

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2010

OR

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

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

Commission file number: 1-33891

ORION MARINE GROUP, INC.

Delaware

State of Incorporation

26-0097459

IRS Employer Identification Number

12000 Aerospace Suite 300

Houston, Texas 77034

Address of Principal Executive Office

(713) 852-6500

Telephone number (including area code)

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

Title of Each Class	Name of Each Exchange on Which Registered
Common stock, \$0.01 par value per share	The New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act: ☐ Yes ☒ No

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act: ☐ Yes ☒ No

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate website, if any, every interactive data file required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files

Yes ☐ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K ☐

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act (Check One):

Large Accelerated Filer ☐ Accelerated Filer ☒ Non-accelerated filer ☐ Smaller reporting company ☐

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

There were 27,004,933 shares of common stock outstanding as of March 1, 2011. The aggregate market value of the Registrant's common equity held by non-affiliates was approximately \$379.1 million as of June 30, 2010, based upon the last reported sales price on the New York Stock Exchange on that date.

DOCUMENTS INCORPORATED BY REFERENCE

Part III – Portions of the Registrant's definitive Proxy Statement to be issued on connection with the 2011 Annual Meeting of Stockholders to be filed on or about April 4, 2011.

ORION MARINE GROUP, INC.

2010 Annual Report on Form 10-K  
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## PART I

### FORWARD-LOOKING STATEMENTS

In addition to historical information, this Annual Report on Form 10-K and the documents incorporated by reference herein may contain forward-looking statements that are not based on historical fact. When used in this report, words such as “expects”, “anticipates”, “believes”, “seeks”, “estimates”, “plans”, “intends” and similar words identify forward-looking statements. You should not place undue reliance on these forward-looking statements. Although such statements are based on management’s current estimates and expectations and currently available competitive, financial and economic data, forward-looking statements are inherently uncertain and involve risks and uncertainties that could cause our actual results to differ materially from what may be inferred from the forward-looking statements. Some of the factors that could cause or contribute to such differences are listed and discussed in Item 1A “*Risk Factors*”, below and elsewhere in this Annual Report on Form 10-K. We undertake no obligation to release publicly any revisions or updates to any forward-looking statements that are contained in this document.

#### Item 1. BUSINESS

##### *General*

We are a leading marine specialty contractor serving the heavy civil marine infrastructure market. We provide a broad range of marine construction services on, over and under the water along the Gulf Coast, the Atlantic Seaboard, the West Coast, Canada, and in the Caribbean Basin. Our customers are federal, state and municipal governments as well as private commercial and industrial enterprises.

##### *History*

We were founded in 1994 as a marine construction project management business. Throughout the years, we expanded beyond the project management business, established fixed geographic operating bases and made several strategic acquisitions since 1997. The common stock of Orion Marine Group, Inc. commenced trading publicly in 2007 and is listed on the New York Stock Exchange under the symbol ORN. Unless the context otherwise requires, all references herein to “Orion”, the “Company”, the “Registrant”, “we”, “us” or “our” refer to Orion Marine Group, Inc. and its consolidated subsidiaries.

##### *Business Strategy*

###### *General*

We pursue the following business strategies in order to improve our business and prospects, increase our revenue and profitability and, ultimately, enhance stockholder value:

###### *Expand and Fill in Our Service Territory*

We grow our business by seeking opportunities in other geographic markets by establishing a physical presence in new areas through selective acquisitions or greenfield expansions.

###### *Pursue Strategic Acquisitions*

We evaluate acquisition opportunities in parallel with our greenfield expansion. Our strategy will include timely and efficient integration of such acquisitions into our culture, bidding process and internal controls. We believe that attractive acquisition candidates are available due to the highly fragmented and regional nature of the industry, high cost of capital for equipment and the desire for liquidity among an aging group of existing business owners. We believe our financial strength, industry expertise and experienced management team will be attractive to acquisition candidates. Recent key acquisitions include:

- In February 2008, we expanded our dredging capabilities along the eastern Atlantic Seaboard, through the purchase of marine construction equipment, including several dredges.

- In January 2010, we purchased T.W. LaQuay Dredging, LLC, a dredging company based in Texas which owns and operates marine construction equipment, including several large dredges.
- In February 2010, we purchased a marine construction business and expanded our area of operations into the West Coast and Canada.

#### *Continue to Capitalize on Favorable Long-Term Industry Trends*

Our growth has been driven by our ability to capitalize on infrastructure spending across multiple end-markets we serve including port infrastructure, government funded projects, transportation, oil and gas, and environmental restoration markets.

#### *Continue to Reinvest in our Core Business*

Since our inception, we have focused on pursuing technically complex projects where our specialized services and equipment differentiate us from our competitors. We intend to continue to grow our fleet through the purchase and development of equipment.

#### **Financial Information About Segments**

Although we describe our business in this report in terms of the services we provide, our base of customers and the geographic areas in which we operate, we have concluded that our operations comprise a single reportable segment. In making this determination, we considered that each project has similar characteristics, includes similar services, has similar types of customers and is subject to the same regulatory environment. We organize, evaluate and manage our financial information around each project when making operating decisions and assessing our overall performance.

#### **Services Provided**

We act as a single-source, turnkey solution for our customers' marine contracting needs. We provide a broad range of heavy civil marine construction services. In addition, we provide dredging, repair and maintenance, and other specialty services. Many of our contracts encompass multiple services within a single project.

#### *Marine Construction Services*

These services include construction of marine transportation facilities, marine pipelines, bridges and causeways, and marine environmental structures. We generally serve as the prime contractor for many of these types of projects and we have the capability of providing design-build services.

Marine transportation facility construction projects include public port facilities for container ship loading and unloading; cruise ship port facilities; private terminals; special-use Navy terminals, recreational use marinas and docks, and other marine-based facilities. These projects typically consist of steel or concrete fabrication dock or mooring structures designed for durability and longevity, and involve driving piles of concrete, pipe or sheet pile up to 90 feet below the surface to provide a foundation for the port facility that we subsequently construct on the piles. We also provide on-going maintenance and repair, inspection services, emergency repair, and demolition and salvage to such facilities.

Our marine pipeline service projects generally include the installation and removal of underwater buried pipeline transmission lines; installation of pipeline intakes and outfalls for industrial facilities; construction of pipeline outfalls for wastewater and industrial discharges; river crossing and directional drilling; creation of hot taps and tie-ins; and inspection, maintenance and repair services.

Our bridge and causeway projects include the construction, repair and maintenance of all types of bridges and causeways, as well as the development of fendering systems in marine environments, and we serve as the prime contractor for many of these projects, some of which may be design-build contracts. These projects involve fabricating steel or concrete structures designed for durability and longevity, and involve driving piles of concrete, pipe or sheet pile to create support for the concrete deck roadways that we subsequently construct on the piles. These piles can exceed 50 inches in diameter, can range up to 170 feet in overall length, and are often driven 90 feet into the sea floor. We also provide ongoing maintenance and repair, as well as emergency repair, to bridges, pile supports, and fendering systems for bridges.

Marine environmental structure projects may include the installation of concrete mattresses to ensure erosion protection; construction of levees to contain environmental mitigation projects, and the installation of geotubes for wetlands and island creation. Such structures are used for erosion control, wetlands creation and environmental remediation.

#### *Dredging services*

Projects involving dredging generally enhance or preserve the navigability of waterways or the protection of shorelines through the removal or replenishment of soil, sand or rock. Dredging involves removing mud and silt from the channel floor by means of a mechanical backhoe, crane and bucket or cutter suction dredge and pipeline systems. Dredging is integral to capital and maintenance projects, including: maintenance for previously deepened waterways and harbors to remove silt, sand and other accumulated sediments; construction of breakwaters, jetties, canals and other marine structures; deepening ship channels and wharves to accommodate larger and deeper draft ships; containing erosion of wetlands and coastal marshes; land reclamation; and beach nourishment and creation of wildlife refuges. Maintenance dredging projects provide a source of recurring revenue as active channels typically require dredging every one to three years due to natural sedimentation. The frequency of maintenance dredging may be accelerated by rainfall and major weather events such as hurricanes. Areas where no natural deep water ports exist, such as the Texas Gulf Coast, require substantial maintenance dredging. We maintain multiple specialty dredges of various sizes and specifications to meet customer needs.

#### *Specialty Services*

Our specialty services include salvage, demolition, surveying, towing, diving and underwater inspection, excavation and repair. Our diving services are largely performed in shallow water with little to no visibility and include inspections, salvage and pile restoration and encapsulation. Our survey services include surveying pipelines and performing hydrographic surveys which determine the configuration of the floors of bodies of water and detect and identify wrecks and obstructions. Most of these specialty services support our other construction services and provide an incremental touch-point with our customers.

#### *Industry Overview*

Our services are provided to customers in diverse end markets, including port expansion and maintenance, bridges, causeways and other marine infrastructure, the cruise industry, the Department of Defense, the oil and gas industry, coastal protection and reclamation, along with hurricane restoration and repair and environmental remediation. We believe that this diversity in our customer base will enable us to utilize our resources to lessen the negative effects of any downturn in a specific end market.

#### *Port Expansion and Maintenance*

Ports and harbors are vital to trade for the U.S. economy, help position the U.S. as a leader in global trade and are essential to national security. We anticipate that U.S. ports will need to build larger dock space and deepen their channels to accommodate larger container, dry bulk and liquid cargo ships in order to remain globally competitive.

Ports located on the Gulf Coast can also expect greater volume growth as the Panama Canal expansion projects should contribute to increased traffic of larger container ships from the Pacific Ocean bypassing Long Beach, California. As a part of our existing operations, we service most major ports across the Gulf Coast and Florida.

#### *Bridge and Causeways*

According to the American Society of Civil Engineers, as of their 2009 report, 26% of the nation's bridges are structurally deficient or functionally obsolete. As the system ages, the infrastructure cannot support the growing traffic loads, resulting in frequent delays for repairs. At the same time, the repairs become more expensive due to long-deferred maintenance. The United States Congress and the Department of Transportation are actively working towards passage of a long term highway funding bill in fiscal 2011.

### *Marine Infrastructure*

The U.S. Marine Transportation System (“MTS”) consists of waterways, ports and their intermodal connections, vessels, vehicles, and system users, as well as shipyards and repair facilities crucial to maritime activity. The MTS is primarily an aggregation of federal, state, local and privately owned facilities and private companies. U.S. inland and intracoastal waterways require substantial maintenance and improvement. While waterway usage is increasing, the facilities and supporting systems are aging. In addition, channels and waterways must maintain certain depths to accommodate ship and barge traffic. Natural sedimentation in these channels and waterways require maintenance dredging to maintain navigability.

### *Cruise Industry*

An expected increase in ship size has generated a need for substantial port infrastructure development, including planning and construction of new terminals and facilities, as well as on-going maintenance and repair services. These larger vessels require development of new piers and additional dredging services to accommodate deeper drafts. Our service area includes the ports of Miami, Galveston, Tampa, New Orleans, and Canaveral, and the Caribbean Basin, which includes numerous cruise facilities and is the most popular cruise destination in the North American market.

### *The Department of Defense*

The US Navy has the responsibility for the maintenance of 39 facilities in the United States, which includes a significant amount of marine infrastructure. In recent years, Department of Defense funding shifted away from naval base expansion, repair and maintenance. We believe that the US Navy is poised to resume a more normal flow of maintenance and upgrades to its infrastructure, including its marine facilities.

The US Coast Guard maintains more than 50,000 federal aids to navigation, which include buoys, lighthouses, day beacons and radio-navigation signals, and additionally has oversight responsibility for over 18,000 highway and railroad bridges that span navigable waterways throughout the country. As part of the Department of Homeland Security, we anticipate that US Coast Guard needs for varied marine construction services will provide opportunities for us in the future.

We anticipate that the continued implementation of the U.S. Base Realignment and Closure Program (“BRAC”), will shift emphasis towards improving domestic military infrastructure, including port and other facilities located on, or near, the water. This should result in the need for increased infrastructure at the realigned facilities where personnel and equipment will be moved from facilities targeted for closure.

### *Oil and Gas Industry*

We construct, repair and remove underwater pipelines, and provide marine construction and on-going maintenance services for private refineries, terminal facilities and docks, and other critical near shore oil and gas infrastructure. Increased levels of capital expenditures by midstream and downstream oil and gas companies in response to higher oil and gas prices should increase demand for our services.

### *U.S. Coastal and Wetland Restoration and Reclamation*

We believe that increases in coastal population density and demographic trends will lead to an increase in the number of coastal restoration and reclamation projects, and, as the value of waterside assets rises from a residential and recreational standpoint, citizens and municipalities will do more to protect these assets via restoration and reclamation projects.

### *Hurricane Restoration and Repair*

Hurricanes can be very destructive to the existing marine infrastructure and natural protection barriers of the prime storm territories of the Gulf Coast, the Atlantic Seaboard and the Caribbean Basin, including bridges, ports, underwater channels and sensitive coastal areas. Typically, restoration and repair opportunities continue for several years after a major hurricane event. These events provide incremental projects to our industry that contribute to a favorable bidding environment and high capacity utilization in our markets.

### *Environmental Remediation*

We believe there will be contingency funding for the protection of natural habitats, environmental preservation, wetlands creation and remediation for high priority projects in Louisiana and other areas in the markets we serve that will protect and restore sensitive marine and coastal areas, advance ocean science and research, and ensure sustainable use of ocean resources.

### *Customers*

Our customers include federal, state and local governmental agencies in the United States, as well as private commercial and industrial enterprises in the US and the Caribbean Basin. Most projects are competitively bid, with the award going to the lowest qualified bidder. In 2010, the US Army Corps of Engineers accounted for 28% of our total revenue. Our customer base shifts from time to time depending on the mix of contracts in progress.

### *Backlog*

Our contract backlog represents our estimate of the revenues we expect to realize under the portion of the contracts remaining to be performed. Given the typical duration of our contracts, which ranges from three to nine months, our backlog at any point in time usually represents only a portion of the revenue that we expect to realize during a twelve month period. We include projects in our backlog only when the customer has provided an executed contract, purchase order or change order. Our backlog under contract as of December 31, 2010 was approximately \$194.5 million and at December 31, 2009 was approximately \$252.9 million. These estimates are subject to fluctuations based upon the scope of services to be provided, as well as factors affecting the time required to complete the project. In addition, many projects that make up our backlog may be canceled at any time without penalty; however, we can generally recover actual committed costs and profit on work performed up to the date of cancellation. Although we have not been materially adversely affected by contract cancellations or modifications in the past, we may be, especially in economically uncertain periods. Consequently, backlog is not necessarily indicative of future results. In addition to our backlog under contract, we also have a substantial number of projects in negotiation or pending award at any given time.

### *Competition*

We compete in our service areas of the Gulf Coast, the Atlantic Seaboard, and the Caribbean Basin, and in 2010 expanded into the West Coast and Canada, with several regional marine construction services companies and a few national marine construction services companies. From time to time, we compete with certain national land-based heavy civil contractors that have greater resources than we do. Our industry is highly fragmented with competitors generally varying within the markets we serve and with few competitors competing in all of the markets we serve or for all of the services that we provide. We believe that our turnkey capability, expertise, experience and reputation for providing safe and timely quality services, safety record and programs, equipment fleet, financial strength, surety bonding capacity, knowledge of local markets and conditions, and project management and estimating abilities allow us to compete effectively. We believe significant barriers to entry exist in the markets in which we operate, including the ability to bond large projects, maritime laws, specialized marine equipment and technical experience; however, a U.S. company that has adequate financial resources, access to technical expertise and specialized equipment may become a competitor.

### *Bonding*

In connection with our business, we generally are required to provide various types of surety bonds that provide an additional measure of security for our performance under certain government and private sector contracts. Our ability to obtain surety bonds depends upon our capitalization, working capital, past performance, management expertise, and external factors, including the capacity of the overall surety market. Surety companies consider such factors in light of the amount of our backlog that we have currently bonded and their current underwriting standards, which may change from time to time. The capacity of the surety market is subject to market-driven fluctuations driven primarily by the level of surety industry losses and the degree of surety market consolidation. The bonds we provide typically are for the amount of the project and have face amounts ranging from approximately \$1.0 to approximately \$50.0 million. As of December 31, 2010, we had approximately \$130.0 million in surety bonds outstanding. On December 31, 2010, we believe our capacity under our current bonding arrangement was in excess of \$400.0 million in aggregate surety bonds.

### ***Trade Names***

We operate under a number of trade names, including Orion Marine Group, King Fisher Marine Service, Orion Construction, Orion Diving & Salvage, Misener Marine Construction Misener Diving & Salvage, F. Miller Construction, Orion Dredging Services, and in 2010, began operating under the trade names of T.W. LaQuay Dredging and Northwest Marine Construction. We do not generally register our trademarks with the U.S. Patent & Trademark Office, but instead rely on state and common law protections. While we consider our trade names to be valuable assets, we do not consider any single trademark or trade name to be of such material importance that its absence would cause a material disruption of our business.

### ***Equipment***

We operate and maintain a large and diverse equipment fleet, substantially all of which we own, that includes the following:

- *Barges* — Spud barges, material barges, deck barges, anchor barges and fuel barges are used to provide work platforms for cranes and other equipment, to transport materials to the project site and to provide support for the project at the project site.
- *Dayboats* — Small pushboats, dredge tenders and skiffs are used to shift barges at the project site, to move personnel and to provide general support to the project site.
- *Tugs* — Larger pushboats and tug boats are used to transport barges and other support equipment to and from project site.
- *Dredges* — 24” cutter head suction dredge (diesel), 20” cutter head suction dredge (diesel/electric), 20” cutter head suction dredges (diesel), 16” cutter head suction dredges, and 12” portable cutter head suction dredges are used to provide dredging services at project sites.
- *Cranes* — Crawler lattice boom cranes with lift capability from 50 tons to 400 tons and hydraulic rough terrain cranes with lift capability from 15 tons to 60 tons are used to provide lifting and pile driving capabilities on project sites, and to provide bucket work, including mechanical dredging and dragline work, to project sites.

We believe that our equipment generally is well maintained and suitable for our current operations. We have the ability to extend the useful life of our equipment through capital refurbishment at periodic intervals. Most of our fleet is serviced by our own mechanics who work at various maintenance sites and facilities, including our dry dock facilities. We are also capable of building, and have built, much of our highly specialized equipment. Our strategy is to move our fleet from region to region as our projects require. We have pledged our owned equipment as collateral under our credit facility.

### ***Equipment Certification***

Some of our equipment requires certification by the U.S. Coast Guard and, where required, our vessels’ permissible loading capacities require certification by the American Bureau of Shipping (“ABS”). ABS is an independent classification society which certifies that certain of our larger, seagoing vessels are “in-class,” signifying that the vessels have been built and maintained in accordance with ABS rules and applicable U.S. Coast Guard rules and regulations. Many projects, such as beach nourishment projects with offshore sand requirements, dredging projects in exposed entrance channels, and dredging projects with offshore disposal areas, are restricted by federal regulations to be performed only by dredges or scows that have U.S. Coast Guard certification and a load line established by the ABS. All of our vessels that are required to be certified by ABS have been certified as “in-class.” These certifications indicate that the vessels are structurally capable of operating in open waters, which enhances the mobility of our fleet.



### ***Government Regulations***

Our operations are subject to compliance with regulatory requirements of federal, state and local governmental agencies and authorities including the following:

- regulations concerning workplace safety, labor relations and disadvantaged businesses;
- licensing requirements applicable to shipping and dredging; and
- permitting and inspection requirements applicable to marine construction projects.

We are also subject to government regulations pursuant to the Dredging Act, the Jones Act, the Shipping Act and the Vessel Documentation Act. These statutes require vessels engaged in the transport of merchandise or passengers between two points in the U.S. or dredging in the navigable waters of the U.S. to be documented with a coastwise endorsement, to be owned and controlled by U.S. citizens, to be manned by U.S. crews, and to be built in the U.S. The U.S. citizenship ownership and control standards require the vessel-owning entity to be at least 75% U.S.-citizen owned, and prohibit the demise or bareboat chartering of the vessel to any entity that does not meet the 75% U.S. citizen ownership test. These statutes, together with similar requirements for other sectors of the maritime industry, are collectively referred to as “cabotage” laws.

We believe that we are in material compliance with applicable regulatory requirements and have all material licenses required to conduct our operations.

### ***Environmental Matters***

#### ***General***

Our marine infrastructure construction, salvage, demolition, dredging and dredge material disposal activities are subject to stringent and complex federal, state, and local laws and regulations governing environmental protection, including air emissions, water quality, solid waste management, marine and bird species and their habitats, and wetlands. Such laws and regulations may require that we or our customers obtain, and that we comply with, various environmental permits, registrations, licenses and other approvals. These laws and regulations also can restrict or impact our business activities in many ways, such as delaying the appropriation and performance of particular projects; restricting the way we handle or dispose of wastes; requiring remedial action to mitigate pollution conditions that may be caused by our operations or that are attributable to others; and enjoining some or all of our operations deemed in non-compliance with environmental laws and regulations. Failure to comply with these laws and regulations may result in the assessment of administrative, civil and/or criminal penalties, the imposition of remedial obligations and the issuance of orders enjoining future operations.

We believe that compliance with existing federal, state and local environmental laws and regulations will not have a material adverse effect on our business, results of operations, or financial condition. Nevertheless, the trend in environmental regulation is to place more restrictions and limitations on activities that may affect the environment. In addition, we could be affected by future laws or regulations, including those imposed in response to climate change concerns. As a result, there can be no assurance as to the amount or timing of future expenditures for environmental compliance or remediation, and actual future expenditures may be different from the amounts we currently anticipate. The following is a discussion of the environmental laws and regulations that could have a material effect on our marine construction and other activities.

#### ***Waste Management***

Our operations could be subject to the federal Resource Conservation and Recovery Act (“RCRA”) and comparable state laws, which impose detailed requirements for the handling, storage, treatment and disposal of hazardous and non-hazardous solid wastes. Under the auspices of the U.S. Environmental Protection Agency (“EPA”), the individual states administer some or all of the provisions of RCRA, sometimes in conjunction with their own more stringent requirements. Generators of hazardous wastes must comply with certain standards for the accumulation and storage of hazardous wastes, as well as recordkeeping and reporting requirements applicable to hazardous waste storage and disposal activities.

#### *Site Remediation*

The Comprehensive, Environmental Response, Compensation and Liability Act ("CERCLA"), also known as "Superfund," and comparable state laws and regulations impose liability, without regard to fault or the legality of the original conduct, on certain classes of persons responsible for the release of hazardous substances into the environment. Such classes of persons include the current and past owners or operators of sites where a hazardous substance was released, and companies that disposed or arranged for the disposal of hazardous substances at offsite locations, such as landfills. CERCLA authorizes the EPA, and in some cases third parties, to take actions in response to threats to the public health or the environment and to seek to recover from the responsible classes of persons the costs they incur. Under CERCLA, such persons may be subject to joint and several liability for the costs of cleaning up the hazardous substances that have been released into the environment, for damages to natural resources and for the costs of certain health studies. In addition, neighboring landowners and other third parties often file claims for personal injury and property damage allegedly caused by the hazardous substances released into the environment.

We currently own or lease properties that have been used by other industries for a number of years. Although we typically have used operating and disposal practices that were standard in the industry at the time, wastes may have been disposed of or released on or under the properties owned or leased by us, on or under other locations where such substances have been taken for disposal, or on or under project sites where we perform work. In addition, some of the properties may have been operated by third parties or by previous owners whose treatment and disposal or release of wastes was not under our control. These properties and the substances disposed or released on them may be subject to CERCLA, RCRA and analogous state laws. Under such laws, we could be required to remove or remediate previously disposed wastes or property contamination, or to perform remedial activities to prevent future contamination.

#### *Water Discharges*

The Federal Water Pollution Control Act, also known as the Clean Water Act ("CWA"), and analogous state laws impose strict controls with respect to the discharge of pollutants, including spills and leaks of oil and other substances, into waters of the U.S., including wetlands. The discharge of pollutants into regulated waters is prohibited, except in accordance with the terms of a permit issued by the EPA or an analogous state agency. The CWA also regulates the discharge of dredged or fill material into waters of the U.S., and activities that result in such discharge generally require permits issued by the Corps of Engineers. Moreover, above ground storage of petroleum products is strictly regulated under the CWA. Under the CWA, federal and state regulatory agencies may impose administrative, civil and/or criminal penalties for non-compliance with discharge permits or other requirements of the CWA and analogous state laws and regulations.

The Oil Pollution Act of 1990 ("OPA"), which amends and augments the CWA, establishes strict liability for owners and operators of facilities that are sites of releases of oil into waters of the U.S. OPA and its associated regulations impose a variety of requirements on responsible parties related to the prevention of oil spills and liability for damages resulting from such spills. For instance, OPA requires vessel owners and operators to establish and maintain evidence of financial responsibility sufficient to cover liabilities related to an oil spill for which such parties are statutorily responsible. We believe we are in compliance with all applicable OPA financial responsibility obligations. In addition, while OPA requires that certain vessels be outfitted with double hulls by 2015, given the make up and expected make up of our fleet of vessels, we do not expect to incur material expenditures to meet these requirements.

In February 2009, regulations promulgated by the EPA covering certain previously exempt discharges to water from certain marine vessels became effective. The regulations provide for a general permit to cover such discharges and impose on marine vessel operators, including the Company, certain discharge, permitting, recordkeeping, reporting, monitoring, maintenance, and operating restrictions and requirements with respect to materials that are or may be discharged from certain vessels. Applicability of these restrictions and requirements is based on size and type of vessel, and they apply only to a minority of the Company's vessels. The Company, nevertheless, is implementing such restrictions and requirements with respect to its vessels which are subject thereto, and the Company does not anticipate that such regulations or the associated permit terms, restrictions and requirements will adversely impact the Company's business and results of operations.

#### *Air Emissions*

The Clean Air Act (“CAA”) and comparable state laws restrict the emission of air pollutants from many sources, including paint booths, and may require pre-approval for the construction or modification of certain facilities expected to produce air emissions, impose stringent air permit requirements, or require the utilization of specific equipment or technologies to control emissions. We believe that our operations are in substantial compliance with the CAA.

#### *Climate Change*

The U.S. Congress is actively considering legislation to reduce emissions of greenhouse gases in response to climate change concerns. In addition, several states have declined to wait on Congress to develop and implement climate control legislation and have already taken legal measures to reduce emissions of greenhouse gases. Passage of climate control legislation or other regulatory initiatives by Congress or various states of the U.S., or the adoption of regulations by the EPA and analogous state agencies that restrict emissions of greenhouse gases in areas in which we conduct business could have an adverse affect on our operations and demand for our services.

#### *Endangered Species*

The Endangered Species Act (“ESA”) restricts activities that may affect endangered species or their habitats. We conduct activities in or near areas that may be designated as habitat for endangered or threatened species. For instance, seasonal observation of endangered or threatened West Indian Manatees adjacent to work areas may impact construction operations within our Florida market. Manatees generally congregate near warm water sources during the cooler winter months. Additionally, our dredging operations in the Florida market are impacted by limitations for placement of dredge spoil materials on designated spoil disposal islands, from April through August of each year, when the islands are inhabited by nesting colonies of protected bird species. Further, restrictions on work during the Whooping Crane nesting period in the Aransas Pass National Wildlife Refuge from October 1 through April 15 each year and during the non-dormant grass season for sea grass in the Laguna Madre from March 1 through November 30 each year impact our construction operations in the Texas Gulf Coast market. In addition, our West Coast operations are impacted by an in water work closure affecting work during the fish spawning window from mid February until mid July. We plan our operations and bidding activity with these restrictions and limitations in mind, and they have not materially hindered our business in the past. However, these and other restrictions may affect our ability to obtain work or to complete our projects on time in the future. In addition, while we believe that we are in material compliance with the ESA, the discovery of previously unidentified endangered species could cause us to incur additional costs or become subject to operating restrictions or bans in the affected area.

#### *Employees*

At December 31, 2010, we had approximately 1,470 employees, 303 of whom were full-time salaried personnel and most of the remainder of whom were hourly personnel. We will hire additional employees for certain large projects and, subject to local market conditions, additional crew members are generally available for hire on relatively short notice. Our employees are not currently represented by labor unions, except certain employees located in the Pacific Northwest. We consider our relations with our employees to be good.

#### *Financial Information About Geographic Areas*

The Company primarily operates in the Gulf Coast, Atlantic Seaboard, and Pacific Northwest areas of the United States. Revenues generated outside the United States, primarily in the Caribbean Basin, totaled 5.4%, 14.0% and 7.0% of total revenues for the years ended December 31, 2010, 2009 and 2008, respectively. Our long-lived assets are substantially located in the United States.

***Access to the Company's Filings***

The Company maintains a website at [www.orionmarinegroup.com](http://www.orionmarinegroup.com) on which we make available, free of charge, access to the various reports we file with, or furnish to, the Securities and Exchange Commission ("SEC"). The website is made available for information purposes only. It should not be relied upon for investment purposes, and none of the information on our website is incorporated into this Annual Report on Form 10-K by reference. In addition, the public may read and copy any materials we file with the SEC at the SEC's Public Reference Room at 100 F Street, NE, Room 1580, Washington, D.C. 20549. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-732-0330. The SEC also maintains an Internet site at [www.sec.gov](http://www.sec.gov) that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC.

