INC.

By: Elizabeth A. Moody
Elizabeth A. Moody, President
("MFM")

M.D. MOODY & SONS, INC.

By: Elizabeth A. Moody
Elizabeth A. Moody, President
("Surviving Corporation")

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT dated this 1ST day of March, 2011, is by and among **M.D. MOODY & SONS, INC.**, a Florida Corporation (the "Surviving Corporation"), **MOODY MACHINERY CORPORATION**, a Florida corporation ("MMC"), **SOUTHEAST CRANE PARTS, INC.**, a Florida corporation ("SCP"), and **MOODY FABRICATION & MACHINE, INC.**, a Florida corporation ("MFM"; and together with MMC and SCP, the "Merging Corporations"). (The Surviving Corporation and the Merging Corporations are referred to herein collectively as the "Constituent Corporations.")

RECITALS:

A. Each of the Constituent Corporations are debtors under that certain Chapter 11 reorganization entitled *M.D. Moody & Sons, Inc., et al.*, debtors; United States Bankruptcy Court, Middle District of Florida, Jacksonville Division (the "Bankruptcy Court"); Case No. 3:09-bk-6247-JAF (the "Bankruptcy Case"). The merger addressed herein has been approved by the Bankruptcy Court, and is being made in accordance with (i) Section 1123 of title 11 of the United States Code, 11 U.S.C., §§ 101-1532, and (ii) the Joint Chapter 11 Plan of Liquidation filed and approved in the Bankruptcy Case (the "Plan").

B. The Surviving Corporation is a corporation organized and existing under the laws of the State of Florida (Document Number 147762), having its principal office at 4600 Philips Highway, Jacksonville, Florida 32207.

C. MMC is a corporation organized and existing under the laws of the State of Florida (Document Number M75902). It is a wholly-owned subsidiary of the Surviving Corporation, having its principal office at 4600 Philips Highway, Jacksonville, Florida 32207.

D. SCP is a corporation existing under the laws of the State of Florida (Document Number L47892). It is a wholly-owned subsidiary of the Surviving Corporation, having its principal office at 4600 Philips Highway, Jacksonville, Florida 32207.

E. MFM is a corporation existing under the laws of the State of Florida (Document Number P94000048914). It is a wholly-owned subsidiary of the Surviving Corporation, having its principal office at 4600 Philips Highway, Jacksonville, Florida 32207.

F. The board of directors of the Constituent Corporations, and the shareholders of the Surviving Corporation, deem it desirable and in the best business interests of the Constituent Corporations that the Merging Corporations be merged with and into the Surviving Corporation pursuant of the provisions of Sections 607.1101, et seq., of the Florida Business Corporation Act, in order that the transaction qualify as a "reorganization" within the meaning of Section 368 (a) (1) (A) of the Internal Revenue Code of 1986, as amended.

In consideration of the mutual covenants and subject to the terms and conditions hereinafter set forth, the Constituent Corporations agree as follows:

1. **Stockholder Approval; Effectiveness of Merger.** This Agreement shall be submitted to the stockholders of the Surviving Corporation for approval, whereupon Articles of Merger shall be executed and delivered to the Secretary of the State of Florida for filing in accordance with the laws of the State of Florida, which Articles of Merger shall have this Agreement attached to them and incorporated in them by reference. The merger shall become effective on the date of such filing such date being sometimes referred to herein as the "Effective Date."

2. **Terms of the Merger.** On the Effective Date, the Merging Corporations shall be merged with and into the Surviving Corporation; all assets and liabilities of the Merging Corporations, as they exist on the Effective Date, shall pass to, vest in and become the obligations of the Surviving Corporation; the separate existence of the Merging Corporations shall cease; and the Surviving Corporation shall continue in existence.

3. **Articles of Incorporation.** The Articles of Incorporation of the Surviving Corporation shall continue to be its Articles of Incorporation following the Effective Date.

4. **Bylaws.** The Bylaws of the Surviving Corporation shall continue to be its Bylaws following the Effective Date.

5. **Directors and Officers.** On the Effective Date, the directors and officers of the Surviving Corporation shall continue to be the officers and directors currently on file with the Secretary of the State of Florida.

[Balance of page intentionally left blank; signatures appearing on next page.]

IN WITNESS WHEREOF, this Agreement and Plan of Merger has been duly executed on the date first above written by the undersigned on behalf of the Constituent Corporations.

MOODY MACHINERY CORPORATION

By: Elizabeth A. Moody
Elizabeth A. Moody, President
("MMC")

SOUTHEAST CRANE PARTS, INC.

By: Elizabeth A. Moody
Elizabeth A. Moody, President
("SCP")

MOODY FABRICATION & MACHINE, INC.

By: Elizabeth A. Moody
Elizabeth A. Moody, President
("MFM")

M.D. MOODY & SONS, INC.

By: Elizabeth A. Moody
Elizabeth A. Moody, President
("Surviving Corporation")

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re)	Chapter 11
M.D. MOODY & SONS, INC., et al, ¹)	Case Nos. 3:09-bk-6247; 3:09-bk-6250;
EIN 59-0552036,)	3:09-bk-6252; 3:09-bk-6254
)	
Debtors.)	Jointly Administered Under Case No. 3:09-
)	bk-6247

**ORDER GRANTING DEBTORS'
MOTION FOR CONFIRMATION OF
SECOND AMENDED CHAPTER 11 PLAN OF
REORGANIZATION PURSUANT TO 11 U.S.C. § 1129(B)**

This Chapter 11 case came before the Court for consideration of the Debtors' Second Amended Chapter 11 Plan of Reorganization [Docket No. 953] (as amended, the "Plan"), and the Debtors' Motion for Confirmation of Second Amended Chapter 11 Plan of Reorganization pursuant to 11 U.S.C. § 1129(b) (the "Cramdown Motion") [Docket No. 1007].² Following a confirmation hearing held on December 9, 2011, the Court entered partial findings with respect to confirmation determining that the requirements of 11 U.S.C. § 1129(a) were met with the exception of § 1129(a)(8) as it pertains to Classes 5 through 10 and 12 [Docket No. 1006]. Subsequent thereto, the Debtors filed their Cramdown Motion, followed by two Plan amendments [Docket Nos. 1040 and 1044]. A

¹ The Debtors are the following four entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): M.D. Moody & Sons, Inc. ("M.D. Moody") (2036), Moody Machinery Corporation ("MMC") (5289), Southeast Crane Parts, Inc. ("SCP") (9906), and Moody Fabrication & Machine, Inc. ("MFM") (4900). The address for all of the Debtors is 4652 Phillips Highway, Jacksonville, Florida 32207.

² Capitalized terms not defined herein have the meaning given such terms in the Plan.

hearing on the Cramdown Motion was held on January 20, 2012. Upon the evidence presented, the Court makes the following findings:

A. This Court has jurisdiction over this Chapter 11 case pursuant to §§ 157 and 1334 of title 28 of the United States Code. Venue is proper pursuant to §§ 1408 and 1409 of title 28 of the United States Code. Confirmation of the Plan is a core proceeding pursuant to § 157(b)(2)(L) of title 28 of the United States Code, and this Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

B. Neither the First Amendment to the Debtors' Second Amended Chapter 11 Plan of Reorganization nor the Second Amendment to the Debtors' Second Amended Chapter 11 Plan of Reorganization adversely impact the interests of General Unsecured Creditors. The modifications to the Plan comply with 11 U.S.C. § 1127. No additional disclosure under 11 U.S.C. § 1125 is required.

C. Prior to the hearing on the Cramdown Motion, BB&T Equipment Finance Corp. and TCF Equipment Finance, Inc. ("TCF") amended their ballots accepting the Plan as Classes 6 and 7. TCF also filed an amended Class 12 ballot accepting the Plan. With the addition of TCF's amended ballot, Class 12 has accepted the Plan.

D. With respect to the remaining classes which have not accepted the Plan (Classes 8, 9 and 10), the Plan does not discriminate unfairly, and is fair and equitable, with respect to each of those classes.

It is therefore ORDERED:

1. The Cramdown Motion is granted.
2. The Plan, a copy of which is attached hereto as **Exhibit A**, is confirmed.

3. All parties have had a full and fair opportunity to litigate all issues raised, or that might have been raised, by the Objections, and any and all comments thereto have been considered by the Court. All Objections that have not been withdrawn, waived, or settled, and all reservations of rights pertaining to confirmation of the Plan included therein, are overruled on the merits for the reasons stated on the record of the Confirmation Hearing.

4. The classifications of Claims and Interests for purposes of the distributions to be made under the Plan shall be governed solely by the terms of the Plan. The classifications set forth on the Ballots tendered to or returned by the Debtors' creditors and Interest holders in connection with voting on the Plan (a) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan, (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims and Interests under the Plan for distribution purposes, and (c) shall not be binding on the Reorganized Debtor or the Debtors.

5. The Plan and its provisions shall be binding upon the Debtors and any creditor of the Reorganized Debtor or the Debtors, whether or not the Claim of such creditor is impaired under the Plan and whether or not such creditor has accepted the Plan, whose claim arose prior to the entry of this Order.

6. The distributions required to be made to the holders of all Claims pursuant to the Plan shall be made to the persons and entities entitled thereto as provided in the Plan.

7. Except as provided in the Plan, all property of the Debtors and all payments and distributions made or to be made under the Plan are free and clear of all Claims of creditors of the Debtors and shall vest in the Reorganized Debtor.

8. Each creditor of the Reorganized Debtor or the Debtors whose Claim is discharged or whose rights are waived or released by the Plan or who otherwise had actual notice of the Bankruptcy Cases prior to enter of this Order is hereby jointly and severally restrained and enjoined from instituting or continuing any action or employing any process to collect such debts, enforce such rights, or pursue such interests or recover any payments from the Debtors.

9. Confirmation of the Plan does not invalidate, terminate or reject any insurance policy, whether pre-petition or post-petition, of the Reorganized Debtor or the Debtors and all such policies remain in effect under their terms.

10. All persons or entities which are parties to adversary proceedings or contested matters pending before this Court, which are not finally determined as of the date of this Order, are restrained and enjoined from commencing any other proceedings or taking any other action against the Reorganized Debtor or the Debtors with respect to any issue raised in such adversary proceedings or contested matter, except upon further order of this Court.

11. The Reorganized Debtor may file within 60 days from the date hereof any and all objections to the allowance of any Claim. The Reorganized Debtor shall comply with all post-confirmation payment and reporting requirements of the United States Trustee, including but not limited to the filing of the quarterly disbursement reports required under Rule 2015(a)(5) until entry of the Final Decree.

12. On the Effective Date the Debtors shall be substantively consolidated and each of MMC, SCP and MFM will be merged into M.D. Moody, the Reorganized Debtor, which, as the surviving corporation shall perform, or cause to be performed, all Plan obligations of the Debtors. All assets and liabilities of the Debtors will be deemed

merged; all guarantees by, or co-obligations of, one Debtor in respect of the obligations of any other Debtor will be deemed eliminated so that any Claim against any Debtor and any guarantee by, or co-obligation of, any other Debtor and any joint or several liability of any of the Debtors will be deemed to be one obligation of M.D. Moody and each and every Claim filed or to be filed in the Bankruptcy Case of any of the Debtors will be deemed filed against M.D. Moody and will be deemed one Claim against and a single obligation of M.D. Moody.

13. The Clerk of the Court is authorized and directed to close each of MMC's, SCP's and MFM's Bankruptcy Case upon the filing of notice of the Effective Date.

14. The quarterly fees payable to the United States Trustee shall continue to accrue until the earlier of the conversion or dismissal of these Bankruptcy Cases or the entry of the final decree, *provided however*, that the merger of MMC, SCP and MFM into M.D. Moody shall terminate such entities' obligations to pay U.S. Trustee Fees and upon the Effective Date no further U.S. Trustee Fees shall be payable or due and owing from MMC, SCP or MFM.

15. Pursuant to § 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of notes or equity securities under or in connection with the Plan, the assignment or surrender of any lease or sublease, or the delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, including any deeds, bills of sale, assignments, mortgages, deeds of trust or similar documents executed in connection with the sale of the Philips Highway Property or the Bellinger Property shall not be subject to any stamp, real estate transfer, mortgage recording, sales, use or other similar tax nor any Uniform Commercial Code filing or recording fee or similar or other governmental assessment. All appropriate state or local government

officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

16. The Debtors are authorized, ordered and instructed to execute, deliver, file or record such contracts, instruments, releases, indentures and other agreements or documents and take such actions as may be reasonably necessary or appropriate consistent with the language of the Plan to effectuate, implement and further evidence the terms and conditions of the Plan without further Order of this Court and without further corporate action.

17. Any entity or person seeking an award by the Court of compensation for services rendered and/or reimbursement of expenses incurred through and including the Effective Date under § 503(b)(2) of the Bankruptcy Code shall file its final application for allowance of such compensation and/or reimbursement by no later than 30 days after the Effective Date. Any objections to final applications for allowance of compensation and/or reimbursement shall be filed no later than seven calendar days before the hearing on such final applications.

18. Pursuant to § 9019 of the Federal Rules of Bankruptcy Procedure, the settlement agreement between M.D. Moody and Hyundai Construction Equipment America, Inc., formerly known as Hyundai Construction Equipment U.S.A. ("Hyundai"), attached to the Plan as Exhibit 3.03(g) is approved in all respects. Claim No. 4 filed in the Bankruptcy Case of M.D. Moody shall be setoff pursuant to § 553 of the Bankruptcy Code against the \$113,869.02 credit memo issued from Hyundai to M.D. Moody thereby satisfying Claim No. 4 in full and leaving \$54,246.02 owed from Hyundai to M.D. Moody.

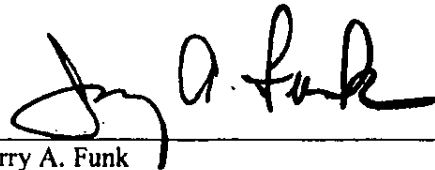
19. This Court retains jurisdiction of these proceedings pursuant to and for the purposes of §§ 105(a) and 1127 of the Bankruptcy Code and for the following purposes:

- a. allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim, the resolution of any objections to the allowance, priority or classification of Claims or Interests;
- b. grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan for periods ending on or before the Effective Date;
- c. resolve any matters related to any Executory Contract or Unexpired Lease to which any Debtor is a party or with respect to which the Reorganized Debtor may be liable and to hear, determine and, if necessary, liquidate any Claims arising therefrom;
- d. ensure that distributions to holders of Allowed Claims and Allowed Interests are accomplished pursuant to the Plan;
- e. decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving the Reorganized Debtor that may be pending on the Effective Date or brought thereafter;
- f. enter such orders as may be necessary or appropriate to implement or consummate each provision herein and all contracts, instruments, releases and other agreements or documents entered into or delivered in connection with the Plan, the Disclosure Statement or the Confirmation Order;
- g. resolve any cases, controversies, suits or disputes that may arise in connection with the Recovery Actions or the consummation, interpretation or enforcement herein or any contract, instrument, release or other agreement or document that is entered into or delivered pursuant to the Plan or any entity's rights arising from or obligations incurred in connection with the Plan or such documents;
- h. modify the Plan before or after the Effective Date pursuant to § 1127 of the Bankruptcy Code; modify the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the Disclosure Statement or the Confirmation Order; or remedy any defect or omission or reconcile any inconsistency in the Plan, the Disclosure Statement, any Bankruptcy Court order, the Confirmation Order or any contract,

instrument, release or other agreement or document entered into, delivered or created in connection with the Plan, the Disclosure Statement or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan;

- i. issue injunctions, enforce the injunctions contained in the Plan and the Confirmation Order, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation, implementation or enforcement herein or the Confirmation Order;
- j. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason or in any respect modified, stayed, reversed, revoked or vacated or distributions pursuant to the Plan are enjoined or stayed;
- k. determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the Disclosure Statement or the Confirmation Order, including whether a material default in connection therewith has occurred;
- l. enter a final decree closing the Bankruptcy Cases; and
- m. determine matters concerning state, local and federal Taxes in accordance with §§ 346, 505 and 1146 of the Bankruptcy Code, including any Disputed Claims for Taxes.
- n. approve or disapprove any use of the Unsecured Creditors' Carve-Out established by Section 4.08 of the Plan.

DATED this 7 day of February, 2012, in Jacksonville, Florida.



Jerry A. Funk
United States Bankruptcy Judge

Debtor's counsel is directed to serve a copy of this Order, along with the attached Exhibit A, upon all interested parties

Exhibit “A”

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re) Chapter 11
M.D. MOODY & SONS, INC., et al. EIN 59-0552036,) Case Nos.: 3:09-bk-6247; 3:09-bk-6250; 3:09-bk-6252; 3:09-bk-6254
Debtors.) Jointly Administered Under Case No. 3:09-bk-6247

SECOND AMENDED CHAPTER 11 PLAN OF REORGANIZATION

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Attorneys for M.D. Moody & Sons,
Inc., Moody Machinery Corporation,
Southeast Crane Parts, Inc. and Moody
Fabrication & Machine, Inc.

Dated: November 3, 2011

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Exhibit 3.02(g) Settlement Agreement with Hyundai

INTRODUCTION

M.D. Moody & Sons, Inc. ("M.D. Moody"), Moody Machinery Corporation ("MMC"), Southeast Crane Parts, Inc. ("SCP"), and Moody Fabrication & Machine, Inc. ("MFM" and together with M.D. Moody, MMC, and SCP, the "Debtors"), propose this Plan (as defined below) pursuant to the provisions of § 1123 of the Bankruptcy Code, for the resolution of the outstanding Claims against and Interests in the Debtors. The Debtors are the proponents of the Plan within the meaning of § 1129 of the Bankruptcy Code. For a discussion of the history, businesses, results of operations, historical financial information, projections and properties of the Debtors, and for a summary and analysis of the Plan, reference is made to the Debtors' Disclosure Statement for the Debtors' Amended Chapter 11 Plan of Liquidation (Joint) as amended by the Addendum filed by the Debtors in support of this Second Amended Chapter 11 Plan of Reorganization (collectively, the "Disclosure Statement," including all exhibits and schedules thereto or referenced therein, as may be amended, modified or supplemented) approved by the Bankruptcy Court pursuant to § 1125 of the Bankruptcy Code.

ARTICLE I. DEFINED TERMS, RULES OF INTERPRETATION AND COMPUTATION OF TIME

Section 1.01 Defined Terms

As used in the Plan, capitalized terms have the meanings set forth below. Any term that is not otherwise defined herein, but that is used in the Bankruptcy Code or the Bankruptcy Rules, will have the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

(1) "ABL Claim" means Wells Fargo's Allowed Secured Claim arising under the ABL Loan Agreement, and secured in part, *inter alia*, by the first mortgage against the Bellinger Property under that certain Amended and Restated Mortgage, Assignment of Rents and Security Agreement dated May 24, 2006, between M.D. Moody & Sons, Inc., as mortgagor, and Wachovia, as mortgagee, recorded as document number 2006181658, in O.R. Book 13283 at page 2158, Duval County public records, as may be amended from time to time, which shall be in the Allowed Amount as determined under Section 3.03(b) of the Plan.

(2) "ABL Loan Agreement" means that certain Amended and Restated Loan and Security Agreement dated May 24, 2006, with M.D. Moody as the borrower and Wachovia as the lender and each of MMC, SCP and MFM as subsidiary guarantors.

(3) "Administrative Claim" means a Claim for costs and expenses of administration allowed under §§ 503(b), 507(b) or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after the Petition Date of preserving the Estates and operating the businesses of the Debtors, including Claims based on liabilities incurred by the Debtors in the ordinary course of their businesses;

(b) Professional Fee Claims; (c) U.S. Trustee Fees; and (d) Claims for reclamation allowed in accordance with § 546(c)(2) of the Bankruptcy Code and Section 2-702 of the Uniform Commercial Code.