## **Item 1A. RISK FACTORS**

### **Risk Factors Relating to Our Business**

***We may be unable to obtain sufficient bonding capacity for our contracts and the need for performance and surety bonds may adversely affect our business.***

We are generally required to post bonds in connection with our contracts to ensure job completion if we were to fail to finish a project. We have entered into a bonding agreement with Liberty Mutual Surety of America (“Liberty”) pursuant to which Liberty acts as surety, issues bid bonds, performance bonds and payment bonds, and obligates itself upon other contracts of guaranty required by us in the day-to-day operations of our business. However, Liberty is not obligated under the bonding agreement to issue bonds for us. We may not be able to maintain a sufficient level of bonding capacity in the future, which could preclude us from being able to bid for certain contracts and successfully contract with certain customers, or increase our letter of credit utilization in lieu of bonds, thereby reducing availability under our credit facility. In addition, the conditions of the bonding market may change, increasing our costs of bonding or restricting our ability to get new bonding which could have a material adverse effect on our business, operating results and financial condition.

***Our business depends on key customer relationships and our reputation in the heavy civil marine infrastructure market, which is developed and maintained by our executives and key project managers. Loss of any of our relationships, reputation or chief executives or key project managers would materially reduce our revenues and profits.***

Our contracts are typically entered into on a project-by-project basis, so we do not have continuing contractual commitments with our customers beyond the terms of the current contract. We benefit from key customer relationships built over time and with both public and private entities that are a part of or use the MTS. We also benefit from our reputation in the heavy civil marine infrastructure market developed over years of successfully performing on projects. Both of these aspects of our business were developed and are maintained through our executives and key project managers. We do not maintain key person life insurance policies on any of our employees. Our inability to retain our executives and key project managers would have a material adverse effect on our current customer relationships and reputation. The inability to maintain relationships with these customers or obtain new customers based on our reputation could have a material adverse effect on our business, operating results and financial condition.

***To be successful, we need to attract and retain qualified personnel, and any inability to do so would adversely affect our business.***

Our future success depends on our ability to attract, retain and motivate highly skilled personnel in various areas, including engineering, project management, procurement, project controls, finance, and senior management. If we do not succeed in retaining and motivating our current employees and attracting new high quality employees, our business could be adversely affected. Accordingly, our ability to increase our productivity and profitability will be limited by our ability to employ, train and retain skilled personnel necessary to meet our requirements. We may not be able to maintain an adequate skilled labor force necessary to operate efficiently. Our labor expenses may also increase as a result of a shortage in the supply of skilled personnel, or we may have to curtail our planned internal growth as a result of labor shortages. We may also spend considerable resources training employees who may then be hired by our competitors, forcing us to spend additional funds to attract personnel to fill those positions. In addition, certain of our employees hold licenses and permits under which we operate. The loss of any such employees could result in our inability to operate under such licenses and permits, which could adversely affect our operations until replacement licenses or permits are obtained. If we are unable to hire and retain qualified personnel in the future, there could be a material adverse effect on our business, operating results and financial condition.

***We could lose money if we fail to accurately estimate our costs or fail to execute within our cost estimates on fixed-price, lump-sum contracts.***

Most of our net revenue is derived from fixed-price, lump-sum contracts. Under these contracts, we perform our services and execute our projects at a fixed price and, as a result, benefit from cost savings, but we may be unable to recover any cost overruns. Fixed-price contracts carry inherent risks, including risks of losses from underestimating costs, operational difficulties and other changes that may occur over the contract period. If our cost estimates for a contract are inaccurate, or if we do not execute the contract within our cost estimates, we may incur losses or the project may not be as profitable as we expected. In addition, we are sometimes required to incur costs in connection with modifications to a contract (change orders) that may be unapproved by the customer as to scope and/or price, or to incur unanticipated costs, including costs for customer-caused delays, errors in specifications or designs, or contract suspension or termination, that we may not be able to recover. These, in turn, could have a material adverse effect on our business, operating results and financial condition. The revenue, cost and gross profit realized on such contracts can vary, sometimes substantially, from the original projections due to changes in a variety of factors, such as:

- failure to properly estimate costs of engineering, design, material, equipment or labor;
- unanticipated technical problems with the structures or services being supplied by us, which may require that we spend our own money to remedy the problem;
- project modifications creating unanticipated costs;
- changes in the costs of equipment, materials, labor or subcontractors;
- our suppliers' or subcontractors' failure to perform;
- difficulties in our customers obtaining required governmental permits or approvals;
- changes in local laws and regulations;
- delays caused by local weather conditions; and
- exacerbation of any one or more of these factors as projects grow in size and complexity.

These risks increase if the duration of the project is long-term because there is an elevated risk that the circumstances upon which we based our original bid will change in a manner that increases costs. In addition, we sometimes bear the risk of delays caused by unexpected conditions or events.

***We may incur higher costs to acquire, manufacture and maintain equipment necessary for our operations.***

We have traditionally owned most of the equipment used in our projects, and we do not bid on contracts for which we do not have, or cannot quickly procure, whether through construction, acquisition or lease, the necessary equipment. We are capable of building much of the specialized equipment used in our projects, including dayboats, tenders and dredges. To the extent that we are unable to buy or build equipment necessary for our needs, either due to a lack of available funding or equipment shortages in the marketplace, we may be forced to rent equipment on a short-term basis, which could increase the costs of completing contracts. In addition, our equipment requires continuous maintenance, which we provide through our own repair facilities and dry docks, as well as certification by the U.S. Coast Guard. If we are unable to continue to maintain the equipment in our fleet or are unable to obtain the requisite certifications, we may be forced to obtain third-party repair services, be unable to use our uncertified equipment or be unable to bid on contracts, which could have a material adverse effect on our business, operating results and financial condition.

In addition, our vessels may be subject to arrest/seizure by claimants as security for maritime torts committed by the vessel or us or the failure by us to pay for necessities, including fuel and repair services, which were furnished to the vessel. Such arrest/seizure could preclude the vessel from working, thereby causing delays in marine construction projects.

***The timing of new contracts may result in unpredictable fluctuations in our cash flow and profitability. These factors as well as others that may cause our actual financial results to vary from any publicly disclosed earnings guidance and forecasts are outside of our control.***

A substantial portion of our revenues is derived from project-based work. It is generally very difficult to predict the timing and location of awarded contracts. The selection of, timing of or failure to obtain projects, delays in awards of projects, the rebidding or termination of projects due to budget overruns, cancellations of projects or delays in completion of contracts could result in the under-utilization of our assets and reduce our cash flows. Even if we are awarded contracts, we face additional risks that could affect whether, or when, work will begin. For example, some of our contracts are subject to financing and other contingencies that may delay or result in termination of projects. This can present difficulty in matching workforce size and equipment location with contract needs. In some cases, we may be required to bear the cost of a ready workforce and equipment that is larger than necessary, resulting in unpredictability in our cash flow, expenses and profitability. If an expected contract award or the related work release is delayed or not received, we could incur substantial costs without receipt of any corresponding revenues. Delays by our customers in obtaining required approvals for their infrastructure projects may delay their awarding contracts for those projects and, once awarded, the ability to commence construction under those contracts. Moreover, construction projects for which our services are contracted may require significant expenditures by us prior to receipt of relevant payments by a customer and may expose us to potential credit risk if such customer should encounter financial difficulties. Such expenditures could reduce our cash flows and necessitate increased borrowings under our credit facilities. Finally, the winding down or completion of work on significant projects that were active in previous periods will reduce our revenue and earnings if such significant projects have not been replaced in the current period. From time-to-time we may publicly provide earnings or other forms of guidance, which reflect our predictions about future revenue, operating costs and capital structure, among other factors. Any such predictions may be impacted by these factors as well as others that are beyond our control and might not turn out to be correct.

***We depend on continued federal, state and local government funding for marine infrastructure. A reduction in government funding for marine construction or maintenance contracts can materially reduce our results of operations.***

Our operations depend on project funding by various government agencies and are adversely affected by decreased levels of, or delays in, government funding. A future decrease in government funding in any of our geographic markets could result in intense competition and pricing pressures for projects that we bid on in the future. As a result of competitive bidding and pricing pressures, we may be awarded fewer projects, which could have a material adverse effect on our business, operating results and financial condition.

***A significant portion of our business is based on government contracts. Our operating results may be adversely affected by the terms of the government contracts or our failure to comply with applicable terms.***

Government contracts are subject to specific procurement regulations, contract provisions and a variety of socioeconomic requirements relating to their formation, administration, performance and accounting. Many of these contracts include express or implied certifications of compliance with applicable laws and contract provisions. As a result of our government contracting and subcontracting, claims for civil or criminal fraud may be brought by the government for violations of these regulations, requirements or statutes. We may also be subject to qui tam litigation brought by private individuals on behalf of the government under the Federal Civil False Claims Act, which could include claims for up to treble damages. Further, if we fail to comply with any of these regulations, requirements or statutes, our existing government contracts could be terminated, we could be suspended or debarred from government contracting or subcontracting, including federally funded projects at the state level. In addition, government customers typically can terminate or modify any of their contracts with us at their convenience, and certain government agencies may claim immunity from suit to recover disputed contract amounts. If our government contracts are terminated for any reason, or if we are suspended or debarred from government work, we could suffer a significant reduction in expected revenue which could have a material adverse effect on our business, operating results and financial condition.

***We derive a significant portion of our revenues from a small group of customers. The loss of one or more of these customers could negatively impact our business, operating results and financial condition.***

We believe that we will continue to rely on a relatively small group of customers for a substantial portion of our revenues for the foreseeable future. We may not be able to maintain our relationships with our significant customers. The loss of, or reduction of our sales to, any of our major customers could have a material adverse effect on our business, operating results and financial condition. See “Business — Customers” for a description of our largest customers.

***We may not be able to fully realize the revenue value reported in our backlog.***

We had a backlog of work to be completed on contracts totaling approximately \$194.5 million as of December 31, 2010. Backlog develops as a result of new awards, which represent the revenue value of new project commitments received by us during a given period. Backlog consists of projects under contract which have either (a) not yet been started or (b) are in progress but are not yet complete. In the latter case, the revenue value reported in backlog is the remaining value associated with work that has not yet been completed. We cannot guarantee that the revenue projected in our backlog will be realized, or if realized, will result in earnings. From time-to-time, projects are cancelled that appeared to have a high certainty of going forward at the time they were recorded as new awards. In the event of a project cancellation, we may be reimbursed for certain costs but typically have no contractual right to the total revenue reflected in our backlog. In addition to being unable to recover certain direct costs, cancelled projects may also result in additional unrecoverable costs due to the resulting under-utilization of our assets.

***Our business is subject to significant operating risks and hazards that could result in damage or destruction to persons or property, which could result in losses or liabilities to us.***

The businesses of marine infrastructure construction, port maintenance, dredging and salvage are generally subject to a number of risks and hazards, including environmental hazards, industrial accidents, adverse weather conditions, collisions with fixed objects, cave-ins, encountering unusual or unexpected geological formations, disruption of transportation services and flooding. These risks could result in damage to or destruction of, dredges, transportation vessels, other maritime structures and buildings, and could also result in personal injury or death, environmental damage, performance delays, monetary losses or legal liability.

Our safety record is an important consideration for our customers. If serious accidents or fatalities occur or our safety record was to deteriorate, we may be ineligible to bid on certain work, and existing service arrangements could be terminated. Further, regulatory changes implemented by OSHA or the U.S. Coast Guard could impose additional costs on us. Adverse experience with hazards and claims could have a negative effect on our reputation with our existing or potential new customers and our prospects for future work.

***Our current insurance coverage may not be adequate, and we may not be able to obtain insurance at acceptable rates, or at all.***

We maintain various insurance policies, including general liability and workers’ compensation. We are partially self-insured under some of our policies, and our insurance does not cover all types or amounts of liabilities. We are not required to, and do not, specifically set aside funds for our self-insurance programs.



At any given time, we are subject to multiple workers' compensation and personal injury claims. We maintain substantial loss accruals for workers' compensation claims, and our workers' compensation and insurance costs have been rising for several years notwithstanding our emphasis on safety. Our insurance policies may not be adequate to protect us from liabilities that we incur in our business. In addition, some of the projects that we bid on require us to maintain builder's risk insurance at high levels. We may not be able to obtain similar levels of insurance on reasonable terms, or at all. Our inability to obtain such insurance coverage at acceptable rates or at all could have a material adverse effect on our business, operating results and financial condition.

Furthermore, due to a variety of factors such as increases in claims and projected significant increases in medical costs and wages, our insurance premiums may increase in the future and we may not be able to obtain similar levels of insurance on reasonable terms, or at all. Any such inadequacy of, or inability to obtain, insurance coverage at acceptable rates, or at all, could have a material adverse effect on our business, operating results and financial condition.

***Our employees are covered by federal laws that provide seagoing employees remedies for job-related claims in addition to those provided by state laws.***

Many of our employees are covered by federal maritime law, including provisions of the Jones Act ("Jones Act"), the Longshore and Harbor Workers Act, ("USL&H") and the Seaman's Wage Act. Jones Act laws typically operate to make liability limits established by USL&H and state workers' compensation laws inapplicable to these employees and to permit these employees and their representatives to pursue litigation against employers for job-related injuries. Because we are not generally protected by the limits imposed by state workers' compensation statutes, we have greater exposure for claims made by these employees as compared to employers whose employees are not covered by these provisions.

For example, in the normal course of business, we are party to various personal injury lawsuits. We maintain insurance to cover claims that arise from injuries to our hourly workforce subject to a deductible. Over the last several years, there has been an increase in suits filed in Texas due in large part to two Texas law firms aggressively pursuing personal injury claims on behalf of dredging workers residing in Texas. Aggressive medical advice is increasing the seriousness of claimed injuries and the amount demanded in settlement. During fiscal 2010, we recorded approximately \$2.0 million of expense for our self-insured portion of these liabilities. We believe our recorded self insurance reserves represent our best estimate of the outcomes of these claims. Should these trends persist; we could continue to be negatively impacted in the future.

***Many of our contracts have penalties for late completion.***

In many instances, including in our fixed-price contracts, we guarantee that we will complete a project by a scheduled date. If we subsequently fail to complete the project as scheduled, we may be held responsible for cost impacts resulting from any delay, generally in the form of contractually agreed-upon liquidated damages. In addition, failure to maintain a required schedule could cause us to default on our government contracts, giving rise to a variety of potential damages. To the extent that these events occur, the total costs of the project could exceed our original estimates, and we could experience reduced profits or, in some cases, a loss for that project.

***We may choose, or be required, to pay our suppliers and subcontractors even if our customers do not pay, or delay paying, us for the related services.***

We use suppliers to obtain necessary materials and subcontractors to perform portions of our services and to manage work flow. In some cases, we pay our suppliers and subcontractors before our customers pay us for the related services. If we choose, or are required, to pay our suppliers and subcontractors for materials purchased and work performed for customers who fail to pay, or delay paying, us for the related work, we could experience a material adverse effect on our business, operating results and financial condition.

***We extend credit to customers for purchases of our services, and in the past we have had, and in the future we may have, difficulty collecting receivables from major customers that have filed bankruptcy or are otherwise experiencing financial difficulties.***

We generally perform services in advance of payment for our customers, which include governmental entities, general contractors, and builders, owners and managers of marine and port facilities located primarily in the Gulf Coast, the Atlantic Seaboard, the Pacific Northwest, and the Caribbean Basin. Consequently, we are subject to potential credit risk related to changes in business and economic factors. On occasion, we have had difficulty collecting from governmental entities or customers with financial difficulties. If we cannot collect receivables for present or future services, we could experience reduced cash flows and losses beyond our established reserves.

***Our strategy of growing through strategic acquisitions may not be successful.***

We may pursue growth through the acquisition of companies or assets that will enable us to broaden the types of projects we execute and also expand into new markets. We have completed several acquisitions and plan to consider strategic acquisitions in the future. We may be unable to implement this growth strategy if we cannot identify suitable companies or assets or reach agreement on potential strategic acquisitions on acceptable terms. Moreover, an acquisition involves certain risks, including:

- difficulties in the integration of operations, systems, policies and procedures;
- enhancements in our controls and procedures including those necessary for a public company may make it more difficult to integrate operations and systems;
- failure to implement proper overall business controls, including those required to support our growth, resulting in inconsistent operating and financial practices at companies we acquire or have acquired;
- termination of relationships with the key personnel and customers of an acquired company;
- additional financial and accounting challenges and complexities in areas such as tax planning, treasury management, financial reporting and internal controls;
- the incurrence of environmental and other liabilities, including liabilities arising from the operation of an acquired business or asset prior to our acquisition for which we are not indemnified or for which the indemnity is inadequate;
- disruption of or receipt of insufficient management attention to our ongoing business; and
- inability to realize the cost savings or other financial benefits that we anticipate.

Future acquisitions may require us to obtain additional equity or debt financing, which may not be available on attractive terms. Moreover, to the extent an acquisition transaction financed by non-equity consideration results in additional goodwill, it will reduce our tangible net worth, which might have an adverse effect on our credit and bonding capacity.

***The anticipated investment in port and marine infrastructure may not be as large as expected, which may result in periods of low demand for our services.***

The demand for port construction, maintenance infrastructure services and dredging may be vulnerable to downturns in the economy generally and in the marine transportation industry specifically. The amount of capital expenditures on port facilities and marine infrastructure in our markets is affected by the actual and anticipated shipping and vessel needs of the economy in general and in our geographic markets in particular. If the general level of economic activity deteriorates, our customers may delay or cancel expansions, upgrades, maintenance and repairs to their infrastructure. A number of other factors, including the financial condition of the industry, could adversely affect our customers and their ability or willingness to fund capital expenditures in the future. During downturns in the U.S. or world economies, the anticipated port usage in our geographic markets may decline, resulting in less port construction, upgrading and maintenance. As a result, demand for our services could substantially decline for extended periods.

***Any adverse change to the economy or business environment in the regions in which we operate could significantly affect our operations, which would lead to lower revenues and reduced profitability.***

Our operations are currently concentrated in the Gulf Coast, the Atlantic Seaboard and the Caribbean Basin and we recently expanded into the Pacific Northwest. Because of this concentration in a specific geographic location, we are susceptible to fluctuations in our business caused by adverse economic or other conditions in this region, including natural or other disasters.

***During the ordinary course of our business, we may become subject to lawsuits or indemnity claims, which could materially and adversely affect our business, operating results and financial condition.***

We have been and may from time to time be named as a defendant in legal actions claiming damages in connection with marine infrastructure projects and other matters. These are typically claims that arise in the normal course of business, including employment-related claims and contractual disputes or claims for personal injury (including asbestos-related lawsuits) or property damage which occurs in connection with services performed relating to project or construction sites. These actions may seek, among other things, compensation for alleged personal injury, workers' compensation, employment discrimination, breach of contract, property damage, environmental damage, punitive damages, civil penalties or other losses, consequential damages or injunctive or declaratory relief. Contractual disputes normally involve claims relating to the timely completion of projects, performance of equipment, design or other engineering services or project services. We may incur liabilities that may not be covered by insurance policies, or, if covered, the dollar amount of such liabilities may exceed our policy limits or fall below applicable deductibles. A partially or completely uninsured claim, if successful and of significant magnitude, could cause us to suffer a significant loss and reduce cash available for our operations.

Furthermore, our services are integral to the operation and performance of the marine infrastructure. As a result, we may become subject to lawsuits or claims for any failure of the infrastructure that we work on, even if our services are not the cause for such failures. In addition, we may incur civil and criminal liabilities to the extent that our services contributed to any property damage or personal injury. With respect to such lawsuits, claims, proceedings and indemnities, we have and will accrue reserves in accordance with generally accepted accounting principles ("GAAP"). In the event that such actions or indemnities are ultimately resolved unfavorably at amounts exceeding our accrued reserves, or at material amounts, the outcome could materially and adversely affect our reputation, business, operating results and financial condition. In addition, payments of significant amounts, even if reserved, could adversely affect our liquidity position.

We are currently engaged in litigation related to claims arising from Hurricane Katrina. See "Business — Legal Proceedings."

***Our operations are subject to environmental laws and regulations that may expose us to significant costs and liabilities.***

Our marine infrastructure construction, salvage, demolition, dredging and dredge material disposal activities are subject to stringent and complex federal, state and local environmental laws and regulations, including those concerning air emissions, water quality, solid waste management, and protection of certain marine and bird species, their habitats, and wetlands. We may incur substantial costs in order to conduct our operations in compliance with these laws and regulations. For instance, we may be required to obtain, maintain and comply with permits and other approvals (as well as those obtained for projects by our customers) issued by various federal, state and local governmental authorities; limit or prevent releases of materials from our operations in accordance with these permits and approvals; and install pollution control equipment. In addition, compliance with environmental laws and regulations can delay or prevent our performance of a particular project and increase related project costs. Moreover, new, stricter environmental laws, regulations or enforcement policies, including those imposed in response to climate change, could be implemented that significantly increase our compliance costs, or require us to adopt more costly methods of operation.

Failure to comply with environmental laws and regulations, or the permits issued under them, may result in the assessment of administrative, civil and criminal penalties, the imposition of remedial obligations and the issuance of injunctions limiting or preventing some or all of our operations. In addition, strict joint and several liability may be imposed under certain environmental laws, which could cause us to become liable for the investigation or remediation of environmental contamination that resulted from the conduct of others or from our own actions that were in compliance with all applicable laws at the time those actions were taken. Further, it is possible that we may be exposed to liability due to releases of pollutants, or other environmental impacts that may arise in the course of our operations. For instance, some of the work we perform is in underground and water environments, and if the field location maps or waterway charts supplied to us are not accurate, or if objects are present in the soil or water that are not indicated on the field location maps or waterway charts, our underground and underwater work could strike objects in the soil or the waterway bottom containing pollutants and result in a rupture and discharge of pollutants. In addition, we sometimes perform directional drilling operations below certain environmentally sensitive terrains and water bodies, and due to the inconsistent nature of the terrain and water bodies, it is possible that such directional drilling may cause a surface fracture releasing subsurface materials. These releases may contain contaminants in excess of amounts permitted by law, may expose us to remediation costs and fines and legal actions by private parties seeking damages for non-compliance with environmental laws and regulations or for personal injury or property damage. We may not be able to recover some or any of these costs through insurance or increased revenues, which may have a material adverse effect on our business, operating results and financial condition. See “Business — Environmental Matters” for more information.

***Our operations are susceptible to adverse weather conditions in our regions of operation.***

Our business, operating results and financial condition could be materially and adversely affected by severe weather, particularly along the Gulf Coast, the Atlantic Seaboard and Caribbean Basin where we have concentrated operations. Repercussions of severe weather conditions may include:

- evacuation of personnel and curtailment of services;
- weather-related damage to our equipment, facilities and project work sites resulting in suspension of operations;
- inability to deliver materials to jobsites in accordance with contract schedules; and
- loss of productivity.

***Our dependence on petroleum-based products increases our costs as the prices of such products increase, which could adversely affect our business, operating results and financial condition.***

We use diesel fuel and other petroleum-based products to operate our equipment used in our construction contracts. Decreased supplies of those products relative to demand and other factors can cause an increase in their cost. Future increases in the costs of fuel and other petroleum-based products used in our business, particularly if a bid has been submitted for a contract and the costs of those products have been estimated at amounts less than the actual costs thereof, could result in a lower profit, or a loss, on one or more contracts.

***Terrorist attacks at port facilities could negatively impact the markets in which we operate.***

Terrorist attacks, like those that occurred on September 11, 2001, targeted at ports, marine facilities or shipping could affect the markets in which we operate our business and our expectations. Increased armed hostilities, terrorist attacks or responses from the U.S. may lead to further acts of terrorism and civil disturbances in the U.S. or elsewhere, which may further contribute to economic instability in the U.S. These attacks or armed conflicts may affect our operations or those of our customers or suppliers and could impact our revenues, our production capability and our ability to complete contracts in a timely manner.

***We may be subject to unionization, work stoppages, slowdowns or increased labor costs.***

We primarily have a non-union workforce. If our employees unionize, it could result in demands that may increase our operating expenses and adversely affect our profitability. Each of our different employee groups could unionize at any time and would require separate collective bargaining agreements. If any group of our employees were to unionize and we were unable to agree on the terms of their collective bargaining agreement or we were to experience widespread employee dissatisfaction, we could be subject to work slowdowns or stoppages. In addition, we may be subject to disruptions by organized labor groups protesting our non-union status. Any of these events would be disruptive to our operations and could have a material adverse effect on our business, operating results and financial condition.

***We may be unable to sustain our historical revenue growth rate.***

Our revenue has grown rapidly in recent years. However, we may be unable to sustain our recent revenue growth rate for a variety of reasons, including limits on additional growth in our current markets, less success in competitive bidding for contracts, limitations on access to necessary working capital and investment capital to sustain growth, limitations on access to bonding to support increased contracts and operations, the inability to hire and retain essential personnel and to acquire equipment to support growth, and the inability to identify acquisition candidates and successfully integrate them into our business. A decline in our revenue growth could have a material adverse effect on our business, operating results and financial condition if we are unable to reduce the growth of our operating expenses at the same rate.

***We are subject to risks related to our international operations.***

Approximately 5% of our revenue in 2010 was derived from international markets. We presently conduct projects in the Caribbean Basin. International operations subject us to additional risks, including:

- uncertainties concerning import and export license requirements, tariffs and other trade barriers;
- restrictions on repatriating foreign profits back to the U.S.;
- changes in foreign policies and regulatory requirements;
- difficulties in staffing and managing international operations;
- taxation issues;
- currency fluctuations; and
- political, cultural and economic uncertainties.

These risks could restrict our ability to provide services to international customers and could have a material adverse effect on our business, operating results and financial condition.

***Restrictions on foreign ownership of our vessels could limit our ability to sell off any portion of our business or result in the forfeiture of our vessels or in our inability to continue our operations in U.S. navigable waters.***

The Dredging Act, the Jones Act, the Shipping Act and the Vessel Documentation Act require vessels engaged in the transport of merchandise or passengers between two points in the U.S. or dredging in the navigable waters of the U.S. to be owned and controlled by U.S. citizens. The U.S. citizen ownership and control standards require the vessel-owning entity to be at least 75% U.S. citizen-owned, thus restricting foreign ownership interests in the entities that directly or indirectly own the vessels which we operate. If we were to seek to sell any portion of our business unit that owns any of these vessels, we may have fewer potential purchasers, since some potential purchasers might be unable or unwilling to satisfy the foreign ownership restrictions described above; additionally, any sales of certain of our larger vessels to foreign buyers would be subject to approval by the U.S. Maritime Administration. As a result, the sales price for that portion of our business may not attain the amount that could be obtained in an unregulated market. Furthermore, although our certificate of incorporation contains provisions limiting ownership of our capital stock by non-U.S. citizens, foreign ownership is difficult to track and if we or any operating subsidiaries cease to be 75% controlled and owned by U.S. citizens, we would become ineligible to continue our operations in U.S. navigable waters and may become subject to penalties and risk forfeiture of our vessels.

***We may be vulnerable to the cyclical nature of the markets in which our customers operate, which may be exacerbated during economic downturns.***

Current global economic conditions are affecting numerous industries and companies and many states are facing difficult budget decisions which could result in reduced demand for general construction projects. This reduced demand may increase the number of potential bidders in our markets and could increase the competitive environment through pressure on pricing. Budgeting decisions and constraints due to the tight credit markets may result in diversion of governmental funding from projects we perform to other uses. A weak economy may also produce less tax revenue, thereby decreasing funds for public sector projects. Lower levels of activity may result in a corresponding decline in the demand for our services, which could have a material adverse effect on our revenue and profitability.

***Negative conditions in the credit and financial markets could impair our ability to operate our business, or implement our acquisition strategies***

Due to the continuing instability of the credit markets in the United States and abroad, the availability of credit has continued to be relatively difficult or expensive to obtain in spite of government efforts to increase liquidity and hold or reduce interest rates. We may face challenges if conditions in the financial markets do not improve. While these conditions have not impaired the Company's ability to access credit markets and finance operations, at this time, there can be no assurance that there will not be a further deterioration in financial markets and confidence in major economies. A continuing shortage of liquidity could have an impact on the lenders under our credit facility or on our customers.

#### **Risk Factors Related to our Accounting, Financial Results and Financing Plans**

***Actual results could differ from the estimates and assumptions that we use to prepare our financial statements.***

To prepare financial statements in conformity with GAAP, management is required to make estimates and assumptions as of the date of the financial statements, which affect the reported values of assets and liabilities, revenues and expenses, and disclosures of contingent assets and liabilities. Areas requiring significant estimates by our management include: contract costs and profits, application of percentage-of-completion accounting, and revenue recognition of contract change order claims; provisions for uncollectible receivables and customer claims and recoveries of costs from subcontractors, suppliers and others; valuation of assets acquired and liabilities assumed in connection with business combinations; accruals for estimated liabilities, including litigation and insurance reserves; and the value of our deferred tax assets. Our actual results could differ from those estimates.

***Our use of the percentage-of-completion method of accounting could result in a reduction or reversal of previously recorded revenue and profit.***

In particular, as is more fully discussed in "Management's Discussion and Analysis of Financial Condition and Results of Operations — Critical Accounting Policies," we recognize contract revenue using the percentage-of-completion method. A significant portion of our work is performed on a fixed-price or lump-sum basis. The balance of our work is performed on variations of cost reimbursable and target price approaches. Contract revenue is accrued based on the percentage that actual costs-to-date bear to total estimated costs. We utilize this cost-to-cost approach as we believe this method is less subjective than relying on assessments of physical progress. Under the cost-to-cost approach, while the most widely recognized method used for percentage-of-completion accounting, the use of estimated cost to complete each contract is a significant variable in the process of determining income earned and is a significant factor in the accounting for contracts. The cumulative impact of revisions in total cost estimates during the progress of work is reflected in the period in which these changes become known. Due to the various estimates inherent in our contract accounting, actual results could differ from those estimates, which may result in a reduction or reversal of previously recorded revenue and profit.

***Failure to establish and maintain effective internal control over financial reporting could have a material adverse effect on our business, operating results and stock value.***

Maintaining effective internal control over financial reporting is necessary for us to produce reliable financial reports and is important in helping to prevent financial fraud. If we are unable to achieve and maintain adequate internal controls, our business, operating results and financial condition could be harmed. We are required under Section 404 of the Sarbanes-Oxley Act of 2002 (“SOX”) and the related rules of the SEC to annually assess the effectiveness of our internal controls over financial reporting and our independent registered public accounting firm is required to issue a report on the effectiveness of our internal control over financial reporting. During the course of the related documentation and testing, we may identify significant deficiencies or material weaknesses that we may be unable to remediate before the requisite deadline for those reports. If our management or our independent registered public accounting firm were to conclude in their reports that our internal control over financial reporting was not effective, this could have a material adverse effect on our ability to process and report financial information and the value of our common stock could significantly decline.

***Our bonding requirements may limit our ability to incur indebtedness.***

We generally are required to provide various types of surety bonds that provide an additional measure of security for our performance under certain government and private sector contracts. Our ability to obtain surety bonds depends upon various factors including our capitalization, working capital and amount of our indebtedness. In order to help ensure that we can obtain required bonds, we may be limited in our ability to incur additional indebtedness that may be needed for potential acquisitions and operations. Our inability to incur additional indebtedness could have a material adverse effect on our business, operating results and financial condition.

***The downturn in economic conditions may impact our customers’ ability to pay for services and finance projects.***

Our primary customers are governmental agencies in the United States, as well as a wide variety of private customers in diverse industries. It is possible that the credit crisis and current economic conditions may affect some of our customers’ ability to access sufficient capital to finance or complete projects. Our cash flows may be adversely impacted through customer delays in payment or non-payment of our accounts receivable, or through delays or cancellations of projects awarded to us. We monitor our accounts receivable balances closely and maintain contact with our customers to assess the economic viability of projects in process.

***Risks related to ownership of our common stock***

***The price of our common stock may be volatile.***

The market price of our common stock may be influenced by many factors, some of which are beyond our control, including actual or anticipated fluctuations in our operating results, or those of our competitors, public announcements by us or our competitors regarding acquisitions, strategic investments, project awards, the financial market and general economic conditions, changes in stock market analyst recommendations, sales of common stock by our executive officers, directors and/or significant stockholders, as well as reactions to those described above under “Risk Factors related to our Business”.

***Certain provisions of our certificate of incorporation and bylaws and of Delaware law may make it difficult for stockholders to change the composition of our board of directors and may discourage a takeover or change of control.***

We are a Delaware corporation. Various anti-takeover provisions under Delaware law impose impediments on the ability of others to acquire control of us, even if a change of control would be beneficial to our shareholders. In addition, certain provisions of our charters and bylaws may impede or discourage a takeover. For example:

- our Board of Directors is divided into three classes serving staggered three-year terms;
- vacancies on the Board of Directors can only be filled by other directors;
- there are various restrictions on the ability of a shareholder to nominate a director for election; and
- our Board of Directors can authorize the issuance of preference shares.

These types of provisions in our charters and bylaws could also make it more difficult for a third party to acquire control of us, even if the acquisition would be beneficial to our shareholders. Accordingly, shareholders may be limited in the ability to obtain a premium for their shares.

**Item 1B. UNRESOLVED STAFF COMMENTS**

*None*



**Item 2. PROPERTIES**

Our corporate headquarters is located at 12000 Aerospace, Suite 300, Houston, Texas 77034, with 10,983 square feet of office space that we lease, with an initial term expiring February 28, 2017 and with two five year extensions at our option. Our finance and executive offices are located at this facility. As of December 31, 2010, we owned or leased the following additional facilities:

<b>Location</b>	<b>Type of Facility</b>	<b>Size</b>	<b>Leased or Owned</b>
159 Highway 316 Port Lavaca, TX	Waterfront maintenance and dock facilities, equipment yard and dry dock	17.5 acres	Owned
17140 Market Street Channelview, TX	Waterfront maintenance and dock facilities and equipment yard	23.7 acres	Owned
619 Bay View Drive Port Lavaca, TX	Waterfront maintenance and dock facilities and equipment yard; regional office	25.3 acres	Owned
931 West Main St. Port Lavaca, TX	Warehouse	2.1 acres	Owned
2705 State Hwy 146 Baytown, TX	Waterfront property	10.0 acres	Owned
5600 West Commerce Street Tampa, FL	Waterfront maintenance and dock facilities; equipment yard and dry dock	9.1 acres	Owned
12550 Fuqua Houston, TX	Regional office	16,440 square feet	Leased
1500 Main Street Ingleside, TX	Regional office	4 acres	Leased
City of Port Lavaca Port Commission Port Lavaca, Texas	Safe harbor	6.6 acres	Leased
825 Ryan Street Lake Charles, LA	Regional office	6,500 square feet	Leased
Dock Board Road Sulphur, LA	Waterfront maintenance and dock facilities; equipment yard	4.37 acres	Leased
2400 Veterans Boulevard Kenner, LA	Regional office	2,715 square feet	Leased
321 Great Bridge Blvd., Chesapeake, VA	Regional office	1,500 square feet	Leased

<b>Location</b>	<b>Type of Facility</b>	<b>Size</b>	<b>Leased or Owned</b>
5440 W. Tyson Avenue Tampa, FL	Regional office	6,160 square feet	Leased
1901 Hill Street Jacksonville, FL	Waterfront maintenance and dock facilities and equipment yard	Estimated less than 5 acres	Leased
1110 Alexander Avenue Tacoma, WA	Waterfront maintenance and dock facilities and equipment yard	Estimated 3.5 acres	Leased

We believe that our existing facilities are adequate for our operations. We do not believe that any single facility is material to our operations and, if necessary, we could readily obtain a replacement facility. Our real estate assets are pledged to secure our credit facility.

**Item 3.           LEGAL PROCEEDINGS**

Although we are subject to various claims and legal actions that arise in the ordinary course of business, except as described below, we are not currently a party to any material legal proceedings or environmental claims.

The Company was named as one of a substantial number of defendants in numerous individual claims and lawsuits brought by the residents and landowners of New Orleans, Louisiana and surrounding areas in the United States District Court for the Eastern District of Louisiana. These suits have been classified as a subcategory of suits under the more expansive proceeding, *In re Canal Breaches Consolidation Litigation*, Civil Action No: 05-4182, (E.D. La.), which was instituted in late 2005. While not technically class actions, the individual claims and lawsuits are being prosecuted in a manner similar to that employed for federal class actions. The claims are based on flooding and related damage from Hurricane Katrina. In general, the claimants state that the flooding and related damage resulted from the failure of certain aspects of the levee system constructed by the Corps of Engineers, and the claimants seek recovery of alleged general and special damages. The Corps of Engineers contracted with various private dredging companies, including us, to perform maintenance dredging of the waterways. On October 15, 2010, the United States Court of Appeals for the Fifth Circuit affirmed the lower court's decision and dismissed the claimants' suit against us and all defendant dredgers.

From time to time, we are a party to various other lawsuits, claims and other legal proceedings that arise in the ordinary course of our business. These actions typically seek, among other things, compensation for alleged personal injury, breach of contract, property damage, punitive damages, civil penalties or other losses, or injunctive or declaratory relief. With respect to such lawsuits, claims and proceedings, we accrue reserves when it is probable a liability has been incurred and the amount of loss can be reasonably estimated. We do not believe any of these proceedings, individually or in the aggregate, would be expected to have a material adverse effect on our results of operations, cash flows, or on our financial condition.

**Item 4.           RESERVED**

## PART II

### Item 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

#### *Market Information*

Our common stock listed on the New York Stock Exchange ("NYSE") on May 13, 2009, and trades under the symbol "ORN". Prior to that date, we were listed on the NASDAQ Stock Market, LLC and traded under the symbol "OMGI". We have provided to the NYSE, without qualification, the required certification regarding compliance with NYSE corporate governance listing standards.

The following table sets forth the low and high prices of a share of our common stock during each of the fiscal quarters presented, based on NYSE and NASDAQ Stock Market LLC reports:

	Low		High	
<b>2010</b>				
Fourth quarter – December 31	\$	11.08	\$	15.88
Third quarter – September 30	\$	10.75	\$	14.02
Second quarter – June 30	\$	13.69	\$	19.80
First quarter – March 31	\$	16.23	\$	22.37
<b>2009</b>				
Fourth quarter – December 31	\$	17.57	\$	24.38
Third quarter – September 30	\$	16.58	\$	24.98
Second quarter – June 30	\$	11.65	\$	22.84
First quarter – March 31	\$	7.93	\$	13.48

#### *Holders*

As of December 31, 2010, we had approximately 6,347 stockholders of record including beneficial holders.

#### *Dividends*

For the foreseeable future, we intend to retain earnings to grow our business and do not intend to pay dividends on our common stock. We have not historically paid dividends and payments of future dividends, if any, will be at the discretion of our board of directors and will depend on many factors, including general economic and business conditions, our strategic plans, our financial results and condition, legal requirements, and other factors that our board of directors deems relevant. Our existing credit facility restricts our ability to pay cash dividends on our common stock, and we may also enter into credit agreements or other borrowing arrangements in the future that will restrict our ability to declare or pay cash dividends on our common stock.

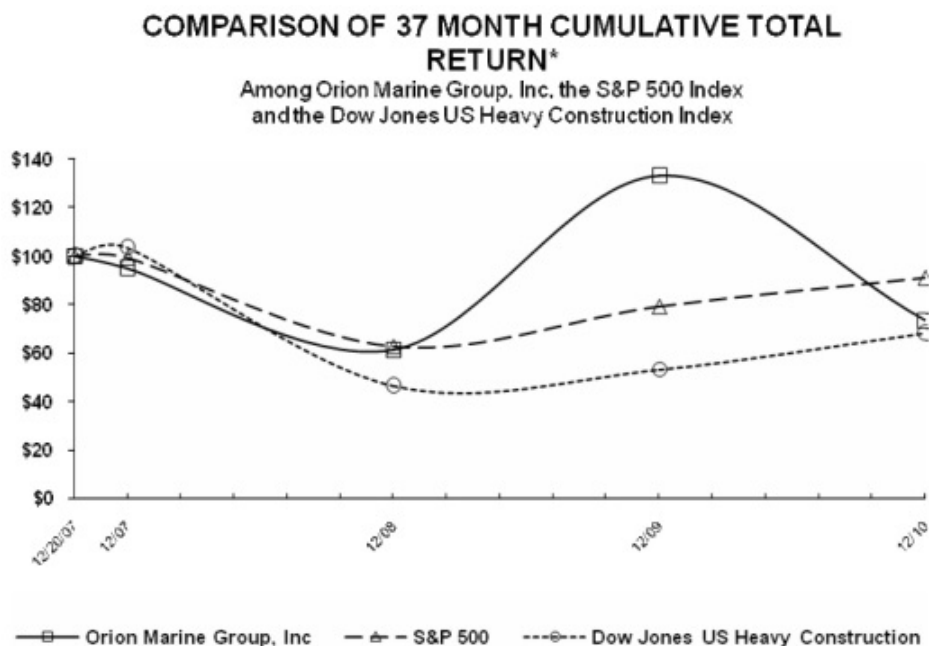
**Securities Authorized for Issuance Under Equity Compensation Plans**

The following table presents certain information about our equity compensation plans as of December 31, 2010:

Plan category	<u>Column A</u>	<u>Column B</u>	<u>Column C</u>
	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in Column A)
Equity compensation plans approved by shareholders	2,606,629	\$ 7.45	50,329
Equity compensation plans not approved by shareholders	—	—	—
Total	<u>2,606,629</u>	<u>\$ 7.45</u>	<u>50,329</u>

### Performance Graph\*

The following graph shows the changes, since our common stock began trading on the NASDAQ Global Market on December 20, 2007, in the value of \$100 invested in (1) the common stock of Orion Marine Group, Inc., (2) the Standard & Poor's 500 Index and (3) the Dow Jones Heavy Construction Index. The values of each investment are based on share price appreciation, with reinvestment of all dividends, assuming any were paid. For each graph, the investments are assumed to have occurred at the beginning of each period.



\*\$100 invested on 12/20/07 in stock or 11/30/07 in index, including reinvestment of dividends. Fiscal year ending December 31.

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	2007	2007	2008	2009	2010
Orion Marine Group, Inc.	100.00	94.94	61.14	133.29	73.42
S&P 500	100.00	99.31	62.56	79.12	91.04
Dow Jones US Heavy Civil Construction	100.00	103.61	46.50	53.15	68.24

Note: The above information was provided by Research Data Group, Inc.

\*This table and the information therein is being furnished but not filed.

**Item 6. SELECTED FINANCIAL DATA**

The following table presents selected financial data for each of the last five fiscal years. This selected financial data should be read in conjunction with the Consolidated Financial Statements and related notes beginning on page F-1 of this Annual Report on Form 10-K and Item 7 “Management’s Discussion and Analysis of Financial Condition and Results of Operations”. These historical results are not necessarily indicative of the results of operations to be expected for any future period. Computations of basic and diluted earnings per share have been adjusted retroactively for all periods presented to reflect a 2.23 for one reverse split of the Company’s common stock in 2007.

The table below includes the non-GAAP financial measure of EBITDA. For a definition of EBITDA and a reconciliation to net income calculated and presented in accordance with GAAP, please see “Non-GAAP Financial Measures” immediately below.

*Amounts in thousands, except share and per share information*

	2010	2009	2008	2007	2006
Contract revenues	\$ 353,135	\$ 293,494	\$ 261,802	\$ 210,360	\$ 183,278
Gross profit	65,233	62,697	50,451	50,433	38,537
Selling, general and administrative expenses	32,646	30,695	27,730	22,738	17,247
Other (income) expense, net	(1,254)	438	964	118	1,933
Net income	21,882	20,030	14,475	17,399	12,403
Preferred dividends	—	—	—	782	2,100
Income available to common shareholders	\$ 21,882	\$ 20,030	\$ 14,475	\$ 16,617	\$ 10,303
Net income per share available to common shareholders:					
Basic	\$ 0.81	\$ 0.85	\$ 0.67	\$ 0.86	\$ 0.62
Diluted	\$ 0.81	\$ 0.84	\$ 0.66	\$ 0.83	\$ 0.61
Weighted average shares outstanding:					
Basic	26,899,373	23,577,854	21,561,201	19,657,436	16,630,045
Diluted	27,165,852	23,979,943	21,979,535	19,976,683	16,958,453
<b>Other Financial Data</b>					
EBITDA	\$ 53,634	\$ 50,538	\$ 41,321	\$ 40,079	\$ 33,003
Capital expenditures	29,050	22,693	14,485	11,433	11,931
Cash interest expense	547	553	1,234	927	2,848
Depreciation and amortization*	19,458	18,536	18,848	12,592	11,805
Net cash provided by (used in):					
Operating activities	13,839	40,336	26,471	10,092	32,475
Investing activities	(95,755)	(21,598)	(47,337)	(9,463)	(11,987)
Financing activities	354	60,286	33,994	(6,606)	(9,572)

\*includes depreciation and amortization of finite lived intangible assets

	2010	2009	2008	2007	2006
(in thousands)					
<b>Balance Sheet Data:</b>					
Cash and cash equivalents	\$ 23,174	\$ 104,736	\$ 25,712	\$ 12,584	\$ 18,561
Working capital	76,729	130,760	47,021	32,452	12,970
Total assets	307,579	273,157	186,322	133,534	125,072
Total debt	—	—	34,125	—	25,000
Total stockholders’ equity	246,856	221,666	105,611	90,084	53,239

**Non-GAAP Financial Measures**

We include in this Annual Report on Form 10-K the non-GAAP financial measure of EBITDA. We define EBITDA as income before interest, income taxes, depreciation and amortization. EBITDA is used as a supplemental financial measure by our management and by external users of our financial statements such as investors, commercial banks and others, to assess:

- the financial performance of our assets without regard to financing methods, capital structure or historical cost basis;
- the ability of our assets to generate cash sufficient to pay interest costs and support our indebtedness;
- our operating performance and return on capital as compared to those of other companies in our industry, without regard to financing or capital structure; and
- the viability of acquisitions and capital expenditure projects and the overall rates of return on alternative investment opportunities.

EBITDA is not a presentation made in accordance with GAAP. EBITDA should not be considered an alternative to, or more meaningful than, net income, operating income, cash flows from operating activities or any other measure of financial performance presented in accordance with GAAP as measures of operating performance, liquidity or ability to service debt obligations. Because EBITDA excludes some, but not all, items that affect net income and is defined differently by different companies in our industry, our definition of EBITDA may not be comparable to similarly titled measures of other companies. EBITDA has important limitations as an analytical tool, and you should not consider it in isolation.

The following table provides a reconciliation of EBITDA to our net income for the periods indicated as calculated and presented in accordance with GAAP:

	2010	2009	2008	2007	2006
Net income	\$ 21,882	\$ 20,030	\$ 14,475	\$ 17,399	\$ 12,403
Income tax expense	11,959	11,534	7,282	10,178	7,040
Interest expense(income), net	335	438	964	118	1,933
Depreciation and amortization*	19,458	18,536	18,600	12,384	11,627
EBITDA	\$ 53,634	\$ 50,538	\$ 41,321	\$ 40,079	\$ 33,003

*\*includes depreciation, amortization of finite-lived intangible assets and amortization of deferred financing costs*



**Selected Quarterly Financial Data**

The following table sets forth selected unaudited financial information for the eight quarters in the two-year period ended December 31, 2010. This information has been prepared on the same basis as the audited financial statements and, in the opinion of management, contains all adjustments necessary for a fair presentation.

	<u>First Quarter</u>	<u>Second Quarter</u>	<u>Third Quarter</u>	<u>Fourth Quarter</u>	<u>Total Year</u>
(in thousands, except per share data)					
<b>2010</b>					
Revenues	\$ 75,556	\$ 87,126	\$ 100,024	\$ 90,428	\$ 353,135
Operating income	5,471	11,164	11,481	4,471	32,587
Income before income taxes	7,602	11,008	11,403	3,828	33,841
Net income	4,781	7,009	7,098	2,994	21,882
Earnings per share:					
Basic	\$ 0.18	\$ 0.26	\$ 0.26	\$ 0.11	\$ 0.81
Diluted	\$ 0.18	\$ 0.26	\$ 0.26	\$ 0.11	\$ 0.81
	<u>First Quarter</u>	<u>Second Quarter</u>	<u>Third Quarter</u>	<u>Fourth Quarter</u>	<u>Total Year</u>
(in thousands, except per share data)					
<b>2009</b>					
Revenues	\$ 70,040	\$ 70,753	\$ 81,466	\$ 71,235	\$ 293,494
Operating income	7,074	10,136	8,300	6,241	31,750
Income before tax	6,971	10,000	8,289	6,304	31,564
Net income	4,341	6,286	5,397	4,006	20,030
Earnings per share:					
Basic	\$ 0.20	\$ 0.29	\$ 0.22	\$ 0.15	\$ 0.85
Diluted	\$ 0.20	\$ 0.28	\$ 0.22	\$ 0.15	\$ 0.84

## **Item 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

The following discussion and analysis of our financial condition and results of operations is based on and should be read in conjunction with our consolidated financial statements and the accompanying notes beginning on page F-1 of this Annual Report on Form 10-K. Certain statements made in our discussion may be forward-looking. Forward-looking statements involve risks and uncertainties and a number of factors could cause actual results or outcomes to differ materially from our expectations. See "Forward-Looking Statements" at the beginning of this Annual Report on Form 10-K for additional discussion of some of these risks and uncertainties. Unless the context requires otherwise, when we refer to "we", "us" and "our", we are describing Orion Marine Group, Inc. and its consolidated subsidiaries.

### ***Overview***

We are a leading marine specialty contractor serving the heavy civil marine infrastructure market. We provide a broad range of marine construction and specialty services on, over and under the water along the Gulf Coast, the Atlantic Seaboard, the Pacific Northwest and the Caribbean Basin. Our customers include federal, state and municipal governments, the combination of which accounted for approximately 64% of our revenue in the year ended December 31, 2010, as well as private commercial and industrial enterprises. We are headquartered in Houston, Texas.

### ***2010 Recap and 2011 Outlook***

In January 2010, we acquired Texas-based T.W. LaQuay Dredging, LLC ("TWLD") for approximately \$61 million in cash, utilizing proceeds raised in our August 2009 public stock offering to fund the acquisition. The acquisition provided us with additional dredging resources for deep-channel dredging capability as well as additional experienced personnel. Through its backlog, the acquisition immediately contributed to 2010 revenue.

In February 2010, we expanded our operations and established a base in the Pacific Northwest through the purchase of a marine construction business, at a total price of \$7.0 million in cash. As the fair value of the business purchased exceeded the purchase price, we recognized a gain, net of the associated tax effect, of \$1.6 million on this transaction.

Despite a difficult and challenging economic environment and increased competition along the Eastern Seaboard, our revenues increased 20.3% in 2010 as compared with 2009, including the liquidation of the TWLD backlog. The mix of contracts in progress and those completed during 2010 shifted more toward the public sector, with 64% of 2010 revenue generated from state agencies and local municipalities, as well as the federal government, which includes the US Army Corps of Engineers. We are not dependent upon a single sector as a source of revenue.

We continued to invest in specialized equipment to enhance our lift capabilities and expand our fleet. Our capital expenditures in 2010 totaled \$29.1 million, excluding the assets acquired in our two acquisitions.

In June 2010, we entered into a larger credit facility, which provides for a revolving credit line of up to \$75 million, with an additional \$25 million available at the lender's discretion. Our credit facility extends to June 30, 2013.

During the year ended December 31, 2010, our operations provided cash from operations of \$13.8 million and our cash position at December 31, 2010 exceeded \$23.0 million. Our operations are not currently dependent on external sources of capital and we have not utilized the \$75 million available to us under our revolving credit facility.

Our overall performance generally depends on spending in the heavy civil marine infrastructure market. Spending by our customers, both government and private, is impacted by several important trends affecting our industry, including the following:

- port and channel expansion and maintenance;

- deteriorating condition of intracoastal waterways and bridges;
- continued demand in the cruise industry;
- infrastructure spending by the United States Navy and Coast Guard;
- near-shore oil and gas capital expenditures
- ongoing U.S. coastal wetlands restoration and reclamation;
- recurring hurricane restoration and repair.

Despite the uncertain economic and political environments, we continue to see positive long term trends in our end markets, including:

- Ports in our geographic markets have released plans for expansion as a result of recent cargo volume increases and expected future increases as larger ships begin to transit the Panama Canal;
- Good opportunities for coastal restoration and protection projects; and.
- The continuation of the highway transportation program for highway construction, including bridges over water.

Our focus in 2011 will be to concentrate on our core business objectives; to manage our business effectively and efficiently, while maintaining pricing discipline; to pursue rational growth strategies while closely monitoring the costs of our operations; and to maintain our strong balance sheet.

### ***Critical Accounting Policies***

The consolidated financial statements contained in this report were prepared in accordance with accounting principles generally accepted in the United States (“US GAAP”). The preparation of these financial statements in conformity with US GAAP requires management to make estimates and assumptions that affect both the Company’s carrying values of its assets and liabilities, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Although our significant accounting policies are described in more detail in Note 2 of the *Notes to Consolidated Financial Statements*; we believe the following accounting policies to be critical to the judgments and estimates used in the preparation of our financial statements.

### ***Revenue Recognition***

We enter into construction contracts principally on the basis of competitive bids. Although the terms of our contracts vary considerably, most are made on a fixed price basis. Revenues from construction contracts are recognized on the percentage-of-completion method. The percentage-of-completion method measures the ratio of costs incurred and accrued to date for each contract to the estimated total costs for each contract at completion. This requires us to prepare on-going estimates of the costs to complete each contract as the project progresses. In preparing these estimates, we make significant judgments and assumptions concerning our significant cost drivers of materials, labor and equipment, and we evaluate contingencies based on possible schedule variances, production delays or other productivity factors.

Actual costs may vary from the costs we estimated. Variations from estimated contract costs along with other risks inherent in fixed price contracts may result in actual revenue and gross profits differing from those we estimated and could result in losses on projects. If a current estimate of total contract cost indicates a loss on a contract, the projected loss is recognized in full when determined, without regard to the percentage of completion. We consider unapproved change orders to be contract variations on which we have customer approval for scope change, but not for price associated with that scope change. These costs are included in the estimated cost to complete the contracts and are expensed as incurred. We recognize revenue equal to cost incurred on unapproved change orders when realization of price approval is probable and the estimated amount is equal to or greater than our cost related to the unapproved change order and the related margin when the change order is formally approved by the customer. Revenue recognized on unapproved change orders is included in contract costs and estimated earnings in excess of billings on uncompleted contracts on the balance sheet. We consider claims to be amounts that we seek or will seek to collect from customers or others for customer-caused changes in contract specifications or design, or other customer-related causes of unanticipated additional contract costs on which there is no agreement with customers on both scope and price changes. Revenue from claims is recognized when agreement is reached with customers as to the value of the claims, which in some instances may not occur until after completion of work under the contract. Costs associated with claims are included in the estimated costs to complete the contracts and are expensed when incurred. Depending on the size of a particular project, variations from estimated project costs could have a significant impact on our operating results for any fiscal quarter or year. We believe our exposure to losses on fixed price contracts is limited by the relatively short duration of the contracts we undertake and our management’s experience in estimating contract costs.

### *Long-Lived Assets*

Our long-lived assets consist primarily of equipment used in our operations. Fixed assets are carried at cost and are depreciated over their estimated useful lives, ranging from one to thirty years, using the straight-line method for financial reporting purposes and accelerated methods for tax reporting purposes. The carrying value of our long-lived assets is evaluated periodically based on utilization of the asset and physical condition of the asset, as well as the useful life of the asset to determine if adjustment to the depreciation period or the carrying value is warranted. If events and circumstances such as poor utilization or deteriorated physical condition indicate that the asset(s) should be reviewed for possible impairment, we use projections to assess whether future cash flows, including disposition, on a non-discounted basis related to the tested assets are likely to exceed the recorded carrying amount of those assets to determine if an impairment exists. If we identify a potential impairment, we will estimate the fair value of the asset through known market transactions of similar equipment and other valuation techniques, which could include the use of similar projections on a discounted basis. We will report a loss to the extent that the carrying value of the impaired assets exceeds their fair values.

### *Goodwill*

We have acquired businesses and assets in purchase transactions that resulted in the recognition of goodwill. In accordance with US GAAP, acquired goodwill is not amortized, but is subject to impairment testing at least annually or more frequently if events or circumstances indicate that the asset more likely than not may be impaired.

Goodwill recorded on our Consolidated Balance Sheets is subject to impairment testing at least annually or more frequently if events or circumstances indicate that the asset more likely than not may be impaired. We evaluate goodwill at the reporting unit level. We have determined that we have three reporting units, which are based on geography, and are referred to internally as “East Coast”, “Gulf Coast” and “Pacific Northwest”. Each reporting unit conducts similar business as described in this Annual Report on Form 10-K, which includes marine construction specialty services. This reporting unit grouping reflects our internal management structure, which is based on the geographic location of our primary field offices. Two reporting units, Gulf Coast and East Coast have goodwill and are tested for impairment.

At December 31, 2010, goodwill totaled \$32.2 million, of which \$22.6 million related to the Gulf Coast (including goodwill acquired from the acquisition of T.W. LaQuay), and \$9.6 million resulted from the acquisition of equipment on the East Coast in 2008.

We assess the fair value of our two reporting units based on a weighted average of valuations based on market multiples, discounted cash flows, and consideration of our market capitalization. The key assumptions used in the discounted cash flow valuations are discount rates and perpetual growth rates applied to cash flow projections. Also inherent in the discounted cash flow valuation models are past performance, projections and assumptions in current operating plans, and revenue growth rates over the next five years. These assumptions contemplate business, market and overall economic conditions. We also consider assumptions that market participants may use.

As required by the Company’s policy, annual impairment tests of goodwill are performed during the fourth quarter of each year or when circumstances arise that indicate a possible impairment might exist. Based on this testing, we determined that the estimated fair value of our reporting units exceeded their respective carrying values as of October 31, 2010, goodwill was not impaired, and no events have occurred since that date that would require an interim impairment test. In the future, our estimated fair value could be negatively impacted by deteriorating economic conditions, which may reduce our revenue growth potential.