(4) **"Administrative Claim Bar Date"** means the date by which, except as otherwise provided in the Plan, all requests for payment of Administrative Claims are required to be filed with the Bankruptcy Court.

(5) **"Administrative Claim Bar Date Order"** means an order of the Bankruptcy Court establishing the Administrative Claim Bar Date.

(6) **"Allowed Amount"** means the dollar amount in which a Claim is Allowed. No Amount shall be allowed for or on account of punitive damages, penalties or post-petition interest on account of any Allowed Claim except as otherwise expressly specified in this Plan or provided by Final Order of the Bankruptcy Court.

(7) **"Allowed Claim"** means a right against the Debtors within the meaning of § 101(5) of the Bankruptcy Code in respect of which a proof of claim has been filed with the Bankruptcy Court within the period of limitation fixed by Bankruptcy Rule 3003 or scheduled in the list of creditors prepared and filed with the Bankruptcy Court pursuant to Bankruptcy Rule 1007(b) and not listed as disputed, contingent or unliquidated as to amount, and in either case as to which no objection as to allowance or amount thereof has been raised within the applicable period of limitation fixed by Bankruptcy Rule 3001 or an order of the Bankruptcy Court or local rule, or as to which any such objection has been determined by an order or judgment which is no longer subject to appeal or certiorari proceeding and as to which no appeal or certiorari is pending. Unless otherwise specified in the Plan or in a Final Order of the Bankruptcy Court allowing such Claim, "Allowed Claim" shall not include (a) interest on the amount of such Allowed Claim accruing from and after the Petition Date, (b) punitive or exemplary damages, (c) any fine, penalty or forfeiture (d) costs of repossession or dispossession or (d) post-petition attorney fees and costs unless such fees and costs have been approved and allowed by Final Order prior to the Confirmation Date.

(8) **"Allowed Interest"** means an Allowed Interest in Class 14.

(9) **"Ballot"** means the form or forms distributed to each holder of an impaired Claim entitled to vote on the Plan on which the holder indicates acceptance or rejection of the Plan.

(10) **"Bankruptcy Case"** means (a) when used with reference to a particular Debtor, the Chapter 11 case pending in the Bankruptcy Court for that Debtor; and (b) when used with reference to all Debtors, the Chapter 11 cases pending in the Bankruptcy Court for all the Debtors.

(11) **"Bankruptcy Code"** means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as now in effect or hereafter amended, as applicable to the Bankruptcy Cases.

(12) **"Bankruptcy Court"** means the United States Bankruptcy Court for the Middle District of Florida.

(13) **"Bankruptcy Rules"** means, collectively, the Federal Rules of Bankruptcy Procedure and the local rules of the Bankruptcy Court, as now in effect or hereafter amended, as applicable to the Bankruptcy Cases.

(14) **"Bar Date"** means the applicable bar date by which a proof of Claim must be or must have been filed, as established by an order of the Bankruptcy Court, including a Bar Date Order and the Confirmation Order. The Bankruptcy Court fixed the Claims Bar Date for filing proofs of Claim or Interests as November 20, 2009 [Docket No. 171].

(15) **"Bar Date Order"** means any order of the Bankruptcy Court establishing bar dates for filing proofs of Claims in the Bankruptcy Cases.

(16) **"BB&T"** means BB&T Equipment Finance Corporation.

(17) **"Bellinger Property"** means the real property owned by the Debtors located at 13911 Atlantic Avenue, Jacksonville, Florida 32225, which is comprised of the real estate described as the "Property" in the Wells Fargo Mortgages, together with all improvements and related permits and entitlements and other intangible rights, subject to any reduction from time to time by reason of closing of the State of Florida Compromise.

(18) **"Bellinger Property Trust"** means that certain trust created under Article V of this Plan for the sale of the Bellinger Property upon the conditions and terms set forth therein.

(19) **"Business Day"** means any day, other than a Saturday, Sunday or "legal holiday" (as defined in Bankruptcy Rule 9006(a)).

(20) **"Cash"** means the legal tender of the United States of America.

(21) **"Claim"** means a "claim" as defined in § 101(5) of the Bankruptcy Code.

(22) **"Claims Objection Bar Date"** means, for all Claims, the latest of: (a) 180 days after the Effective Date; (b) 60 days after the filing of a proof of Claim for such Claim; and (c) such other period of limitation as may be specifically fixed by the Plan, the Confirmation Order or a Final Order.

(23) **"Claims Reserve"** means a Cash reserve to be established by the Reorganized Debtor on the Effective Date to be administered in accordance with Section 4.08 of this Plan, including to fund operations, pay administrative expenses, pay expenses associated with the implementation of the Plan, fund on-going environmental remediation and clean-up costs at the Bellinger Property, and pay any Tax coming due with respect to the Philips Highway Property.

(24) **"Claims Reserve Threshold"** means the minimum funding level to be maintained in the Claims Reserve pursuant to Section 4.08 of the Plan.

(25) **"Class"** means a class of Claims or Interests, as described in Article II of the Plan.

(26) **"Confirmation"** means the entry of the Confirmation Order on the docket of the Bankruptcy Court, within the meaning of Bankruptcy Rules 5003 and 9021.

(27) **"Confirmation Hearing"** means the hearing held by the Bankruptcy Court on Confirmation of the Plan; as such hearing may be continued from time to time.

(28) **"Confirmation Order"** means the order or orders of the Bankruptcy Court confirming the Plan pursuant to § 1129 of the Bankruptcy Code.

(29) **"Convenience Claim"** means any Claim against the Debtors that otherwise would be classified as a Unsecured Claim in Class 12, but either (a) the aggregate amount of such Claim is \$2,222 or less, or (b) the Claim is greater than \$2,222 and the holder of the Claim elects on a Ballot to have the Claim treated as a Convenience Claim in Class 13.

(30) **"Debtors"** has the meaning set forth in the introductory paragraph of the Plan.

(31) **"Dell Marine Promissory Note"** means that certain promissory note in the original principal amount of \$320,000 dated September 1, 2011 between Dell Marine, Inc. and M.D. Moody.

(32) **"Disclosure Statement"** has the meaning set forth in the introductory paragraph of the Plan.

(33) **"Disputed Claim"** means:

(a) if no proof of Claim has been filed by the applicable Bar Date or has otherwise been deemed timely filed under applicable law: (i) a Claim that is listed on the Debtors' Schedules as other than disputed, contingent or unliquidated, but as to which the Debtors, or any other party in interest has filed an objection by the Claims Objection Bar Date and such objection has not been withdrawn or denied by a Final Order; or (ii) a Claim that is listed on the Debtors' Schedules as disputed, contingent or unliquidated;

(b) if a proof of Claim or proof of Administrative Claim has been filed by the Bar Date or has otherwise been deemed timely filed under applicable law: (i) a Claim for which an objection has been filed by the Debtors, Debtors or any other party in interest by the Claims Objection Bar Date, and such objection has not been withdrawn or denied by a Final Order; or

(c) a Claim for damages in respect of an Executory Contract or Unexpired Lease that has been rejected or is anticipated to be rejected under § 365 of the Bankruptcy Code and as to which the applicable Bar Date has not occurred and such Claim is not otherwise an Allowed Claim.

(34) **"Distribution Record Date"** means the close of business on the date announced by the Debtors that is not more than five Business Days preceding the then-anticipated Effective Date.

(35) **"Effective Date"** means a day, as determined by the Debtors, that is the Business Day as soon as reasonably practicable after all conditions to the Effective Date have been met or waived. The Reorganized Debtor shall file written notice of the Effective Date with the Bankruptcy Court.

(36) **"Equipment Auction"** means an auction to be conducted pursuant to Section 4.01(c) of the Plan for the sale of, as necessary, (a) all Wells Fargo Equipment Collateral that has not otherwise been sold or liquidated and (b) any equipment collateral of non-Wells Fargo creditors who desire to include their collateral in the auction.

(37) **"Equity Claim"** means a legal, equitable or contractual Claim arising from any share or stock ownership interest in the Debtors.

(38) **"Estate"** means the Estate created for each Debtor in its Bankruptcy Case pursuant to § 541 of the Bankruptcy Code.

(39) **"Executory Contract or Unexpired Lease"** means a contract or lease to which any Debtor is a party that is subject to assumption, assumption and assignment or rejection under § 365 of the Bankruptcy Code.

(40) **"Face Amount"** means when used with reference to a Disputed Claim in Class 12: (a) the full stated amount claimed by the holder of such Claim in any proof of Claim filed by the Bar Date or otherwise deemed timely filed under applicable law, if the proof of Claim specifies only a liquidated amount; (b) if no proof of Claim has been filed by the Bar Date or has otherwise been deemed timely filed under applicable law, or if the proof of Claim specified an unliquidated amount, the amount of the Claim (i) acknowledged by the Debtors in any objection filed to such Claim or in the Debtors' Schedules as an undisputed, noncontingent and liquidated Claim, (ii) estimated by the Bankruptcy Court pursuant to § 502 of the Bankruptcy Code, or (iii) proposed by the Debtors prior to the Effective Date; or (c) if neither (a) nor (b) above are applicable, an amount estimated by the Debtors so long as such estimated amount is not less than either (i) any amount of such Claim as estimated by the Bankruptcy Court or (ii) the liquidated portion of the amount claimed by the holder of such Claim in any proof of Claim filed by the Bar Date or otherwise deemed timely filed under applicable law.

(41) **"Fee Order"** means the Order Granting the Debtors' Motion for Approval of Interim Compensation Procedures for Professionals entered by the Bankruptcy Court [Docket No. 105].

(42) **"Final Order"** means an order or judgment of the Bankruptcy Court or other court of competent jurisdiction, as entered on the docket in the Bankruptcy Cases or the docket of any other court of competent jurisdiction, that has not been reversed, stayed, modified or amended, and as to which the time to appeal or seek certiorari or move for a new trial, reargument or rehearing has expired, and no appeal or petition for

certiorari or other proceedings for a new trial, reargument or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been timely filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument or rehearing has been denied or has resulted in no modification of such order.

(43) **"GBG Claim"** means Wells Fargo's Allowed Secured Claim arising under the GBG Loan Agreement and secured, *inter alia*, by the second mortgage against the Bellinger Property under that certain Mortgage, Assignment of Rents and Security Agreement dated May 24, 2006, between M.D. Moody & Sons, Inc., as mortgagor, and Wachovia, as mortgagee, recorded as document number 2006181661 in O.R. Book 13283 at Page 2184, public records of Duval County, Florida, as may be amended from time to time, which shall be in the Allowed Amount as determined under Section 3.03(c) of the Plan.

(44) **"GBG Loan Agreement"** means that certain loan agreement dated May 24, 2006, entered into between M.D. Moody & Sons and Wachovia, which loan is secured by a second mortgage against the Bellinger Property and the Personal Guaranties.

(45) **"Hyundai"** means Hyundai Construction Equipment Americas, Inc. f/k/a Hyundai Construction Equipment U.S.A.

(46) **"Interest"** means (a) any share or other ownership interest in the Debtors, whether or not transferable or denominated "stock," or similar security and (b) any Equity Claim.

(47) **"IRC"** means the Internal Revenue Code, as now in effect or hereafter amended.

(48) **"Kochring"** means Kochring Cranes, Inc.

(49) **"Orderly Liquidation Value"** means the gross amount in Cash that could reasonably be realized from property through a privately negotiated sale, properly advertised and professionally managed by a seller obligated to sell over a six to nine month time period.

(50) **"P&S Business"** means the Reorganized Debtor's post-confirmation business of selling cranes and other heavy equipment through drop-sales and its continuing parts and service business for cranes and heavy equipment.

(51) **"Personal Guaranties"** means collectively (i) the unconditional guaranty dated May 24, 2006, and executed by Maxey D. Moody, III, to secure the GBG Claim, and (ii) the unconditional guaranty dated May 24, 2006, and executed by Judith L. Moody to secure the GBG Claim.

(52) **"Petition Date"** means July 28, 2009, the date on which the Debtors filed their voluntary Chapter 11 petitions for relief.

(53) **"Philips Highway Property"** means the real property owned by the Debtors located at 4652 Philips Highway, 4718 Philips Highway, and 4744 Philips Highway, Jacksonville, Florida 32207.

(54) **"Plan"** means this Second Amended Chapter 11 Plan of Reorganization for the Debtors and all Exhibits attached hereto or referenced herein, as the same may be amended, modified or supplemented.

(55) **"PNCEF"** means PNCEF, LLC, doing business as PNC Equipment Finance, formerly known as National City Commercial Capital, LLC.

(56) **"Priority Claim"** means a Claim against the Debtors that is entitled to priority in payment pursuant to § 507(a) of the Bankruptcy Code that is not an Administrative Claim or a Priority Tax Claim.

(57) **"Priority Tax Claim"** means a Claim arising under federal, state or local Tax laws that is entitled to priority in payment pursuant to § 507(a)(8) of the Bankruptcy Code.

(58) **"Professional"** means any professional employed in the Bankruptcy Cases pursuant to §§ 327 or 1103 of the Bankruptcy Code or any professional or other entity seeking compensation or reimbursement of expenses in connection with the Bankruptcy Cases pursuant to § 503 of the Bankruptcy Code.

(59) **"Professional Fee Claims"** mean the Claims of (a) any Professional in the Bankruptcy Cases pursuant to §§ 330 or 1103 of the Bankruptcy Code or (b) any Professional or other entity seeking compensation or reimbursement of expenses in connection with the Bankruptcy Cases, but excluding the Professionals of Wells Fargo.

(60) **"Property Executor"** means Maxey D. Moody, III or a successor reasonably and in good faith designated by the Reorganized Debtor.

(61) **"Pro Rata Share"** means, when used with reference to a distribution to a holder of an Allowed Claim in a Class pursuant to Article III, that share of the property to be distributed on account of all Allowed Claims in such Class so that the ratio of (a)(i) the amount of such property distributed on account of the particular Allowed Claim to (ii) the amount of such Claim, is the same as the ratio of (b)(i) the aggregate amount of such property distributed on account of all Allowed Claims in such Class to (ii) the aggregate amount of all Allowed Claims in such Class.

(62) **"Record Date"** means the date classifying Claims for purposes of voting on the Plan as set forth in the order approving the Disclosure Statement.

(63) **"Recovery Actions"** means, collectively and individually, preference actions, fraudulent conveyance or fraudulent transfer actions, rights of setoff, derivative actions, and any other claims or causes of action against persons or entities arising under §§ 502, 510, 541, 542, 545, 547 through 551 and 553 of the Bankruptcy Code or related state or federal statutes and common law, including fraudulent transfer laws.

(64) **"Reorganized Debtor"** means M.D. Moody & Sons, Inc. after the Effective Date.

(65) **"Schedules"** means the schedules of assets and liabilities and the statements of financial affairs filed by the Debtors, as required by § 521 of the Bankruptcy Code, as the same may have been or may be amended, modified or supplemented.

(66) **"Secured Claim"** means a Claim against the Debtors (a) for extensions of credit to the Debtors that is secured by a lien on property in which the Debtors' Estates have an interest or that is subject to setoff under § 553 of the Bankruptcy Code, to the extent of the value of the holder of such Claim's interest in the Estates' interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to § 506(a) and, if applicable, § 1129(b) of the Bankruptcy Code, (b) arising under equipment financing leases, or (c) a tax claim secured by a lien on property of the Debtors.

(67) **"State of Florida Compromise"** means that certain transaction between the Debtors and the State of Florida for the settlement of the Debtors' quiet title action, including the conveyance to the State of Florida of approximately 46 acres of wetlands which are a part of the Bellinger Property, as approved by the Court's Order Approving Compromise with the Board of Trustee of the Internal Improvement Trust Fund, State of Florida [Docket No. 721].

(68) **"Tax"** means any net income, alternative or add-on minimum, gross income, gross receipts, sales, use, *ad valorem*, value added, transfer, franchise, profits, license, property, environmental or other tax, assessment or charge of any kind whatsoever (together in each instance with any interest, penalty, addition to tax or additional amount) imposed by any federal, state, local or foreign taxing authority.

(69) **"Tax Reserve"** means a cash reserve to be established in a segregated, interest-bearing bank account by the Debtors on the Effective Date for the payment of any Tax coming due with respect to the Bellinger Property during 2011, 2012, and 2013.

(70) **"TCF"** means TCF Equipment Finance, Inc.

(71) **"Terex"** means Terex Cranes Wilmington, Inc.

(72) **"Trustee"** means Curtis W. Lorin, or his successor or successors.

(73) **"Unsecured Claim"** means an Unsecured Claim that is not an Administrative Claim, a Cure Amount Claim, an Equity Claim, a Priority Claim, a Priority Tax Claim, or a Secured Claim, but shall not include any claim that is disallowed or released, whether by operation of law, Final Order, written agreement, the provisions of this Plan or otherwise.

(74) **"U.S. Bancorp"** means U.S. Bancorp Equipment Finance, Inc.

(75) **"U.S. Trustee Fees"** means all fees and charges assessed against the Estates under Chapter 123 of title 28, United States Code, 28 U.S.C. §§ 1911-1930.

(76) **"Voting Deadline"** means the deadline for submitting Ballots to accept or reject the Plan in accordance with § 1126 of the Bankruptcy Code that is specified in the Disclosure Statement, the Ballots or related solicitation documents approved by the Bankruptcy Court.

(77) **"Wachovia"** means Wachovia Bank, N.A.

(78) **"Wells Fargo"** means Wells Fargo Bank, N.A., as successor by merger to Wachovia Bank, N.A.

(79) **"Wells Fargo Equipment Collateral"** means the heavy equipment and cranes, together with the boot collateral consisting of excess boom, trucks, yard equipment, and all parts not necessary, in the Debtors' discretion, for the P&S Business, in which Wells Fargo holds a perfected and unavoidable first lien securing the AHL Claim and the GBG Claim.

(80) **"Wells Fargo Mortgages"** means the Amended and Restated Mortgage, Assignment of Rents and Security Agreement dated May 24, 2006 between M.D. Moody & Sons, Inc., as mortgagor, and Wachovia Bank, as mortgagee, recorded as document number 2006181658, in O.R. Book 13283 at page 2158, Duval County public records, as may be amended from time to time, and Mortgage, Assignment of Rents and Security Agreement dated May 24, 2006 between M.D. Moody & Sons, Inc., as mortgagor, and Wachovia Bank, as mortgagee, recorded as document number 2006181661 in O.R. Book 13283 at page 2184, public records of Duval County, Florida, as may be amended from time to time.

Section 1.02 Rules of Interpretation

For purposes of the Plan, unless otherwise provided herein: (i) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, will include both the singular and the plural; (ii) unless otherwise provided in the Plan, any reference in the Plan to a contract, instrument, release or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions; (iii) any reference in the Plan to an existing document or exhibit filed or to be filed means such document or exhibit, as it may have been or may be amended, modified or supplemented pursuant to the Plan or Confirmation Order; (iv) any reference to an entity as a holder of a Claim or Interest includes that entity's successors and assigns; (v) all references in the Plan to Sections and Articles are references to Sections and Articles of or to the Plan; (vi) the words "herein," "hereunder" and "hereto" refer to the Plan in its entirety rather than to a particular portion of the Plan; (vii) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (viii) subject to the provisions of any contract, instrument, release or other agreement or document entered

into or delivered in connection with the Plan, the rights and obligations arising under the Plan will be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code and the Bankruptcy Rules; and (ix) the rules of construction set forth in § 102 of the Bankruptcy Code will apply.

As to contested matters, adversary proceedings, and other actions or threatened actions, neither this Plan nor the Disclosure Statement shall be construed as a stipulation or admission, but rather as a statement made in settlement negotiations.

Section 1.03 Computation of Time

In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) will apply.