#### *Income Taxes*

We account for income taxes using the liability method prescribed by US GAAP. We evaluate valuation allowances for deferred tax assets for which future realization is uncertain. The estimation of required valuation allowance includes estimates of future taxable income. In our assessment of our deferred tax assets at December 31, 2010, we considered that it was more likely than not that all of the deferred tax assets would be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. We consider the scheduled reversal of deferred tax liabilities, projected future taxable income and tax planning strategies in making this assessment.

The Company accounts for uncertain tax positions in accordance with the provisions ASC 740-10, which prescribes a recognition threshold and measurement attribute for financial statement disclosure of tax positions taken, or expected to be taken, on our consolidated tax return. We evaluate and record any uncertain tax positions based on the amount that management deems is more likely than not to be sustained upon ultimate settlement with the tax authorities in the tax jurisdictions in which we operate.

#### *Insurance Coverage, Litigation, Claims and Contingencies*

We maintain insurance coverage for our business and operations. Insurance related to property, equipment, automobile, general liability and a portion of workers' compensation is provided through traditional policies, subject to a deductible. A portion of our workers' compensation exposure is covered through a mutual association, which is subject to supplemental calls.

The Company maintains five levels of excess loss insurance coverage, totaling \$75 million in excess of primary coverage, which excess loss coverage responds to all of the Company's insurance policies other than a portion of its Workers' Compensation coverage and employee health care coverage. The Company's excess loss coverage responds to most of its policies when a primary limit of \$1 million has been exhausted; provided that the primary limit for Maritime Employer's Liability is \$10 million and the Watercraft Pollution Policy primary limit is \$5 million.

We have elected to retain a portion of losses that may occur through the use of various deductibles, limits and retentions under our insurance programs. Losses on these policies up to the deductible amounts are accrued in our consolidated financial statements based on known claims incurred and an estimate of claims incurred but not yet reported. We derive our accruals from known facts, historical trends and industry averages to determine the best estimate of the ultimate expected loss. Actual claims may vary from our estimate. We include any adjustments to such reserves in our consolidated results of operations in the period in which they become known.

#### *Accounting for Stock Issued to Employees and Others*

We measure the cost of equity compensation to our employees and independent directors based on the estimated grant-date fair value of the award and recognize the expense over the vesting period. We use the Black-Scholes option pricing model to compute the fair value of the awards of equity instruments. The Black-Scholes model requires the use of highly subjective assumptions in the computation. Changes in these assumptions can cause significant fluctuations in the fair value of the option award.

## Consolidated Results of Operations

### Current Year—Year Ended December 31, 2010 compared with Year Ended December 31, 2009

The following information is derived from our historical results of operations (dollars in thousands):

	Twelve months ended December 31,			
	2010		2009	
	Amount	Percent	Amount	Percent
Contract revenues	\$ 353,135	100.0%	\$ 293,494	100.0%
Cost of contract revenues	287,902	81.5%	230,797	78.6%
Gross profit	65,233	18.5%	62,697	21.4%
Selling, general and administrative expenses	32,646	9.3%	30,695	10.5%
Operating income	32,587	9.2%	32,002	10.9%
Other (income) expense				
Gain from bargain purchase	(1,589)	-0.5%	—	0.0%
Interest (income)	(99)	-0.0%	(352)	-0.1%
Interest expense	434	0.1%	790	0.2%
Other (income) expense, net	(1,254)	-0.4%	438	0.1%
Income before income taxes	33,841	9.6%	31,564	10.8%
Income tax expense	11,959	3.4%	11,534	3.9%
Net income	\$ 21,882	6.2%	\$ 20,030	6.9%

**Contract Revenues.** Total revenue in 2010 increased \$59.6 million or 20.3%, as compared with 2009, of which approximately \$31 million related to liquidation of backlog from contracts acquired in the acquisition of T.W. LaQuay Dredging. The assets of T.W. LaQuay Dredging were absorbed into the normal operations of our business and are not a separate reporting unit. The remaining increase in revenue was attributable to the size and type of projects in backlog; the productivity of our labor force, the utilization of our equipment and the progress schedules in the mix of projects between periods; all of which factor into and affect the rate at which revenue is recognized as projects are completed. Our typical project duration is between three to nine months, and comparisons of individual projects between reporting periods are not indicators of future results. In 2010, our mix of contracts due to the projects we chose to bid (and were awarded), as well as the backlog obtained from T.W. LaQuay Dredging shifted, such that 41% of 2010 revenues were generated from federally funded projects. Overall, 64% of 2010 revenues were generated from governmentally funded projects, with 36% generated from the private sector. Our customer base changes over time, and we are not dependent on a single sector or customer for the projects we bid.

**Gross Profit.** Gross profit increased by \$2.5 million, or 4.0% as compared with the prior year, primarily as a result of the increase in revenues. However, gross margin decreased in 2010 to 18.5% of revenues from 21.4% of revenues in 2009. The decrease was due to pricing pressure experienced on the East Coast which reduced profitability on certain jobs throughout the year. In the fourth quarter, production issues on three projects negatively impacted gross profit and margin. In addition, the mix of contracts in progress required the use of outside subcontractors, more than is historically our norm, which reduced our overall self-performance rate to 82.4% and contributed to the decrease in gross margin.

**Selling, General and Administrative Expense.** As compared with the prior year, selling, general and administrative expenses (“SG&A”) increased approximately \$2.0 million or 6.4% in 2010. In the current year, \$1.7 million was related to the costs of the acquisitions in early 2010, while in 2009 approximately \$3.0 million was related to the amortization of construction contracts in backlog acquired in 2008 upon the acquisition of a dredging business along the Eastern Seaboard. Excluding these two items in each year, SG&A increased by approximately \$3.3 million, primarily related to additional overheads to support our business growth.

***Other Income, net of expense.*** Other income of \$1.3 million in 2010 resulted from a gain of \$1.6 million on the purchase of the business in the Pacific Northwest in February 2010, which fair value, net of the related deferred tax liability, exceeded the purchase price. The balance related to interest expense, net of interest income.

***Income Tax Expense.*** Our effective rate for the year ended December 31, 2010 was 35.3%. This differed from the Company's statutory rate of 35% primarily due to state income taxes and the non-deductibility of certain permanent tax items, such as incentive stock compensation expense, and which in the current year included a reduction of taxable income related to the net gain on the bargain purchase of the business in the Pacific Northwest. Our effective tax rate at December 31, 2009 was 36.5%.

**Prior Year—Year Ended December 31, 2009 compared with Year Ended December 31, 2008**

The following information is derived from our historical results of operations (dollars in thousands):

	Twelve months ended December 31,			
	2009		2008	
	Amount	Percent	Amount	Percent
Contract revenues	\$ 293,494	100.0%	\$ 261,802	100.0%
Cost of contract revenues	230,797	78.6%	211,351	80.7%
Gross profit	62,697	21.4%	50,451	19.3%
Selling, general and administrative expenses	30,695	10.5%	27,730	10.6%
Operating income	32,002	10.9%	22,473	8.7%
Interest (income) expense				
Interest (income)	(352)	-0.1%	(530)	-0.2%
Interest expense	790	0.2%	1,494	0.6%
Interest (income) expense, net	438	0.1%	964	0.4%
Income before income taxes	31,564	10.8%	21,757	8.3%
Income tax expense	11,534	3.9%	7,282	2.8%
Net income	\$ 20,030	6.9%	\$ 14,475	5.5%

**Contract Revenues.** Total revenue in 2009 increased \$31.7 million or 12.1%, as compared with 2008. The increase in revenue was attributable to the progress schedules and rate of completion of the contracts in progress in 2009. Our mix of projects during the year shifted toward the public sector, which totaled 55.2% of 2009 revenues, with revenues generated from the private sector representing 44.8%. In 2008, 50.1% of revenues were generated from government agencies and 49.1% from the private sector. An increase in spending by the Corps of Engineers, partly targeting economic recovery, resulted in 18.5% of total revenues generated from federally funded projects, as compared with 11.1% in the prior year.

**Gross Profit.** Gross profit increased by \$12.2 million, or 24.3% and gross margin improved to 21.4% in 2009 from 19.3% in 2008. We achieved an improvement in gross margin (related to the increase in revenues) despite a reduction in our contract self-performance rate to 87.6% of total costs, as compared with a self-performance rate of 88.2% in 2008. In addition, during 2008, significant production delays which resulted from unexpected amounts of trash and unforeseen site conditions on two projects involving dredging services, negatively affected gross margins in that period, and which did not reoccur in 2009.

**Selling, General and Administrative Expense.** As compared with the prior year, selling, general and administrative expenses (“SG&A”) increased \$3.0 million or 10.6% in 2010. The increase was due primarily to additional overheads to support our business growth. In the prior year, we benefitted from lower group medical and workers’ compensation expenses.

**Income Tax Expense.** Our effective rate for the year ended December 31, 2009 was 36.5% and differed from the Company’s statutory rate of 35% primarily related to state income taxes and the non-deductibility of certain permanent tax items, such as incentive stock compensation expense, offset in part by the benefit of the domestic production activities deduction on our federal tax return, which net effect increased our overall effective tax rate. Our effective tax rate of 33.5% in 2008 differed from our statutory rate of 35%, primarily due to the benefit of the domestic production activities deduction on the Company’s tax return and true-ups of federal and state deferred taxes.

#### **Liquidity and Capital Resources**

Our primary liquidity needs are for financing working capital, investment in capital expenditures and strategic acquisitions. Historically, our sources of liquidity have been cash provided by our operating activities and borrowings under our credit facility.



Our working capital position fluctuates from period to period due to normal increases and decreases in operations activity. At December 31, 2010, our working capital was \$76.7 million as compared with \$130.8 million at December 31, 2009, of which \$53.4 million in the prior year balance was related to the proceeds received from the sale of common stock in August 2009.

As of December 31, 2010, we had available cash on hand and availability under our revolving credit facility of \$123.2 million.

During 2010, our operations provided cash from operations of \$13.8 million. Our operations are not currently dependent on external sources of capital, and we have not utilized our available borrowing of \$75 million under our credit facility.

We expect to meet our future internal liquidity and working capital needs, and maintain our equipment fleet through capital expenditure purchases and major repairs, from funds generated in our operating activities, and from the proceeds received from our common stock offering, for at least the next 12 months. We believe our cash position, combined with the capacity available under our revolving credit facility, is adequate for our general business requirements.

The following table provides information regarding our cash flows and our capital expenditures for the years ended December 31, 2010, 2009 and 2008:

	Year ended December 31,		
	2010	2009	2008
	(in thousands)		
Cash provided by (used in):			
Operating activities	\$ 13,839	\$ 40,336	\$ 26,471
Investing activities	(95,755)	(21,598)	(47,337)
Financing activities	354	60,286	33,994
Capital expenditures (included in investing activities above)	29,050	22,693	14,485

**Operating Activities.** Fluctuations in cash generated by operating activities are generally the result of timing differences related to the nature and volume of contracts in any given year. Our operations provided net cash of \$13.8 million during fiscal 2010. The change between periods of \$26.5 million, as compared with 2009 was due to:

- An increase in our deferred income taxes of \$6.0 million due to an increase in deferred tax liability related to timing differences in book and tax depreciation resulting from the acquisitions in the year;
- An increase of \$1.0 million of depreciation expense related to the increase in our fleet;
- An increase of \$0.9 million of stock based compensation expense, due to the increase in the fair value of our stock at the time of grants; offset by
- A decrease of \$35.3million in working capital components, as described below.

In 2010, the changes in working capital included a decrease in trade payables of \$18.9 million compared with 2009, related to the timing of payments to vendors, and based on the mix of contracts in progress. Amounts unbilled to customers, net of our liability related to progress billings, increased by \$7.3 million as compared with 2009 and was related to the timing of billings to customers and our contractual ability to bill for materials received but not installed. Due to the timing of estimated federal income tax deposits, our prepaid taxes increased by approximately \$4.6 million, and we recorded a receivable of approximately \$3.1 million related to the finalization of the purchase price of T.W. LaQuay Dredging. We manage our working capital components in total, rather than by the individual elements, and fluctuations in accounts receivable and payable balances are normal within our business.

In 2009, our accounts receivable and payable balances increased by \$2.5 million and \$11.2 million, respectively, and amounts unbilled to customers exceeded billings to customers on our contracts in progress.

**Investing Activities.** We purchase capital equipment as well as perform major maintenance and upgrades of our existing fleet and construction equipment to support our construction activities. Capital expenditures supporting our operations and enhancing our fleet totaled \$29.1 million in 2010, an increase of \$6.4 million as compared with 2009, some of which related to the purchase of additional heavy lift capacity. Also in 2010, we acquired the business of T.W. LaQuay Dredging for approximately \$61 million, and expanded into the Pacific Northwest through a business acquisition totaling \$6.7 million. In 2009, our capital expenditures totaled \$22.7 million, which included the purchase of specialized equipment for approximately \$5.8 million. In 2008, we purchased assets to expand our dredging capabilities along the Atlantic Seaboard for a total purchase price of \$36.7 million. Proceeds from the sale of property and equipment in 2008 included \$2.8 million received from the sale of a vessel no longer considered integral to our fleet.

**Financing Activities.** Financing activities in 2010 primarily related to loan costs incurred upon the entry into a new credit agreement in June 2010 and to proceeds received from the exercise of stock options. In August 2009, we completed a public offering of common stock, receiving proceeds, net of expenses, of approximately \$91.0 million. With a portion of the proceeds, we repaid the outstanding balance on our credit facility. In addition, we received proceeds from stock option exercises, including related tax benefits of \$3.4 million. Cash provided by financing activities in 2008 was attributable to our borrowing of \$35.0 million under our line of credit to fund the purchase of assets.

### Sources of Capital

On June 29, 2010, the Company entered into a credit agreement with Wells Fargo Bank, National Association, as administrative agent, and Wells Fargo Securities, LLC as sole lead arranger and bookrunner; and the lenders from time to time as party thereto.

The Credit Agreement provides for borrowings of up to \$75,000,000 under revolving and swingline loans (as defined in the Credit Agreement) with a \$20,000,000 sublimit for the issuance of letters of credit. An additional \$25 million is available under the facility subject to the lenders' discretion (together, the "*Credit Facility*"). The Credit Facility matures on September 30, 2013, and is guaranteed by the subsidiaries of the Company. The Credit Facility may be used to finance working capital, repay indebtedness, fund acquisitions, and for other general corporate purposes.

Revolving loans may be designated as prime rate based loans ("ABR Loans") or Eurodollar Loans, at the Company's request, and may be made in integrals of \$500,000, in the case of an ABR Loan, or \$1,000,000 in the case of a Eurodollar Loan. Swingline loans may only be designated as ABR Loans, and may be made in amounts equal to integral multiples of \$100,000. The Company may convert, change or modify such designations from time to time. Interest is computed based on the designation of the Loans, and bear interest at either a prime-based interest rate or a LIBOR-based interest rate. Principal balances drawn under the Credit Facility may be prepaid at any time, in whole or in part, without premium or penalty. Amounts repaid under the Credit Facility may be re-borrowed.

The Credit Facility contains certain restrictive financial covenants that are usual and customary for similar transactions, including:

- A Fixed Charge Coverage Ratio of not less than 1.50 to 1.00 at all times;
- A Leverage Ratio of not greater than 2.50 to 1.00 at all times;
- A minimum Net Worth of not less than \$180 million on the effective date, and at the end of each fiscal quarter thereafter, minimum net worth required as of the end of the immediately preceding fiscal quarter plus 50% of the Borrower's and its subsidiaries consolidated net income for that quarter, plus 75% of all issuances of equity interests by Borrower during that quarter.

In addition, the Credit Facility contains events of default that are usual and customary for similar transactions, including non-payment of principal, interest or fees; inaccuracy of representations and warranties; violation of covenants; bankruptcy and insolvency events; and events constituting a change of control.

The Company is subject to a commitment fee, payable quarterly in arrears on the unused portion of the Credit Facility at a current rate of 0.25% of the unused balance. As of December 31, 2010, no amounts had been drawn under the Credit Facility.

At December 31, 2010, the Company was in compliance with all its financial covenants with a sufficient margin as to not impair its ability to incur additional debt or violate the terms of the Credit Facility, and had outstanding letters of credit of \$979,221. Historically, the Company has not relied on debt financing to fund its operations or working capital.

### **Bonding Capacity**

We are generally required to provide various types of surety bonds that provide additional security to our customers for our performance under certain government and private sector contracts. Our ability to obtain surety bonds depends on our capitalization, working capital, past performance and external factors, including the capacity of the overall surety market. At December 31, 2010, we believe our capacity under our current bonding arrangement was in excess of \$400 million, of which we had approximately \$130 million in surety bonds outstanding. We believe our strong balance sheet and working capital position will allow us to continue to access our bonding capacity.

### **Effect of Inflation**

We are subject to the effects of inflation through increases in the cost of raw materials, and other items such as fuel. Because the typical duration of a project is between three to nine months we do not believe inflation has had a material impact on our operations.

### **Off Balance Sheet Arrangements**

We currently have no off balance sheet arrangements, other than operating leases to which we are a party, and which are discussed above under "Bonding Capacity" and "Sources of Capital" and which arise in the normal course of business. These arrangements are not reasonably likely to have an effect on our financial condition, or results of operations that is material to investors. See Note 20 – *Commitments and Contingencies* of Notes to Consolidated Financial Statements beginning on page F-1 of this Annual Report on Form 10-K.

## Contractual Obligations

The following table sets forth information about our contractual obligations and commercial commitments as of December 31, 2010:

	<u>Total</u>	<u>Payment Due by Period</u>			
		<u>&lt; 1 year</u>	<u>1-3 years</u> (in thousands)	<u>3-5 years</u>	<u>&gt; 5 years</u>
Long-term debt obligations	\$ —	\$ —	\$ —	\$ —	\$ —
Operating lease obligations	8,146	3,491	3,613	820	222
Purchase obligations (1)	—	—	—	—	—
Total	<u>\$ 8,146</u>	<u>\$ 3,491</u>	<u>\$ 3,613</u>	<u>\$ 820</u>	<u>\$ 222</u>

- (1) Commitments pursuant to other purchase orders and subcontracts related to construction contracts are not included since such amounts are expected to be funded under contract billings.

To manage risks of changes in the material prices and subcontracting costs used in tendering bids for construction contracts, we obtain firm quotations from our suppliers and subcontractors before submitting a bid. These quotations do not include any quantity guarantees, and we have no obligation for materials or subcontract services beyond those required to complete the contracts that we are awarded for which quotations have been provided.

## Recently Issued Accounting Pronouncements

### *Disclosures about Fair Value Measurements*

In January 2010, the FASB issued a new accounting standard update ("ASU") which clarifies and provides additional disclosure requirements on the transfers of assets and liabilities between Level 1 (quoted prices in active market for identical assets or liabilities) and Level 2 (significant other observable inputs) of the fair value measurement hierarchy, including the reasons for and the timing of the transfers. Additionally, the guidance requires a roll forward of activities on purchases, sales, issuance, and settlements of the assets and liabilities measured using significant unobservable inputs (Level 3 fair value measurements). This ASU is effective for us in 2010, except for the requirements to provide Level 3 activity which will become effective for us in 2011. The adoption of the currently effective provisions of this ASU did not have a material effect on our consolidated financial statements, and we do not expect the adoption of the remaining provisions of this ASU to have a material effect on our consolidated financial statements.

During the periods presented in these financial statements, the Company implemented other new accounting pronouncements other than the one above that are discussed in the notes where applicable.

**Item 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

We do not enter into derivative financial instruments for trading, speculation or other purposes that would expose the Company to market risk. In the normal course of business, our results of operations are subject to risks related to fluctuation in commodity prices and fluctuations in interest rates.

*Commodity price risk*

We are subject to fluctuations in commodity prices for concrete, steel products and fuel. Although we attempt to secure firm quotes from our suppliers, we generally do not hedge against increases in prices for concrete, steel and fuel. Commodity price risks may have an impact on our results of operations due to the fixed-price nature of many of our contracts, although the short-term duration of our projects may allow us to include price increases in the costs of our bids.

*Interest rate risk*

At December 31, 2010, we had no borrowings under our credit agreement. Interest expense interest related primarily to the amortization of costs associated with the entry into the credit facility in June. Our credit facility expires in June 2013. Our objectives in managing interest rate risk are to lower our overall borrowing costs and limit interest rate changes on our earnings and cash flows. To achieve this, we closely monitor changes in interest rates and we utilize cash from operations to reduce our debt position.

**Item 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

The information required by this Item 8 is submitted as a separate section beginning on page F-1 of this Annual Report on Form 10-K and is incorporated herein by reference.

Additionally, a two-year Summary of Selected Quarterly Financial Data (unaudited) is included in “*Selected Quarterly Financial Data*” under Item 6 - Selected Financial Data.

**Item 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None

**Item 9A. CONTROLS AND PROCEDURES**

***Disclosure Controls and Procedures***

We maintain a set of disclosure controls and procedures that are designed to provide reasonable assurance that information required to be disclosed in our reports filed under the Securities Exchange Act of 1934 (the “Exchange Act”) is recorded, processed, summarized, and reported within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

Our management, with the participation of our principal executive officer and principal financial officer, has evaluated the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) as of the end of the period covered by this report. Based on such evaluation, our principal executive and financial officers have concluded that our disclosure controls and procedures were effective with reasonable assurance as of the end of such period.

### ***Management's Report on Internal Control Over Financial Reporting***

Management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. Internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect our transactions and dispositions of our assets; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that our receipts and expenditures are being made only in accordance with authorizations of our management and directors; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of our assets that could have a material effect on the financial statements.

Internal control over financial reporting cannot provide absolute assurance of achieving financial reporting objectives because of its inherent limitations. Internal control over financial reporting is a process that involves human diligence and compliance and is subject to lapses in judgment and breakdowns resulting from human failures. Internal control over financial reporting can also be circumvented by collusion or improper management override. Because of such limitations, there is a risk that material misstatements may not be prevented or detected on a timely basis by internal control over financial reporting. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate. However, these inherent limitations are known features of the financial reporting process. Therefore, it is possible to design into the process safeguards to reduce, though not eliminate, this risk.

Management conducted an assessment of the effectiveness of our internal control over financial reporting as of December 31, 2010. In making this assessment, management used the criteria described in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this assessment, management concluded that our internal control over financial reporting was effective as of December 31, 2010.

Grant Thornton LLP, an independent registered public accounting firm who audited the consolidated financial statements included in this Annual Report, has issued a report on our internal control over financial reporting dated March 7, 2011 and expressed an unqualified opinion on the effectiveness of our internal control over the financial reporting as of December 31, 2010.

### ***Changes in Internal Control***

There were no changes in the Company's internal control over financial reporting during the Company's quarter ended December 31, 2010, that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

### **Item 9B. OTHER INFORMATION**

None

### PART III

Certain information required by Part III is omitted from this Report. We will file our definitive proxy statement for our Annual Meeting of Stockholders to be held on May 19, 2011 (the "Proxy Statement") pursuant to regulation 14A not later than 120 days after the end of the fiscal year covered by this Annual Report, and certain information included therein is incorporated by reference herein.

#### Item 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

##### *Directors, Executive Officers, Promoters and Control Persons*

The information required by Paragraph (a), and Paragraphs (c) through (g) of Item 401 of Regulation S-K (except for information required by Paragraph (e) of that Item to the extent the required information pertains to our executive officers) is hereby incorporated by reference from our definitive proxy statement to be filed with the SEC pursuant to Regulation 14A within 120 days after the close of our fiscal year.

The following table presents the information required by Paragraph (b) of Item 401 of Regulation S-K.

Name	Age	Position with the Company	Year Joined the Registrant
Richard L. Daerr, Jr.	66	Chairman of the Board	2007
J. Michael Pearson	63	President, Chief Executive Officer and Director	2006
Thomas N. Amonett	67	Director	2007
Austin J. Shanfelter	54	Director	2007
Gene Stoeber	73	Director	2007
Mark R. Stauffer	48	Executive Vice President and Chief Financial Officer	1999
Elliott J. Kennedy	56	Executive Vice President	1994
James L. Rose	46	Executive Vice President	2005
Peter R. Buchler	65	Executive Vice President, General Counsel and Secretary	2009

##### *Code of Ethics*

We have adopted a code of ethics for our chief executive, chief financial and principal accounting officers; a code of business conduct and ethics for members of our Board of Directors; and corporate governance guidelines. The full text of the codes of ethics and corporate governance guidelines is available at our website [www.orionmarinegroup.com](http://www.orionmarinegroup.com). Although we have never done so, in the event we make any amendment to, or grant any waiver from, a provision of the code of ethics that applies to the principal executive officer, principal financial officer or principal accounting officer that requires disclosure under applicable Commission rules, we will disclose such amendment or waiver and the reasons therefore on our website. We will provide any person without charge a copy of any of the aforementioned codes of ethics upon receipt of a written request. Requests should be addressed to: Orion Marine Group, Inc. 12000 Aerospace, Houston, Texas 77034, Attention: Corporate Secretary.

##### *Corporate Governance*

The information required by Items 407(c)(3), (d)(4) and (d)(5) of Regulation S-K is hereby incorporated by reference from our definitive proxy statement to be filed with the SEC pursuant to Regulation 14A within 120 days after the close of our fiscal year.

#### Item 11. EXECUTIVE COMPENSATION

The information required by this Item is hereby incorporated by reference from our definitive proxy statement to be filed with the SEC pursuant to Regulation 14A within 120 days after the close of our fiscal year.

**Item 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

The information required by this item is hereby incorporated by reference from our definitive proxy statement to be filed with the SEC pursuant to Regulation 14A within 120 days after the close of our fiscal year. The information required by Item 201(d) of Regulation S-K is submitted in a separate section of this Form 10-K. See Item 5. — Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities, above.

**Item 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

The information required by this Item is hereby incorporated by reference from our definitive proxy statement to be filed with the SEC pursuant to Regulation 14A within 120 days after the close of our fiscal year.

**Item 14. PRINCIPAL ACCOUNTING FEES AND SERVICES**

The information required by this Item is hereby incorporated by reference from our definitive proxy statement to be filed with the SEC pursuant to Regulation 14A within 120 days after the close of our fiscal year.



## PART IV

### Item 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

The following documents are filed as part of this Report:

#### 1. Financial Statements

The Company's Consolidated Financial Statements at December 31, 2010 and 2009 and for each of the three years in the period ended December 31, 2010 and the notes thereto, together with the Report of the Independent Registered Public Accounting Firm on those Consolidated Financial Statements are hereby filed as part of this Report, beginning on page F-1.

#### 2. Financial Statement Schedule

The following financial statement schedule of the Company for each of the three years in the period ended December 31, 2010 is filed as part of this Report and should be read in conjunction with the Consolidated Financial Statements of the Company.

Schedule II – Schedule of Valuation and Qualifying Accounts

#### 3. Exhibits

The exhibits listed in the accompanying Exhibit Index are filed or incorporated by reference as part of this Report.

Except as noted below, all exhibits are incorporated by reference to the Company's Registration Statement on Form S-3 filed on August 20, 2009, as subsequently amended.

Exhibit Number	Description
1 .01	Form of Indemnity Agreement for Directors and Certain Officers dated November 24, 2008 (filed as Exhibit 1.01 to Form 8-K filed on November 25, 2008)
2 .1	Asset Purchase Agreement dated February 28, 2008, by and between OMGI Sub, LLC and Orion Marine Group, Inc. and Subaqueous Services, Inc. and Lance Young (filed as an exhibit to the Company's Current Report on Form 8-K on March 4, 2008)
2 .2	Purchase Agreement dated January 28, 2010 by and among LaQuay Holdings., Inc and Seagull Services Inc. (filed as Exhibit 2.1 to the Company's Current Report on Form 8-K on February 2, 2010)
3 .1	Amended and Restated Certificate of Incorporation of Orion Marine Group, Inc.
3 .2	Amended and Restated Bylaws of Orion Marine Group, Inc.
4 .1	Registration Rights Agreement between Friedman, Billings, Ramsey & Co., Inc. and Orion Marine Group, Inc. dated May 17, 2008
* 10 .1	Loan Agreement, dated as of June 30, 2010, between Orion Marine Group, Inc. and Wells Fargo National Association and Wells Fargo Securities, LLC
10 .2	Purchase/Placement Agreement dated May 9, 2009 between Orion Marine Group, Inc. and Friedman, Billings, Ramsey & Co., Inc.
+ 10 .8	2005 Stock Incentive Plan
+ 10 .9	Form of Stock Option Agreement Under the 2005 Stock Incentive Plan & Notice of Grant of Stock Option
+ 10 .10	Form of Restricted Stock Agreement Under the 2005 Stock Incentive Plan & Notice of Grant of Restricted Stock
+ 10 .11	Orion Marine Group, Inc. Long Term Incentive Plan
+ 10 .12	Form of Stock Option Agreement Under the 2007 Long Term Incentive Plan
+ 10 .13	Form of Restricted Stock Agreement and Notice of Grant of Restricted Stock

- + 10 .14 Executive Incentive Plan (filed as an exhibit to the Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2008)
- + 10 .15 Subsidiary Incentive Plan (filed as an exhibit to the Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2008)
- + 10 .16 Employment Agreement, dated as of December 4, 2009, by and between Orion Marine Group, Inc. and J. Michael Pearson (filed as exhibit 10.1 to the Current Report on Form 8-K dated December 10, 2009)
- + 10 .17 Employment Agreement, dated as of December 4, 2009, by and between Orion Marine Group, Inc. and Mark Stauffer (filed as exhibit 10.2 to the Current Report on Form 8-K dated December 10, 2009)
- + 10 .18 Employment Agreement, dated as of December 11, 2009, by and between Orion Marine Group, Inc. and Elliott Kennedy (filed as exhibit 10.4 to the Current Report on Form 8-K dated December 17, 2009)
- + 10 .19 Employment Agreement, dated as of December 11, 2009, by and between Orion Marine Group, Inc. and Jim Rose (filed as exhibit 10.5 to the Current Report on Form 8-K dated December 17, 2009)
- + 10 .20 Employment Agreement, dated as of December 11, 2009, by and between Orion Marine Group, Inc. and Peter R. Buchler (filed as exhibit 10.3 to the Current Report on Form 8-K dated December 17, 2009)
- + 10 .23 Schedule of Changes to Compensation of Non-employee Directors, effective for 2008 (filed as an exhibit to the Quarterly Report on Form 1-Q for the quarterly period ended June 30, 2008)
- \* 21 .1 List of Subsidiaries
- \* 23 .1 Consent of Independent Registered Public Accounting Firm
- 24 .1 Power of Attorney (included on signature page of this filing)
- \* 31 .1 Certification of CEO pursuant to Section 302
- \* 31 .2 Certification of CFO pursuant to Section 302
- \* 32 .1 Certification of CEO and CFO pursuant to Section 906

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\* Filed herewith

\*\* Incorporated by reference to the Company's report on Form 8K filed with the SEC on March 4, 2008

+ Management contract or compensatory plan or arrangement

(b) Financial Statement Schedules

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

ORION MARINE GROUP, INC.