ARTICLE II. CLASSES OF CLAIMS AND INTERESTS; ALLOWED AMOUNT OF CERTAIN CLAIMS

All Claims and Interests, except Administrative Claims and Priority Tax Claims, are placed in the following Classes. In accordance with § 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims, as described in Section 3.01, have not been classified and thus are excluded from the Classes. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any remainder of the Claim or Interest qualifies within the description of such other Classes.

Section 2.01 Class 1 shall consist of Priority Claims that are entitled to priority under §§ 507(a)(3) or 507(a)(4) of the Bankruptcy Code.

Section 2.02 Class 2 shall consist of Secured Tax Claims.

Section 2.03 Class 3 shall consist of the ABL Claim.

Section 2.04 Class 4 shall consist of the GBG Claim.

Section 2.05 Class 5 shall consist of the Secured Claim of U.S. Bancorp.

Section 2.06 Class 6 shall consist of the Secured Claim of BB&T.

Section 2.07 Class 7 shall consist of the Secured Claims of TCF.

Section 2.08 Class 8 shall consist of the Secured Claim of Hyundai.

Section 2.09 Class 9 shall consist of the Secured Claim of Ferrex.

Section 2.10 Class 10 shall consist of the Secured Claim Kochang.

Section 2.11 Class 11 shall consist of the Secured Claim of PNCEF.

Section 2.12 Class 12 shall consist of Unsecured Claims.

Section 2.13 Class 13 shall consist of Convenience Claims.

Section 2.14 Class 14 shall consist of all Interests in the Debtors.

ARTICLE III. TREATMENT OF CLAIMS AND INTERESTS

Section 3.01 Unclassified Claims

(a) Payment of Administrative Claims

(i) Administrative Claims in General

Except as otherwise provided herein or unless otherwise agreed by the holder of an Administrative Claim and the Debtors, each holder of an Allowed Administrative Claim will receive from the Debtors, in full satisfaction of its Administrative Claim, Cash equal to the Allowed Amount of such Administrative Claim either (A) on the Effective Date or (B) if the Administrative Claim is not allowed as of the Effective Date, within 30 days after the date on which (i) an order allowing such Administrative Claim becomes a Final Order or (ii) a Stipulation of Amount and Nature of Claim is executed by the Debtors and the holder of the Administrative Claim.

(ii) U.S. Trustee Fees

On or before the Effective Date, Administrative Claims for U.S. Trustee Fees, as determined by the Bankruptcy Court at the Confirmation Hearing, will be paid by the Debtors in Cash equal to the amount of such Administrative Claims. M.D. Moody shall pay all post-confirmation U.S. Trustee Fees until the closing of its Bankruptcy Case pursuant to § 350(a) of the Bankruptcy Code. The merger of MMC, SCP and MFM into M.D. Moody shall terminate such entities' obligations to pay U.S. Trustee Fees and, following the Effective Date, no further U.S. Trustee Fees shall be payable or due and owing from MMC, SCP or MFM.

(iii) Ordinary Course Liabilities

Allowed Administrative Claims based on liabilities incurred by the Debtors in the ordinary course of their businesses (including Administrative Claims of governmental units for taxes, including tax audit claims related to tax years commencing after the Petition Date) will be paid by the Debtors pursuant to the terms and conditions of the particular transaction giving rise to such Administrative Claims, without any further action by the holders of such Administrative Claims.

(b) Bar Dates for Administrative Claims

(i) General Bar Date Provisions

Except as otherwise provided herein, requests for payment of Administrative Claims must be filed by the Administrative Claim Bar Date and served pursuant to the procedures specified in the Administrative Claim Bar Date Order. Holders of Administrative Claims that are required to file and serve a request for payment of such Administrative Claims and that do not file and serve such a request by such date will be forever barred from asserting such Administrative Claims against the Debtors or their property and such Administrative Claims will be deemed waived and released as of the Effective Date. Objections to such requests must be filed and served on the Debtors and the requesting party by the later of (1) 90 days after the Effective Date and (2) 30 days after the filing of the applicable request for payment of Administrative Claims.

(ii) Professional Compensation

Professionals or other entities asserting a Professional Fee Claim for services rendered on behalf of the Debtors in the Bankruptcy Cases before the Effective Date, must file and serve on the Debtors, and such other entities who are designated by the Bankruptcy Rules, the Confirmation Order, the Fee Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claims no later than 60 days after the Effective Date. To the extent necessary, the Confirmation Order will amend and supersede any previously entered order of the Bankruptcy Court, including Fee Order, regarding the payment of Professional Fee Claims.

(iii) Ordinary Course Liabilities

Holders of Administrative Claims based on liabilities incurred by the Debtors in the ordinary course of their businesses, including Administrative Trade Claims, Administrative Claims of governmental units for Taxes (including Tax audit Claims arising after the Petition Date) will not be required to file or serve any request for payment of such Administrative Claims.

(c) Payment of Priority Tax Claims

(i) Priority Tax Claims

Pursuant to § 1129(a)(9)(C) of the Bankruptcy Code, unless otherwise agreed by the holder of a Priority Tax Claim and the Debtors, each holder of an Allowed Priority Tax Claim will receive, in full satisfaction of its Priority Tax Claim, Cash equal to the Allowed Amount of such Claim.

(ii) Other Provisions Concerning Treatment of Priority Tax Claims

The holder of an Allowed Priority Tax Claim will not be entitled to receive any payment on account of any penalty arising with respect to or in connection with the Allowed Priority Tax Claim. Any such Claim or demand for any such penalty will be

subject to treatment in Class 12 and the holder of an Allowed Priority Tax Claim will not be entitled to assess or attempt to collect such penalty from the Debtors or their property (other than as the holder of a Class 12 Claim).

Section 3.02 Unimpaired Classes of Claims

The following constitute unimpaired Claims, and each holder thereof is conclusively presumed to have accepted the Plan and is not entitled to vote on the Plan.

(a) Class 1 (Unsecured Priority Claims)

On the later of the Effective Date and the date on which the Claim is allowed, each holder of an Allowed Claim in Class 1 will be entitled to receive in satisfaction of its Allowed Class 1 Claim, Cash equal to the Allowed Amount of such Claim against the Debtors.

(b) Class 11 – the Secured Claim of PNCEF

In full satisfaction of PNCEF's remaining Secured Claim, the Debtors shall fully perform the terms of the post-petition lease for the Terex HC110 Crane, S/N AC-4370. If the Debtors, with PNCEF's consent, sell the Terex HC110 Crane, S/N AC-4370, payment to PNCEF shall be in accordance with the terms of the lease. PNCEF shall be required to deliver to the Debtors a release of any lien upon any sale of the subject crane.

(c) Class 14 – Interests in the Debtors

Interests in the Debtors are unimpaired and all interests shall be retained by current holders of such interests. The Plan does not create or effect a change of ownership of the Debtors. No distribution of any funds or assets will be made to holders of interests until (1) each holder of an Allowed Claim in all senior classes has received payment equal to 100% of the Allowed Amount of such Claim in accordance with the terms of this Plan and (2) the Debtors, in their sole discretion, determine distributions to interest holders are appropriate.

Section 3.03 Impaired Classes of Claims and Interests

The following constitute impaired Claims and, except as otherwise noted, each holder thereof is entitled to vote on the Plan.

(a) Class 2 (Secured Tax Claims)

(i) Holders of *ad valorem* Tax Claims shall receive in full satisfaction of such Claims, Cash equal to the Allowed Amount of their Class 2 Secured Claims on the later of the Effective Date or the date on which such holder's Claim becomes an Allowed Claim. Post-petition and post-confirmation *ad valorem* Taxes will be paid when due from the Tax Reserve or the Claims Reserve, except that *ad valorem* Taxes due with respect to the Bellinger Property for 2014, if any, may be deferred until the sale of the property.

(H) Tangible personal property Taxes due with respect to equipment owned by the Debtors, to the extent not already paid, shall be deducted and paid from the proceeds from the sale or auction of the equipment against which the Taxes are assessed, or from the funds currently held as restricted cash for the benefit of secured creditors. Tangible personal property Taxes due with respect to equipment retained by the Debtors shall be paid in Cash on the latter of the Effective Date or the date on which such holder's Claim becomes an Allowed Claim. Post-petition and post-confirmation personal property Taxes on retained equipment shall be paid when due.

(b) Class 3 - the ABL Claim

The Allowed Amount of the ABL Claim shall be determined as of the date of entry of the Confirmation Order to be the sum of (a) principal in the amount of \$6,554,805, less any principal payments made by the Debtors and received by Wells Fargo on account of the ABL Claim after August 31, 2011, but prior to the entry of the Confirmation Order, (b) accrued and unpaid interest calculated at the contract rate, together with default interest accrued from the Petition Date through the date of entry of the Confirmation Order, (c) field exam expenses in the amount of \$54,417.44, (d) appraisal expenses in the amount of \$92,672.17, and (e) attorneys' and financial consultants' fees in the amount of \$641,500. For clarification Wells Fargo shall not be required to submit or seek approval of the allowance of its professional fees in the amount stipulated herein. Until paid in full, the ABL Claim and all post-Confirmation interest accruing thereon shall remain secured by all collateral provided under or pursuant to the terms of the ABL Loan Agreement, including the first mortgage lien against the Bellinger Property.

Wells Fargo shall have no Claims against the Debtors other than the ABL Claim and the GBG Claim, and proof of claim number 90-1, filed in the case of M.D. Moody by or on behalf of Wachovia in respect of the ABL Claim and the GBG Claim, shall be an Allowed Claim only to the extent the ABL Claim and the GBG Claim are Allowed Claims as provided herein. All other proofs of claim filed by or on behalf of Wachovia in these cases are disallowed.

The ABL Claim shall accrue interest at the rate of 6.0% per annum from the date of entry of the Confirmation Order until the ABL Claim, and all post-Confirmation interest accruing thereon, is paid in full. Until such time as the ABL Claim is paid in full, the Reorganized Debtor will make monthly interest payments to Wells Fargo on account of the ABL Claim at the foregoing rate, which payments will be due on the 10th day of the following month in which the interest accrued. Interest shall not, however, accrue or be paid on the portion of the ABL Claim comprised of Wells Fargo's attorneys' fees, field exam expenses, appraisal expenses or financial consultants' fees (items (c) through (e) above).

Until the ABL Claim, and all post-Confirmation interest accruing thereon, is paid in full, the Reorganized Debtor (or the Bellinger Property Trust as applicable) shall make the following payments to Wells Fargo to be applied to the ABL Claim and post-Confirmation interest accruing thereon:

(i) payment of the proceeds from all sales of any Wells Fargo collateral, including auction proceeds, less transportation costs, costs of sale and applicable taxes as provided in Section 4.01(c) herein;

(ii) payment of the proceeds from the sale of the Bellinger Property, less costs of sale and applicable property taxes;

(iii) payment of all net proceeds from the sale of the Philips Highway Property in excess of the initial \$1,000,000 of such net sale proceeds, pursuant to Section 4.01(b) of this Plan;

(iv) the quarterly Excess Cash Sweep Payments pursuant to Section 4.09 of the Plan; and

(v) commencing on June 1, 2012, and continuing on the first day of each month thereafter, a monthly payment of \$20,000, provided that the Reorganized Debtor shall receive a credit against such monthly payment obligation for all payments made to Wells Fargo under subparagraphs (iii) and (iv) above.

In addition to its existing collateral, and as additional security for the ABL Claim, and all post-Confirmation interest accruing thereon, Wells Fargo shall hold a perfected, first priority lien on all of the Reorganized Debtor's post-Confirmation assets, tangible and intangible, such as parts inventory, residual equipment and accounts receivable, including specifically the Dell Marine Promissory Note, the Claims Reserve, and the Tax Reserve, but excluding the Philips Highway Property or the proceeds thereof until deposited into the Claims Reserve, until the ABL Claim and all post-Confirmation interest accruing thereon is paid in full, *provided, however*, that Wells Fargo shall release its lien on any piece of collateral sold, with the lien then attaching to the proceeds of sale. If upon sale of the Bellinger Property pursuant to Article V of this Plan the ABL Claim shall remain unpaid in full, including post-Confirmation interest, then Wells Fargo shall be entitled to the immediate payment of such funds as are necessary from the Claims Reserve to pay such obligations in full, and if such obligations then remain unpaid Wells Fargo may exercise any and all remedies to realize against all collateral recited in this paragraph as a first lien secured creditor pursuant to the provisions of the Uniform Commercial Code. No further action or recording is necessary to document, evidence, perfect, or carry into effect Wells Fargo's first lien hereunder.

The Debtors waive any right of surcharge against Wells Fargo arising under § 506(c) of the Bankruptcy Code.

(c) Class 4 - the GBG Claim

The Allowed Amount of the GBG Claim shall be determined as of the date of entry of the Confirmation Order to be the sum of (a) principal in the amount of \$2,760,916.66, less any principal payments made by the Debtors and received by Wells Fargo on account of the GBG Claim after August 31, 2011, but prior to the entry of the Confirmation Order, and (b) accrued and unpaid interest calculated at the contract rate, together with default interest accrued from the Petition Date through the date of entry of

the Confirmation Order. No attorneys' fees, consultants' fees, field exam fees or the like shall be allowed with respect to the GBG Claim. The GBG Claim and all post-Confirmation interest accruing thereon shall remain secured by all collateral provided under or pursuant to the terms of the GBG Loan Agreement, including the second mortgage lien against the Bellinger Property. The GBG Claim shall be subordinated to the ABL Claim and Wells Fargo shall not be entitled to any payments from the Reorganized Debtor or the Bellinger Property Trust on account of the GBG Claim until the ABL Claim and all post-Confirmation interest thereon is paid in full.

Wells Fargo shall have no Claims against the Debtors other than the ABL Claim and the GBG Claim, and proof of claim number 90-1, filed in the case of M.D. Moody by or on behalf of Wachovia in respect of the ABL Claim and the GBG Claim, shall be an Allowed Claim only to the extent the ABL Claim and the GBG Claim are Allowed Claims as provided herein. All other proofs of claim filed by or on behalf of Wachovia in these cases are disallowed.

Interest shall accrue on the principal portion of the Allowed Amount of the GBG Claim at 6.5% per annum from the date of entry of the Confirmation Order until the Allowed Amount of the GBG Claim is paid in full. Interest shall not accrue or be paid on the portion of the GBG Claim comprised of interest. All payments with respect to the GBG Claim shall be applied first to pay accrued but unpaid interest and costs, and thereafter to principal.

Until the GBG Claim and all post-Confirmation interest thereon is paid in full, but only after first the payment in full of the ABL Claim and all post-Confirmation interest thereon, the Reorganized Debtor (or the Bellinger Property Trust as applicable) shall make the following payments to Wells Fargo to be applied to the GBG Claim and post-Confirmation interest accruing thereon:

(i) payment of the proceeds from all sales of any Wells Fargo collateral, including auction proceeds, less transportation costs, costs of sale and applicable taxes as provided in Section 4.01(c) herein;

(ii) payment of the proceeds from the sale of the Bellinger Property, less costs of sale and applicable property taxes;

(iii) payment of all net proceeds from the sale of the Philips Highway Property in excess of the initial \$1,000,000 of such net sale proceeds, pursuant to Section 4.01(b) of this Plan;

(iv) the quarterly Excess Cash Sweep Payments pursuant to Section 4.09 of this Plan, and

(v) commencing on June 1, 2012, and continuing on the first day of each month thereafter, a monthly payment of \$20,000, provided that the Reorganized Debtor shall receive a credit against such monthly payment obligation for all payments which are made to Wells Fargo on account of the GBG Claim under subparagraphs (iii) and

(iv) above after such date as the ABL Claim and all post-Confirmation interest thereon shall have been paid in full.

In addition to its existing collateral, and as additional security for the GBG Claim, and all post-Confirmation interest thereon, Wells Fargo shall hold a perfected, first priority lien on all of the Reorganized Debtor's post-confirmation assets, tangible and intangible, such as parts inventory, residual equipment and accounts receivable, including specifically the Dell Marine Promissory Note, the Claims Reserve, and the Tax Reserve, but excluding the Phillips Highway Property or the proceeds thereof until deposited into the Claims Reserve, until the Allowed Amount of the GBG Claim and all post-Confirmation interest accruing thereon has been paid in full, *provided, however*, that Wells Fargo shall release its lien on any piece of collateral sold, with the lien then attaching to the proceeds of sale. If upon sale of the Bellinger Property pursuant to Article V the GBG Claim shall remain unpaid in full, including post-Confirmation interest, then Wells Fargo shall be entitled to the immediate payment of such funds as are necessary from the Claims Reserve to pay such obligations in full, and if such obligations then remain unpaid Wells Fargo may exercise any and all remedies to realize against all collateral recited in this paragraph as a first lien secured creditor pursuant to the provisions of the Uniform Commercial Code. No further action or recording is necessary to document, evidence, perfect, or carry into effect Wells Fargo's first lien hereunder.

The Debtors waive any right of surcharge against Wells Fargo arising under § 506(c) of the Bankruptcy Code.

(d) Class 5 – the Secured Claim of U.S. Bancorp

All U.S. Bancorp collateral has been sold during the pendency of the Bankruptcy Cases and sale proceeds remitted to U.S. Bancorp in satisfaction of U.S. Bancorp's Secured Claim. Accordingly, U.S. Bancorp shall receive no further distribution from the Debtors on account of its Allowed Secured Claim. U.S. Bancorp shall hold an Allowed Unsecured Claim in Class 12 in the amount of \$539,069.35, representing the difference between the principal owed to U.S. Bancorp on its Secured Claim and the agreed fair market value of the collateral securing such Claim.

(e) Class 6 – the Secured Claim of BB&T

On or about, July 7, 2008, the Debtors and BB&T entered into a lease for a 2008 SANY SCC1500C Hydraulic Crawler Crane. The Debtors also financed three additional SANY Cranes through BB&T. BB&T filed a secured proof of claim in the amount of \$2,952,203.16 (Claim No. 69) in respect of the foregoing. The Debtors dispute BB&T's Claim amount. The Debtors and BB&T are in the process of negotiating an agreed amount for BB&T's Allowed Secured Claim, which Allowed Secured Claim shall be satisfied by the Debtors' surrender to BB&T of all collateral securing BB&T's Claim. BB&T shall hold an Allowed Unsecured Claim for any deficiency created upon the disposition of such collateral. For purposes of voting on the Plan only, without prejudice to the ultimate calculation of BB&T's deficiency claim BB&T shall hold an Unsecured Claim in Class 12 in the amount of \$500,000.

BB&T shall hold Allowed Administrative Claim in the amount of \$49,187.38 for unpaid post-petition lease payments, which Administrative Claim shall be paid on the Effective Date of the Plan or as otherwise agreed to by BB&T and the Debtors.

(f) Class 7 – the Secured Claim of TCF

In accordance with the February 23, 2011, stipulation among the Debtors and TCF [Docket No. 662], and in full satisfaction of TCF's Secured Claim (Claim Number 82), the Debtors have sold or surrendered to TCF all collateral securing TCF's Secured Claim. Accordingly, TCF shall receive no further distribution from the Debtors on account of its Allowed Secured Claim. TCF shall, however, be deemed to hold an Allowed Unsecured Claim in Class 12 in the amount to be determined representing the difference between the principal owed to TCF on its Secured Claim and the agreed fair market value of the collateral securing such Claim.

(g) Class 8 – the Secured Claim of Hyundai

Hyundai filed a proof of claim in the amount \$59,623 asserting a security interest in parts it supplied to the Debtors prior to the Petition Date. The Debtors and Hyundai have entered into a settlement agreement attached hereto as Exhibit 3.03(g). The Debtors will seek approval of the settlement agreement in connection with Confirmation of the Plan. Pursuant to the terms of the settlement agreement, the Debtors returned all Hyundai parts remaining in their possession and Hyundai issued a credit memo to the Debtors in the amount of \$113,869.02. The Debtors will setoff Hyundai's \$59,623 proof of claim against the credit memo, and, following Confirmation of the Plan, Hyundai shall remit the remaining balance of \$54,246.02 to the Reorganized Debtor.

(h) Class 9 – the Secured Claim of Terex

Terex filed a proof of claim in the amount \$115,925 asserting a security interest in parts it supplied to the Debtors prior to the Petition Date. In full satisfaction of Terex's Allowed Secured Claim, the Debtors have surrendered or shall surrender to Terex a sufficient quantity of parts subject to Terex's security interests to satisfy Terex's Claim in full.

(i) Class 10 – the Secured Claim of Koehring

Koehring filed a proof of claim in the amount \$167,878 asserting a security interest in parts it supplied to the Debtors prior to the Petition Date. In full satisfaction of Koehring's Allowed Secured Claim, the Debtors have surrendered or shall surrender to Koehring a sufficient quantity of parts subject to Koehring's security interests to satisfy Koehring's Claim in full.

(j) Class 12 – Unsecured Claims

In full satisfaction of his or her Claim, and provided that the ABL Claim and the GBC Claim, including all post-Confirmation interest on each of the ABL Claim and the GBC Claim, shall each have been first paid in full, each holder of an Allowed Unsecured

Claim will receive pro rata distributions from the Claims Reserve up to 100% of the Allowed Amount of such Claim. Distributions to holders of Allowed Unsecured Claims will be made from the Claims Reserve approximately 30 days after such date as the GBG Claim shall have been paid in full, whether upon sale by the Reorganized Debtor of the Bellinger Property, or the sale of the Bellinger Property under the terms of the Bellinger Property Trust, and provided that the Claims Reserve is not first applied in whole to the payment of the ABL Claim or the GBG Claim.

There shall be no distribution on account of a Disputed Claim until such objection or dispute is resolved by Final Order. The Debtors shall, however, reserve funds to make the proportionate distribution on account of such Claims until such time as all Claim objections have been finally resolved.

Pursuant to § 502(d) of the Bankruptcy Code, no payments shall be made to any entity from which property is recoverable under §§ 542, 543, 550 or 553 of the Bankruptcy Code or to any entity that is a transferee of a transfer avoidable under §§ 522(f), 522(h), 544, 545, 547, 548, 549 or 724(a) of the Bankruptcy Code, unless such entity or transferee has paid the amount, or turned over any such property from which such entity or transferee is liable under §§ 522(i), 542, 543, 550 or 553 of the Bankruptcy Code. The Claim of any recipient of a payment avoidable under §§ 542, 543, 550 or 553 of the Bankruptcy Code who fails to pay or turnover the amount of the payment to the Reorganized Debtor within 60 days of a judgment or order avoiding the transfer or requiring such turnover shall be extinguished and forever barred.

(k) Class 13 – Convenience Claims

Within 30 days of the Effective Date, in full satisfaction of his or her Claim, each holder of a Convenience Claim shall be paid 90% of the Allowed Amount of such Claim up to a maximum of \$2,000. Any creditor with an Allowed Claim in excess of \$2,222 may elect treatment in Class 13, and in so doing shall receive, in full satisfaction of such Claim, a maximum distribution of \$2,000. By way of example, a creditor with a \$1,000 Claim shall receive \$900 under the Plan; a creditor with a Claim of \$4,000 may elect treatment in Class 13 and would thus receive \$2,000. The election for Class 13 treatment shall be made through a timely filed Ballot.

**ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THE PLAN**

Section 4.01 Sale of Assets

The Plan will be implemented and funded through (a) the sale of equipment and real estate assets, (b) collection of accounts receivable, (c) pursuit of Recovery Actions and (d) operation of the P&S Business. The Reorganized Debtor shall, in an expeditious but orderly manner, monetize and convert assets of the Estates to Cash and make timely distributions to holders of Allowed Claims in accordance with the provisions herein. In

so doing, the Reorganized Debtor shall exercise its reasonable business judgment to maximize creditor recoveries.

(a) Sale of Bellinger Property

The Bellinger Property shall be marketed for sale and sold pursuant to the provisions of the Bellinger Property Trust set forth in Article V below.

(b) Sale of the Philips Highway Property

The Philips Highway Property is currently listed for sale at \$2.2 million. The Reorganized Debtor will continue to market the Philips Highway Property from and after Confirmation and shall be entitled to accept any offer of sale for the Philips Highway Property that it deems in its sole discretion to be the highest and best offer. The first \$1,000,000 of net sale proceeds from sale of the Philips Highway Property shall be deposited in the Claims Reserve, and any excess net sale proceeds over such initial \$1,000,000 threshold shall be paid to Wells Fargo for application first to the ABL Claim and then to the GBG Claim until they shall be paid in full, and then to the Claims Reserve. The sale of the Philips Highway Property is a sale of real estate pursuant to this Plan and shall be exempt from all Taxes, including documentary stamp taxes, pursuant to Bankruptcy Code § 1146(u), irrespective of any sale motion filed with the Bankruptcy Court seeking approval of a sale of the Philips Highway Property.

(c) Equipment Auction

Unless the ABL Claim and the GBG Claim have been previously paid in full, including post-Confirmation interest as to each, the Reorganized Debtor shall conduct the Equipment Auction through Ritchie Bros. Auctioneers at their regularly scheduled February 2012 auction. The Equipment Auction shall include all Wells Fargo Equipment Collateral that has not otherwise been sold or liquidated during the pendency of the Bankruptcy Cases, excepting only those items which in the Reorganized Debtor's reasonable discretion are needed to continue the P&S Business. The Reorganized Debtor shall remit all proceeds from the auction of the Wells Fargo Equipment Collateral, less costs of sale and property taxes, to Wells Fargo for application first to the payment of the ABL Claim and then to the payment of the GBG Claim until they shall be paid in full, and then to the Claims Reserve. Any Wells Fargo Equipment Collateral that remains unsold after the Equipment Auction, except equipment utilized in the operation of the P&S Business, shall be sold at salvage value or as scrap, unless the Reorganized Debtor and Wells Fargo shall agree to any alternative dispositions in order to maximize the value of such collateral. For the purpose of clarity, if prior to the February 2012 Ritchie Bros. auction the ABL Claim and the GBG Claim have been paid in full, including post-Confirmation interest as to each, then participation in the February 2012 auction and the inclusion of any equipment in such auction will be within the Reorganized Debtor's sole and absolute discretion.

Auction collateral will include the collateral of other creditors who elect to include their collateral in the Equipment Auction. Proceeds from the auction of the non-

Wells Fargo collateral, less costs of sale, shall be distributed to the respective creditors whose Claims are secured by such collateral in accordance with the provisions herein, with any surplus being paid to Wells Fargo on account of its Claims until such Claims are paid in full. Each creditor shall provide a release of lien for any piece of collateral sold at the Equipment Auction for which the creditor has received auction proceeds.

(d) Miscellaneous Asset Sales

The Reorganized Debtor will conduct miscellaneous asset sales as necessary to monetize any potential asset of the Estates such as goodwill, net-operating losses, parts, boom, and other miscellaneous assets. Proceeds from any miscellaneous asset sale, less costs of sale, shall be paid over to Wells Fargo for application first to the ABL Claim and then to the GBG Claim until they shall be paid in full, and then to the Claims Reserve.

Section 4.02 Continuation of P&S Business

The Reorganized Debtor shall continue to operate its business of selling cranes and heavy equipment through drop sales and, with the exception of "yard cranes" or the Terex HC110 Crane, S/N AC-4370 leased from PNCEF, shall maintain no inventory of cranes or heavy equipment, and shall continue to operate its service and parts distribution departments in the ordinary course of business post-Confirmation. Wells Fargo shall have a first priority lien on all accounts receivable generated by the P&S Business post-Confirmation until the ABL Claim and the GBG Claim are paid in full. The Reorganized Debtor shall on a regular basis, and no less than monthly, deposit to the Claims Reserve all net profits from the P&S Business up to and until the earlier of (i) payment of all Claims in full or (ii) 12 months following the closing of the sale of the Bellinger Property. Thereafter, the P&S Business shall have no further obligation to fund the Claims Reserve and shall be entitled to operate and retain its profits free and clear of prepetition Claims but subject to the liens granted to Wells Fargo hereunder.

So long as the ABL Claim and the GBG Claim shall remain unpaid, including post-Confirmation interest as to each, the Reorganized Debtor shall provide quarterly reports to Wells Fargo of the financial performance of the P&S Business, to include a profit and loss statement and balance sheet. Such reports shall be provided to Wells Fargo no later than 10 days following the end of each calendar quarter. Wells Fargo shall have the right to audit the business operations of the P&S Business upon reasonable notice.

Section 4.03 Collection of Accounts Receivable

The Reorganized Debtor shall utilize collections of accounts receivable to fund operations of the P&S Business during the marketing period for the Bellinger Property.

Section 4.04 Dell Marine Promissory Note

The Dell Marine Promissory Note bears an annual interest rate of 6.5% and is amortized over two years. All payments under the Dell Marine Promissory Note will be deposited to the Claims Reserve. Wells Fargo shall hold a perfected, first priority lien on

the Dell Marine Promissory Note until the ABL Claim and the GBG Claim are paid in full.

Section 4.05 Lease of the Bellinger Property

The Debtors have entered into a lease with Dell Marine for the non-exclusive use of the Bellinger Property. The lease provides for a term of three years, cancelable by either party upon 120 days' notice, and rental payments of \$5,000 per month, plus applicable sales and use taxes. Other portions of the Bellinger Property will, in accordance with historical practices, be rented to unaffiliated third-parties. Wells Fargo shall continue to have a lien on all rents generated from the Bellinger Property until the ABL Claim and the GBG Claim are paid in full.

Section 4.06 Closing of State of Florida Compromise

The Reorganized Debtor shall be authorized and empowered to close and implement the settlement with the State of Florida as approved and pursuant to the Court's Order Approving Compromise with the Board of Trustees of the Internal Improvement Trust Fund, State of Florida [Docket No. 721].

Section 4.07 Establishment of Tax Reserve

On the Effective Date, the Reorganized Debtor shall establish the Tax Reserve in a segregated, interest-bearing bank account. The Tax Reserve will be utilized solely to pay Taxes imposed on the Bellinger Property coming due during 2011, 2012, and 2013. The Tax Reserve will be funded from Cash on hand and from rental revenue derived from the Bellinger Property pending its sale. Any surplus remaining in the Tax Reserve following payment in full of the ABL Claim and the GBG Claim will be transferred to the Claims Reserve for distribution to creditors in accordance with the priority structure established in the Bankruptcy Code and herein.

Section 4.08 Establishment of Claims Reserve

On the Effective Date, the Reorganized Debtor shall establish the Claims Reserve, in a segregated, interest-bearing bank account, which will be funded by (a) a portion of unrestricted Cash on hand, (b) the net profits from the P&S Business as provided in Section 4.02 of this Plan (c) all proceeds remaining from the sale of the Bellinger Property after the ABL Claim and the GBG Claim have been paid in full, (d) the first \$1,000,000 of net sale proceeds from sale of the Phillips Highway Property, and the excess net sale proceeds over such threshold to the extent they are not applied to payment of the ABL Claim or the GBG Claim, (e) the payments under the Dell Marine Promissory Note, (f) any recovery obtained by the Reorganized Debtor in the Sky Litigation, and (g) proceeds obtained through the prosecution of the Recovery Actions. Wells Fargo shall have a perfected, first priority lien upon the Claims Reserve to secure payment of first the ABL Claim and second the GBG Claim, including post-Confirmation interest as to each.

Until distribution of the Claims Reserve as provided under the Plan, the Claims Reserve Threshold shall be maintained at a minimum funding level of \$1,000,000, provided that in the event of the sale of the Philips Highway Property and the funding to the Claims Reserve of the first \$1,000,000 of net sale proceeds from such sale, the Claims Reserve Threshold shall thereafter be maintained at \$2,000,000.

So long as the ABL Claim and the GBG Claim shall remain unpaid, including post-Confirmation interest as to each, the Reorganized Debtor shall provide to Wells Fargo monthly reports of the detail of cash receipts, an aging report of accounts receivable, detail of changes in balance of and all deposits and withdrawals to and from the Claims Reserve, together with copies of all applicable monthly bank statements for the Claims Reserve and for operations of the P&S Business. Such reports and statements shall be provided to Wells Fargo no later than 10 days following the end of each calendar month.

The Claims Reserve is intended to protect the interests of unsecured creditors and to fully implement the Plan. The Reorganized Debtor shall therefore be entitled to utilize Cash deposited into the Claims Reserve to fund operations, pay administrative expenses, pay expenses associated with the implementation of the Plan, fund on-going environmental remediation and clean-up costs at the Bellinger Property, and pay any Tax coming due with respect to the Philips Highway Property or Bellinger Property, to the extent the Tax Reserve or the Cash in the Reorganized Debtor's operating accounts are insufficient to pay such items.

All funds currently held as "restricted cash" shall, to the extent not utilized to pay Taxes, be transferred to the Claims Reserve free and clear of any claimed security interests in the Claims Reserve except the security interest being granted to Wells Fargo pursuant to Article III of this Plan.

Distributions to holders of Class 13 Allowed Unsecured Claims shall be made on the Effective Date, from the Claims Reserve or as reasonably practicable thereafter in accordance with Section 3.02(k) of this Plan.

Distributions to holders of Class 12 Allowed Unsecured Claims will be made from the Claims Reserve approximately 30 days after such date as the ABL Claim and the GBG Claim and all post-Confirmation interest thereon shall have been paid in full, whether or not such payment occurs upon sale of the Bellinger Property under the terms of the Bellinger Property Trust, and provided that the Claims Reserve is not first applied in whole to the payment of the ABL Claim or the GBG Claim. The Claims Reserve is the only source from which distributions to holders of Allowed Unsecured Claims shall be made.

Section 4.09 Excess Cash Sweep from Claims Reserve

On a quarterly basis, commencing upon the end of the first calendar quarter following the Effective Date, the Reorganized Debtor shall pay over to Wells Fargo, for application to the ABL Claim or the GBG Claim pursuant to Sections 3.03(b) and (c) of

the Plan, all funds on hand in the Claims Reserve in excess of the Claims Reserve Threshold as of the last day of such calendar quarter. Such payments shall be made by the Reorganized Debtor to Wells Fargo no later than 10 days following the end of each calendar quarter.

Section 4.10 Corporate Action

(a) Actions by the Reorganized Debtor

Following the Effective Date, the Reorganized Debtor shall (a) administer this Plan, including without limitation, prosecuting and settling all Recovery Actions and objecting to, or settling, any type or classification of Claims and Interests; (b) collect and convert the assets of the Estates to Cash; (c) make Cash distributions to the holders of Allowed Claims in accordance with the priorities set forth herein; and (d) take such steps as are reasonably necessary to accomplish such purposes, all as more fully provided in, and subject to the terms and provisions herein and the Confirmation Order.

The entry of the Confirmation Order shall constitute authorization for the Reorganized Debtor to take or to cause to be taken all actions necessary or appropriate to consummate and implement the provisions herein prior to, on and after the Effective Date, and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court. All such actions shall be deemed to have occurred and shall be in effect pursuant to applicable non-bankruptcy law and the Bankruptcy Code, without any requirement of further action by the shareholders or directors of the Reorganized Debtor.

(b) Officers and Directors of the Reorganized Debtor

Maxey D. Moody, III, shall serve as the sole officer and director of the Reorganized Debtor during the life of the Plan. On the Effective Date, Maxey D. Moody, III, is authorized and directed to execute and deliver the agreements, documents and instruments contemplated by this Plan in the name and on behalf of the Debtors.

Section 4.11 Preservation of Rights of Action

Except as provided in the Plan or in any contract, instrument, release or other agreement entered into or delivered in connection with the Plan, in accordance with § 1123(b) of the Bankruptcy Code, the Reorganized Debtor will retain and may enforce any claims, demands, rights and causes of action that the Debtors or Estates may hold, including the Recovery Actions, to the extent not expressly released under the Plan. Further, the Reorganized Debtor retains its right to file and pursue any adversary proceedings against any trade creditor or vendor related to debit balances or deposits owed to the Debtors as provided by law.

Section 4.12 Right of Surcharge

Except as provided in Sections 3.03(b) and 3.03(c), the Reorganized Debtor reserves all rights arising under § 506(c) of the Bankruptcy Code to surcharge its secured

creditors or their collateral the reasonable, necessary costs and expenses of preserving, or disposing of, their collateral, including any taxes paid with respect thereto.

Section 4.13 Releases and Exculpation

AS OF THE EFFECTIVE DATE, IN CONSIDERATION FOR THE OBLIGATIONS OF THE DEBTORS AND THE REORGANIZED DEBTOR UNDER THE PLAN, EACH HOLDER OF A CLAIM OR INTEREST WILL BE DEEMED TO FOREVER RELEASE, WAIVE AND DISCHARGE ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEMANDS, DEBTS, RIGHTS, CAUSES OF ACTION AND LIABILITIES (OTHER THAN THE RIGHT TO ENFORCE THE REORGANIZED DEBTOR'S OBLIGATIONS UNDER THE PLAN AND THE CONTRACTS, INSTRUMENTS, RELEASES AND OTHER AGREEMENTS AND DOCUMENTS DELIVERED THEREUNDER), WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THEN EXISTING OR THEREAFTER ARISING IN LAW, EQUITY OR OTHERWISE, THAT ARE BASED IN WHOLE OR IN PART ON ANY ACT, OMISSION, TRANSACTION OR OTHER OCCURRENCE TAKING PLACE ON OR PRIOR TO THE EFFECTIVE DATE IN ANY WAY RELATING TO THE DEBTORS OR THE BANKRUPTCY CASES THAT SUCH ENTITY HAS, HAD OR MAY HAVE AGAINST THE DEBTORS OR ANY OF THEIR RESPECTIVE PRESENT OR FORMER DIRECTORS, OFFICERS, EMPLOYEES, ACCOUNTANTS (INCLUDING INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS), ADVISORS, ATTORNEYS, INVESTMENT BANKERS, UNDERWRITERS, CONSULTANTS OR OTHER REPRESENTATIVES, AGENTS OR SHAREHOLDERS, ACTING IN SUCH CAPACITY (WHICH RELEASE WILL BE IN ADDITION TO THE DISCHARGE OF CLAIMS PROVIDED HEREIN AND UNDER THE CONFIRMATION ORDER AND THE BANKRUPTCY CODE), EXCEPT FOR THOSE CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEMANDS, DEBTS, RIGHTS, CAUSES OF ACTION AND LIABILITIES BASED ON ACTS OR OMISSIONS OF ANY SUCH PERSON CONSTITUTING GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND THE DEBTORS OR ANY OF THEIR RESPECTIVE PRESENT OR FORMER DIRECTORS, OFFICERS, EMPLOYEES, ACCOUNTANTS (INCLUDING INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS), ADVISORS, ATTORNEYS, INVESTMENT BANKERS, UNDERWRITERS, CONSULTANTS OR OTHER REPRESENTATIVES, AGENTS OR SHAREHOLDERS, ACTING IN SUCH CAPACITY, SHALL BE EXCULPATED FROM ANY AND ALL CLAIMS OF ANY KIND ARISING OUT OF OR RELATED TO THE NEGOTIATION AND IMPLEMENTATION OF THIS PLAN; PROVIDED, HOWEVER, THAT NOTHING HEREIN SHALL IMPAIR, LIMIT, OR OTHERWISE AFFECT THE PERSONAL GUARANTIES, WHICH PERSONAL GUARANTIES OBLIGATIONS SHALL REMAIN ENFORCEABLE BY WELLS FARGO ACCORDING TO THEIR TERMS.