Date: March 7, 2011

By: /s/ J. Michael Pearson

J. Michael Pearson

President and Chief Executive Officer and Director

Pursuant to the requirements of the Securities Exchange Act of 1934, this Report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated:

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ J. Michael Pearson</u> J. Michael Pearson	President and Chief Executive Officer and Director	March 7, 2011
<u>/s/ Mark R. Stauffer</u> Mark R. Stauffer	Chief Financial Officer Chief Accounting Officer	March 7, 2011
<u>/s/ Richard L. Daerr, Jr.</u> Richard L. Daerr, Jr.	Chairman of the Board	March 7, 2011
<u>/s/ Thomas N. Amonett</u> Thomas N. Amonett	Director	March 7, 2011
<u>/s/ Austin J. Shanfelter</u> Austin J. Shanfelter	Director	March 7, 2011
<u>/s/ Gene Stoevers</u> Gene Stoevers	Director	March 7, 2011

**ORION MARINE GROUP, INC. AND SUBSIDIARIES**  
**CONSOLIDATED FINANCIAL STATEMENTS**  
**WITH REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**  
**December 31, 2010**

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**ORION MARINE GROUP, INC. AND SUBSIDIARIES**

**INDEX TO CONSOLIDATED FINANCIAL STATEMENTS**

**December 31, 2010**

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## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of  
Orion Marine Group, Inc.

We have audited the accompanying consolidated balance sheets of Orion Marine Group, Inc. and subsidiaries at December 31, 2010 and 2009, and the related consolidated statements of income, stockholders' equity and cash flows for each of the three years in the period ended December 31, 2010. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Orion Marine Group, Inc. and subsidiaries at December 31, 2010 and 2009 and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2010, in conformity with accounting principles generally accepted in the United States of America.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Orion Marine Group, Inc.'s internal control over financial reporting as of December 31, 2010, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) and our report dated March 7, 2011 expressed an unqualified opinion on the effectiveness of internal control over financial reporting.

/s/ Grant Thornton LLP  
Houston, Texas  
March 7, 2011

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of  
Orion Marine Group, Inc.

We have audited Orion Marine Group, Inc.'s internal control over financial reporting as of December 31, 2010, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Orion Marine Group Inc.'s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on Orion Marine Group Inc.'s internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, Orion Marine Group, Inc. has maintained, in all material respects, effective internal control over financial reporting as of December 31, 2010, based on criteria established in *Internal Control—Integrated Framework* issued by COSO.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Orion Marine Group, Inc. and subsidiaries as of December 31, 2010 and 2009 and the related consolidated statements of income, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2010, and our report dated March 7, 2011 expressed an unqualified opinion on those consolidated financial statements.

/s/ GRANT THORNTON LLP  
Houston, Texas  
March 7, 2011

**ORION MARINE GROUP, INC. AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**  
**DECEMBER 31, 2010 AND 2009**  
(In thousands, except share and per share amounts)

	December 31,	
	2010	2009
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 23,174	\$ 104,736
Accounts receivable:		
Trade, net of allowance of \$0 and \$1,202, respectively	40,211	32,819
Retainage	10,643	12,028
Other	4,988	922
Income taxes receivable	7,668	3,040
Note receivable	90	961
Inventory	2,991	1,472
Deferred tax asset	1,794	1,499
Costs and estimated earnings in excess of billings on uncompleted contracts	26,103	10,868
Prepaid expenses and other	2,076	1,624
Total current assets	119,738	169,969
Property and equipment, net	155,311	90,790
Goodwill	32,168	12,096
Intangible assets, net of accumulated amortization	5	38
Other assets	357	264
Total assets	<u>\$ 307,579</u>	<u>\$ 273,157</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Current portion of long-term debt	\$ —	\$ —
Accounts payable:		
Trade	25,519	23,680
Retainage	377	1,227
Accrued liabilities	12,463	8,354
Taxes payable	262	312
Billings in excess of costs and estimated earnings on uncompleted contracts	4,389	5,636
Total current liabilities	43,010	39,209
Long-term debt, less current portion	—	—
Other long-term liabilities	746	514
Deferred income taxes	16,707	11,453
Deferred revenue	260	315
Total liabilities	60,723	51,491
Commitments and contingencies		
Stockholders' equity:		
Common stock — \$0.01 par value, 50,000,000 authorized, 27,017,165 and 26,852,407 issued; 27,004,934 and 26,840,761 outstanding at December 31, 2010 and 2009, respectively	270	268
Treasury stock, 12,231 and 11,646 shares at December 31, 2010 and 2009, respectively, at cost	—	—
Additional paid-in capital	154,667	151,361
Retained earnings	91,919	70,037
Total stockholders' equity	246,856	221,666
Total liabilities and stockholders' equity	<u>\$ 307,579</u>	<u>\$ 273,157</u>

*The accompanying notes are an integral part of these consolidated financial statements*



**ORION MARINE GROUP, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF INCOME**  
(In thousands, except share and per share amounts)

	Year ended December 31,		
	2010	2009	2008
Contract revenues	\$ 353,135	\$ 293,494	\$ 261,802
Costs of contract revenues	287,902	230,797	211,351
Gross profit	65,233	62,697	50,451
Selling, general and administrative expenses	32,646	30,694	27,730
Operating income	32,587	32,002	22,721
Other (income) expense			
Gain from bargain purchase of a business	(1,589)	—	—
Interest (income)	(99)	(352)	(530)
Interest expense	434	790	1,494
Other (income) expense, net	(1,254)	438	964
Income before income taxes	33,841	31,564	21,757
Income tax expense	11,959	11,534	7,282
Net income	\$ 21,882	\$ 20,030	\$ 14,475
Basic earnings per share	\$ 0.81	\$ 0.85	\$ 0.67
Diluted earnings per share	\$ 0.81	\$ 0.84	\$ 0.66
Shares used to compute earnings per share			
Basic	26,899,373	23,577,854	21,561,201
Diluted	27,165,852	23,979,943	21,979,535

*The accompanying notes are an integral part of these consolidated financial statements*

**ORION MARINE GROUP, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY**  
(In thousands, except share information)

	Common stock		Treasury stock		Additional	Retained	Total
	Shares	Amount	Shares	Amount	Paid-in capital	earnings	
Balance, December 31, 2007	21,565,324	\$ 216	—	\$ —	\$ 54,336	\$ 35,532	\$ 90,084
Forfeit unvested restricted stock		—	(11,646)	—			—
Stock-based compensation					1,103		1,103
Expenses related to the sale of common stock					(51)		(51)
Issuance of restricted stock	12,042	—					—
Net income	—	—	—	—	—	14,475	14,475
Balance, December 31, 2008	21,577,366	\$ 216	(11,646)	\$ —	\$ 55,388	\$ 50,007	\$ 105,611
Stock-based compensation					1,614		1,614
Exercise of stock options	382,852	\$ 4			1,934		1,938
Excess tax benefits from exercise of stock options					1,476		1,476
Proceeds from sale of common stock, net of expenses	4,830,000	\$ 48			90,949		90,997
Issuance of restricted stock	62,189						
Net income	—	—	—	—	—	20,030	20,030
Balance, December 31, 2009	26,852,407	\$ 268	(11,646)	\$ —	\$ 151,361	\$ 70,037	\$ 221,666
Stock-based compensation					2,542		2,542
Exercise of stock options	82,510	\$ 1			668		669
Excess tax benefits from exercise of stock options					96		96
Issuance of restricted stock	82,248	\$ 1					1
Forfeiture of restricted stock			(585)	—			
Net income	—	—	—	—	—	21,882	21,882
Balance, December 31, 2010	27,017,165	\$ 270	(12,231)	\$ —	\$ 154,667	\$ 91,919	\$ 246,856

*The accompanying notes are an integral part of this consolidated financial statement*

**ORION MARINE GROUP, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In thousands)

	Year ended December 31,		
	2010	2009	2008
<b>Cash flows from operating activities</b>			
Net income	\$ 21,882	\$ 20,030	\$ 14,475
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	19,458	18,536	18,599
Deferred financing cost amortization	296	252	249
Non-cash interest expense	—	—	22
Bad debt (recovery) expense	(285)	442	300
Deferred income taxes	4,959	(1,013)	(2,410)
Stock-based compensation	2,542	1,614	1,103
Gain on bargain purchase of a business	(1,589)	—	—
Gain on sale of property and equipment	(459)	(518)	(1,075)
Excess tax benefit from stock option exercise	(96)	(1,476)	—
Change in operating assets and liabilities, net of effects of acquisitions of businesses:			
Accounts receivable	(5,073)	(1,996)	(4,550)
Income tax receivable	(5,119)	2,453	(4,017)
Note receivable	1,246	(961)	—
Inventory	(1,519)	(734)	(92)
Prepaid expenses and other	(698)	1,608	(2,380)
Costs and estimated earnings in excess of billings on uncompleted contracts	(13,733)	(3,640)	1,678
Accounts payable	(7,651)	11,241	1,848
Accrued liabilities	3,024	270	661
Income tax payable	(50)	314	(1,960)
Billings in excess of costs and estimated earnings on uncompleted contracts	(3,241)	(6,030)	4,076
Deferred revenue	(55)	(56)	(56)
Net cash provided by operating activities	13,839	40,336	26,471
<b>Cash flows from investing activities:</b>			
Proceeds from sale of property and equipment	827	1,095	3,861
Purchase of property and equipment	(29,050)	(22,693)	(14,485)
Acquisition of T.W. LaQuay Dredging	(60,879)	—	—
Acquisition of business (net of cash acquired)	(6,653)	—	(36,713)
Net cash used in investing activities	(95,755)	(21,598)	(47,337)
<b>Cash flows from financing activities:</b>			
Increase in loan costs	(411)	—	(80)
Borrowings on long-term debt	—	—	35,000
Payments on long-term debt	—	(34,125)	(875)
Purchase of treasury stock	—	—	—
Exercise of stock options	669	1,938	—
Excess tax benefit from stock option exercise	96	1,476	—
Proceeds from the sale of common stock, net of offering costs	—	90,997	(51)
Redemption of common stock	—	—	—
Net cash provided by financing activities	354	60,286	33,994
Net change in cash and cash equivalents	(81,562)	79,024	13,128
Cash and cash equivalents at beginning of period	104,736	25,712	12,584
Cash and cash equivalents at end of period	\$ 23,174	\$ 104,736	\$ 25,712
<b>Supplemental disclosures of cash flow information:</b>			
<b>Cash paid during the period for:</b>			
Interest	\$ 547	\$ 553	\$ 1,234
Taxes, net of refunds	\$ 12,149	\$ 9,781	\$ 14,476
<b>Significant non-cash investing and financing activities:</b>			
Non-cash capital expenditures	\$ 1,110	\$ 42	\$ —

*The accompanying notes are an integral part of these consolidated financial statements*

**ORION MARINE GROUP, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**YEARS ENDED DECEMBER 31, 2010, 2009 AND 2008**  
**(Tabular Amounts in 000's, Except for Share and per Share Amounts)**

**1. Description of Business and Basis of Presentation**

***Description of Business***

Orion Marine Group, Inc. and its subsidiaries (hereafter collectively referred to as “Orion” or the “Company”) provide a broad range of marine construction services on, over and under the water along the Gulf Coast, the Atlantic Seaboard, the Pacific Northwest and the Caribbean Basin. Our heavy civil marine projects include marine transportation facilities; bridges and causeways; marine pipelines; mechanical and hydraulic dredging and specialty projects. We are headquartered in Houston, Texas.

Although we describe our business in this report in terms of the services we provide, our base of customers and the geographic areas in which we operate, we have concluded that our operations comprise one reportable segment pursuant to Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) Topic 280 – *Segment Reporting*. In making this determination, we considered that each project has similar characteristics, includes similar services, has similar types of customers and is subject to the same regulatory environment. We organize, evaluate and manage our financial information around each project when making operating decisions and assessing our overall performance.

***Basis of Presentation***

These consolidated financial statements include the accounts of the parent company, Orion Marine Group, Inc. and its wholly-owned subsidiaries and have been prepared in accordance with accounting principles generally accepted in the United States of America. All significant intercompany balances and transactions have been eliminated in consolidation.

**2. Summary of Accounting Principles**

***Use of Estimates***

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Management’s estimates, judgments and assumptions are continually evaluated based on available information and experience; however, actual amounts could differ from those estimates.

The Company’s significant accounting policies that rely on the application of estimates and assumptions include:

- Revenue recognition from construction contracts;
- Allowance for doubtful accounts;
- Testing of goodwill and other long-lived assets for possible impairment;
- Income taxes;
- Self-insurance; and
- Stock-based compensation

### ***Revenue Recognition***

The Company records revenue on construction contracts for financial statement purposes on the percentage-of-completion method, measured by the percentage of contract costs incurred to date to total estimated costs for each contract. This method is used because management considers contract costs incurred to be the best available measure of progress on these contracts. Contract revenue reflects the original contract price adjusted for agreed upon change orders. Contract costs include all direct costs, such as material and labor, and those indirect costs related to contract performance such as payroll taxes and insurance. General and administrative costs are charged to expense as incurred. Unapproved claims are recognized as an increase in contract revenue only when the collection is deemed probable and if the amount can be reasonably estimated for purposes of calculating total profit or loss on long-term contracts. Incentive fees, if available, are billed to the customer based on the terms and conditions of the contract. The Company records revenue and the unbilled receivable for claims to the extent of costs incurred and to the extent we believe related collection is probable and includes no profit on claims recorded. Changes in job performance, job conditions and estimated profitability, including those arising from final contract settlements, may result in revisions to costs and revenues and are recognized in the period in which the revisions are determined. Provisions for estimated losses on uncompleted contracts are made in the period in which such losses are determined, without regard to the percentage of completion. Revenue is recorded net of any sales taxes collected and paid on behalf of the customer, if applicable.

The current asset “costs and estimated earnings in excess of billings on uncompleted contracts” represents revenues recognized in excess of amounts billed to the customer, which management believes will be billed and collected within one year of the completion of the contract. The liability “billings in excess of costs and estimated earnings on uncompleted contracts” represents billings in advance of work performed.

The Company’s projects are typically short in duration, and usually span a period of three to nine months. Historically, we have not combined or segmented contracts.

### ***Classification of Current Assets and Liabilities***

The Company includes in current assets and liabilities amounts realizable and payable in the normal course of contract completion.

### ***Cash Equivalents***

The Company considers all highly liquid investments with a maturity of three months or less when purchased to be cash equivalents. At times, cash held by financial institutions may exceed federally insured limits. We have not historically sustained losses on our cash balances in excess of federally insured limits. Cash equivalents at December 31, 2010 and 2009 consisted primarily of money market mutual funds and overnight bank deposits.

### ***Foreign Currencies***

Historically, the Company’s exposure to foreign currency fluctuations has not been material and has been limited to temporary field accounts, located in countries where the Company performs work, which amounts were insignificant in either 2010 or 2009.

### ***Risk Concentrations***

Financial instruments that potentially subject the Company to concentrations of credit risk principally consist of cash and cash equivalents and accounts receivable.

The Company depends on its ability to continue to obtain federal, state and local governmental contracts, and indirectly, on the amount of funding available to these agencies for new and current governmental projects. Therefore, the Company's operations can be influenced by the level and timing of government funding. Statutory mechanics liens provide the Company high priority in the event of lien foreclosures following financial difficulties of private owners, thus minimizing credit risk with private customers.

The following table represents concentrations of receivables (trade and retainage) at December 31, 2010 and 2009:

	December 31, 2010		December 31, 2009	
	A/R	%	A/R	%
Federal Government	\$ 16,881	33%	\$ 5,262	12%
State Governments	3,156	6%	1,124	3%
Local Municipalities	11,236	22%	11,431	25%
Private Companies	19,581	39%	27,030	60%
	<u>\$ 50,854</u>	<u>100%</u>	<u>\$ 44,847</u>	<u>100%</u>

At December 31, 2010 and 2009, one customer in each period accounted for 17.7% and 12.3% of total receivables, respectively.

### ***Accounts Receivable***

Accounts receivable are stated at the historical carrying value, less write-offs and allowances for doubtful accounts. The Company has significant investments in billed and unbilled receivables as of December 31, 2010 and 2009. Billed receivables represent amounts billed upon the completion of small contracts and progress billings on large contracts in accordance with contract terms and milestones. Unbilled receivables on fixed-price contracts, which are included in costs in excess of billings, arise as revenues are recognized under the percentage-of-completion method. Unbilled amounts on cost-reimbursement contracts represent recoverable costs and accrued profits not yet billed. Revenue associated with these billings is recorded net of any sales tax, if applicable. Past due balances over 90 days and other higher risk amounts are reviewed individually for collectability. In establishing an allowance for doubtful accounts, the Company evaluates its contract receivables and costs in excess of billings and thoroughly reviews historical collection experience, the financial condition of its customers, billing disputes and other factors. The Company writes off uncollectible accounts receivable against the allowance for doubtful accounts if it is determined that the amounts will not be collected or if a settlement is reached for an amount that is less than the carrying value.

At December 31, 2010 and 2009, the Company had an allowance for doubtful accounts of \$0 and \$1.2 million respectively.

Balances billed to customers but not paid pursuant to retainage provisions in construction contracts generally become payable upon contract completion and acceptance by the owner. Retention at December 31, 2010 totaled \$10.6 million, of which \$1.8 million is expected to be collected beyond 2011. Retention at December 31, 2009 totaled \$12.0 million.

The Company negotiates change orders and claims with its customers. Unsuccessful negotiations of claims could result in a change to contract revenue that is less than its carrying value, which could result in the recording of a loss. Successful claims negotiations could result in the recovery of previously recorded losses. Significant losses on receivables could adversely affect the Company's financial position, results of operations and overall liquidity.

### ***Advertising Costs***

The Company primarily obtains contracts through the open bid process, and therefore advertising costs are not a significant component of expense. Advertising costs are expensed as incurred. Advertising expenses totaled \$63,000 in 2010, \$39,500 in 2009, and \$30,500 in 2008.

### ***Environmental Costs***

Costs related to environmental remediation are charged to expense. Other environmental costs are also charged to expense unless they increase the value of the property and/or provide future economic benefits, in which event the costs are capitalized. Liabilities, if any, are recognized when the expenditure is considered probable and the amount can be reasonably estimated.

### ***Fair Value Measurements***

We evaluate and present certain amounts included in the accompanying consolidated financial statements at “fair value” in accordance with GAAP, which requires us to base our estimates on assumptions market participants, in an orderly transaction, would use to price an asset or liability, and to establish a hierarchy that prioritizes the information used to determine fair value. In measuring fair value, we use the following inputs in the order of priority indicated:

Level 1 – Quoted prices in active markets for identical, unrestricted assets or liabilities.

Level II – Observable inputs other than Level I prices, such as (i) quoted prices for similar assets or liabilities; (ii) quoted prices in markets that have insufficient volume or infrequent transactions; and (iii) inputs that are derived principally from or corroborated by observable market data for substantially the full term of the assets or liabilities.

Level III – Unobservable inputs to the valuation methodology that are significant to the fair value measurement.

We generally apply fair value valuation techniques on a non-recurring basis associated with (1) valuing assets and liabilities acquired in connection with business combinations and other transactions; (2) valuing potential impairment loss related to long-lived assets; and (3) valuing potential impairment loss related to goodwill and indefinite-lived intangible assets.

### ***Inventory***

Inventory consists of parts and small equipment held for use in the ordinary course of business and is valued at the lower of cost or market using historical average cost. Where shipping and handling costs are incurred by us, these charges are included in inventory and charged to cost of contract revenue upon use.

### ***Property and Equipment***

Property and equipment are recorded at cost. Ordinary maintenance and repairs that do not improve or extend the useful life of the asset are expensed as incurred. Major renewals and betterments of equipment are capitalized and depreciated generally over three to seven years until the next scheduled maintenance.

When property and equipment are retired or otherwise disposed of, the cost and accumulated depreciation are removed from the accounts and any resulting gain or loss is included in results of operations for the respective period. Depreciation is computed using the straight-line method over the estimated useful lives of the related assets for financial statement purposes, as follows:

Automobiles and trucks	3 to 5 years
Buildings and improvements	5 to 30 years
Construction equipment	3 to 15 years
Vessels and dredges	1 to 15 years
Office equipment	1 to 5 years

The Company generally uses accelerated depreciation methods for tax purposes where appropriate.

Dry-docking activities and costs are capitalized and amortized on the straight-line method over a period ranging from three to 15 years until the next scheduled dry-docking. Dry-docking activities include, but are not limited to, the inspection, refurbishment and replacement of steel, engine components, tailshafts, mooring equipment and other parts of the vessel. Amortization related to dry-docking activities is included as a component of depreciation. These activities and the related amortization periods are periodically reviewed to determine if the estimates are accurate. If warranted, a significant upgrade of equipment may result in a revision to the useful life of the asset, in which case, the change is accounted for prospectively.

Property and equipment are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated future cash flows, an impairment charge is recognized in the amount by which the carrying amount of the asset exceeds the fair value of the asset. Assets to be disposed of are separately presented in the balance sheet and reported at the lower of the carrying amount or the fair value, less the costs to sell, and are no longer depreciated. No property and equipment were held for sale at December 31, 2010 and 2009.

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

#### ***Goodwill***

Goodwill recorded on our Consolidated Balance Sheets is subject to impairment testing at least annually or more frequently if events or circumstances indicate that the asset more likely than not may be impaired. We evaluate goodwill at the reporting unit level. The Company has three reporting units, which are based on geography, and are referred to internally as “East Coast”, “Gulf Coast” and Pacific Northwest. Each reporting unit conducts similar business, which includes marine construction specialty services. This reporting unit grouping reflects our internal management structure, which is based on the geographic location of our primary field offices.

At December 31, 2010, goodwill totaled \$32.2 million, of which \$22.6 million related to the Gulf Coast (including goodwill recorded upon the purchase of T.W. LaQuay Dredging, LLC, as discussed in Note 4 below), and \$9.6 million resulted from the acquisition of equipment on the East Coast in 2008. The Pacific Northwest reporting unit does not have goodwill.

The Company assesses the fair value of its reporting units based on a weighted average of valuations based on market multiples, discounted cash flows, and consideration of our market capitalization. The key assumptions used in the discounted cash flow valuations are discount rates and perpetual growth rates applied to cash flow projections. Also inherent in the discounted cash flow valuation models are past performance, projections and assumptions in current operating plans, and revenue growth rates over the next five years. These assumptions contemplate business, market and overall economic conditions. We also consider assumptions that market participants may use.

As required by the Company’s policy, annual impairment tests of goodwill are performed as of October 31 of each year or when circumstances arise that indicate a possible impairment might exist. Based on this testing, the Company determined that goodwill was not impaired as of October 31, 2010, and no events have occurred since that date that would require an interim impairment test. The discount rate used in testing goodwill for impairment was 17% for the Gulf Coast reporting unit and 18.5% for the East Coast reporting unit. Revenue growth for each reporting unit was based on management’s estimates, which was a conservative estimate due to pricing pressures and economic and market conditions. As compared with the impairment test performed in 2009, the discount rate increased by 110 basis points in the Gulf Coast reporting unit and by 260 basis points in the East Coast reporting unit, due to our assessment of economic conditions and risk while the stabilized growth rate remained constant at 5%. This had the effect of conservatively estimating the fair value in the 2010 impairment test. The impairment test concluded that the fair value of the Gulf Coast reporting unit and the East Coast reporting unit exceeded carrying values by 62% and 16%, respectively. In the future, our estimated fair value could be negatively impacted by deteriorating economic conditions, which may reduce our revenue growth potential.



### *Intangible assets*

Intangible assets that have finite lives continue to be subject to amortization. In addition, the Company must evaluate the remaining useful life in each reporting period to determine whether events and circumstances warrant a revision of the remaining period of amortization. If the estimate of an intangible asset's remaining life is changed, the remaining carrying value of such asset is amortized prospectively over that revised remaining useful life.

### *Stock-Based Compensation*

The Company recognizes compensation expense for equity awards over the vesting period based on the fair value of these awards at the date of grant. The computed fair value of these awards is recognized as a non-cash cost over the period the employee provides services, which is typically the vesting period of the award. The fair value of options granted is estimated on the date of grant using the Black-Scholes option-pricing model. The fair value of restricted stock grants is equivalent to the fair value of the stock issued on the date of grant.

Compensation expense is recognized only for share-based payments expected to vest. The Company estimates forfeitures at the date of grant based on historical experience and future expectations. See Note 14 to the consolidated financial statements for further discussion of the Company's stock-based compensation plan.

### *Income Taxes*

The Company determines its consolidated income tax provision using the asset and liability method prescribed by US GAAP, which requires the recognition of income tax expense for the amount of taxes payable or refundable for the current period and for deferred tax liabilities and assets for the future tax consequences of events that have been recognized in an entity's financial statements or tax returns. The Company must make significant assumptions, judgments and estimates to determine its current provision for income taxes, its deferred tax assets and liabilities, and any valuation allowance to be recorded against any deferred tax asset. The current provision for income tax is based upon the current tax laws and the Company's interpretation of these laws, as well as the probable outcomes of any tax audits. The value of any net deferred tax asset depends upon estimates of the amount and category of future taxable income reduced by the amount of any tax benefits that the Company does not expect to realize. Actual operating results and the underlying amount and category of income in future years could render current assumptions, judgments and estimates of recoverable net deferred taxes inaccurate, thus impacting the Company's financial position and results of operations. The Company computes deferred income taxes using the liability method. Under the liability method, deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. Under the liability method, the effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

The Company accounts for uncertain tax positions in accordance with the provisions of ASC 740-10 which prescribes a recognition threshold and measurement attribute for financial statement disclosure of tax positions taken, or expected to be taken, on our consolidated tax return. We evaluate and record any uncertain tax positions based on the amount that management deems is more likely than not to be sustained upon examination and ultimate settlement with the tax authorities in the tax jurisdictions in which we operate.

### *Insurance Coverage*

The Company maintains insurance coverage for its business and operations. Insurance related to property, equipment, automobile, general liability, and a portion of workers' compensation is provided through traditional policies, subject to a deductible. A portion of the Company's workers' compensation exposure is covered through a mutual association, which is subject to supplemental calls.

The Company maintains five levels of excess loss insurance coverage, totaling \$75 million in excess of primary coverage, which excess loss coverage responds to all of the Company's insurance policies other than a portion of its Workers' Compensation coverage and employee health care coverage. The Company's excess loss coverage responds to most of its policies when a primary limit of \$1 million has been exhausted; provided that the primary limit for Maritime Employer's Liability is \$10 million and the Watercraft Pollution Policy primary limit is \$5 million.

Separately, the Company's employee health care is provided through a trust, administered by a third party. The Company funds the trust based on current claims. The administrator has purchased appropriate stop-loss coverage. Losses on these policies up to the deductible amounts are accrued based upon known claims incurred and an estimate to claims incurred but not reported. The accruals are derived from known facts, historical trends and industry averages to determine the best estimate of the ultimate expected loss. Actual claims may vary from our estimate. We include any adjustments to such reserves in our consolidated results of operations in the period in which they become known.

The accrued liability for self-insured claims includes incurred but not reported losses of \$4.7 million and \$2.1 million at December 31, 2010 and 2009, respectively.

#### ***Warranty Costs***

Provision for estimated warranty costs, (if any) is made in the period in which such costs become probable and is periodically adjusted to reflect actual experience. The Company historically has not been subject to significant warranty provisions. The Company's Consolidated Balance Sheets at December 31, 2010 and 2009 included \$0.1 million related to warranty costs.

#### ***Reclassifications***

Certain reclassifications have been made to prior years' financial statements to conform to the current year presentation. These reclassifications were related to the inclusion of financing cost amortization as a component of interest expense and not selling, general and administrative expenses and had no effect on previously reported net income or retained earnings.

#### ***New Accounting Pronouncements***

In January 2010, the FASB issued a new accounting standard update ("ASU") which clarifies and provides additional disclosure requirements on the transfers of assets and liabilities between Level 1 (quoted prices in active market for identical assets or liabilities) and Level 2 (significant other observable inputs) of the fair value measurement hierarchy, including the reasons for and the timing of the transfers. Additionally, the guidance requires a roll forward of activities on purchases, sales, issuance, and settlements of the assets and liabilities measured using significant unobservable inputs (Level 3 fair value measurements). This ASU is effective for us in 2010, except for the requirements to provide Level 3 activity which will become effective for us in 2011. The adoption of the currently effective provisions of this ASU did not have a material effect on our consolidated financial statements, and we do not expect the adoption of the remaining provisions of this ASU to have a material effect on our consolidated financial statements.

During the periods presented in these financial statements, the Company implemented other new accounting pronouncements other than the one above that are discussed in the notes where applicable.

### **3. Offering of Common Stock**

#### ***2009 Common Stock Offering***

In August 2009, pursuant to a shelf registration statement on Form S-3, the Company completed a public offering of 4,830,000 shares of its common stock at \$19.70 per share. The Company received proceeds, net of underwriting commissions, of \$91.3 million (\$18.91 per share), and paid approximately \$548,000 in related offering expenses. The underwriters contributed \$200,000 to offset a portion of the Company's expenses. A portion of the offering proceeds was used to repay the Company's outstanding debt of approximately \$29.9 million.

Proceeds received from the sale of securities	\$ 95,151
Less:	
Underwriters' commission	(3,806)
	91,345
Offering related expenses	(548)
Expense credit received from underwriters	200
Total proceeds, net of expenses	\$ 90,997
Use of proceeds:	
Purchase of specialized equipment	7,000
Fund acquisitions in 2010	54,031
Repayment of outstanding debt	29,966
Balance retained in working capital, December 31, 2010	\$ —

#### 4. Business Acquisitions

On January 28, 2010, the Company purchased (a) the membership interests of T.W. LaQuay Dredging, LLC (“TWLD”), a Texas limited liability company, from LaQuay Holdings, Inc. (the “Seller”), (b) all of the issued and outstanding capital stock of Industrial Channel and Dock Company, a Texas Corporation, and Commercial Channel and Dock Company, a Texas Corporation (collectively, the “Channel and Dock Companies”), from Timothy W. LaQuay and Linda F. LaQuay (the principal shareholders of the Seller, the “Principal Shareholders”), and (c) certain parcels of real property located in Port Lavaca, Texas from the Principal Shareholders (collectively, the “Purchase Transactions”). TWLD and its predecessor company have operated as a marine construction and dredging company in the Gulf Coast markets since 2000. The integration of TWLD’s operations and assets have added to the Company’s dredging fleet and enhanced its presence in the Gulf Coast. At the closing, the Company entered into a consulting agreement with Timothy and Linda LaQuay and with Charles F. Barnett for a term of one year from the Closing Date.

Upon the terms of and subject to the conditions set forth in the Purchase Agreement, the total aggregate consideration paid by the Company to the Seller and the Principal Shareholders consisted of the following:

- Cash consideration of \$52.4 million, paid to the Seller for the membership interests of T.W. LaQuay Dredging;
- Cash consideration of \$4.5 million, paid to the Principal Shareholders for the Channel and Dock Companies and the above mentioned parcels of land; and
- An additional \$4.0 million paid to Seller as a result of an increase in the purchase price of the membership interests by the amount of additional taxes incurred by the Seller arising from the allocation of the membership interests purchase price, as further described in Section 1060 of the U.S. Internal Revenue Code, as amended.

The Purchase Agreement contains customary representations, warranties, covenants and indemnities, including certain post-closing covenants with respect to confidentiality and non-competition.

The following table summarizes the allocation of the purchase price:

Receivables and other short-term assets	\$ 6,723
Property and equipment	\$ 44,925
Accounts payable	\$ (8,065)
Other accrued liabilities	\$ (2,776)
Goodwill	\$ 20,072
Total	<u>\$ 60,879</u>

The purchase price has been allocated to the assets acquired and the liabilities assumed using estimated fair values as of the acquisition date. Working capital items primarily include trade accounts receivable, net of trade accounts payable, which due to their short term nature, the fair value is equal to carrying value. No values were assigned to the acquisition of the trade name or the value of the contracts in backlog, as such amounts were short term in duration and immaterial in fair value.

The goodwill of \$20.1 million arising from the acquisition consists primarily of the synergies and economies of scale expected from the combining of the operations of the Company and TWLD. The Company and Seller elected to treat the acquisition as an asset purchase for tax purposes. Including acquisition related costs of approximately \$1.2 million, goodwill for tax purposes is approximately \$21.3 million, which is amortizable over a 15 year period.

Acquisition related costs of \$1.2 million are included in selling, general and administrative expenses in the Company’s income statement for the year ended December 31, 2010.

The Company's condensed consolidated financial statements at December 31, 2010 include results of TWLD for the period since the acquisition. Pro-forma information is presented below as if the purchase had occurred on January 1 of each reporting period:

	2010	2009
Revenue	\$ 356,936	\$ 334,271
Income before taxes	34,291	39,206
Net income	\$ 22,164	\$ 24,879
Earnings per share:		
Basic	\$ 0.82	\$ 1.06
Diluted	\$ 0.82	\$ 1.04

On February 11, 2010, the Company expanded its business into the Pacific Northwest through the purchase of marine construction equipment items including derrick barges, cranes, hammers and ancillary equipment from a private company exiting the marine construction business, for a purchase price of approximately \$7.0 million in cash. The acquisition constitutes a business, as the assets acquired met the definition of a "self-sustaining integrated set of activities and assets capable of being conducted and managed to provide a return to investors, owners, members or participants" and include such items as (a) long-lived assets, such as marine construction equipment, (b) the ability to obtain access to necessary materials or rights, and (c) employees, which collectively are used to bid and obtain projects, which generate contract revenue through our field office in Tacoma, Washington.

The Company applied the principles of ASC 820 regarding the determination of fair values for a variety of applications, including business combinations. The Company believes that the valuation of \$9.2 million reflected the appropriate fair market value under the "in-use" valuation premise, based on the expertise of senior management, as well as reliance on outside sources, such as dealer markets, broker markets and principal to principal markets.

The fair value of the assets acquired of \$9.2 million exceeded the fair value of the purchase price of \$7.0 million. Accordingly, the acquisition has been accounted for as a bargain purchase, and, as a result, the Company recognized a gain of \$1.6 million (net of all tax effects) associated with the transaction. The gain is included in the line item "Gain from bargain purchase of a business" in the 2010 Consolidated Statements of Income.

Acquisition related costs of \$0.5 million are included in selling, general and administrative expenses in the Company's income statement for the year ended December 31, 2010.

Discrete financial information is not available for the business prior to the acquisition.

## 5. Inventory

Inventory at December 31, 2010 and December 31, 2009, of \$3.0 million and \$1.5 million, respectively, consists of parts and small equipment held for use in the ordinary course of business.

## 6. Fair Value of Financial Instruments

The fair value of financial instruments is the amount at which the instrument could be exchanged in a current transaction between willing parties. Due to their short term nature, we believe that the carrying value of our accounts receivables, other current assets, accounts payables and other current liabilities approximate their fair values. We have a note receivable in the amount of \$90,000 from a customer, which we believe that the carrying value of the note receivable approximates its fair value, and which bears interest at 10%.

The fair value of the Company's reporting units (as needed for purposes of determining indications of impairment to the carrying value of goodwill) is determined using a weighted average of valuations based on market multiples, discounted cash flows, and consideration of our market capitalization. In 2010, the acquisitions of TWLD and our expansion into the Pacific Northwest resulted in the valuation of fixed assets and goodwill on a non-recurring basis, as presented in the table below:

	December 31, 2010	Level 1	Level II	Level III
Assets acquired in business combinations	\$ 54,153	—	—	\$ 53,746
Goodwill and other intangibles	\$ 20,072	—	—	\$ 20,072

## 7. Contracts in Progress

Contracts in progress are as follows at December 31, 2010 and December 31, 2009:

	2010	2009
Costs incurred on uncompleted contracts	\$ 268,603	\$ 235,175
Estimated earnings	79,208	61,486
	347,811	296,661
Less: Billings to date	(326,097)	(291,429)
	<u>\$ 21,714</u>	<u>\$ 5,232</u>
Included in the accompanying consolidated balance sheet under the following captions:		
Costs and estimated earnings in excess of billings on uncompleted contracts.	\$ 26,103	\$ 10,868
Billings in excess of costs and estimated earnings on uncompleted contracts.	(4,389)	(5,636)
	<u>\$ 21,714</u>	<u>\$ 5,232</u>

Contract costs include all direct costs, such as material and labor, and those indirect costs related to contract performance such as payroll taxes, insurance, job supervision and equipment charges. Provisions for estimated losses on uncompleted contracts are made in the period in which such losses are determined. Changes in job performance, job conditions and estimated profitability may result in revisions to costs and income and are recognized in the period in which the revisions are determined. An amount equal to contract costs attributable to claims is included in revenues when realization is probable and the amount can be reliably estimated.

## 8. Property and Equipment

The following is a summary of property and equipment at December 31, 2010 and December 31, 2009:

	2010	2009
Automobiles and trucks	\$ 2,134	\$ 1,409
Building and improvements	13,026	12,832
Construction equipment	122,792	92,230
Dredges and dredging equipment	91,018	44,912
Office equipment	3,527	2,460
	<u>232,498</u>	<u>153,843</u>
Less: accumulated depreciation	(100,170)	(82,671)
Net book value of depreciable assets	132,328	71,172
Construction in progress	13,629	14,389
Land	9,354	5,229
	<u>\$ 155,311</u>	<u>\$ 90,790</u>

For the years ended December 31, 2010, 2009 and 2008 depreciation expense was \$19.4 million, \$15.5 million, and \$14.7 million respectively, substantially all of which is included in the cost of contract revenue in the Company's Consolidated Statements of Income. The assets of the Company are pledged as collateral for the Company's line of credit.

Construction in progress is stated at cost, which includes the cost of materials, labor and other direct costs attributable to the construction. No provision for depreciation is made on construction in progress until such time as the relevant assets are completed and put into use. Construction in progress at December 31, 2010 represents construction of material and anchor barges, outfitting of boats and crane barges, and repair and refurbishment of dredges.

## 9. Goodwill

The table below summarizes activity related to goodwill as of December 31, 2010 and 2009:

	2010	2009
Beginning balance, January 1	\$ 12,096	\$ 12,096
Additions	20,072	—
Impairment	—	—
Ending balance, December 31	<u>\$ 32,168</u>	<u>\$ 12,096</u>

## 10. Intangible assets

The tables below present the activity and amortizations of finite-lived intangible assets

	2010
Intangible assets, January 1, 2010	\$ 6,900
Additions	—
Total intangible assets, end of year	<u>6,900</u>
Accumulated amortization, January 1, 2010	\$ (6,862)
Current year amortization	(33)
Total accumulated amortization	<u>(6,895)</u>
Net intangible assets, end of year	<u>\$ 5</u>

The Company's finite-lived intangible assets are estimated to be amortized as follows:

Year Ended December 31,	
2011	\$ 5

## 11. Accrued Liabilities

Accrued liabilities at December 31, 2010 and 2009 consisted of the following:

	2010	2009
Accrued salaries, wages and benefits	\$ 5,440	\$ 5,195
Accrual for self-insurance liabilities	4,709	2,114
Other accrued expenses	2,314	1,045
	<u>\$ 12,463</u>	<u>\$ 8,354</u>

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

On June 29, 2010, the Company entered into a credit agreement with Wells Fargo Bank, National Association, as administrative agent, and Wells Fargo Securities, LLC as sole lead arranger and bookrunner; and the lenders from time to time as party thereto.

The Credit Agreement provides for borrowings of up to \$75,000,000 under revolving and swingline loans (as defined in the Credit Agreement) with a \$20,000,000 sublimit for the issuance of letters of credit. An additional \$25 million is available under the facility subject to the lenders' discretion (together, the "*Credit Facility*"). The Credit Facility matures on September 30, 2013, and is guaranteed by the subsidiaries of the Company. The Credit Facility may be used to finance working capital, repay indebtedness, fund acquisitions, and for other general corporate purposes.

Revolving loans may be designated as prime rate based loans ("ABR Loans") or Eurodollar Loans, at the Company's request, and may be made in integrals of \$500,000, in the case of an ABR Loan, or \$1,000,000 in the case of a Eurodollar Loan. Swingline loans may only be designated as ABR Loans, and may be made in amounts equal to integral multiples of \$100,000. The Company may convert, change or modify such designations from time to time. Interest is computed based on the designation of the Loans, and bear interest at either a prime-based interest rate or a LIBOR-based interest rate. Principal balances drawn under the Credit Facility may be prepaid at any time, in whole or in part, without premium or penalty. Amounts repaid under the Credit Facility may be re-borrowed.

The Credit Facility contains certain restrictive financial covenants that are usual and customary for similar transactions, including:

- A Fixed Charge Coverage Ratio of not less than 1.50 to 1.00 at all times;
- A Leverage Ratio of not greater than 2.50 to 1.00 at all times;
- A minimum Net Worth of not less than \$180 million on the effective date, and at the end of each fiscal quarter thereafter, minimum net worth required as of the end of the immediately preceding fiscal quarter plus 50% of the Borrower's and its subsidiaries consolidated net income for that quarter, plus 75% of all issuances of equity interests by Borrower during that quarter.

In addition, the Credit Facility contains events of default that are usual and customary for similar transactions, including non-payment of principal, interest or fees; inaccuracy of representations and warranties; violation of covenants; bankruptcy and insolvency events; and events constituting a change of control.

The Company is subject to a commitment fee, payable quarterly in arrears on the unused portion of the Credit Facility at a current rate of 0.25% of the unused balance. As of December 31, 2010, no amounts had been drawn under the Credit Facility.



At December 31, 2010, the Company was in compliance with all its financial covenants with a sufficient margin as to not impair its ability to incur additional debt or violate the terms of the Credit Facility, and had outstanding letters of credit of \$979,221. Historically, the Company has not relied on debt financing to fund its operations or working capital.

### 13. Stockholders' Equity

#### *Common Stock*

In August 2009, pursuant to a shelf registration statement on Form S-3, the Company completed a public offering of 4,830,000 shares of its common stock at \$19.70 per share. The Company received proceeds, net of underwriting commissions, of \$91.3 million (\$18.91 per share), and paid approximately \$548,000 in related offering expenses.

### 14. Stock-Based Compensation

The Compensation Committee of the Company's Board of Directors is responsible for the administration of the Company's two stock incentive plans (the "LTIP" and the "2005 Plan"). In general, the plans provide for grants of restricted stock and stock options to be issued with a per-share price equal to the fair market value of a share of common stock on the date of grant. Option terms are specified at each grant date, but generally are 10 years. Options generally vest over a three to five year period. Total shares of common stock that may be delivered under the LTIP and the 2005 Plan may not exceed 2,943,946.

#### *Restricted Stock*

The following table summarizes the restricted stock activity under the 2005 Plan and LTIP:

	Number of Shares	Weighted Average Fair Value Per Share
Nonvested at December 31, 2007	102,023	\$ 0.02
Granted	12,042	\$ 8.72
Vested	(38,132)	\$ 0.02
Forfeited/repurchased shares	(11,646)	\$ 0.02
Nonvested at December 31, 2008	64,287	\$ 1.65
Granted	62,189	\$ 19.01
Vested	(36,771)	\$ 0.02
Forfeited/repurchased shares	—	—
Nonvested at December 31, 2009	89,705	\$ 14.36
Granted	82,248	\$ 13.86
Vested	(43,136)	\$ 12.31
Forfeited/repurchased shares	(585)	\$ 0.02
Nonvested at December 31, 2010	128,232	\$ 14.72

Changes to the independent director compensation plan, approved in November 2009, resulted in equity compensation granted to each of the independent directors with a fair value of \$60,000, with vesting in six months from the date of grant. Also in November 2009, the Compensation Committee of the Board of Directors approved grants of stock to its named executive officers, with vesting over a three year period. In March 2010, certain named executive officers were granted a total of 3,539 shares with a grant date fair value of \$17.68 per share. In November 2010, each independent director received a grant of common stock, which is restricted over the vesting period of six months. Each grant of restricted stock had a fair value of \$60,000 on the date of grant. Also in November 2010, the Compensation Committee of the Board of Directors approved grants of restricted stock, totaling 61,177 shares to its named executive officers, with vesting over a three year period. The shares had a fair value on the date of grant of \$13.69.

## Stock Options

The following table summarizes the stock option activity under the 2005 Plan and LTIP:

	Number of Shares	Weighted Average Exercise Price Per Share	Weighted Average Contractual Life (Years)	Aggregate Intrinsic Value
Outstanding at December 31, 2007	902,144	\$ 9.44		
Granted	451,749	\$ 6.48		
Exercised	—	—		
Forfeited	(25,553)	\$ 13.65		
Outstanding at December 31, 2008	1,328,340	\$ 8.35		
Granted	262,934	\$ 19.19		
Exercised	(382,852)	\$ 5.06		
Forfeited	(22,102)	\$ 11.27		
Outstanding at December 31, 2009	1,186,320	\$ 11.76		
Granted	217,552	\$ 13.78		
Exercised	(82,510)	\$ 8.11		
Forfeited	(12,364)	\$ 14.97		
Outstanding at December 31, 2010	1,308,998	\$ 12.30		
Vested at December 31, 2010 and expected to vest	1,285,910	\$ 12.25	7.85	\$ 2,407
Exercisable at December 31, 2010	804,264	\$ 11.52	7.18	\$ 1,702

The Company calculates the fair value of each option on the date of grant using the Black-Scholes pricing model and the following weighted-average assumptions in each year:

	2010	2009	2008
Weighted average grant-date fair value of options granted	\$ 6.58	\$ 8.57	\$ 2.52
Risk-free interest rate	1.5%	1.3%	2.9%
Expected volatility	50.3%	66.5%	37%
Expected term of options (in years)	5.4	3.0	6.0
Dividend yield	0%	0%	0%

The risk-free interest rate is based on interest rates on U.S. Treasury zero-coupon issues that match the contractual terms of the stock option grants. The expected term represents the period in which the Company's equity awards are expected to be outstanding, which for 2010 is based on the exercise history.

In 2008, the expected term was calculated using the “simplified method” as the Company did not have sufficient information regarding historical exercise behavior to accurately estimate the expected term. For grants made in 2009 and 2010, volatility was calculated based on the Company’s historic stock price. Volatility was calculated using an average of similar public companies within the Company’s industry in 2008, as the Company did not have sufficient data to accurately estimate volatility of its common stock. The Company does not anticipate paying dividends in the future.

Compensation expense related to equity award grants totaled \$2.5 million, \$1.6 million, and \$1.1 million, for the years ended December 31, 2010, 2009 and 2008, respectively.

As of December 31, 2010, there was \$4.2 million of unrecognized compensation cost, net of estimated forfeitures, related to the Company’s non-vested equity awards, which is expected to be recognized over a weighted average period of 2.2 years.

	2010	2009	2008
Total intrinsic value of options exercised	\$ 799	\$ 5,042	\$ —
Total fair value of shares vested	\$ 2,518	\$ 6,367	\$ 1,282

## 15. Income Taxes

The following table presents the components of our consolidated income tax expense for each fiscal year ended December 31:

	Current	Deferred	Total
<b>2010</b>			
U.S. Federal	\$ 6,658	\$ 5,019	\$ 11,677
State and local	77	205	282
	<u>\$ 6,735</u>	<u>\$ 5,224</u>	<u>\$ 11,959</u>
<b>2009</b>			
U.S. Federal	\$ 11,484	\$ (392)	\$ 11,092
State and local	1,063	(621)	442
	<u>\$ 12,547</u>	<u>\$ (1,013)</u>	<u>\$ 11,534</u>
<b>2008</b>			
U.S. Federal	\$ 9,090	\$ (2,403)	\$ 6,687
State and local	602	(7)	595
	<u>\$ 9,692</u>	<u>\$ (2,410)</u>	<u>\$ 7,282</u>

The Company’s income tax provision reconciles to the provision at the statutory U.S. federal income tax rate for each year ended December 31 as follows:

	2010	2009	2008
Statutory amount (computed at 35%)	\$ 11,783	\$ 11,048	\$ 7,615
State income tax, net of federal benefit	252	290	385
Permanent differences	(197)	5	(86)
Other (net)	121	191	(632)
Consolidated income tax provision	<u>\$ 11,959</u>	<u>\$ 11,534</u>	<u>\$ 7,282</u>
Consolidated effective tax rate	35.3%	36.5%	33.5%

The Company's deferred tax (assets) liabilities are as follows:

	December 31, 2010		December 31, 2009	
	Current	Long-term	Current	Long-term
Assets related to:				
Accrued liabilities	\$ 1,482	\$ —	\$ 837	\$ —
Intangible assets		2,677		2,814
Allowance for bad debt	—		421	
Non-qualified stock options		104		72
Other	312	1,206	241	731
Total assets	1,794	3,987	1,499	3,617
Liabilities related to:				
Depreciation and amortization		(20,652)		(15,003)
Other	—	(42)	—	(67)
Total liabilities	—	(20,694)	—	(15,070)
Net deferred assets (liabilities)	\$ 1,794	\$ (16,707)	\$ 1,499	\$ (11,453)

As reported in the balance sheet:

	December 31, 2010	December 31, 2009
As reported in the balance sheet:		
Net current deferred tax assets	1,794	1,499
Net non-current deferred tax liabilities	(16,707)	(11,453)
Total net deferred tax liabilities:	\$ (14,913)	\$ (9,554)

In assessing the realizability of deferred tax assets at December 31, 2010, the Company considered whether it was more likely than not that some portion or all of the deferred tax assets will not be realized. The realization of deferred tax assets depends upon the generation of future taxable income during the periods in which these temporary differences become deductible. As of December 31, 2010, the Company believes that all of the deferred tax assets will be utilized and therefore has not recorded a valuation allowance.

Although the Company believes its recorded assets and liabilities are reasonable, tax regulations are subject to interpretation and tax litigation is inherently uncertain; therefore the Company's assessments can involve both a series of complex judgments about future events and rely heavily on estimates and assumptions. Although the Company believes that the estimates and assumptions supporting its assessments are reasonable, the final determination of tax audit settlements and any related litigation could be materially different from that which is reflected in historical income tax provisions and recorded assets and liabilities. If the Company were to settle an audit or a matter under litigation, it could have a material effect on the income tax provision, net income, or cash flows in the period or periods for which that determination is made. Any accruals for tax contingencies are provided for in accordance with US GAAP.

The Company believes that it has no uncertain tax positions. The Company does not believe that its tax positions will significantly change due to the settlement and expiration of statutes of limitations prior to December 31, 2011.

The Company and its subsidiaries file income tax returns in the United States federal jurisdiction and in various states. With few exceptions, the Company remains subject to federal and state income tax examinations for the years of 2007, 2008, 2009 and 2010. The Company's policy is to recognize interest and penalties related to any unrecognized tax liabilities as additional tax expense. No interest or penalties have been accrued at December 31, 2010 and 2009, as the Company has not recorded any uncertain tax positions. The Company believes it has appropriate and adequate support for the income tax positions taken and to be taken on its tax returns and that its accruals for tax liabilities are adequate for all open years based on an assessment of many factors including past experience and interpretations of tax law applied to the facts of each matter.

## 16. Earnings Per Share

Basic earnings per share are based on the weighted average number of common shares outstanding during each period. Diluted earnings per share are based on the weighted average number of common shares outstanding and the effect of all dilutive common stock equivalents during each period. At December 31, 2010, 2009 and 2008, 515,906, 262,934, and 996,489 common stock equivalents, respectively, were not included in the diluted earnings per share calculation, as the effect of these shares would have been anti-dilutive.

We adopted new accounting guidance on January 1, 2009 which addresses whether instruments granted in share-based payment transactions are participating securities prior to vesting and, therefore, need to participate in computing earnings per share under the two-class method. Our non-vested restricted stock awards contain nonforfeitable rights to dividends and consequently are included in the computation of basic earnings per share under the two-class method.

The following table reconciles the numerators and denominators used in the computations of both basic and diluted EPS for each fiscal year ended December 31:

	2010	2009	2008
<b>Basic EPS computation:</b>			
<b>Numerator:</b>			
Net income	\$ 21,882	\$ 20,030	\$ 14,475
<b>Denominator:</b>			
Basic weighted average shares outstanding	26,899,373	23,577,854	21,561,201
Basic earnings per share	\$ 0.81	\$ 0.85	\$ 0.67
<b>Diluted EPS computation:</b>			
Total basic weighted average shares outstanding	26,899,373	23,577,854	21,561,201
<b>Effect of dilutive securities:</b>			
Common stock options	266,479	402,088	418,334
Total weighted average shares outstanding assuming dilution	27,165,852	23,979,943	21,979,535
Diluted earnings per share	\$ 0.81	\$ 0.84	\$ 0.66

## 17. Enterprise Wide Disclosures

The Company is a heavy civil contractor specializing in marine construction. The Company operates as a single segment, as each project has similar characteristics, includes similar services, has similar types of customers and is subject to the same regulatory environment. The Company organizes and evaluates its financial information around each project when making operating decisions and assessing its overall performance.

The Company's primary customers are governmental agencies in the United States. The following table represents concentrations of revenue by type of customer for the years ended December 31, 2010, 2009, and 2008.

	2010	%	2009	%	2008	%
Federal	\$ 143,697	41%	\$ 54,173	19%	\$ 29,134	11%
State	40,145	11%	24,835	8%	37,340	14%
Local	41,868	12%	82,933	28%	64,713	25%
Private	127,425	36%	131,553	45%	130,615	50%
	<u>\$ 353,135</u>	<u>100%</u>	<u>\$ 293,494</u>	<u>100%</u>	<u>\$ 261,802</u>	<u>100%</u>

Revenues generated outside the United States totaled 5%, 14%, and 7.0% of total revenues for the years ended 2010, 2009 and 2008, respectively. Revenue generated outside the United States in 2009 was primarily related to construction of a cruise pier and facilities in Haiti.

The Company's long-lived assets are substantially located in the United States.

#### *Significant customers*

The following customers accounted for 10% or more of contract revenues for the years ended December 31, 2010, 2009 and 2008:

	2010	2009	2008
Customer A	28%	16%	N/A
Customer B	10%	N/A	N/A
Customer C	N/A	N/A	10%

### **18. Employee Benefits**

All employees except the Associate Divers and Associate Tugmasters, and union employees in the Pacific Northwest, are eligible to participate in the Company's 401(k) Retirement Plan after completing six months of service. Each participant may contribute between 1% and 80% of eligible compensation on a pretax basis, up to the annual IRS limit. The Company matches 100% on the first 2% of eligible compensation contributed to the Plan and 50% on the next 2% of eligible compensation contributed to the Plan. Participants' contributions are fully vested at all times. Employer matching contributions vest over a four-year period. At its discretion, the Company may make additional matching and profit-sharing contributions. During the years ended December 31, 2010, 2009 and 2008, the Company contributed \$1.1 million, \$1.0 million, and \$0.9 million to the plan in each respective year.

### **19. Commitments and Contingencies**

#### *Operating Leases*

In July 2005, the Company executed a sale-leaseback transaction in which it sold an office building for \$2.1 million and entered into a ten year lease agreement. The Company, at its option, can extend the lease for two additional five year terms. Scheduled increases in monthly rent are included in the lease agreement.

The sale of the office building resulted in a gain of \$562,000 which has been deferred and amortized over the life of the lease. The Company recognized \$54,212 in each of the years ending December 31, 2010, 2009 and 2008, respectively. Rent expense under this agreement was \$170,219, \$168,504, and \$168,162 for each of the years ending December 31, 2010, 2009 and 2008, respectively.

In 2005, the Company entered into a lease agreement for vehicles under a continuing operating lease agreement. Rental expense under this lease for the years ended December 31, 2010, 2009 and 2008 was \$3.6 million, \$2.1 million, and \$1.4 million, respectively.

The Company leases its corporate office in Houston, Texas under a lease with an initial term of nine years. In addition, the Company leases other facilities, including office space and yard facilities, under terms that range from one to five years. The Company also leases short-term field office space at its various construction sites for the duration of the projects.

Future minimum lease payments under non-cancelable operating leases as of December 31, 2010 are as follows:

	Amount
Year ended December 31,	
2011	\$ 3,491
2012	2,365
2013	1,248
2014	527
2015	293
Thereafter	222
	<u>\$ 8,146</u>

### ***Litigation***

From time to time the Company is a party to various lawsuits, claims and other legal proceedings that arise in the ordinary course of business. These actions typically seek, among other things, compensation for alleged personal injury, breach of contract, property damage, punitive damages, civil penalties or other losses, or injunctive or declaratory relief. With respect to such lawsuits, the Company accrues reserves when it is probable a liability has been incurred and the amount of loss can be reasonably estimated. The Company does not believe any of these proceedings, individually or in the aggregate, would be expected to have a material adverse effect on results of operations, cash flows or financial condition.