Section 4.14 Effectuating Documents; Further Transactions; Exemption from Certain Transfer Taxes

The Confirmation Order shall authorize (a) a sale of certain or substantially all of the Debtors' assets under §§ 365, 1123(b)(4), 1129(b)(2)(A), 1145 and 1146(a) of the Bankruptcy Code, (b) the CEO of the Debtors and the Reorganized Debtor to execute, deliver, file or record such contracts, instruments, releases and other agreements and documents and take such actions as may be necessary, appropriate or desirable to effectuate and implement each provision herein, (c) the Secretary of the Debtors and the Reorganized Debtor to certify or attest to any of the foregoing actions.

Pursuant to § 1146(a) of the Bankruptcy Code, the following will not be subject to a stamp tax, real estate transfer tax, sales or use tax or similar Tax: (a) the sale of the Bellinger Property, (b) the sale of the Philips Highway Property, (c) the creation of any mortgage, deed of trust, lien or other security interest, including the Bellinger Property Trust; (d) the making or assignment of any lease or sublease; or (e) the making or delivery of any deed, bill of sale or other instrument of transfer or assignment or any plan of merger, consolidation, liquidation or dissolution under, in furtherance of or in connection with the Plan.

Section 4.15 Post-petition Financing, Extensions of Credit

Nothing herein or in the Confirmation Order or shall preclude the Reorganized Debtor from entering into post-petition financing agreements or agreements for the extension of credit, *provided, however*, that the repayment of any post-petition financing or extensions of credit shall be subordinate to the repayment obligations imposed under the Plan and Confirmation Order, no liens or encumbrances shall be permitted with respect to the Bellinger Property, and all other liens (excepting *ad valorem* tax liens) shall be expressly junior and subordinate to the liens of Wells Fargo.

Section 4.16 Merger of Certain Debtors – Substantive Consolidation

On the Effective Date each of MMC, SCP and MFM will be merged into M.D. Moody, which, as the surviving corporation, shall perform or cause to be performed, all Plan obligations of the Debtors. Additionally, the Confirmation Order shall authorize the Clerk of the Court to close each of MMC's, SCP's and MFM's Bankruptcy Cases upon the filing of notice of the Effective Date. The merger of MMC, SCP and MFM into M.D. Moody shall terminate such entities' obligations to pay U.S. Trustee Fees and upon the Effective Date no further U.S. Trustee Fees shall be payable or due and owing from MMC, SCP or MFM.

In connection with Confirmation, the Debtors will seek Bankruptcy Court approval of the substantive consolidation of the Debtors for the purpose of implementing this Plan, including for purposes of voting, Confirmation and distributions to be made under the Plan. Pursuant to the relevant order of the Bankruptcy Court: (a) all assets and liabilities of the Debtors will be deemed merged; (b) all guarantees by, or co-obligations of, one Debtor in respect of the obligations of any other Debtor will be deemed

eliminated so that any Claim against any Debtor and any guarantee by, or co-obligation of, any other Debtor and any joint or several liability of any of the Debtors will be deemed to be one obligation of the substantively consolidated Debtors; and (c) each and every Claim filed or to be filed in the Bankruptcy Case of any of the Debtors will be deemed filed against the substantively consolidated Debtors and will be deemed one Claim against and a single obligation of the substantively consolidated Debtors.

This Plan serves as a motion seeking entry of an order substantively consolidating the Debtors. Unless an objection to such substantive consolidation is made in writing by any creditor or claimant affected by the Plan on or before such date as shall be fixed by the Bankruptcy Court, the substantive consolidation order (which may be the Confirmation Order) may be entered by the Bankruptcy Court. If any such objections are timely filed, a hearing with respect thereto will occur at the Confirmation Hearing.

Section 4.17 Dismissal of Debtors'/Wells Fargo's Adversary Proceedings

This Plan shall constitute a settlement, as of the Effective Date, of the Debtors' Adversary Proceeding against Wells Fargo, Adversary Proceeding 3:09-ap-00466-JAF, and Wells Fargo's Adversary Proceeding against the Debtors, Adversary Proceeding 3:11-ap-00336-JAF. The adversary proceedings will thereafter be dismissed upon entry of the Confirmation Order.

Section 4.18 Compromise of Wells Fargo's § 507(b) Claim

Wells Fargo has filed a motion under § 507(b) of the Bankruptcy Code seeking an allowance of "super-priority" Administrative Expense Claim in the approximate amount of \$3,145,100 for an alleged decline in the value of its collateral [Docket No. 885]. Though disputed, the allowance of Wells Fargo's § 507(b) claim could render the Estates administratively insolvent. In compromise of the dispute, and in exchange for Wells Fargo's withdrawal of the § 507(b) motion coincident with the Confirmation of this Plan, and the treatment of the ABL Claim and the GBG Claim as provided under Sections 3.03(b) and 3.03(c) of this Plan, Wells Fargo shall receive upon Confirmation a lien on the funds held in the Claims Reserve to cover any deficiency upon the sale of the Bellinger Property.

ARTICLE V. BELLINGER PROPERTY TRUST

Section 5.01 Preliminary Statement

The ABL Claim and GBG Claim are secured by the Wells Fargo Mortgages. As a material inducement for Wells Fargo's support of this Plan, the Debtors have irrevocably and unconditionally agreed to the immediate sale of the Bellinger Property by an independent third-party if the Reorganized Debtor, acting through the Property Executor or the Reorganized Debtor's manager of the sale process, has not closed and funded the sale of the Bellinger Property before the third anniversary of the Effective Date and to the implementation through this Plan of protective devices under Bankruptcy Code § 105 to prevent the Reorganized Debtor from voluntarily or involuntarily creating any additional

encumbrances on the Bellinger Property or delaying or interfering with such third-party's sale of the Bellinger Property. This Article V, and the Bellinger Property Trust created hereby, implement the Debtors' commitment to Wells Fargo and provide an essential inducement for Wells Fargo's support of this Plan. This Article V and the Bellinger Property Trust created hereby are not intended to, and shall not be construed as, changing or impacting the income tax treatment that would otherwise flow from the Reorganized Debtor's direct sale of the Bellinger Property or the permits and other regulatory and governmental entitlements that currently benefit the Bellinger Property and the Estates.

Section 5.02 Creation of the Bellinger Property Trust

(a) **Creation of Trust.** Upon entry of the Confirmation Order, the Bellinger Property Trust shall be automatically, irrevocably and unconditionally established on behalf of and for the benefit of the Debtors and the Reorganized Debtor as Grantors (referred to sometimes herein collectively as the "Grantors" or the "Beneficiaries"), for the sole and exclusive purpose of holding and conducting the sale of the Bellinger Property, paying in full at the closing on the sale of the Bellinger Property the Debtors' obligations to Wells Fargo under the ABL Claim and the GBG Claim and distributing the remaining sale proceeds (net of closing costs) pursuant to this Article V and the other provisions of this Plan.

(b) **Transfer of Bellinger Property to Bellinger Property Trust.** Upon the entry of the Confirmation Order, the Grantor shall be deemed to have unconditionally and irrevocably granted, conveyed, assigned, transferred and delivered all right, title and interest of the Debtors in and to the Bellinger Property to the Bellinger Property Trust, and the Bellinger Property Trust hereby accepts such transfer and delivery of the Bellinger Property to be held in trust and administered and sold, with the proceeds of sale to be applied as specified in this Article V first for the repayment of the Debtors' obligations to Wells Fargo under the ABL Claim and the GBG Claim. Through this irrevocable and unconditional transfer of all the Debtors' interests in the Bellinger Property, such assets are Bellinger Property Trust assets and the Bellinger Property Trust has the sole and exclusive right, title and interest in and to the Bellinger Property Trust assets and control thereof, subject only to the Reorganized Debtor's and the Property Executor's right and authority to (i) close and implement the settlement with the State of Florida as approved and pursuant to the Bankruptcy Court's Order Approving Compromise with the Board of Trustees of the Internal Improvement Trust Fund, State of Florida [Docket No. 721], (ii) utilize the Bellinger Property in accordance with the license granted pursuant to Article 5.02(e), and (iii) take all such actions as are necessary and appropriate in the Debtors' discretion to communicate, negotiate, or agree with any applicable state or federal regulatory agency and to mitigate or remediate any environmental issues involving the Bellinger Property. The transfer of the Bellinger Property to the Bellinger Property Trust shall be effective upon confirmation of this Plan without the need for any further documentation or other action. Notwithstanding the foregoing, should this Plan be recorded in the public records the grant of trust hereunder shall not be deemed to be a transfer of real property for recording purposes. For the avoidance of doubt, the Wells Fargo Mortgages shall remain in full force and effect and

the transfer of the Bellinger Property to the Bellinger Property Trust shall be expressly subject to the liens and rights of the Wells Fargo Mortgages.

(c) **Intent.** It is the intent of the parties that the Bellinger Property Trust constitute and qualify as a "grantor trust" for federal income tax purposes with the Debtors treated as the Grantors, Beneficiaries and owners of the trust, subject to the obligation to cause the Bellinger Property to be sold with sale proceeds applied for the exclusive benefit of the Grantors first to satisfy the Wells Fargo Mortgages and discharge the Grantor's obligations under the ABL Claim and the GBG Claim in accordance with the provisions of Article V of this Plan, with the balance to be used in accordance with this Article V and the other provisions of this Plan.

(d) **Distribution to Beneficiaries.** In the furtherance of the above stated intent and purposes of the Bellinger Property Trust, upon the sale of the Bellinger Property, the Property Executor (or Trustee if the sale occurs after the third anniversary of the Effective Date) shall distribute the proceeds from the sale of the Bellinger Property, after payment of the Bellinger Property Trust's expenses (including the Trustee's compensation) and costs of sale, as follows:

(i) First, to Wells Fargo, as primary payee and as the holder of the Wells Fargo Mortgages, in the amount necessary to pay in full the ABL Claim and the GBG Claim, including all post-Confirmation interest as to each, outstanding at the time of the distribution (this distribution will be accomplished at closing of the sale of the Bellinger Property in connection with the payoff of the Wells Fargo Mortgages); and thereafter

(ii) Second, to the Reorganized Debtor for further distribution in accordance with the Plan.

(e) **Reorganized Debtor's License to Use Bellinger Property** The Bellinger Property Trust hereby grants the Reorganized Debtor a temporary license to use the Bellinger Property in the ordinary course of the Reorganized Debtor's business consistent with past practices, including the right to lease or sublease portions of the Bellinger Property to third-parties provided that the Reorganized Debtor's license to use the Bellinger Property shall, unless otherwise agreed by the buyer of the Bellinger Property, automatically terminate, and all rights of Reorganized Debtor's lessees shall automatically terminate upon the sale of the Bellinger Property.

The Reorganized Debtor shall pay all insurance, Taxes and other expenses of maintaining the Bellinger Property during the license period provided by this Section 5.02(e) and the Reorganized Debtor shall be entitled to all tax deductions for such expenditures. To the extent the Trustee generates income within the Bellinger Property Trust, the Trustee shall at least annually distribute to the Reorganized Debtor any income realized by the Bellinger Property Trust, excluding proceeds from the sale of the Bellinger Property, which income shall be added to the Claims Reserve and distributed in accordance with the Plan.

(f) **Limited Rights of Reorganized Debtor.** The Reorganized Debtor shall have no claim to or right or interest in, whether direct, residual, contingent or otherwise, to the Bellinger Property, except as expressly stated herein, for those limited purposes set forth in Section 5.02(b), and as a licensee pursuant to Section 5.02(e) above. The Reorganized Debtor's beneficial interest as a beneficiary under the Bellinger Property Trust shall constitute personal property. The Reorganized Debtor shall have no real property ownership interest in the Bellinger Property, and shall have no power or right to convey or encumber any interest in the Bellinger Property; *provided, however,* the Reorganized Debtor may cause the Bellinger Property Trust to (i) sell the Bellinger Property pursuant to Section 5.03(a) of this Plan, which right shall not constitute a real property interest or interest in the Bellinger Property, (ii) execute such instruments as may be necessary to implement and close the settlement with the State of Florida or implement any agreements with state or federal environmental regulatory agencies, as contemplated in Section 5.02(b) above, or (iii) lease or sublease portions of the Bellinger Property in ordinary course of business pursuant to Section 5.02(c). In the event of a post-petition judgment against the Reorganized Debtor, the judgment creditor may only recover from, and may only levy upon, the Reorganized Debtor's personal property interest as a beneficiary, and not from or upon the Bellinger Property, which is a Bellinger Property Trust asset.

(g) **Prohibition Against Subsequent Bankruptcy or Interference with Bellinger Property Trust's Sale of Bellinger Property.**

THE REORGANIZED DEBTOR, AND THE PRESENT OR FORMER OFFICERS, DIRECTORS AND SHAREHOLDERS OF THE REORGANIZED DEBTOR AND ALL ENTITIES THAT HAVE, HOLD OR MAY HOLD CLAIMS AGAINST OR INTEREST IN THE DEBTORS OR THEIR ESTATES AND THEIR TRANSFEREES AND AFFILIATES ARE HEREBY PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING ANY BANKRUPTCY OR OTHER ACTIONS OR OTHER PROCEEDING OF ANY KIND AGAINST THE REORGANIZED DEBTOR, THE BELLINGER PROPERTY TRUST, THE TRUSTEE OR THE BELLINGER PROPERTY OR SEEKING IN ANY WAY TO INTERFERE WITH, HINDER, DELAY, ASSERT CONTROL OVER, OR IMPEDE THE BELLINGER PROPERTY TRUST'S SALE OF THE BELLINGER PROPERTY PURSUANT TO THIS ARTICLE V. THE BANKRUPTCY COURT, IN THE CONTEXT OF THIS BANKRUPTCY CASE, SHALL HAVE AND RETAIN SOLE AND EXCLUSIVE JURISDICTION OVER THE BELLINGER PROPERTY, THE BELLINGER PROPERTY TRUST, THE TRUSTEE AND THE SALE OF THE BELLINGER PROPERTY, AND ANY ACTION OR CAUSE WITH RESPECT THERETO MUST BE BROUGHT SOLELY AND EXCLUSIVELY IN THE BANKRUPTCY COURT IN THIS CASE.

Section 5.03 Sale of Bellinger Property

(a) **Sale within three years following Effective Date.** During the initial three years following the Effective Date, the Property Executor shall have full and complete authority and control the marketing and sale of the Bellinger Property and the

Trustee shall be dormant with respect to the sale during the initial three-year period and shall not have an active role in marketing of the Bellinger Property. At any time prior to the third anniversary of the Effective Date, the Property Executor, as the authorized representative of the Bellinger Property Trust, shall have all the necessary power and authority to sell the Bellinger Property to any buyer identified and/or approved by Property Executor on terms acceptable to the Property Executor, in Property Executor's sole discretion, provided that all the following conditions are satisfied:

(i) Net cash proceeds from the sale are sufficient to pay in full all closing costs, costs of the Bellinger Property Trust including the Trustee's fees, and to pay in full at closing all of the outstanding Reorganized Debtor's debt owed to Wells Fargo on account of the ABL Claim and the GBG Claim, including all post-Confirmation interest as to each;

(ii) The closing occurs before 90 days after the third anniversary of the Effective Date; and

(iii) Wells Fargo receives at closing payment in full, in Cash, of the total outstanding debt owed to Wells Fargo on account of the ABL Claim and the GBG Claim, including all post-Confirmation interest as to each. At the closing of the Sale pursuant to this Section 5.03(a), to the extent required for the conveyance of the Bellinger Property, the Trustee shall execute on behalf of the Bellinger Property Trust such deeds and other instruments of transfer and other documents as may be reasonably requested and Wells Fargo shall execute satisfactions of the Wells Fargo Mortgages and other documents as may be reasonably requested.

(b) **Property Executor's Power and Authority.** Subject to the conditions of any sale in Section 5.03(a) and the other provisions in this Article V, during the initial three years following the Effective Date, the Property Executor is hereby irrevocably and unconditionally granted all power and authority necessary to sell the Bellinger Property on behalf of the Bellinger Property Trust pursuant to this Article V, including, without limitation the following:

(i) To enter into purchase and sale contracts on behalf of the Bellinger Property Trust; and

(ii) To execute and deliver deeds and other closing documents on behalf of the Bellinger Property Trust and to pay closing costs.

(iii) To hire brokers, auctioneers, advertising firms, surveyors, lawyers and other professional to assist with the sale of the Bellinger Property;

(iv) To advertise the sale of the Bellinger Property; and

(v) To take all such further actions and to execute all such further documents and instruments and pay such amounts as the Trustee deems reasonable in order to market and sell the Bellinger Property and distribute the proceeds to the Beneficiaries as provided in the Bellinger Property Trust and this Article V

Subject to compliance with the terms of this Article V, no further authorization or approval of any kind, including without limitation, any Bankruptcy Court approval or approval from or on behalf of the Reorganized Debtor shall be necessary for the Property Executor to sell the Bellinger Property during the initial three-year period following the Effective Date. A purchaser of the Bellinger Property shall be entitled to conclusively rely on the Property Executor's authority to execute deeds and other instruments on behalf of the Bellinger Property Trust and to sell, transfer, deliver and convey title to the Bellinger Property. The Reorganized Debtor shall promptly execute all such instruments and documents as the Property Executor may request, including without limitation quitclaim deeds, to facilitate the Bellinger Property Trust's sale of the Bellinger Property.

(c) Sale of Bellinger Property Following Third Anniversary of Effective Date. If the Property Executor or the Reorganized Debtor shall not have closed the sale of the Bellinger Property before the third anniversary of the Effective Date, the Trustee shall assume active, primary and direct responsibility to market and sell the Bellinger Property, subject to the obligation to close any commercially reasonable contract to sell the Bellinger Property executed prior to the third anniversary of the Effective Date provided such sale will pay in full the outstanding debt owed to Wells Fargo on account of the ABL Claim and the GBC Claim, including all post-Confirmation interest as to each, and the sale will close within 90 days after the third anniversary of the Effective Date without any right of extension. The Trustee shall manage and handle the sale process in the manner that, in the exercise of the Trustee's business judgment, the Trustee believes will maximize the value of the Bellinger Property in a Cash sale within the context of a sale and marketing period of six months or less. The Trustee is given discretion to handle the sale and marketing process in the manner that he believes is best under the circumstances. The Trustee is hereby advised that the goal and objective of the Bellinger Property Trust is for the Trustee to complete his marketing efforts, close the sale, and distribute the proceeds within six months following the third anniversary of the Effective Date. However, consistent with the Trustee's good faith business judgment, the Trustee is permitted to extend the marketing and sale process longer than six months following the third anniversary of the Effective Date upon application of the Bankruptcy Court if the Trustee believes such delay is appropriate under the circumstances. The Trustee is authorized to market and sell the property through an auction, through the use of one or more brokers, or using whatever other methods and strategy as the Trustee deems appropriate under the circumstances.

(d) Trustee's Power and Authority Prior to Third Anniversary of Effective Date. Should the Bellinger Property be sold at the direction of the Reorganized Debtor prior to the third anniversary of the Effective Date, the Trustee is hereby irrevocably and unconditionally granted all power and authority necessary to sell the Bellinger Property on behalf of the Bellinger Property Trust pursuant to this Article V, including, without limitation, the following powers to be exercised in the Trustee's discretion:

(i) To enter into purchase and sale contracts on behalf of the Bellinger Property Trust as directed by the Reorganized Debtor or the Property Executor; and

(ii) To execute and deliver deeds and other closing documents on behalf of the Bellinger Property Trust and to pay closing costs.