The Company was named as one of a substantial number of defendants in numerous individual claims and lawsuits brought by the residents and landowners of New Orleans, Louisiana and surrounding areas in the United States District Court for the Eastern District of Louisiana. These suits have been classified as a subcategory of suits under the more expansive proceeding, *In re Canal Breaches Consolidation Litigation*, Civil Action No: 05-4182, (E.D. La.), which was instituted in late 2005. While not technically class actions, the individual claims and lawsuits are being prosecuted in a manner similar to that employed for federal class actions. The claims are based on flooding and related damage from Hurricane Katrina. In general, the claimants state that the flooding and related damage resulted from the failure of certain aspects of the levee system constructed by the Corps of Engineers, and the claimants seek recovery of alleged general and special damages. The Corps of Engineers contracted with various private dredging companies, including us, to perform maintenance dredging of the waterways. On October 15, 2010, the United States Court of Appeals for the Fifth Circuit affirmed the lower court's decision and dismissed the claimants' suit against us and all defendant dredgers.

### **20. Subsidiary Guarantors**

The Company filed a registration statement on Form S-3 which became effective August 7, 2009, and registered certain securities described therein, including debt securities, which may be guaranteed by certain of the Company's subsidiaries and are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933. Orion Marine Group, Inc., as the parent company, has no independent assets or operations. The Company contemplates that if it offers guaranteed debt securities pursuant to the registration statement, all guarantees will be full and unconditional and joint and several, and any subsidiaries of the Company other than the subsidiary guarantors will be minor. In addition, there are no restrictions on the ability of Orion Marine Group, Inc. to obtain funds from its subsidiaries by dividend or loan. Finally, there are no restricted assets in any subsidiaries.

**CREDIT AGREEMENT**

**dated as of June 29, 2010**

**among**

**ORION MARINE GROUP, INC.,**

**The Lenders From Time to Time Party Hereto**

**and**

**WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Administrative Agent**

**WELLS FARGO SECURITIES, LLC.,  
as Sole Lead Arranger and Bookrunner**

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## **CREDIT AGREEMENT**

CREDIT AGREEMENT (as amended, modified, restated, supplemented and in effect from time to time, herein called this “Agreement”) dated as of June 29, 2010 (the “Effective Date”), among ORION MARINE GROUP, INC., a Delaware corporation, the LENDERS party hereto, and WELLS FARGO BANK, NATIONAL ASSOCIATION, Administrative Agent for the Lenders.

### **ARTICLE I** **Definitions**

The parties hereto agree as follows:

SECTION 1.01. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“ABR”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

“Accounts” shall have the meaning assigned to it in the Uniform Commercial Code enacted in the State of Texas in force on the Effective Date.

“Acquired EBITDA” means, with respect to any Acquisition permitted under this Agreement, an adjustment to EBITDA which gives pro forma effect to such Acquisition assuming that such transaction had occurred on the first day of any applicable period for which EBITDA is to be calculated. Determination of Acquired EBITDA shall be subject to approval by the Administrative Agent.

“Acquisition” means any transaction, or any series of related transactions, consummated on or after the date of this Agreement, by which Borrower or any of its Subsidiaries (i) acquires any going business or all or substantially all of the assets of any Person, or division thereof, whether through the purchase of assets, merger or otherwise or (ii) directly or indirectly acquires (in one transaction or as the most recent transaction in a series of transactions) at least a majority (in number of votes) of the securities of a corporation which have ordinary voting power for the election of directors (other than securities having such power only by reason of the happening of a contingency) or a majority (by percentage or voting power) of the outstanding ownership interests of a partnership or limited liability company.

“Additional Collateral” shall have the meaning ascribed to such term in Section 5.03(b) hereof.

“Additional Collateral Event” shall have the meaning ascribed to such term in Section 5.03(b) hereof.

“Adjusted LIBOR” means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the LIBOR for such Interest Period multiplied by (b) the Statutory Reserve Rate.

“Adjusted One Month LIBOR” means, with respect to an ABR Borrowing for any day, the sum of (i) 1.00% per annum plus (ii) the quotient of (a) the interest rate determined by the Administrative Agent by reference to the Page to be the rate at approximately 11:00 a.m. London time, on such date or, if such date is not a Business Day, on the immediately preceding Business Day for dollar deposits with a maturity equal to one (1) month, multiplied by (b) the Statutory Reserve Rate (expressed as a decimal) applicable to dollar deposits in the London interbank market with a maturity equal to one (1) month.

“Administrative Agent” means Wells Fargo Bank, National Association, in its capacity as administrative agent for the Lenders hereunder, and its successors in that capacity.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Alternate Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate for that day in effect on such day and (b) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1% and (c) the Adjusted One Month LIBOR. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted One Month LIBOR for that day shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or Adjusted One Month LIBOR, respectively.

“Applicable Percentage” means, with respect to any Revolving Lender, the percentage of the total Commitments represented by such Lender’s Commitment; provided that in the case of Section 2.20 when a Defaulting Lender shall exist, “Applicable Percentage” shall mean the percentage of the total Commitments (disregarding any Defaulting Lender’s Commitment) represented by such Lender’s Commitment. If the Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Commitments most recently in effect, giving effect to any assignments.

“Applicable Rate” means, for any day with respect to any ABR Loan or Eurodollar Loan or with respect to the commitment fees payable hereunder, as the case may be, the applicable rate per annum set forth below under the caption “ABR Spread”, “Eurodollar Spread” or “Commitment Fee Rate”, as the case may be, based upon the Leverage Ratio as of the most recent determination date; but until June 30, 2010 the Eurodollar Spread shall be 1.75% and the ABR Spread shall be 0.75% and the Commitment Fee Rate shall be 0.25%:

<b>Leverage Ratio</b>	<b>ABR Spread</b>	<b>Eurodollar Spread</b>	<b>Commitment Fee Rate</b>
<u>Category 1:</u> greater than or equal to 2.00 to 1.00	1.50	2.50	0.50
<u>Category 2:</u> greater than or equal to 1.00 to 1.00 but less than 2.00 to 1.00	1.25	2.25	0.375
<u>Category 3:</u> greater than or equal to 0.50 to 1.00 but less than 1.00 to 1.00	1.00	2.00	0.375
<u>Category 4:</u> less than 0.50 to 1.00	0.75	1.75	0.25

For purposes of the foregoing, (i) the Leverage Ratio shall be determined as of the end of each fiscal quarter of the Borrower's fiscal year based upon the Borrower's consolidated financial statements delivered pursuant to Sections 5.01(a) or (b) and (ii) each change in the Applicable Rate resulting from a change in the Leverage Ratio shall be effective during the period commencing on and including the date of delivery to the Administrative Agent of such consolidated financial statements indicating such change and ending on the date immediately preceding the effective date of the next such change; but the Leverage Ratio shall be deemed to be in Category 1 at any time that an Event of Default has occurred which is continuing or at the request of the Required Lenders if the Borrower fails to timely deliver the consolidated financial statements required to be delivered by it pursuant to Sections 5.01(a) or (b), during the period from the deadline for delivery thereof until such consolidated financial statements are received.

"Approved Fund" has the meaning assigned to such term in Section 9.04.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent.

"Banking Services" means each and any of the following bank services provided to any Loan Party by any Lender or any of its Affiliates: (a) commercial credit cards, (b) stored value cards and (c) treasury management services (including, without limitation, controlled disbursement, automated clearinghouse transactions, return items, overdrafts and interstate depository network services).

"Board" means the Board of Governors of the Federal Reserve System of the United States of America and any successor entity performing similar functions.

"Bond Obligations" means obligations and indebtedness of Borrower and its Subsidiaries arising in connection with (a) bid or payment and performance bonds or (b) insurance policies or other instruments insuring the performance by Borrower and its Subsidiaries of obligations under contracts to which such Persons are parties.

“Bonded Receivables” means accounts receivable of Borrower and its Subsidiaries which arise from contracts in connection with which Borrower or such Subsidiary has obtained a bond or insurance policy insuring performance of such contract.

“Borrower” means ORION MARINE GROUP, INC., a Delaware corporation.

“Borrowing” means (a) Loans of the same Class and Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect and (b) a Swingline Loan.

“Borrowing Request” means a request by the Borrower for a Borrowing in accordance with Section 2.03.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in Houston, Texas are authorized or required by law to remain closed; provided that, when used in connection with a Eurodollar Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

“Capital Expenditures” means, for any period, (a) the additions to property, plant and equipment and other capital expenditures of the Borrower and its consolidated Subsidiaries that are (or would be) set forth in a consolidated statement of cash flows of Borrower for such period prepared in accordance with GAAP and (b) Capital Lease Obligations incurred by the Borrower and its consolidated Subsidiaries during such period, but excluding Acquisitions and expenditures for the restoration, repair or replacement of any fixed or capital asset which was destroyed or damaged, in whole or in part, to the extent financed by the proceeds of an insurance policy maintained by such Person.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“Ceiling Rate” means, on any day, the maximum nonusurious rate of interest permitted for that day by whichever of applicable federal or Texas (or any jurisdiction whose usury laws are deemed to apply to the Notes or any other Loan Documents despite the intention and desire of the parties to apply the usury laws of the State of Texas) laws permits the higher interest rate, stated as a rate per annum. On each day, if any, that the Texas Finance Code establishes the Ceiling Rate, the Ceiling Rate shall be the “weekly ceiling” (as defined in the Texas Finance Code) for that day. Administrative Agent may from time to time, as to current and future balances, implement any other ceiling under the Texas Finance Code by notice to the Borrower, if and to the extent permitted by the Texas Finance Code. Without notice to the Borrower or any other Person, the Ceiling Rate shall automatically fluctuate upward and downward as and in the amount by which such maximum nonusurious rate of interest permitted by applicable law fluctuates.

“Change in Control” means a change resulting when any Unrelated Person or any Unrelated Persons acting together which would constitute a Group together with any Affiliates or Related Persons thereof (in each case also constituting Unrelated Persons) shall at any time either (i) Beneficially Own more than 40% of the aggregate voting power of all classes of Voting Stock of Borrower or (ii) succeed in having sufficient of its or their nominees elected to the Board of Directors of Borrower such that such nominees, when added to any existing directors remaining on the Board of Directors of Borrower after such election who are Affiliates or Related Persons of such Person or Group, shall constitute a majority of the Board of Directors of Borrower. As used herein (a) “Beneficially Own” means “beneficially own” as defined in Rule 13d-3 of the Securities Exchange Act of 1934, as amended, or any successor provision thereto; provided, however, that, for purposes of this definition, a Person shall not be deemed to Beneficially Own securities tendered pursuant to a tender or exchange offer made by or on behalf of such Person or any of such Person’s Affiliates until such tendered securities are accepted for purchase or exchange; (b) “Group” means a “group” for purposes of Section 13(d) of the Securities Exchange Act of 1934, as amended; (c) “Unrelated Person” means at any time any Person other than Borrower or any Subsidiary of Borrower and other than any trust for any employee benefit plan of Borrower or any Subsidiary of Borrower; (d) “Related Person” of any Person shall mean any other Person owning (1) 12-1/2% or more of the outstanding common stock of such Person or (2) 12-1/2% or more of the Voting Stock of such Person; and (e) “Voting Stock” of any Person shall mean capital stock of such Person which ordinarily has voting power for the election of directors (or persons performing similar functions) of such Person, whether at all times or only so long as no senior class of securities has such voting power by reason of any contingency.

“Change in Law” means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender or the Issuing Bank (or, for purposes of Section 2.14(b), by any lending office of such Lender or by such Lender’s or the Issuing Bank’s holding company, if any) with any binding request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement.

“Class”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans or Swingline Loans.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Collateral” means any and all “Collateral”, as defined in any applicable Security Document. The Collateral shall not include any Excluded Assets.

“Commitment” means, with respect to each Lender, the commitment, if any, of such Lender to make Revolving Loans and to acquire participations in Letters of Credit and Swingline Loans hereunder, expressed as an amount representing the maximum aggregate amount of such Lender’s Revolving Exposure hereunder, as such commitment may be (a) reduced or increased from time to time pursuant to Section 2.07 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04. The initial amount of each Lender’s Commitment is set forth on Schedule 2.01, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Commitment, as applicable. The initial aggregate amount of the Lenders’ Commitments is \$75,000,000.



“Contribution Agreement” means that certain Contribution Agreement dated concurrently herewith by and among Borrower and the current Domestic Subsidiaries of Borrower, as the same may be amended, modified, supplemented and restated—and joined in pursuant to a joinder agreement—from time to time.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Debt Service” means the sum of (i) Interest Expense and (ii) scheduled principal payments on Indebtedness for the applicable period, determined in each case on a consolidated basis for Borrower and its Subsidiaries.

“Default” means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“Defaulting Lender” means any Lender, as determined by the Administrative Agent, that has (a) failed to fund any portion of its Loans or participations in Letters of Credit or Swingline Loans within three Business Days of the date required to be funded by it hereunder, (b) notified the Borrower, the Administrative Agent, the Issuing Bank, the Swingline Lender or any Lender in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement or under other agreements in which it commits to extend credit, (c) failed, within three Business Days after request by the Administrative Agent, to confirm that it will comply with the terms of this Agreement relating to its obligations to fund prospective Loans and participations in then outstanding Letters of Credit and Swingline Loans, (d) otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within three Business Days of the date when due, unless the subject of a good faith dispute, or (e) (i) become or is insolvent or has a parent company that has become or is insolvent or (ii) become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment.

“dollars” or “\$” refers to lawful money of the United States of America.

“Domestic Subsidiary” shall mean any Subsidiary of Borrower that is not a Foreign Subsidiary.

“EBITDA” means, without duplication, for any period the consolidated net earnings (excluding any extraordinary gains or losses) of the Borrower and its Subsidiaries plus, to the extent deducted in calculating consolidated net income, depreciation, amortization, other non-cash items, Interest Expense, federal and state income tax expense, management fees plus Acquired EBITDA and minus, to the extent added in calculating consolidated net income, any non-cash items.

“Environmental Laws” means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Material or to health and safety matters.

“Environmental Liability” means any liability (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any other Loan Party directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, or any warrants, options or other rights to acquire such interests.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with the Borrower or any other Loan Party, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30 day notice period is waived); (b) the existence with respect to any Plan of a failure to make the “minimum required contribution” (as defined in Section 430 of the Code or Section 303 of ERISA), or of an “accumulated funding deficiency” (as defined in Section 431 of the Code or Section 304 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any other Loan Party or any of their ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any other Loan Party or any of their ERISA Affiliates from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Borrower or any other Loan Party or any of their ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by the Borrower or any other Loan Party or any of their ERISA Affiliates of any notice, or the receipt by any Multiemployer Plan from the Borrower or any other Loan Party or any of their ERISA Affiliates of any notice, evidencing the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA and that is likely to result in the imposition of Withdrawal Liability upon Borrower or any other Loan Party.

“Eurodollar”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBOR.

“Event of Default” has the meaning assigned to such term in Article VII.

“Excluded Assets” means (i) all leasehold estates with respect to office space used by Borrower or any of its Subsidiaries, (ii) motor vehicles and other property which is subject to certificates of title having an aggregate book value of not greater than \$2,000,000, (iii) the outstanding Equity Interests in each Foreign Subsidiary which is owned directly by Borrower or any of its Domestic Subsidiaries in excess of 66% of issued and outstanding Equity Interests of such Foreign Subsidiary (or such greater percentage that would not reasonably be expected to result in adverse tax consequences), (iv) any property owned by any Foreign Subsidiary (unless a Lien on such property securing the Obligations would not reasonably be expected to result in adverse tax consequences), (v) any real estate owned by Borrower or any of any of its Subsidiaries as of the date hereof other than any such real estate located in the State of Texas, (vi) prior to October 1, 2010, the real property owned by King Fisher Marine Service LP, a Texas limited partnership, located at 159 Highway 318, port Lavaca, Texas (provided that such real property shall cease to be an “Excluded Asset” on October 1, 2010 and shall thereupon be subject to the provisions of Section 5.03(b) hereof regarding Additional Collateral), and (vii) any item of general intangibles that is now or hereafter held by Borrower or any of its Subsidiaries but only to the extent that such item of general intangibles (or any agreement evidencing such item of general intangibles) contains a term, provision or other contractual obligation or is subject to a rule of law, statute or regulation that restricts, prohibits, or requires a consent (that has not been obtained) of a Person (other than Borrower or any of its Subsidiaries) to, the grant, creation, attachment or perfection of the security interest granted in the Security Documents, and any such restriction, prohibition and/or requirement of consent is effective and enforceable under applicable law and is not rendered ineffective by applicable law (including, without limitation, pursuant to Sections 9.406, 9.407, 9.408 or 9.409 of the UCC, and any successor provision thereto).

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender, the Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) income or franchise taxes imposed on (or measured by) its net income by the United States of America, or by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which the Borrower is located and (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 2.18(b)), any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office) or is attributable to such Foreign Lender’s failure to comply with Section 2.16(e), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrower with respect to such withholding tax pursuant to Section 2.16(a).

"Existing Letters of Credit" means the letters of credit listed on Schedule 1.01 attached hereto.

"Federal Funds Effective Rate" means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by the Administrative Agent.

"Financial Officer" means the chief financial officer, principal accounting officer, treasurer or Director of Accounting of the Borrower.

"Fixed Charge Coverage Ratio" means, as of any day, the ratio of (a) EBITDA for the 12 months ending on such date minus the greater of (i) Maintenance Capital Expenditures for such period or (ii) \$5,000,000 to (b) Fixed Charges for such 12-month period, determined in each case on a consolidated basis for Borrower and its Subsidiaries.

"Fixed Charges" means (without duplication), for any period, (a) Debt Service for such period, plus (b) taxes paid in cash during such period plus (c) one-fifth of the aggregate outstanding amount (as of the date of calculation of the Fixed Charge Coverage Ratio) of the aggregate principal amount of Loans.

"Foreign Lender" means any Lender that is organized under the laws of a jurisdiction other than that in which the Borrower is located. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"Foreign Subsidiaries" means Subsidiaries of Borrower which are organized under the laws of a jurisdiction other than the United States of America, any State of the United States or any political subdivision thereof.

"GAAP" means generally accepted accounting principles in the United States of America.

"Governmental Authority" means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

“Guarantors” means each Domestic Subsidiary of the Borrower now or hereafter existing (and such Foreign Subsidiaries in respect of which the execution of a Guaranty would not reasonably be expected to result in adverse tax consequences).

“Guaranty” means that certain Guaranty dated concurrently herewith executed by Guarantors in favor of the Administrative Agent and any and all other guaranties now or hereafter executed in favor of the Administrative Agent relating to the Obligations hereunder and the other Loan Documents, as any of them may from time to time be amended, modified, restated or supplemented.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current Accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty and (j) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

“Interest Election Request” means a request by the Borrower to convert or continue a Revolving Borrowing in accordance with Section 2.06.

“Interest Expense” means, for any period, total interest expense accruing on Indebtedness of the Borrower and its Subsidiaries, on a consolidated basis, during such period (including interest expense attributable to Capital Lease Obligations and amounts attributable to interest incurred under Swap Agreements), determined in accordance with GAAP.

“Interest Payment Date” means (a) with respect to any ABR Loan (other than a Swingline Loan), the last day of each March, June, September and December, (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period, and (c) with respect to any Swingline Loan, the day that such Loan is required to be repaid.

“Interest Period” means with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months thereafter, as the Borrower may elect; provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, and (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Inventory” shall have the meaning assigned to it in the Uniform Commercial Code enacted in the State of Texas in force on the Effective Date.

“Issuing Bank” means Wells Fargo Bank, National Association, in its capacity as the issuer of Letters of Credit hereunder, and its successors in such capacity as provided in Section 2.04(i); provided that, in respect of the Existing Letters of Credit, the Issuing Bank means Amegy Bank, National Association. The Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the Issuing Bank, in which case the term “Issuing Bank” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

“LC Disbursement” means a payment made by the Issuing Bank pursuant to a Letter of Credit.

“LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time. The LC Exposure of any Revolving Lender at any time shall be its Applicable Percentage of the total LC Exposure at such time.

“Lenders” means the Persons listed on Schedule 2.01 and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term “Lenders” includes the Swingline Lender.

“Letter of Credit” means any letter of credit issued pursuant to this Agreement. The Existing Letters of Credit shall constitute “Letters of Credit” hereunder and under the other Loan Documents.

“Leverage Ratio” means, as of any day, the ratio of (a) Indebtedness as of such date to (b) EBITDA for the 12 months then ended, determined in each case on a consolidated basis for Borrower and its Subsidiaries.

“LIBOR” means, for each Interest Period, the interest rate determined by the Administrative Agent by reference to Reuters Screen LIBOR01, formerly known as Page 3750 of the Moneyline Telerate Service (together with any successor or substitute, the “Service”) or any successor or substitute page of the Service providing rate quotations comparable to those currently provided on such page of the Service, as determined by the Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to dollar deposits in the London interbank market (the “Page”), to be the rate at approximately 11:00 a.m. London time, two Business Days prior to the commencement of the Interest Period for dollar deposits with a maturity equal to such Interest Period. If no LIBOR is available to the Administrative Agent, the applicable LIBOR for the relevant Interest Period shall instead be the rate determined by the Administrative Agent to be the rate at which the Administrative Agent offers to place U.S. dollar deposits having a maturity equal to such Interest Period with first-class banks in the London interbank market at approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period. Each determination by the Administrative Agent of the LIBOR shall be conclusive and binding, absent manifest error, and may be computed using any reasonable averaging and attribution method.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“Loan Documents” means, collectively, this Agreement, the Notes, the Guaranty, the Security Documents, the Notice of Entire Agreement, the Contribution Agreement, any subordination agreement relating to Subordinated Debt, all instruments, certificates and agreements now or hereafter executed or delivered to the Administrative Agent or any Lender pursuant to any of the foregoing or in connection with the obligations under this Agreement and the other Loan Documents or any commitment regarding such obligations, and all amendments, modifications, renewals, extensions, increases and rearrangements of, and substitutions for, any of the foregoing. The term “Loan Document” as used herein shall not include any Swap Agreement or agreements governing Banking Services.

“Loan Parties” means the Borrower and each of its Subsidiaries and shall also include each Guarantor.

“Loans” means the loans made by the Lenders to the Borrower pursuant to this Agreement.

“Maintenance Capital Expenditures” means, for Borrower and its Subsidiaries, all Capital Expenditures related to extending the life of, or maintaining the working condition of, existing assets. Maintenance Capital Expenditures does not include capital spending for new assets (so-called “growth capital expenditures”).

“Material Adverse Effect” means a material adverse effect on (a) the business, assets, operations, prospects or condition, financial or otherwise, of the Borrower and its Subsidiaries taken as a whole, (b) the ability of any Loan Party to perform any of its obligations under any Loan Document or (c) the rights of or benefits available to the Lenders under any Loan Document.

“Material Indebtedness” means Indebtedness (other than the Loans and Letters of Credit), or obligations in respect of one or more Swap Agreements, of any one or more of the Borrower and any other Loan Party in an aggregate principal amount exceeding \$500,000. For purposes of determining Material Indebtedness, the “principal amount” of the obligations in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that would be required to be paid if such Swap Agreement were terminated at such time.

“Maturity Date” means June 30, 2013.

“Moody’s” means Moody’s Investors Service, Inc.

“Mortgage” means a mortgage, deed of trust, assignment of leases and rents, leasehold mortgage or other security document granting a Lien on any Mortgaged Property to secure the Obligations. Each Mortgage shall be satisfactory in form and substance to the Administrative Agent.

“Mortgaged Property” means, initially, each parcel of real property and the improvements thereto owned by Borrower and its Subsidiaries, and includes each other parcel of real property and improvements thereto with respect to which a Mortgage is granted pursuant hereto. The Mortgaged Property shall not include any Excluded Assets.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Net Worth” means, at any particular time, all amounts which, in conformity with GAAP, would be included as stockholders’ capital on a consolidated balance sheet of Borrower and its Subsidiaries. Net Worth shall be calculated on a consolidated basis for Borrower and its Subsidiaries.

“Notes” shall have the meaning assigned to such term in Section 2.02(a) hereof.



“Notice of Entire Agreement” means a notice of entire agreement executed by Borrower, each other Loan Party and the Administrative Agent, as the same may from time to time be amended, modified, supplemented or restated.

“Obligations” means, as at any date of determination thereof, the sum of the following: (i) the aggregate principal amount of Loans outstanding hereunder, plus (ii) the aggregate amount of the LC Exposure, plus (iii) all other liabilities, obligations and indebtedness under any Loan Document of Borrower or any other Loan Party, plus (iv) any obligations of Borrower (whether now existing or hereafter arising) under any Swap Agreement entered into with any Lender (or an Affiliate of any Lender) or agreements governing Banking Services entered into with any Lender (or an Affiliate of any Lender).

“Other Taxes” means any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document.

“Page” shall have the meaning ascribed to such term in the definition of “LIBOR”.

“Participant” has the meaning set forth in Section 9.04.

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Permitted Encumbrances” means:

- (a) Liens imposed by law for taxes that are not yet due or are being contested in compliance with Section 5.05;
- (b) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 30 days or are being contested in compliance with Section 5.05;
- (c) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance and other social security laws or regulations;
- (d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;
- (e) judgment liens in respect of judgments that do not constitute an Event of Default under clause (k) of Article VII;
- (f) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower or other Loan Party;

(g) deposits with banks that are subject to the terms of any escrow agreement, established in accordance with the arms length negotiation of an Acquisition; and

(h) with respect to the Vessels, Liens (i) for crew's wages (1) for fifteen (15) days after the termination of a voyage, or (2) which shall then be contested in good faith by appropriate action promptly initiated and diligently conducted, if such reserve as shall be required by GAAP shall have been made therefor, (ii) for general average (1) which are unclaimed, (2) for fifteen (15) days after having been claimed, (3) which are covered by insurance, or (4) which shall then be contested in good faith by appropriate action promptly initiated and diligently conducted, if such reserve as shall be required by GAAP shall have been made therefor, (iii) for salvage, whether voluntary or contract, (1) which are unclaimed, (2) for fifteen (15) days after having been claimed, (3) which are covered by insurance, or (4) which shall then be contested in good faith by appropriate action promptly initiated and diligently conducted, if such reserve as shall be required by GAAP shall have been made therefor, (iv) otherwise incident to the then current operations of the Vessels, for the wages of a stevedore when employed directly by Borrower, or the operator, master or agent of any Vessel, (v) covered by insurance and any deductible applicable thereto, and (vi) for repairs or with respect to any changes made in any Vessel (1) which are unclaimed, (2) for fifteen (15) days after having been claimed, (3) which are covered by insurance, or (4) which shall then be contested in good faith by appropriate action promptly initiated and diligently conducted, if such reserve as shall be required by GAAP shall have been made therefor.

provided that the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness.

"Permitted Investments" means:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

(b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody's;

(c) investments in certificates of deposit, banker's acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof which has a combined capital and surplus and undivided profits of not less than \$500,000,000;

(d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above; and

(e) money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least \$5,000,000,000.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Plan" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any other Loan Party or any of their ERISA Affiliates is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Prime Rate" means, on any day, the prime rate of Wells Fargo Bank, National Association in effect for that day at the principal offices of Wells Fargo Bank, National Association in Houston, Texas. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate or a favored rate, and Administrative Agent and each Lender disclaims any statement, representation or warranty to the contrary. Administrative Agent, any Lender or Wells Fargo Bank, National Association may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

"Register" has the meaning set forth in Section 9.04.

"Related Parties" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person's Affiliates.

"Required Lenders" means at least two Lenders collectively having Revolving Exposures and unused Commitments representing at least 66-2/3% of the sum of the total Revolving Exposures and unused Commitments at such time.

"Restricted Payment" means (i) any payment or prepayment of any Subordinated Debt or (ii) any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Borrower or other Loan Party, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Equity Interests in the Borrower or other Loan Party or any option, warrant or other right to acquire any such Equity Interests in the Borrower or other Loan Party. The term "Restricted Payments" as used herein shall include management fees paid to any Person owning any Equity Interests in and to Borrower or any other Loan Party.

"Revolving Availability Period" means the period from and including the Effective Date to but excluding the earlier of the Maturity Date and the date of termination of the Commitments.

"Revolving Exposure" means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender's Revolving Loans and its LC Exposure and Swingline Exposure at such time.

“Revolving Lender” means a Lender with a Commitment or, if the Commitments have terminated or expired, a Lender with Revolving Exposure.

“Revolving Loan” means a Loan made pursuant to Section 2.01.

“S&P” means Standard & Poor’s Ratings Group.

“Security Agreements” means, collectively, (i) the Security Agreements dated as of the Effective Date executed between Borrower and each of its Domestic Subsidiaries (and such Foreign Subsidiaries as are Guarantors), respectively, and Administrative Agent and (ii) any and all security agreements hereafter executed in favor of Administrative Agent and securing all or any part of the Obligations, as any of them may from time to time be amended, modified, restated or supplemented.