(e) **Trustee's Power and Authority Following Third Anniversary of Effective Date.** Should a sale of the Bellinger Property not close within 90 days after the third anniversary of the Effective Date, the Trustee is hereby irrevocably and unconditionally granted all power and authority necessary to market and sell the Bellinger Property on behalf of the Bellinger Property Trust pursuant to this Article V, including, without limitation, the following powers to be exercised in the Trustee's discretion:

(i) To hire brokers, auctioneers, advertising firms, surveyors, lawyers and other professional to assist with the sale of the Bellinger Property;

(ii) To advertise the sale of the Bellinger Property;

(iii) To enter into purchase and sale contracts on behalf of the Bellinger Property Trust;

(iv) To execute and deliver deeds and other closing documents on behalf of the Bellinger Property Trust and to pay closing costs; and

(v) To take all such further actions and to execute all such further documents and instruments and pay such amounts as the Trustee deems reasonable in order to market and sell the Bellinger Property and distribute the proceeds to the Beneficiaries as provided in the Bellinger Property Trust and this Article V.

(f) **Further Authority.** Except as expressly stated in this Article V, no further authorization or approval of any kind, including without limitation, any Bankruptcy Court approval or approval from or on behalf of the Reorganized Debtor shall be necessary for the Trustee to sell the Bellinger Property. A purchaser of the Bellinger Property shall be entitled to conclusively rely on the Trustee's authority to execute deeds and other instruments on behalf of the Bellinger Property Trust and to sell, transfer, deliver and convey title to the Bellinger Property. The Reorganized Debtor shall promptly execute all such instruments and documents as the Trustee may request, including without limitation quit-claim deeds, to facilitate the Bellinger Property Trust's sale of the Bellinger Property.

(g) **Wells Fargo's Right to Credit Bid.** If the Trustee seeks to sell the Bellinger Property by auction or other method pursuant to Section 5.03(c) hereof, and the best price reasonably attainable by the Trustee is less than the cumulative unpaid balances of the ABF Claim and the GBC Claim, including all post-Confirmation interest as to each, Wells Fargo shall have the right to "credit bid" and purchase the Bellinger Property for the highest price offered by a bona fide third party purchaser plus \$10,000, with the purchase price being paid by Wells Fargo by cancellation of such corresponding amount of Wells Fargo's Allowed Claims, provided Wells Fargo shall be required to pay

Cash for a portion of the purchase price equal to the Trustee's costs of sale and the Trustee's compensation and other Bellinger Property Trust expenses.

Section 5.04 Compensation of the Trustee

As compensation for all his services under this Bellinger Property Trust, the Trustee shall be paid according to his standard hourly rate together with reimbursement of all reasonable costs and expenses, upon the Trustee's tender of statements for such charges to the Reorganized Debtor, which shall be paid from the Claims Reserve. During the three years following the Effective Date, the Trustee's compensation, and the compensation of any counsel employed by the Trustee, shall be limited in the aggregate to \$5,000 per quarter, unless the Property Executor, acting in his absolute discretion, may otherwise consent. Any disputes as to the reasonableness of the Trustee's fees shall be resolved by the Bankruptcy Court.

Section 5.05 Income Tax Consequences of the Trust

(a) The Debtors shall be treated as the grantors and deemed owners of the Bellinger Property Trust for tax purposes. The Trust is merely a device, under § 105 of the Bankruptcy Code, to unconditionally and irrevocably guarantee the Bellinger Property is sold and proceeds applied first to repay the Debtors' obligations under the Wells Fargo Mortgages by satisfying the ABL Claim and the GBG Claim as provided in this Plan pursuant to the timetable agreed to by the Debtors and approved by the Bankruptcy Court.

(b) For all federal and state income tax purposes, the transfer of the Bellinger Property to the Bellinger Property Trust pursuant to Section 5.02(b) above shall not constitute a taxable transaction for federal or state income tax purposes since the Debtors are grantors and deemed owners of the Bellinger Property Trust.

(c) All of the Bellinger Property Trust's net income, if any, shall be attributed to Debtors and subject to taxation on a current basis. The Bellinger Property Trust's net income (excluding gain from the sale of the Bellinger Property) shall be allocated to the Reorganized Debtor as licensee and beneficiary of the use of the Bellinger Property.

(d) Upon the sale by the Bellinger Property Trust of the Bellinger Property, such sale shall be treated and reported as if the Debtors sold the Bellinger Property and applied the net sale proceeds to pay closing costs and to repay the Debtors' obligations under the Wells Fargo Mortgages by satisfying the ABL Claim and the GBG Claim. For federal and state income tax purposes, the creation of the Bellinger Property Trust and the transfer of the Bellinger Property to the Bellinger Property Trust shall be disregarded and for all tax purposes the Reorganized Debtor shall be treated as the continuous owner of the Bellinger Property.

Section 5.06 Exemption from Taxes Upon Sale

The sale of the Bellinger Property by the Bellinger Property Trust pursuant to this Article V is a sale of real estate pursuant to this Plan and shall be exempt from all Taxes, including documentary stamp taxes, pursuant to Bankruptcy Code § 1146(a).

Section 5.07 Trustee's Power of Attorney

The Debtors and the Reorganized Debtor hereby unconditionally and irrevocably appoint the Trustee as their attorney-in-fact and grant the Trustee their power of attorney to execute such deeds, bills of sale, instruments of conveyance and other instruments and agreements on behalf of and in the name of the Debtors and the Reorganized Debtor as the Trustee believes are necessary, proper or desirable to further evidence, document or facilitate the transfer of the Bellinger Property to the Bellinger Property Trust and/or the Bellinger Property Trust's sale of the Bellinger Property pursuant to the Bellinger Property Trust and this Article V of this Plan. This appointment and power of attorney is coupled with an interest and therefore irrevocable.

Section 5.08 Termination of Trust

This Bellinger Property Trust shall terminate upon the first to occur of the following:

(a) The Reorganized Debtor's payment in full in Cash of the ABL Claim and the GBG Claim and all post-Confirmation interest thereon (for the avoidance of doubt, the Reorganized Debtor may arrange for the refinancing of the Bellinger Property to repay Wells Fargo, and therefore terminate the Bellinger Property Trust) upon which the Bellinger Property shall be reversioned in the Reorganized Debtor; or

(b) The Bellinger Property Trust's sale of the Bellinger Property, payment in full of all costs of sale and expenses of the Bellinger Property Trust, and the distribution of the sale proceeds in accordance with this Article V and the other provisions of this Plan.

Section 5.09 Concerning the Trustee

(a) **Discretionary Submission of Questions to the Bankruptcy Court.** The Trustee, in his discretion and judgment may submit to the Bankruptcy Court any question or questions regarding which the Trustee may desire to have explicit approval of the Bankruptcy Court for the taking of any specific action proposed to be taken by the Trustee with respect to the Bellinger Property, or any part hereof, or the administration and distribution of the Bellinger Property Trust. The Bankruptcy Court shall approve or disapprove any such proposed action after motion and hearing. Any such proposed action submitted to the Bankruptcy Court for approval will be approved by the Bankruptcy Court if no Beneficiary objects to such motion within the time specified by the applicable Bankruptcy Rule. If a Beneficiary objects to such action by the Trustee, the Bankruptcy Court shall approve or disapprove such action after hearing. Upon approval of a proposed action by the Bankruptcy Court by Final Order, the Trustee shall

be authorized to take the proposed action without liability with respect thereto. If such action is not approved by the Bankruptcy Court, the Trustee shall not take such action. All costs and expenses incurred by the Trustee in the exercise of an right, power or authority conferred by this Section 5.09(a) shall be costs and expenses of the Bellinger Property Trust. Any party desiring notice of matters submitted to the Bankruptcy Court must send the Trustee a written request for notice of post-Confirmation pleadings. For the avoidance of doubt, the Trustee, in his discretion, is authorized to sell the Bellinger Property without seeking Bankruptcy Court approval.

(b) **Limitation on Liability.** No provision of this Agreement shall be construed to impart any liability upon the Trustee unless it shall be proved in a court of competent jurisdiction that the Trustee's actions or omissions constituted gross negligence or willful misconduct in the exercise of or failure to exercise any right, power or duty vested in him under the Bellinger Property Trust. The Trustee shall have no personal liability for any of the rights, obligations, duties, or liabilities of the Reorganized Debtor, Property Executor or the Bellinger Property Trust.

(c) **Reliance on Orders, Statements, Certificates or Opinions.** In the absence of gross negligence or willful misconduct on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and correctness of the opinions expressed therein, upon any orders, statements, certificates or opinions furnished to the Trustee and conforming to the requirements of the Bellinger Property Trust.

(d) **Reliance Upon Written Consent of Beneficiaries.** The Trustee may conclusively rely upon any authorization or consent signed by the Beneficiaries and Wells Fargo.

(e) **Discretion of Trustee.** Within the limitations and restrictions expressed and imposed herein and in the Plan, the Trustee may act freely with respect to the exercise of any or all of the rights, powers, and authority conferred hereby in all matters concerning the Bellinger Property Trust after forming his best judgment based upon the circumstances without the necessity of obtaining the consent or permission or authorization of the Beneficiaries or of the Bankruptcy Court, any other court, official, or officer. The rights, powers and authority conferred on the Trustee by this Bellinger Property Trust are conferred in contemplation of such freedom of prudent judgment and action by the Trustee, within the limitations and restrictions so expressed and imposed. Further, the Trustee shall not be liable for any act or omission in connection with the administration of this Article V, or the exercising of any right, power or authority conferred upon him hereunder, unless it shall be proved that such Trustee was grossly negligent or acted in a manner which constituted willful misconduct.

(f) **Delegation of Duties.** The Trustee may engage the services of and delegate such of his powers and duties (but not any of his responsibilities), upon such terms and conditions as are satisfactory to the Trustee, to such employees, agents, attorneys, accountants, appraisers, consultants, custodians and other persons as he may deem necessary or advisable to carry out the purposes of this Article V.

(g) **Retention and Payment of Professionals.** The Trustee may, subject to the limits on compensation set forth in Section 5.04 above, consult with legal counsel and with such public accountants and other professionals as may be retained by the Trustee from time to time. The Trustee shall not be liable for any action taken or suffered by him or omitted to be taken by him without gross negligence or willful misconduct in reliance on the advice of such counsel or experts.

Section 5.10 Miscellaneous

(a) **Bankruptcy Court Retains Sole and Exclusive Jurisdiction.** The Bellinger Property Trust is established pursuant to the Bankruptcy Court's authority under Bankruptcy Code § 105. The Bankruptcy Court, in the context of the Bankruptcy Cases, shall retain sole and exclusive jurisdiction over the Bellinger Property Trust, the Trustee and the Bellinger Property and any and all claims or causes of actions related thereto must be brought only in such case.

(b) **Bond.** The Trustee shall not be required to post a bond.

(c) **Successors and Assigns.** This Article V shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

(d) **No Execution.** The Bellinger Property and all funds in the Bellinger Property Trust shall be deemed *in custodia legis* until such times as the funds have actually been paid to or for the benefit of a Beneficiary, and no Beneficiary or any other person can execute upon, garnish or attach the Bellinger Property Trust assets or the Trustee in any manner or compel payment from the Bellinger Property Trust except by Final Order of the Bankruptcy Court. Payments will be solely governed by the Plan and this Bellinger Property Trust.

(e) **Amendment.** This Article V may be amended only by Final Order of the Bankruptcy Court with the signed consent of Wells Fargo and the Debtors, and after the Effective Date, the Reorganized Debtor.

(f) **Severability.** If any term, provision, covenant or restriction contained in this Article is held to be invalid, void, unenforceable or against its regulatory policy, the remainder of the terms, provisions, covenants and restrictions contained in this Article V shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

(g) **Florida Business Corporation Act § 607.0732.** The Debtors are Florida corporations with less than 100 shareholders and therefore subject to Florida Business Corporation Act, § 607.0732. By Confirmation of this Plan, the shareholders of the Debtors are irrevocably and unconditionally deemed to have agreed and consented to all provisions of this Plan as if set forth in a Shareholder Agreement signed by all shareholders and shall further agree that the Debtors' and the Reorganized Debtor's governing documentation, including the Articles and Bylaws, as hereby irrevocably amended to provide the following:

(i) The Trustee is authorized to sell the Bellinger Property in accordance with the terms of the Plan without any further action or approval by the Debtors, the Reorganized Debtor, or their shareholders;

(ii) The Trustee shall have authority in accordance with the terms of the Plan to authorize, execute and deliver on behalf of the Debtors and the Reorganized Debtor all instruments the Trustee deems necessary or desirable to sell the Bellinger Property pursuant to the terms of the Bellinger Property Trust without any further action on behalf of the Debtors or the Reorganized Debtor;

(iii) The Debtors and the Reorganized Debtor shall not file bankruptcy or institute or pursue any action, lawsuit or proceeding with the intent or effect of interfering with, hindering or delaying the Trustee's sale of the Bellinger Property in accordance with the terms of the Plan.

(iv) The Debtors' and the Reorganized Debtor's governing corporate documentation shall not be modified, amended or terminated with respect to the foregoing unless and until the Reorganized Debtor has repaid in full the ABL Claim and the GBC Claim, including all post-Confirmation interest as to each.

ARTICLE VI. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Section 6.01 Executory Contracts or Unexpired Leases

On the Effective Date, each Executory Contract or Unexpired Lease that has not previously expired or terminated pursuant to its own terms will be rejected pursuant to § 365 of the Bankruptcy Code. The Confirmation Order will constitute an order of the Bankruptcy Court approving such rejections, pursuant to § 365 of the Bankruptcy Code, as of the Effective Date, *provided, however*, that the Reorganized Debtor, in its sole discretion may extend the rejection date for any Executory Contract or Unexpired Lease upon written notice to a counterparty on or before the Effective Date.

Section 6.02 Bar Date for Rejection Damages

Notwithstanding anything to the contrary in the Bar Date Order, if the rejection of an Executory Contract or Unexpired Lease gives rise to a Claim, such Claim will be forever barred and will not be enforceable against the Debtors, their successors or their property unless a proof of Claim or request for payment of Administrative Claim is filed and served on the Debtors.

Section 6.03 Obligations to Indemnify Directors, Officers and Employees

The obligations of the Debtors to indemnify any person who was serving as one of their directors, officers or employees as of the Petition Date by reason of such person's prior or future service in such a capacity or as a director, officer or employee of another

corporation, partnership or other legal entity, to the extent provided in the applicable certificates of incorporation or bylaws, by statutory law or by written agreement, policies or procedures of or with the Debtors, will be deemed and treated as executory contracts that are assumed by the Reorganized Debtor pursuant to the Plan and § 365 of the Bankruptcy Code. Accordingly, such indemnification obligations will survive and be unaffected by entry of the Confirmation Order, irrespective of whether such indemnification is owed for an act or event occurring before, on, or after the Petition Date.

ARTICLE VII. PROVISIONS GOVERNING DISTRIBUTIONS

Section 7.01 Distributions for Claims

Within 30 days following the sale of the Bellinger Property, or as promptly thereafter as is practicable, the Reorganized Debtor will begin making distributions to holders of Allowed Class 12 Claims from funds remaining in the Claims Reserve, to the extent the Claims Reserve is not applied in whole to payment of the ABL Claim and the CBG Claim, including all post-Confirmation interest as to each. The amount of such distributions will be calculated as if each then-unresolved Disputed Claim in Class 12 were an Allowed Claim in its Face Amount after all costs of post-confirmation operations and Plan administration have been paid in full.

Section 7.02 Right of Prepayment

The Reorganized Debtor expressly reserves the right to prepay, in full or in part, any obligation created pursuant to the Plan. No fees or other charges shall be charged to the Reorganized Debtor as a result of any such prepayment.

Section 7.03 Undeliverable Distributions

If any distribution to a holder of an Allowed Claim is returned to the Reorganized Debtor as undeliverable, then unless and until the Reorganized Debtor is notified in writing of such holder's then-current address, no further attempt will be made to deliver such distribution. Any holder of an Allowed Claim that does not assert a claim for an undeliverable distribution by delivering to the Reorganized Debtor a written notice setting forth such holder's then-current address within the third anniversary of the Effective Date will have its claim for such undeliverable distribution discharged. Distribution returned as undeliverable will be returned to the Claims Reserve and available for redistribution, and will be forever barred from asserting any such claim against the Reorganized Debtor or its property.

Section 7.04 Non-Negotiated Check

If a holder of an Allowed Claim or Allowed Interest fails to negotiate a check issued to such holder pursuant to this Plan within six months of the date such check was

issued, then the amount of Cash attributable to such check shall be deemed to be unclaimed property in respect of such holder's Allowed Claim and shall be transferred and delivered to the Reorganized Debtor to be applied toward the funding of this Plan. In such event, such holder's Claim shall no longer be deemed to be Allowed and such holder shall be deemed to have waived its rights to such payments or distributions under this Plan pursuant to § 1143 of the Bankruptcy Code and shall have no further Claim in respect of such distribution and shall not participate in any further distributions under this Plan with respect to such Claim.

Section 7.05 Distribution Record Date

The Reorganized Debtor will have no obligation to recognize the transfer of, or the sale of any participation in, any Allowed Claim that occurs after the Distribution Record Date and will be entitled for all purposes herein to recognize and make distributions only to those holders of Allowed Claims and Allowed Interests that are holders of such Claims or Interests, or participants therein, as of the Distribution Record Date.

Except as otherwise provided in a Final Order of the Bankruptcy Court, the transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 prior to the Distribution Record Date will be treated as the holders of such Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to such transfer has not expired by the Distribution Record Date.

Section 7.06 Compliance with Tax Requirements

To the extent applicable, the Reorganized Debtor will comply with all Tax withholding and reporting requirements imposed by any governmental unit, and all distributions pursuant to the Plan will be subject to such withholding and reporting requirements. The Reorganized Debtor will be authorized to take any actions that they determine, in their reasonable discretion, to be necessary, appropriate or desirable to comply with such withholding and reporting requirements; *provided, however*, that, notwithstanding the foregoing or any other provision herein, each entity receiving a distribution pursuant to the Plan will have sole and exclusive responsibility for the satisfaction and payment of any Tax obligations imposed on it by any governmental unit on account of such distribution, including withholding obligations.

Section 7.07 Setoffs

Except with respect to Claims of the Reorganized Debtor released pursuant to the Plan or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the Reorganized Debtor may, pursuant to § 553 of the Bankruptcy Code or applicable non-bankruptcy law, setoff against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Claim (before any distribution is made on account of such Claim) the claims, rights and causes of action of any nature that the Reorganized Debtor may hold against the holder of such Allowed Claim; *provided, however*, that neither the failure to effect a setoff nor the

allowance of any Claim hereunder will constitute a waiver or release by the Reorganized Debtor of any Claims, rights and causes of action that the Reorganized Debtor may possess against such a Claim holder, which are preserved under the Plan.

ARTICLE VIII. PROCEDURES FOR RESOLVING DISPUTED CLAIMS

Section 8.01 Prosecution of Objections to Claims

All objections to Claims must be filed and served on the holders of such Claims by the Claims Objection Bar Date, as may be extended from time to time, and, if filed prior to the Effective Date, such objections will be served on the parties on the then-applicable service list in the Bankruptcy Cases. If an objection has not been filed to a proof of Claim or a scheduled Claim by the Claims Objection Bar Date, the Claim to which the proof of Claim or scheduled Claim relates will be treated as an Allowed Claim if such Claim has not been allowed earlier.

Section 8.02 Treatment of Disputed Claims

Except as otherwise provided herein, no payments or distributions will be made on account of a Disputed Claim until such Claim becomes an Allowed Claim, if ever, except that the undisputed portion of a Disputed Claim may be paid in the discretion of the Reorganized Debtor if the disputed portion is less than 15% of the total claim. The Reorganized Debtor will make all distributions on account of any Disputed Claim that has become an Allowed Claim as promptly thereafter as practicable from the Claims Reserve.

Section 8.03 Claims Estimation

After the Confirmation Date, the Reorganized Debtor may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim pursuant to applicable law and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, § 502(c) of the Bankruptcy Code, regardless of whether the Reorganized Debtor have previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or during the pendency of any appeal relating to any such objection. Notwithstanding any provision otherwise in the Plan, a Claim that has been expunged from the Claims Register but that is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. If the Bankruptcy Court estimates any Disputed Claim, contingent Claim or unliquidated Claim, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim for all purposes under the Plan, including for purposes of distributions, and the Reorganized Debtor may elect to pursue additional objections to the ultimate distribution on such Claim. If the estimated amount

constitutes a maximum limitation on such Claim, the Reorganized Debtor may elect to pursue any supplemental proceedings to object to any ultimate distribution on account of such Claim. Notwithstanding § 502(j) of the Bankruptcy Code, in no event shall any holder of a Claim that has been estimated pursuant to § 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such holder has filed a motion requesting the right to seek such reconsideration on or before 20 days after the date on which such Claim is estimated. All of the aforementioned Claims and objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

Section 8.04 Settlement of Claims, Disputes and Litigation

All Claims must be filed against the Debtors on or before the Effective Date and any such late filed Claim is expressly disallowed. After the Confirmation Date, the Reorganized Debtor is authorized to resolve or settle any Claim objection, adversary proceeding, contested matter, or pending litigation, in its sole discretion, without further notice and without the necessity of obtaining Bankruptcy Court approval. All of the aforementioned Claims and objection, estimation and resolution procedures are cumulative and not exclusive of one another.

Section 8.05 Expungement or Adjustment to Claims without Objection

Any Claim that has been paid, satisfied or superseded may be expunged on the Claims register, and any Claim that has been amended may be adjusted thereon, in both cases without an objection having to be filed and without any further notice to or action, order or approval of the Bankruptcy Court.

Section 8.06 Claims Paid by Third Parties

The Reorganized Debtor shall reduce in full a Claim, and such Claim shall be disallowed without an objection to such Claim having to be filed and without further notice to, action, order, or approval of the Bankruptcy Court, to the extent the holder of such Claim receives payment on account of such Claim from a party that is not a Debtor. Further, to the extent a holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor on account of such Claim, such holder shall, within two weeks of receipt thereof, repay or return the distribution, to the extent the holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan. The failure of such holder to timely repay or return such distribution shall result in the holder owing annualized interest at the federal judgment rate on such amount owed for each Business Day after the two-week grace period specified above until such amount is repaid.

An entity, including any insider of the Reorganized Debtor, that is liable with the Reorganized Debtor on, or that has secured, a Claim of a creditor against the Reorganized Debtor, and that pays such Claim, shall be subrogated to the rights of such creditor to the extent of such payment in accordance with the provisions of § 509 of the Bankruptcy Code.

Section 8.07 Claims Payable by Insurance

Holders of Claims that are covered by the Reorganized Debtor's insurance policies shall seek payment of such Claims from applicable insurance policies, provided that the Reorganized Debtor shall have no obligation to pay any amounts in respect of prepetition deductibles or self-insured retention amounts. No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Reorganized Debtor's insurance policies until the holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Reorganized Debtor's insurers agrees to satisfy in full a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, such Claim may be expunged to the extent of any agreed upon satisfaction on the Claims register without a Claims objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

EXCEPT AS OTHERWISE AGREED, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE APPLICABLE CLAIMS BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE FILED PROOF OF CLAIM IS DEEMED TIMELY FILED BY A BANKRUPTCY COURT ORDER ON OR BEFORE THE LATER OF (a) THE CONFIRMATION HEARING AND (b) 45 DAYS AFTER THE APPLICABLE BAR DATE.

**ARTICLE IX.
CONDITIONS PRECEDENT TO
CONFIRMATION AND CONSUMMATION OF THE PLAN**

Section 9.01 Conditions to the Effective Date

The Effective Date will not occur and the Plan will not be consummated unless and until the Confirmation Order shall have become a Final Order. The Reorganized Debtor shall file written notice of the Effective Date with the Bankruptcy Court.

**ARTICLE X.
CRAMDOWN**

Section 10.01 Nonconsensual Confirmation

The Debtors request Confirmation under § 1129(b) of the Bankruptcy Code with respect to: (a) any impaired Class that does not accept the Plan pursuant to § 1126 of the Bankruptcy Code; and (b) any Class that is deemed to have not accepted the Plan pursuant to § 1126(g) of the Bankruptcy Code. The Debtors reserve the right to modify the Plan to the extent, if any, that Confirmation pursuant to § 1129(b) of the Bankruptcy Code requires modification.

**ARTICLE XI.
DISCHARGE, TERMINATION AND INJUNCTION**

Section 11.01 Discharge of Claims

Except as provided in the Plan or the Confirmation Order, the rights afforded under the Plan and the treatment of Claims under the Plan will be in exchange for and in complete satisfaction, discharge and release of all Claims arising on or before the Effective Date, including any interest accrued on Claims from the Petition Date. Except as provided in the Plan or, in the Confirmation Order, Confirmation will discharge the Reorganized Debtor from all Claims or other debts that arose on or before the Effective Date, and all debts of the kind specified in §§ 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not (a) a proof of Claim based on such debt is filed or deemed filed pursuant to § 501 of the Bankruptcy Code, (b) a Claim based on such debt is allowed pursuant to § 502 of the Bankruptcy Code, or (c) the holder of a Claim based on such debt has accepted the Plan.

In accordance with the foregoing, except as provided in the Plan or the Confirmation Order, the Confirmation Order will be a judicial determination, as of the Effective Date, of a discharge of all Claims and other debts and liabilities against the Reorganized Debtor, pursuant to §§ 524 and 1141 of the Bankruptcy Code, and such discharge will void any judgment obtained against the Reorganized Debtor at any time, to the extent that such judgment relates to a discharged Claim.

Section 11.02 Injunction

All entities that have held, currently hold or may hold a Claim or other debt or liability of the Reorganized Debtor, or an interest or other right of an equity security holder with respect to the Reorganized Debtor are permanently enjoined from taking any of the following actions on account of any such Claims, debts, liabilities, interests or rights: (a) commencing or continuing in any manner any action or other proceeding against the Reorganized Debtor or its property, other than to enforce any right pursuant to the Plan to a distribution; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Reorganized Debtor or its property.

other than as permitted pursuant to (a) above; (c) creating, perfecting or enforcing any lien or encumbrance of any kind against the Reorganized Debtor or its property; (d) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to the Reorganized Debtor; and (e) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the Plan. Nothing herein is intended to bar an appeal of the Confirmation Order. Nothing herein shall modify, limit, impair, or otherwise effect the terms of or the enforceability of the Wells Fargo Mortgages, which shall remain in full force and effect to secure repayment of the ABL Claim and the GBG Claim, including all post-Confirmation interest as to each.

Section 11.03 Personal Guaranties

Wells Fargo shall retain its liens securing the GBG Claim and the Personal Guaranties shall remain in full force and effect until the GBG Claim is paid in full, including all post-Confirmation interest thereon.

ARTICLE XII. RETENTION OF JURISDICTION

Section 12.01 Retention of Jurisdiction

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court will retain such jurisdiction over the Bankruptcy Cases after the Effective Date as is legally permissible, including jurisdiction over the matters identified below:

(a) allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim, the resolution of any objections to the allowance, priority or classification of Claims or Interests;

(b) grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan for periods ending on or before the Effective Date;

(c) resolve any matters related to any Executory Contract or Unexpired Lease to which any Debtor is a party or with respect to which the Reorganized Debtor may be liable and to hear, determine and, if necessary, liquidate any Claims arising therefrom;

(d) ensure that distributions to holders of Allowed Claims and Allowed Interests are accomplished pursuant to the Plan;

(e) decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving the Reorganized Debtor that may be pending on the Effective Date or brought thereafter.

(f) enter such orders as may be necessary or appropriate to implement or consummate each provision herein and all contracts, instruments, releases and other agreements or documents entered into or delivered in connection with the Plan, the Disclosure Statement or the Confirmation Order;

(g) resolve any cases, controversies, suits or disputes that may arise in connection with the Recovery Actions or the consummation, interpretation or enforcement herein or any contract, instrument, release or other agreement or document that is entered into or delivered pursuant to the Plan or any entity's rights arising from or obligations incurred in connection with the Plan or such documents;

(h) modify the Plan before or after the Effective Date pursuant to § 1127 of the Bankruptcy Code; modify the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the Disclosure Statement or the Confirmation Order; or remedy any defect or omission or reconcile any inconsistency in the Plan, the Disclosure Statement, any Bankruptcy Court order, the Confirmation Order or any contract, instrument, release or other agreement or document entered into, delivered or created in connection with the Plan, the Disclosure Statement or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan;

(i) issue injunctions, enforce the injunctions contained in the Plan and the Confirmation Order, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation, implementation or enforcement herein or the Confirmation Order;

(j) enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason or in any respect modified, stayed, reversed, revoked or vacated or distributions pursuant to the Plan are enjoined or stayed;

(k) determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the Disclosure Statement or the Confirmation Order, including whether a material default in connection therewith has occurred;

(l) enter a final decree closing the Bankruptcy Cases; and

(m) determine matters concerning state, local and federal Taxes in accordance with §§ 346, 505 and 1146 of the Bankruptcy Code, including any Disputed Claims for Taxes.

Section 12.02 Abstention and Other Courts

If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising out of or relating to the Chapter 11 Cases, Section 12.01 herein shall have no effect upon and shall not

control, prohibit, or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

**ARTICLE XIII.
MISCELLANEOUS PROVISIONS**

Section 13.01 Limitation of Liability

THE DEBTORS AND THEIR DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, PREDECESSORS, SUCCESSORS, ASSIGNS AND PROFESSIONALS, ACTING IN SUCH CAPACITY WILL NEITHER HAVE NOR INCUR ANY LIABILITY TO ANY ENTITY FOR ANY ACT TAKEN OR OMITTED TO BE TAKEN IN CONNECTION WITH OR RELATED TO THE NEGOTIATION, FORMULATION, PREPARATION, DISSEMINATION, IMPLEMENTATION, CONFIRMATION OR CONSUMMATION HEREIN, THE DISCLOSURE STATEMENT OR ANY CONTRACT, INSTRUMENT, RELEASE OR OTHER AGREEMENT OR DOCUMENT CREATED OR ENTERED INTO, OR ANY OTHER ACT TAKEN OR OMITTED TO BE TAKEN, IN CONNECTION WITH THE PLAN, INCLUDING THAT CERTAIN SETTLEMENT OPTION AGREEMENT AMONG MAXEY D. MOODY, JUDITH MOODY AND WELLS FARGO AND ANY AGREEMENT ENTERED INTO IN CONNECTION THEREWITH; *PROVIDED, HOWEVER*, THAT THE FOREGOING PROVISIONS OF THIS SECTION 13.01 WILL HAVE NO EFFECT ON (A) THE LIABILITY OF ANY ENTITY THAT WOULD OTHERWISE RESULT FROM THE FAILURE TO PERFORM OR PAY ANY OBLIGATION OR LIABILITY UNDER THE PLAN OR ANY CONTRACT, INSTRUMENT, RELEASE OR OTHER AGREEMENT OR DOCUMENT TO BE ENTERED INTO OR DELIVERED IN CONNECTION WITH THE PLAN OR (B) THE LIABILITY OF ANY ENTITY THAT WOULD OTHERWISE RESULT FROM ANY SUCH ACT OR OMISSION TO THE EXTENT THAT SUCH ACT OR OMISSION IS DETERMINED IN A FINAL ORDER TO HAVE CONSTITUTED GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. NEITHER MAXEY D. MOODY NOR JUDITH MOODY SHALL INCUR LIABILITY TO THE ESTATE OR ANY CREDITOR THEREOF ON ACCOUNT OF THEIR PARTICIPATION IN THE DISTRIBUTIONS BEING MADE ON ACCOUNT OF THE GBG CLAIM BY VIRTUE OF THE SETTLEMENT OPTION AGREEMENT.

Section 13.02 Modification of the Plan

Subject to the restrictions on modifications set forth in § 1127 of the Bankruptcy Code, the Reorganized Debtor reserve the right to alter, amend or modify the Plan before its substantial consummation.

Section 13.03 Severability of Plan Provisions

If, prior to Confirmation, any term or provision herein is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision then will be applicable as altered or interpreted; *provided, however*, that any such alteration or interpretation must be in form and substance acceptable to the Reorganized Debtor and the person or entity directly affected by such provision. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions herein will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision herein, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable.

Section 13.04 Exhibits

All Exhibits to the Plan are incorporated by reference and are intended to be an integral part of this document as though fully set forth in the Plan.

Section 13.05 Successors and Assigns

The rights, benefits and obligations of any entity named or referred to in the Plan will be binding on, and will inure to the benefit of, any heir, executor, administrator, successor or assign of such entity.

Section 13.06 No Post-Petition Interest

Except as expressly stated in this Plan or otherwise allowed by Final Order of the Bankruptcy Court, no interest, penalties, late charges, attorney fees, or costs arising after the Petition Date are to be allowed on any Claim.

Section 13.07 No Attorneys' Fees

No attorneys' fees or Professional Fee Claim shall be paid with respect to any Claim or Interest except as specified herein or as Allowed by a Final Order of the Bankruptcy Court upon motion filed prior to the Confirmation Date.

Section 13.08 Reporting Requirements

Irrespective of any contractual provisions to the contrary, upon the Effective Date the Reorganized Debtor shall be required to make only such disclosures and reports to creditors as directed under the Bankruptcy Code and Bankruptcy Rules; *provided, however*, that the Reorganized Debtor will continue to comply with reporting obligations to Wells Fargo until completion of the Equipment Auction and the remittance to Wells Fargo of auction proceeds in accordance with Section 4.01(c) of the Plan, and shall provide such reports as are required under Sections 4.02 and 4.08 of the Plan until the

ABL Claim and the GBG Claim, including all post-Confirmation interest as to each, shall each have been paid in full.

Section 13.09 Default by the Reorganized Debtor

All payments required hereunder shall have an automatic grace period from payment of 10 days. A default by the Reorganized Debtor occurs only when a breach of the terms of this Plan is not cured within 30 days of the receipt by the Reorganized Debtor of notice of such breach delivered after the expiration of the grace period. The notice must be written and from the party affected by the breach. A breach that is not timely cured shall be a default under the Plan. Unless the Reorganized Debtor has materially defaulted under the Plan, no Person may proceed with litigation against the Reorganized Debtor or its shareholders; provided, however, that nothing herein shall limit or impair the pursuit by Wells Fargo of its rights and remedies under the Personal Guaranties.

Section 13.10 Release from Financial Covenants

The terms and provisions of the Plan supersede any conflicting term or provision arising under any prepetition contract or agreement of the Debtors or the Reorganized Debtor. The Reorganized Debtor shall be released from all financial covenants and provisions concerning non-monetary defaults arising under (a) any loan documents, (b) any order issued by the Bankruptcy Court prior to Confirmation, or (c) any other agreement, document or contract to which any Debtor is a party.

Section 13.11 Employment of Professionals

After Confirmation, the Reorganized Debtor is authorized to employ such Professionals as it deems appropriate and to compensate them without the further approval of the Bankruptcy Court.

Section 13.12 Costs of Enforcement

In the event the Reorganized Debtor is required to initiate litigation or a contested proceeding to enforce the provisions of this Plan against any holder of a Claim, the Reorganized Debtor shall be entitled to recover from such creditor all reasonable attorney fees and costs incurred in such effort, including appellate fees and costs.

Section 13.13 Closing of the Debtors' Chapter 11 Cases

The Confirmation Order shall authorize the closing of MMC's, SCP's and MFM's Bankruptcy Cases following their merger into M.D. Moody in accordance with Section 4.15 herein and the filing of notice of the Effective Date.

When all Disputed Claims filed against the Debtors have become Allowed Claims or have been disallowed by Final Order, all assets have been liquidated and the proceeds thereof distributed in accordance with the terms herein, and all other actions required to be taken under the Plan have been taken, the Reorganized Debtor shall seek authority

from the Bankruptcy Court to close its Bankruptcy Case in accordance with the Bankruptcy Code and the Bankruptcy Rules.

Section 13.14 Exemption from Taxation

The Confirmation Order shall authorize a sale of certain or substantially all of the Reorganized Debtor's assets under §§ 363, 1123(b)(4), 1129(b)(2)(A), 1145 and 1146(a) of the Bankruptcy Code, and the making or delivery of any instrument of transfer pursuant to, in implementation of, or as contemplated by this Plan, or the revesting, transfer, or sale of any real or personal property of the Reorganized Debtor pursuant to, in implementation of, or as contemplated by this Plan, shall not be taxed under any state or local law imposing a stamp tax, transfer tax, or similar tax or fee.

Section 13.15 Service of Documents

Any pleading, notice or other document required by the Plan or Confirmation Order to be served on or delivered to the Reorganized Debtor must be sent by overnight delivery service, facsimile transmission, courier service or messenger to:

Maxey D. Moody, III, CEO
M.D. Moody & Sons, Inc.
4652 Philips Highway
Jacksonville, Florida 32207

Richard R. Thames, Esq.
Stutsman Thames & Markey, P.A.
50 North Laura Street, Suite 1600
Jacksonville, Florida 32202

M.D. MOODY & SONS, INC.

By: Maxey D. Moody
Name: Maxey D. Moody
Its: CEO

MOODY MACHINERY CORPORATION

By: Maxey D. Moody
Name: Maxey D. Moody
Its: PRESIDENT

SOUTHEAST CRANE PARTS, INC.

By: Maxey D. Moody
Name: Maxey D. Moody
Its: PRESIDENT

MOODY FABRICATION & MACHINE, INC.

By: *Wayne D. Moody*
Name: Wayne D. Moody
Its: President

STUTSMAN THAMES & MARKEY, P.A.

By: */s/ Richard R. Thames*
Richard R. Thames
Eric N. McKay

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Attorneys for M.D. Moody & Sons, Inc., Moody
Machinery Corporation, Southeast Crane Parts,
Inc. and Moody Fabrication & Machine, Inc.

Exhibit 3.02(g)

Settlement Agreement with Hyundai

SETTLEMENT AGREEMENT

This settlement agreement (the "Settlement Agreement"), dated as of October 1, 2011, is made by and among M.D. Moody & Sons, Inc. ("M.D. Moody") and Hyundai Construction Equipment Americas, Inc. d/b/a Hyundai Construction Equipment U.S.A. Inc. ("Hyundai").

RECITALS

- A. In 1993, M.D. Moody and Hyundai entered into a Distribution Agreement that required M.D. Moody to serve as a non-exclusive distributor of Hyundai construction equipment and related parts.
- B. On July 28, 2009 (the "Petition Date"), M.D. Moody filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code (11 U.S.C. §§ 101-132) (the "Bankruptcy Code") in the United States Bankruptcy Court for the Middle District of Florida (the "Bankruptcy Court"). M.D. Moody is continuing in possession of its properties and managing its business as debtor in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.
- C. On August 7, 2009, Hyundai filed proof of claim number 4 ("Claim No. 4") in the amount \$59,623 asserting a security interest in parts it supplied to M.D. Moody prior to the Petition Date.
- D. In October 2010, Hyundai terminated the Distribution Agreement with M.D. Moody pursuant to notice and in accordance with its terms.
- E. Following termination of the Distribution Agreement, M.D. Moody sent Hyundai a demand letter requesting Hyundai repurchase its Hyundai parts and equipment remaining in M.D. Moody's possession.
- F. Following Hyundai's inspection of the Hyundai parts remaining in M.D. Moody's possession, Hyundai issued a credit memo to M.D. Moody in the amount of \$113,869.02. A copy of the credit memo is attached hereto as Exhibit A.
- G. By and through the undersigned, M.D. Moody and Hyundai have agreed in writing on this Settlement Agreement detailing their agreement concerning Hyundai's repurchase of parts and equipment and the payment and setting forth the

NOW, THEREFORE, in full and valuable consideration, intending to be legally bound, the parties agree as follows:

1. The foregoing recitals are true and valid and constitute part hereof.
2. This Settlement Agreement is a discharge upon bankruptcy plan approval, which approval shall be sought pursuant to Chapter 11 of the Federal Bankruptcy Reorganization Code and in connection with confirmation of the Chapter 11 Reorganization Plan ("Plan") as filed with the bankruptcy court.
3. Claim No. 4 shall be settled pursuant to § 541 of the Bankruptcy Code against the \$103,869.02 credit memo, thereby satisfying Claim No. 4 in full and leaving \$54,246.02 owed from Hyundai to M.D. Massey.
4. Within 10 days of receiving notice of confirmation of the Plan, Hyundai shall remit the \$54,246.02 to M.D. Massey in the form of a check, sent via overnight express delivery.
5. The purpose of this Settlement Agreement is to compromise disputed claims and avoid litigation and the related expense and uncertainty thereof. None of the execution, delivery, or performance of this Settlement Agreement or the parties herein shall be deemed or construed as an admission or statement against liability.
6. All of the provisions of this Settlement Agreement shall be binding upon the respective parties, their heirs, and permitted assigns.
7. This Settlement Agreement may be executed in one or more counterparts, any one of which shall be considered an original.
8. Each party, herein or hereafter and their heirs, assigns, and successors, and other heirs, officers, shall be deemed to have accepted, with their heirs, successors, predecessors, and permitted assigns as "Party", jointly, even after the death of its heirs, and all claims, obligations, demands, damages, and causes of action, in tort or otherwise, that may or may not arise against the other Party, including claims, obligations, demands, or may arise against the other Party, including claims, obligations, demands, arising from the creation, existence or termination of the Disputed Claim Agreed upon.
9. The foregoing constitutes the entire agreement of the parties and no other oral or written agreement shall be binding on the parties, but the parties shall be bound by the terms of the Settlement Agreement.

In any event, on or before the date of the filing of this Statement, notwithstanding the foregoing, this Settlement Agreement is subject to the terms of the Plan and the terms of the Plan as set forth in the Plan, and the terms of this Settlement Agreement and the terms of the Plan.

To the extent that the Court shall determine that the foregoing is not in the best interests of the estate, the Court shall have the authority to modify the terms of this Settlement Agreement.

HYUNDAI EQUIPMENT COMPANY
AMERICA, INC.

By

Karl H. Hahn

ALD. MOODY & SONS

By

Paul A. Hahn

Is

Is

Paul A. Hahn

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re)	Case Nos.: 3:09-bk-6247;
)	3:09-bk-6250; 3:09-bk-6252;
M.D. MOODY & SONS, INC., et al., ¹)	3:09-bk-6254
EIN 59-0552036.)	
)	Chapter 11
Debtors.)	Jointly Administered Under Case No.
_____)	3:09-bk-6247

**FIRST MODIFICATION TO SECOND
AMENDED CHAPTER 11 PLAN OF REORGANIZATION**

Debtors, M.D. Moody & Sons, Inc., Moody Machinery Corporation, Southeast Crane Parts, Inc. and Moody Fabrication & Machine, Inc. (collectively, "Debtors"), modify their Second Amended Plan of Reorganization dated November 3, 2011 (the "Second Amended Plan") [Docket No. 953] as follows:

1. Section 3.02(d), dealing with the Secured Claim of U.S. Bancorp Equipment Finance, Inc. ("U.S. Bancorp"), is modified to add the following provision:

The Debtors waive any right of surcharge against U.S. Bancorp arising under § 506(c) of the Bankruptcy Code.

2. Section 3.02(f), dealing with the Secured Claim of TCF Equipment Finance, Inc. ("TCF") is modified to add the following provision:

The Debtors waive any right of surcharge against TCF arising under § 506(c) of the Bankruptcy Code.

The Debtors are the following four entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): M.D. Moody & Sons, Inc. (2036), Moody Machinery Corporation (5289), Southeast Crane Parts, Inc. (9906), and Moody Fabrication & Machine, Inc. (4900). The address for all of the Debtors is 4600 Phillips Highway, Jacksonville, Florida 32207.

3. Section 4.08 of the Second Amended Plan, which establishes a Claims Reserve, is modified and replaced in its entirety with the following:

Section 4.08 Establishment of Claims Reserve

On the Effective Date, the Reorganized Debtor shall establish the Claims Reserve, in a segregated, interest-bearing bank account, which will be funded by (a) a portion of unrestricted Cash on hand, (b) the net profits from the P&S Business as provided in Section 4.02 of this Plan (c) all proceeds remaining from the sale of the Bellinger Property after the ABL Claim and the GBG Claim have been paid in full, (d) the first \$1,000,000 of net sale proceeds from sale of the Philips Highway Property, and the excess net sale proceeds over such threshold to the extent they are not applied to payment of the ABL Claim or the GBG Claim, (e) the payments under the Dell Marine Promissory Note, (f) any recovery obtained by the Reorganized Debtor in the Sky Litigation, and (g) proceeds obtained through the prosecution of the Recovery Actions. Excepting the Unsecured Creditors' Carve-Out defined below, Wells Fargo shall have a perfected, first priority lien upon the Claims Reserve to secure payment of first the ABL Claim and second the GBG Claim, including post-Confirmation interest as to each.

Until distribution of the Claims Reserve as provided under the Plan, the Claims Reserve Threshold shall be maintained at a minimum funding level of \$1,000,000, provided that in the event of the sale of the Philips Highway Property and the funding to the Claims Reserve of the first \$1,000,000 of net sale proceeds from such sale, the Claims Reserve Threshold shall thereafter be maintained at \$2,000,000.

So long as the ABL Claim and the GBG Claim shall remain unpaid, including post-Confirmation interest as to each, the Reorganized Debtor shall provide to Wells Fargo monthly reports of the detail of cash receipts, an aging report of accounts receivable, detail of changes in balance of and all deposits and withdrawals to and from the Claims Reserve, together with copies of all applicable monthly bank statements for the Claims Reserve and for operations of the P&S Business. Such reports and statements shall be provided to Wells Fargo no later than 10 days following the end of each calendar month.

The Claims Reserve is intended to protect the interests of unsecured creditors and to fully implement the Plan. The Reorganized Debtor shall therefore be entitled to utilize Cash deposited into the Claims Reserve to fund operations, pay administrative expenses, pay expenses associated with the implementation of the Plan, fund on-going environmental remediation and clean-up costs at the Bellinger Property, and pay any Tax coming due with respect to the Philips Highway Property or Bellinger Property, to the extent the Tax Reserve or the Cash in the

Reorganized Debtor's operating accounts are insufficient to pay such items; provided, however that the Debtors shall segregate and set aside in an interest bearing account \$300,000 in proceeds from the sale of the Phillips Highway Property to ensure a distribution to unsecured creditors as contemplated herein (the "Unsecured Creditors' Carve-Out"). The Debtors shall not be entitled to utilize any portion of the Unsecured Creditors' Carve-Out absent consent of U.S. Bancorp and TCF.

All funds currently held as "restricted cash" shall, to the extent not utilized to pay Taxes, be transferred to the Claims Reserve free and clear of any claimed security interests in the Claims Reserve except the security interest being granted to Wells Fargo pursuant to Article III of this Plan.

Distributions to holders of Class 13 Allowed Unsecured Claims shall be made on the Effective Date, from the Claims Reserve or as reasonably practicable thereafter in accordance with Section 3.02(k) of this Plan.

Distributions to holders of Class 12 Allowed Unsecured Claims will be made from the Claims Reserve approximately 30 days after such date as the ABL Claim and the GBG Claim and all post-Confirmation interest thereon shall have been paid in full whether or not such payment occurs upon sale of the Bellinger Property under the terms of the Bellinger Property Trust, and provided that the Claims Reserve is not first applied in whole to the payment of the ABL Claim or the GBG Claim. The Claims Reserve is the only source from which distributions to holders of Allowed Unsecured Claims shall be made.

4. Section 12.01, dealing with the post-confirmation jurisdiction of the Bankruptcy Court, is modified to include the following additional subparagraph:

Section 12.01 Retention of Jurisdiction

(n) approve or disapprove any use of the Unsecured Creditors' Carve-Out established by Section 4.08 of this Plan.

5. Except as provided herein, all other provisions of the Second Amended Plan shall remain unchanged.

STUTSMAN THAMES & MARKEY, P.A.

/s/ Richard R. Thames

By _____
Richard R. Thames

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Moody Machinery Corporation, Southeast
Crane Parts, Inc. and Moody Fabrication &
Machine, Inc.

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re)	Case Nos.: 3:09-bk-6247;
)	3:09-bk-6250; 3:09-bk-6252;
M.D. MOODY & SONS, INC., et al., ¹)	3:09-bk-6254
EIN 59-0552036,)	
)	Chapter 11
Debtors.)	Jointly Administered Under Case No.
)	3:09-bk-6247

**SECOND MODIFICATION TO SECOND
AMENDED CHAPTER 11 PLAN OF REORGANIZATION**

Debtors, M.D. Moody & Sons, Inc., Moody Machinery Corporation, Southeast Crane Parts, Inc. and Moody Fabrication & Machine, Inc. (collectively, "Debtors"), modify their Second Amended Plan of Reorganization dated November 3, 2011 (the "Second Amended Plan") (Docket No. 953) as follows:

1. Section 3.02(h), dealing with the Secured Claim of Terex Cranes Wilmington, Inc. ("Terex"), is modified and replaced in its entirety with the following provision:

Class 9 - Secured Claim of Terex

Claim No. 92, filed by Terex on November 19, 2009, shall be treated and paid in accordance with the Stipulation attached to this document as **Exhibit A**.

The Debtors are the following four entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): M.D. Moody & Sons, Inc. (2036), Moody Machinery Corporation (5289), Southeast Crane Parts, Inc. (9606), and Moody Fabrication & Machine, Inc. (4900). The address for all of the Debtors is 1600 Phillips Highway, Jacksonville, Florida 32207.

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2. Section 3.02(i), dealing with the Secured Claim of Koehring Cranes, Inc. ("Koehring"), is modified and replaced in its entirety with the following provision:

Class 10 - Secured Claim of Koehring

Claim No. 91, filed by Koehring on November 19, 2009, shall be treated and paid in accordance with the Stipulation attached to this document as Exhibit A.

3. Except as provided herein, all other provisions of the Second Amended Plan shall remain unchanged.

STUTSMAN THAMES & MARKEY, P.A.

By Richard R. Thames

By _____
Richard R. Thames

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Attorneys for M.D. Moody & Sons, Inc.,
Moody Machinery Corporation, Southeast
Crane Parts, Inc. and Moody Fabrication &
Machine, Inc.

Exhibit “A”

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

M.D. MOODY & SONS, INC., et al.,

Debtors.

Case No. 3:09-bk-6247; 3:09-bk-
6250; 3:09-bk-6252; 3:09-bk-6254

Chapter 11

Jointly Administered Under Case
No. 3:09-bk-6247

STIPULATION FOR SETTLEMENT OF ALL CLAIMS BETWEEN
THE DEBTORS AND TEREX CRANES WILMINGTON,
INC., KOEHRING CRANES, INC. AND TEREX CORPORATION

THIS STIPULATION (the "Stipulation") dated as of January 16, 2012, is made by and between M.D. MOODY & SONS, INC. ("M.D. Moody") and its wholly owned subsidiaries, MOODY MACHINERY CORPORATION, SOUTHEAST CRANE PARTS, INC. and MOODY FABRICATION & MACHINE, INC. (collectively with M.D. Moody referred to as the "Debtors") and TEREX CRANES WILMINGTON, INC. ("Terex Cranes"), KOEHRING CRANES, INC. ("Koehring") and TEREX CORPORATION (collectively with Terex Cranes and Koehring referred to as "Terex"). The Debtors and Terex stipulate and agree to the following facts:

A. On July 28, 2009 (the "Petition Date"), the Debtors each filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. The Debtors are continuing in possession of their properties and are managing their businesses, as debtors in possession, pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

F. On July 27, 2011, M.D. Moody filed a complaint against Koehring (the "Koehring Complaint"), Adversary No. J-11 ap-00377-JAF (the "Koehring Adversary Proceeding") in which M.D. Moody asserted a preference claim against Koehring in the

sum of \$19,195.56. At M.D. Moody's request, service of the Koehring Complaint and prosecution of the Koehring Adversary Proceeding has been stayed until March 15, 2012.

G. On November 3, 2011, the Debtors filed their Second Amended Chapter 11 Plan of Reorganization [D.E. 953] which classifies Claim No. 92 of Terex Cranes in Class 9 and Claim No. 91 of Koehring in Class 10 and provides the same treatment of each claim, which is that the Debtors have surrendered or will surrender in full satisfaction of the particular claim a sufficient quantity of parts subject to the respective security interest of Terex Cranes or Koehring to satisfy each claim in full.

H. From their review of the presently available Parts Collateral, Terex Cranes and Koehring dispute the value of that collateral and do not agree with the treatment of Claim Nos. 91 and 92 in the Plan.

I. By and through their respective counsel, the Debtors and Terex have agreed to enter into this Stipulation to reflect the terms and conditions of an agreement reached between them with respect to any and all claims that each may have against the other, including, but not limited to, the treatment of Terex under the Plan, the settlement of Claim Nos. 91 and 92, and the disposition of the Terex Adversary Proceeding, the Koehring Adversary Proceeding and any executory contracts between the parties.

NOW, THEREFORE, for good and valuable consideration, and intending to be legally bound, the parties agree as follows:

1. To full satisfaction of Claim No. 92 of Terex Cranes, Claim No. 92 shall be re-classified as an Unsecured Claim in Class 12 of the Plan and shall be an Allowed

Unsecured Claim in the amount of \$102,117.00 on a full and final basis and not subject to any objection. Terex Cranes' Allowed Unsecured Claim shall be paid in accordance with the provisions of the Plan, as it may be amended and confirmed by the Court.

2. In full satisfaction of Claim No. 91 of Koehring, Claim No. 91 shall be reclassified as an Unsecured Claim in Class 12 of the Plan and shall be an Allowed Unsecured Claim in the amount of \$147,883.00 on a full and final basis and not subject to any objection. Koehring's Allowed Unsecured Claim shall be paid in accordance with the provisions of the Plan, as it may be amended and confirmed by the Court.

3. The Debtors shall retain and dispose of the Terex Parts Collateral and the Koehring Parts Collateral in their discretion and in the ordinary course of business.

4. Within ten (10) days of the approval of this Stipulation by the Bankruptcy Court, M.D. Moody shall dismiss with prejudice the Terex Adversary Proceeding and the Koehring Adversary Proceeding.

5. Any and all distributorship agreements between M.D. Moody and Terex that could be considered executory contracts and any other executory contracts or agreements between the Debtors and Terex are rejected upon confirmation of the Plan pursuant to the Section 6.01 of the Plan.

6. The Debtors, for each entity comprising the Debtors and all affiliates, parent companies, subsidiaries, divisions, other legal entities owned by or under their common control, and their present and former officers, directors, employees, agents, principals, consultants, attorneys, legal representatives, predecessors, successors, assigns and all persons acting by, through or in concert with any of them, jointly and severally,

hereby knowingly and voluntarily release and forever discharge Terex and all affiliates, parent companies, subsidiaries, divisions, legal entities owned by or under the common control of each entity comprising Terex, and their present and former directors, employees, agents, principals, consultants, attorneys, legal representatives, predecessors, successors, assigns and all persons acting by, through or in concert with any of them, from any and all actions, causes of actions, suits, obligations, liabilities, expenses, damages, claims, defenses, setoffs or demands of every kind or nature whatsoever (including actual, incidental, consequential or punitive damages), in tort or in contract, and at law or in equity, whether presently possessed or hereafter arising, whether known or unknown, whether liability be direct or indirect, liquidated or unliquidated, which any of the entities comprising the Debtors ever had, now have or which the Debtors or any successor or assign of the Debtors, respectively, may hereafter ever have against Terex or any successor or assign of Terex, upon or by reason of any matter, cause or thing whatsoever from the beginning of time through the date of this Stipulation, including, but not limited to, all claims, losses and damages arising from or related, directly or indirectly, to or in connection with (i) the claims asserted or which could have been asserted in the Terex Adversary Proceeding or the Koehring Adversary Proceeding or any other avoidance action which could be brought under any section of Chapter 5 of the Bankruptcy Code or under any applicable state or federal law, or (ii) any distributorship agreements or other executory contracts or any other agreements between the parties.

7. Terex, for each entity comprising Terex and all affiliates, parent companies, subsidiaries, divisions, other legal entities owned by or under their common

control, and their present and former officers, directors, employees, agents, principals, consultants, attorneys, legal representatives, predecessors, successors, assigns and all persons acting by, through or in concert with any of them, jointly and severally, hereby knowingly and voluntarily release and forever discharge the Debtors and all of their affiliates, parent companies, subsidiaries, divisions, legal entities owned by or under the common control of each entity comprising the Debtors, and the present and former directors, employees, agents, principals, consultants, attorneys, legal representatives, predecessors, successors, assigns and all persons acting by, through or in concert with any of them, from any and all actions, causes of actions, suits, obligations, liabilities, expenses, damages, claims, defenses, setoffs or demands of every kind or nature whatsoever (including actual, incidental, consequential or punitive damages), in tort or in contract, and at law or in equity, whether presently possessed of hereafter arising, whether known or unknown, whether liability be direct or indirect, liquidated or unliquidated, which any of the entities comprising Terex ever had, now has or which Terex or any successor or assign of Terex, respectively, may hereafter ever have against the Debtors or any successor or assign of the Debtors, upon or by reason of any matter, cause or thing whatsoever from the beginning of time through the date of this Stipulation, including, but not limited to, all claims, losses and damages arising from or related, directly or indirectly, or in connection with (i) Claims Nos. 91 and 92 or (ii) any distributorship agreements or other executory contracts or agreements between the parties; provided, however, that the Debtors expressly are not released from their obligations to make distributions to Terex Cranes and Kochring on account of their

Allowed Unsecured Claims under the Plan and other obligations under the Stipulation that continue subsequent to the date of this Stipulation.

8. The purpose of this Stipulation is to compromise disputed claims and avoid litigation and the related expense and uncertainty. The execution, delivery of performance of this Stipulation by the parties shall not be deemed or construed as an admission or statement against interest.

9. This Stipulation is contingent upon Bankruptcy Court approval, which approval shall be sought pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure. Once approved, all of the provisions of this Stipulation shall be binding upon the respective parties, their successors and permitted assigns.

10. This Stipulation is entered into in conjunction with the Plan, as it may be amended. Upon confirmation of the Plan, the terms of the Plan are binding upon the Debtors and Terex; provided, however, that if any inconsistency exists between the terms of the Plan and this Stipulation with respect to Terex, the terms of the Stipulation are controlling.

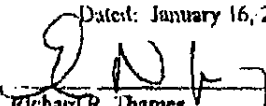
11. This Stipulation constitutes the entire agreement of the parties with respect to the matters stated therein, and there are no other oral or written agreements between the parties which are supplemental or contrary to this Stipulation. This Stipulation may only be modified by written modification signed by each party. Reliance by any party on oral communications accordingly is unwarranted.

12. The Bankruptcy Court shall retain exclusive jurisdiction to resolve any litigation, claim, suit or dispute regarding this Stipulation.

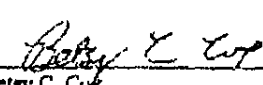
13. The undersigned counsel for the Debtors and Terex represent that each has full and complete authorization to execute this Stipulation on behalf of their respective clients.

14. The terms of the Stipulation are binding in the event of dismissal of the case, conversion to Chapter 7, or appointment of a Chapter 11 trustee.

Date: January 16, 2012


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