“Security Documents” means, collectively, the Vessel Mortgages, the Mortgages, the Security Agreements and any and all other agreements, deeds of trust, mortgages, chattel mortgages, security agreements, pledges, guaranties, assignments of production or proceeds of production, assignments of income, assignments of contract rights, assignments of partnership interest, assignments of royalty interests, assignments of performance, completion or surety bonds, standby agreements, subordination agreements, undertakings and other instruments and financing statements now or hereafter executed and delivered as security for the Obligations, as any of them may from time to time be amended, modified, restated or supplemented.

“Statutory Reserve Rate” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject for Eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute Eurocurrency fundings and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“Subordinated Debt” means all Indebtedness of a Person which has been subordinated on terms and conditions satisfactory to the Required Lenders, in their sole discretion, to all of the Obligations, whether now existing or hereafter incurred. Indebtedness shall not be considered as “Subordinated Debt” unless and until the Administrative Agent shall have received copies of the documentation evidencing or relating to such Indebtedness together with a subordination agreement, in form and substance satisfactory to the Required Lenders, duly executed by the holder or holders of such Indebtedness and evidencing the terms and conditions of the required subordination.

“Subordinated Debt Documents” means any indenture or note under which any Subordinated Debt is issued and all other instruments, agreements and other documents evidencing or governing any Subordinated Debt or providing for any Guarantee or other right in respect thereof.

“Subsidiary” means, with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, Controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more Subsidiaries of the parent or by the parent and one or more Subsidiaries of the parent.

“Swap Agreement” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or its Subsidiaries shall be a Swap Agreement.

“Swingline Exposure” means, at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any Lender at any time shall be its Applicable Percentage of the total Swingline Exposure at such time. The initial maximum amount of Swingline Exposure is \$5,000,000.

“Swingline Lender” means Wells Fargo Bank, National Association, in its capacity as lender of Swingline Loans hereunder.

“Swingline Loan” means a Loan made pursuant to Section 2.19.

“Taxes” means any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority.

“Transactions” means (a) the execution, delivery and performance by each Loan Party of the Loan Documents to which it is to be a party, the borrowing of Loans, the use of the proceeds thereof and the issuance of Letters of Credit hereunder and (b) the execution, delivery and performance by each Loan Party of each other document and instrument required to satisfy the conditions precedent to the initial Loan hereunder, including without limitation all applicable Subordinated Debt Documents and all documents and instruments relating to any required equity contribution.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBOR or the Alternate Base Rate.

“UCC” means the Uniform Commercial Code in effect from time to time in the State of Texas.

“Vessel” means any barge, tug or other vessel upon which a Lien may be established under Title 46 USC 313.

“Vessel Mortgage” means a first preferred fleet or ship mortgage or other security document granting a Lien on any Vessel or group of Vessels to secure the Obligations. Each Vessel Mortgage shall be satisfactory in form and substance to the Administrative Agent.

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

SECTION 1.02. Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a “Revolving Loan”) or by Type (e.g., a “Eurodollar Loan”) or by Class and Type (e.g., a “Eurodollar Revolving Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Revolving Borrowing”) or by Type (e.g., a “Eurodollar Borrowing”) or by Class and Type (e.g., a “Eurodollar Revolving Borrowing”).

SECTION 1.03. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, Accounts and contract rights.

SECTION 1.04. Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

ARTICLE II  
The Credits

SECTION 2.01. Commitments. Subject to the terms and conditions set forth herein, each Lender agrees to make Revolving Loans to the Borrower from time to time during the Revolving Availability Period in an aggregate principal amount that will not result in such Lender's Revolving Exposure exceeding such Lender's Commitment. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Revolving Loans.

SECTION 2.02. Loans and Borrowings.

(a) Each Loan (other than a Swingline Loan) shall be made as part of a Borrowing consisting of Loans of the same Class and Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Class. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required. The Loans made by each Lender shall be evidenced by a single Note of Borrower (each, together with all renewals, extensions, modifications and replacements thereof and substitutions therefor, a "Note," collectively, the "Notes") in substantially the forms of Exhibit C-1 (Revolving Loans) and Exhibit C-2 (Swingline Loans) respectively, payable to the order of such Lender in a principal amount equal to the applicable Commitment of such Lender with respect to Revolving Loans and in the principal amount of \$5,000,000 with respect to Swingline Loans and otherwise duly completed. Each Lender is hereby authorized by Borrower to endorse on the schedule (or a continuation thereof) that may be attached to each Note of such Lender, to the extent applicable, the date, amount, type of and the applicable period of interest for each Loan made by such Lender to Borrower hereunder, and the amount of each payment or prepayment of principal of such Loan received by such Lender, provided, that any failure by such Lender to make any such endorsement shall not affect the obligations of Borrower under such Note or hereunder in respect of such Loan.

(b) Subject to Section 2.13, each Revolving Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request in accordance herewith. Each Swingline Loan shall be an ABR Loan. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Eurodollar Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$1,000,000. At the time that each ABR Revolving Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of \$500,000; provided that an ABR Revolving Borrowing may be in an aggregate amount that is equal to the entire unused balance of the total Commitments or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.04(e). Each Swingline Loan shall be in an amount that is an integral multiple of \$100,000. Borrowings of more than one Type and Class may be outstanding at the same time; provided that there shall not at any time be more than a total of eight (8) Eurodollar Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

SECTION 2.03. Requests for Borrowings. To request a Revolving Borrowing, the Borrower shall notify the Administrative Agent of such request by telephone (a) in the case of a Eurodollar Borrowing, not later than 11:00 a.m., Houston, Texas time, three Business Days before the date of the proposed Borrowing and (b) in the case of an ABR Borrowing, not later than 11:00 a.m., Houston, Texas time, one Business Day before the date of the proposed Borrowing; provided that any such notice of an ABR Revolving Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.04(e) may be given not later than 10:00 a.m., Houston, Texas time, on the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by the Borrower. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.02:

- (i) the aggregate amount of such Borrowing;
- (ii) the date of such Borrowing, which shall be a Business Day;
- (iii) whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing;
- (iv) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and
- (v) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.05.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Revolving Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

#### SECTION 2.04. Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, the Borrower may request the issuance of Letters of Credit for its own account, in a form reasonably acceptable to the Administrative Agent and the Issuing Bank, at any time and from time to time during the Revolving Availability Period. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, the Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control.



(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the Issuing Bank) to the Issuing Bank and the Administrative Agent (at least five Business Days in advance of the requested date of issuance, amendment, renewal or extension) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the Issuing Bank, the Borrower also shall submit a letter of credit application on the Issuing Bank's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the LC Exposure shall not exceed \$20,000,000 and (ii) the total Revolving Exposures shall not exceed the total Commitments.

(c) Expiration Date. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) the date that is five Business Days prior to the Maturity Date.

(d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank or the Lenders, the Issuing Bank hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from the Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, such Lender's Applicable Percentage of each LC Disbursement made by the Issuing Bank and not reimbursed by the Borrower on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to the Borrower for any reason. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) Reimbursement. If the Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than 1:00 p.m., Houston, Texas time, on the date that such LC Disbursement is made, if the Borrower shall have received notice of such LC Disbursement prior to 10:00 a.m., Houston, Texas time, on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than 1:00 p.m., Houston, Texas time, on (i) the Business Day that the Borrower receives such notice, if such notice is received prior to 10:00 a.m., Houston, Texas time, on the day of receipt, or (ii) the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; provided that the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with this Agreement that such payment be financed with an ABR Revolving Borrowing or Swingline Loan in an equivalent amount and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting ABR Revolving Borrowing or Swingline Loan. If the Borrower fails to make such payment when due, the Administrative Agent shall notify each Revolving Lender of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Revolving Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the Borrower, in the same manner as provided in Section 2.05 with respect to Loans made by such Lender (and Section 2.05 shall apply, mutatis mutandis, to the payment obligations of the Revolving Lenders), and the Administrative Agent shall promptly pay to the Issuing Bank the amounts so received by it from the Revolving Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to the Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to this paragraph to reimburse the Issuing Bank, then to such Lenders and the Issuing Bank as their interests may appear. Any payment made by a Revolving Lender pursuant to this paragraph to reimburse the Issuing Bank for any LC Disbursement (other than the funding of ABR Revolving Loans or Swingline Loan as contemplated above) shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse such LC Disbursement.

(f) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the Administrative Agent, the Lenders nor the Issuing Bank, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Bank; provided that the foregoing shall not be construed to excuse the Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by the Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Issuing Bank (as finally determined by a court of competent jurisdiction), the Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Disbursement Procedures. The Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Bank shall promptly notify the Administrative Agent and the Borrower by telephone (confirmed by telecopy) of such demand for payment and whether the Issuing Bank has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the Issuing Bank and the Revolving Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If the Issuing Bank shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement, at the rate per annum then applicable to ABR Revolving Loans; provided that, if the Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section, then Section 2.12(c) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to paragraph (e) of this Section to reimburse the Issuing Bank shall be for the account of such Lender to the extent of such payment.

(i) Replacement of the Issuing Bank. The Issuing Bank may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of the Issuing Bank. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.11(b). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(j) Cash Collateralization. If any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, at least two Revolving Lenders with LC Exposure representing greater than 66-2/3% of the total LC Exposure) demanding the deposit of cash collateral pursuant to this paragraph, the Borrower shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Lenders, an amount in cash equal to the LC Exposure as of such date plus any accrued and unpaid interest thereon; provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in clauses (h) or (i) of Article VII. The Borrower also shall deposit cash collateral pursuant to this paragraph as and to the extent required by Section 2.10(b). Each such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of at least two Revolving Lenders with LC Exposure representing greater than 66-2/3% of the total LC Exposure), be applied to satisfy other obligations of the Borrower under this Agreement. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three Business Days after all Events of Default have been cured or waived. If the Borrower is required to provide an amount of cash collateral hereunder pursuant to Section 2.10(b), such amount (to the extent not applied as aforesaid) shall be returned to the Borrower as and to the extent that, after giving effect to such return, the Borrower would remain in compliance with Section 2.10(b) and no Default shall have occurred and be continuing.

#### SECTION 2.05. Funding of Borrowings.

(a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 noon, Houston, Texas time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders; provided that Swingline Loans shall be made as provided in Section 2.19. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an account of the Borrower maintained with the Administrative Agent in Houston, Texas and designated by the Borrower in the applicable Borrowing Request; provided that ABR Revolving Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.04(e) shall be remitted by the Administrative Agent to the Issuing Bank.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. If a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to ABR Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

#### SECTION 2.06. Interest Elections.

(a) Each Revolving Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. This Section shall not apply to Swingline Borrowings, which may not be converted or continued.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Revolving Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by the Borrower.

(c) Each telephonic and written Interest Election Request shall specify the following information:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

- (ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;
- (iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and
- (iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

(f) A Borrowing of any Class may not be converted to or continued as a Eurodollar Borrowing if after giving effect thereto the sum of the aggregate principal amount of outstanding Eurodollar Borrowings of such Class with Interest Periods ending on or prior to such scheduled repayment date plus the aggregate principal amount of outstanding ABR Borrowings of such Class would be less than the aggregate principal amount of Loans of such Class required to be repaid on such scheduled repayment date.

#### SECTION 2.07. Termination, Reduction and Increase of Commitments.

(a) Unless previously terminated, the Commitments shall terminate on the Maturity Date.

(b) The Borrower may at any time terminate, or from time to time reduce, the Commitments of any Class; provided that (i) each reduction of the Commitments of any Class shall be in an amount that is an integral multiple of \$5,000,000 and (ii) the Borrower shall not terminate or reduce the Commitments if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.10, the sum of the Revolving Exposures would exceed the total Commitments.

(c) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Commitments under paragraph (b) of this Section, at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; provided that a notice of termination of the Commitments delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitments of any Class shall be permanent. Each reduction of the Commitments of any Class shall be made ratably among the Lenders in accordance with their respective Commitments of such Class.

(d) At any time prior to the expiration of the Revolving Availability Period, and so long as no Default or Event of Default shall have occurred which is continuing, the Borrower may elect to increase the aggregate of the Commitments to an amount not exceeding \$100,000,000 minus any reductions in the Commitments pursuant to Section 2.07(b) hereof, provided that (i) the Borrower shall give at least fifteen (15) Business Days' prior written notice of such increase to the Administrative Agent and each existing Lender, (ii) each existing Lender shall have the right (but not the obligation) to subscribe to its pro rata share of the proposed increase in the Commitments by giving written notice of such election to the Borrower and the Administrative Agent within ten (10) Business Days after receipt of a notice from the Borrower as above described and only if an existing Lender does not exercise such election may the Borrower elect to add a new Lender, (iii) no Lender shall be required to increase its Commitment unless it shall have expressly agreed to such increase in writing (but otherwise, no notice to or consent by any Lender shall be required, notwithstanding anything to the contrary set forth in Section 9.02 hereof), (iv) the addition of new Lenders shall be subject to the terms and provisions of Section 9.04 hereof as if such new Lenders were acquiring an interest in the Loans by assignment from an existing Lender (to the extent applicable, i.e. required approvals, minimum amounts and the like), (v) the Borrower shall execute and deliver such additional or replacement Notes and such other documentation (including evidence of proper authorization) as may be reasonably requested by the Administrative Agent, any new Lender or any Lender which is increasing its Commitment, (vi) no Lender shall have any right to decrease its Commitment as a result of such increase of the aggregate amount of the Commitments, (vii) the Administrative Agent shall have no obligation to arrange, find or locate any Lender or new bank or financial institution to participate in any unsubscribed portion of such increase in the aggregate committed amount of the Commitments, and (viii) such option to increase the Commitments may only be exercised once. The Borrowers shall be required to pay (or to reimburse each applicable Lender for) any breakage costs incurred by any Lender in connection with the need to reallocate existing Loans among the Lenders following any increase in the Commitments pursuant to this provision. Except as may otherwise be agreed by the Borrower and any applicable Lender, the Borrower shall not be required to pay any upfront or other fees or expenses to any existing Lenders, new Lenders or the Administrative Agent with respect to any such increase in Commitments.

#### SECTION 2.08. Repayment of Loans; Evidence of Debt.

(a) The Borrower hereby unconditionally promises to pay (i) to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Revolving Loan of such Lender on the Maturity Date and (ii) to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the earlier of the Maturity Date and the first date after such Swingline Loan is made that is the 15th or last day of a calendar month and is at least two Business Days after such Swingline Loan is made; provided that on each date that a Revolving Borrowing is made, the Borrower shall repay all Swingline Loans then outstanding.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class and Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraphs (b) or (c) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

SECTION 2.09. Intentionally Left Blank.

SECTION 2.10. Prepayment of Loans.

(a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to the requirements of this Section.

(b) In the event and on such occasion that the sum of the Revolving Exposures exceeds the total Commitments, the Borrower shall prepay Revolving Borrowings or Swingline Borrowings (or, if no such Borrowings are outstanding, deposit cash collateral in an account with the Administrative Agent pursuant to Section 2.04(j)) in an aggregate amount equal to such excess.

(c) Prior to any optional or mandatory prepayment of Borrowings hereunder, the Borrower shall select the Borrowing or Borrowings to be prepaid and shall specify such selection in the notice of such prepayment pursuant to this Section.

(d) The Borrower shall notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by telephone (confirmed by telecopy) of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Revolving Borrowing, not later than 11:00 a.m., Houston, Texas time, three Business Days before the date of prepayment or (ii) in the case of prepayment of an ABR Revolving Borrowing, not later than 11:00 a.m., Houston, Texas time, one Business Day before the date of prepayment or (iii) in the case of prepayment of a Swingline Loan, not later than 12:00 noon, Houston, Texas time, on the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date, the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment; provided that, if a notice of optional prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.07, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.07. Promptly following receipt of any such notice (other than a notice relating solely to Swingline Loans), the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.02, except as necessary to apply fully the required amount of a mandatory prepayment.



(e) All Swap Agreements and agreements governing Banking Services between Borrower and any Lender (or any Affiliate of a Lender) are independent agreements governed by the written provisions of said Swap Agreements, which will remain in full force and effect, unaffected by any repayment, prepayment, acceleration, reduction, increase or change in the terms of the Obligations, except as otherwise expressly provided in said Swap Agreements, and any payoff statement relating to the Obligations shall not apply to said Swap Agreements or agreements governing Banking Services except as otherwise expressly provided in such payoff statement.

#### SECTION 2.11. Fees.

(a) The Borrower agrees to pay to the Administrative Agent for the account of each Lender a commitment fee, which shall accrue at the Applicable Rate on the average daily unused amount of the Commitment of such Lender during the period from and including the date hereof to but excluding the date on which such Commitment terminates. Accrued commitment fees shall be payable in arrears on the last day of March, June, September and December of each year and on the date on which the Commitments terminate, commencing on the first such date to occur after the date hereof. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). For purposes of computing such commitment fees, a Commitment of a Lender shall be deemed to be used to the extent of the outstanding Revolving Loans and LC Exposure of such Lender (but the Commitment of a Lender shall not be deemed to be used to the extent of the Swingline Exposure of such Lender).

(b) The Borrower agrees to pay (i) to the Administrative Agent for the account of each Revolving Lender a participation fee with respect to its participations in Letters of Credit, which shall accrue at the same Applicable Rate used to determine the interest rate applicable to Eurodollar Revolving Loans on the average daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date on which such Lender's Commitment terminates and the date on which such Lender ceases to have any LC Exposure (provided, however, that in no event shall such participation fees for any single Letter of Credit be less than \$500) and (ii) to the Issuing Bank a fronting fee, which shall accrue at the rate of 0.125% per annum on the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date of termination of the Commitments and the date on which there ceases to be any LC Exposure, as well as the Issuing Bank's standard fees with respect to the amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees accrued through and including the last day of March, June, September and December of each year shall be payable on the third Business Day following such last day, commencing on the first such date to occur after the Effective Date; provided that all such fees shall be payable on the date on which the Commitments terminate and any such fees accruing after the date on which the Commitments terminate shall be payable on demand. Any other fees payable to the Issuing Bank pursuant to this paragraph shall be payable within 10 days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(c) The Borrower agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent.

(d) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent (or to the Issuing Bank, in the case of fees payable to it) for distribution, in the case of commitment fees and participation fees, to the Lenders entitled thereto. Fees paid shall not be refundable under any circumstances.

SECTION 2.12. Interest.

(a) The Loans comprising each ABR Borrowing (including each Swingline Loan) shall bear interest at the lesser of (i) the Alternate Base Rate plus the Applicable Rate or (ii) the Ceiling Rate.

(b) The Loans comprising each Eurodollar Borrowing shall bear interest at the lesser of (i) the Adjusted LIBOR for the Interest Period in effect for such Borrowing plus the Applicable Rate or (ii) the Ceiling Rate.

(c) Notwithstanding the foregoing, if any Event of Default has occurred which is continuing, the entire unpaid principal balance of the Loans shall bear interest, after as well as before judgment, at a rate per annum equal to the lesser of (i) the Ceiling Rate or (ii) in the case of principal of any Loan, 2% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or in the case of any other amount, 2% plus the rate applicable to ABR Revolving Loans as provided in paragraph (a) of this Section.

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and, in the case of Revolving Loans, upon termination of the Commitments; provided that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Revolving Loan prior to the end of the Revolving Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate or Adjusted LIBOR shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.13. Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBOR for such Interest Period; or

(b) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBOR for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone or telecopy as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective and (ii) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing; provided that if the circumstances giving rise to such notice affect only one Type of Borrowings, then the other Type of Borrowings shall be permitted.

SECTION 2.14. Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBOR) or the Issuing Bank; or

(ii) impose on any Lender or the Issuing Bank or the London interbank market any other condition affecting this Agreement or Eurodollar Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or the Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or the Issuing Bank hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or the Issuing Bank determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or on the capital of such Lender's or the Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or the Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company, as the case may be, as specified in paragraphs (a) or (b) of this Section shall be delivered to the Borrower, demonstrating in reasonable detail the calculation of the amounts, and shall be conclusive absent manifest error. The Borrower shall pay such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender or the Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or the Issuing Bank, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing Bank's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive and if such Lender or the Issuing Bank, as the case may be, notifies the Borrower of such Change of Law within 180 days after the adoption, enactment or similar act with respect to such Change of Law, then the 180-day period referred to above shall be extended to include the period from the effective date of such Change of Law to the date of such notice.

**SECTION 2.15. Break Funding Payments.** In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Revolving Loan on the date specified in any notice delivered pursuant hereto, or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.18, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. Such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBOR that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the Eurodollar market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section, demonstrating in reasonable detail the calculation of the amounts, shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

SECTION 2.16. Taxes.

(a) Any and all payments by or on account of any obligation of the Borrower hereunder or under any other Loan Document shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; provided that if the Borrower shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, Lender or Issuing Bank (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) The Borrower shall indemnify the Administrative Agent, each Lender and the Issuing Bank, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent, such Lender or the Issuing Bank, as the case may be, on or with respect to any payment by or on account of any obligation of the Borrower hereunder or under any other Loan Document (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender or the Issuing Bank, or by the Administrative Agent on its own behalf or on behalf of a Lender or the Issuing Bank, demonstrating in reasonable detail the calculation of the amounts, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law or reasonably requested by the Borrower as will permit such payments to be made without withholding or at a reduced rate.

SECTION 2.17. Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(a) The Borrower shall make each payment required to be made by it hereunder or under any other Loan Document (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Sections 2.14, 2.15 or 2.16, or otherwise) prior to the time expressly required hereunder or under such other Loan Document for such payment (or, if no such time is expressly required, prior to 1:00 p.m., Houston, Texas time), on the date when due, in immediately available funds, without set off, deduction or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 1525 W WT Harris Blvd., Charlotte, NC 28262, except payments to be made directly to the Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.14, 2.15, 2.16 and 9.03 shall be made directly to the Persons entitled thereto and payments pursuant to other Loan Documents shall be made to the Persons specified therein. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment under any Loan Document shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments under each Loan Document shall be made in dollars.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal and unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties.

(c) If any Lender shall, by exercising any right of set off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Revolving Loans or participations in LC Disbursements or Swingline Loans, resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Loans and participations in LC Disbursements and Swingline Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Revolving Loans and participations in LC Disbursements and Swingline Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Loans and participations in LC Disbursements and Swingline Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements or Swingline Loans to any assignee or participant, other than to the Borrower or any other Loan Party or Affiliate thereof (as to which the provisions of this paragraph shall apply). Each Lender agrees that it will not exercise any right of set-off or counterclaim or otherwise obtain payment in respect of any Obligation owed to it other than principal of and interest accruing on the Loans and participations in the LC Disbursements and Swingline Loans, unless all of the outstanding principal of and accrued interest on the Loans and LC Disbursements have been paid in full. The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Bank, as the case may be, the amount due. If the Borrower has not in fact made such payment when due, then each of the Lenders or the Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to this Agreement, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations hereunder until all such unsatisfied obligations are fully paid.

#### SECTION 2.18. Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under Section 2.14, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Sections 2.14 or 2.16, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.14, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.16, or if any Lender defaults in its obligation to fund Loans hereunder, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Borrower shall have received the prior written consent of the Administrative Agent (and, if a Commitment is being assigned, the Issuing Bank and Swingline Lender), which consent shall not unreasonably be withheld, (ii) such assignor Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.14 or payments required to be made pursuant to Section 2.16, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

#### SECTION 2.19. Swingline Loans.

(a) Subject to the terms and conditions set forth herein, the Swingline Lender agrees to make Swingline Loans to the Borrower from time to time during the Revolving Availability Period, in an aggregate principal amount at any time outstanding that will not result in (i) the aggregate principal amount of outstanding Swingline Loans exceeding \$5,000,000 or (ii) the sum of the total Revolving Exposures exceeding the total Commitments; provided that the Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan and provided further that the Swingline Lender shall not, without the consent of the Required Lenders, make any Swingline Loan if any Event of Default exists of which the Swingline Lender has actual knowledge. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Swingline Loans.

(b) To request a Swingline Loan, the Borrower shall notify the Administrative Agent of such request by telephone (confirmed by telecopy), not later than 12:00 noon, Houston, Texas time, on the day of a proposed Swingline Loan. Each such notice shall be irrevocable and shall specify the requested date (which shall be a Business Day) and amount of the requested Swingline Loan. The Administrative Agent will promptly advise the Swingline Lender of any such notice received from the Borrower. The Swingline Lender shall make each Swingline Loan available to the Borrower by means of a credit to the general deposit account of the Borrower with the Swingline Lender (or, in the case of a Swingline Loan made to finance the reimbursement of an LC Disbursement as provided in Section 2.04(e), by remittance to the Issuing Bank) by 3:00 p.m., Houston, Texas time, on the requested date of such Swingline Loan.



(c) The Swingline Lender may by written notice given to the Administrative Agent not later than 12:00 noon, Houston, Texas time, on any Business Day require the Revolving Lenders to acquire participations on such Business Day in all or a portion of the Swingline Loans outstanding. Such notice shall specify the aggregate amount of Swingline Loans in which Revolving Lenders will participate. The Administrative Agent will give notice thereof to each Revolving Lender by 1:00 p.m., Houston, Texas time on such Business Day, specifying in such notice such Lender's Applicable Percentage of such Swingline Loan or Loans. Each Revolving Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Swingline Lender, such Lender's Applicable Percentage of such Swingline Loan or Loans. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional, subject to Swingline Lender's compliance with the provisions of Section 2.19(a) hereof, and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Revolving Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.05 with respect to Loans made by such Lender (and Section 2.05 shall apply, mutatis mutandis, to the payment obligations of the Revolving Lenders), and the Administrative Agent shall promptly pay to the Swingline Lender the amounts so received by it from the Revolving Lenders. The Administrative Agent shall notify the Borrower in writing of any participations in any Swingline Loan acquired pursuant to this paragraph, and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from the Borrower (or other party on behalf of the Borrower) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent; any such amounts received by the Administrative Agent shall be remitted by the Administrative Agent to the Swingline Lender and to the Revolving Lenders that shall have made their payments pursuant to this paragraph, as their interests may appear, such remittance to be made on the day of receipt if such payment is received by 1:00 p.m., Houston, Texas time and prior to 10:00 a.m. of the following Business Day if such payment is received after 1:00 p.m., Houston, Texas time. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve the Borrower of any default in the payment thereof.

(d) Notwithstanding the foregoing procedures for requesting a Swingline Loan, the Borrower and the Swingline Lender may agree to implement an alternate arrangement with respect to Swingline Loans pursuant to a direct borrowing agreement between the Borrower and the Swingline Lender. The Swingline Lender will give notice to the Administrative Agent of each Swingline Loan made by the Borrower within one (1) Business Day after making such Swingline Loan.

SECTION 2.20. Defaulting Lender. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

- (a) fees shall cease to accrue on the unfunded portion of any Commitment of such Defaulting Lender pursuant to this Agreement;

(b) the Commitments and Obligations of such Defaulting Lender shall not be included in determining whether all Lenders or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 9.02), provided that any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender which affects such Defaulting Lender differently than other affected Lenders shall require the consent of such Defaulting Lender;

(c) if any Swingline Exposure or LC Exposure exists at the time a Lender becomes a Defaulting Lender then:

(i) all or any part of such Swingline Exposure and LC Exposure shall be reallocated among the Lenders which are not Defaulting Lenders (the “Non-Defaulting Lenders”) in accordance with their respective Applicable Percentages but only to the extent the sum of all Non-Defaulting Lenders’ Revolving Exposures plus such Defaulting Lender’s Swingline Exposure and LC Exposure does not exceed the total of all Non-Defaulting Lenders’ Commitments; and

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrower shall within one Business Day following notice by the Administrative Agent (x) first, prepay such Swingline Exposure and (y) second, cash collateralize such Defaulting Lender’s LC Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth in Section 2.04(j) for so long as such LC Exposure is outstanding;

(iii) if the Borrower cash collateralizes any portion of such Defaulting Lender’s LC Exposure pursuant to this Section 2.20(c), the Borrower shall not be required to pay any fees to such Defaulting Lender pursuant to Section 2.11 with respect to such Defaulting Lender’s LC Exposure during the period such Defaulting Lender’s LC Exposure is cash collateralized;

(iv) if the LC Exposure of the non-Defaulting Lenders is reallocated pursuant to this Section 2.20(c), then the fees payable to the Lenders pursuant to Section 2.11 shall be adjusted in accordance with such non-Defaulting Lenders’ Applicable Percentages; or

(v) if any Defaulting Lender’s LC Exposure is neither cash collateralized nor reallocated pursuant to this Section 2.20(c), then, without prejudice to any rights or remedies of the Issuing Bank or any Lender hereunder, all fees that otherwise would have been payable to such Defaulting Lender with respect to such Defaulting Lender’s LC Exposure shall be payable to the Issuing Bank until such LC Exposure is cash collateralized and/or reallocated;

(d) so long as any Lender is a Defaulting Lender, the Swingline Lender shall not be required to fund any Swingline Loan and the Issuing Bank shall not be required to issue, amend or increase any Letter of Credit, unless it is satisfied that the related exposure will be 100% covered by the Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrower in accordance with Section 2.20(c), and participating interests in any such newly issued or increased Letter of Credit or newly made Swingline Loan shall be allocated among non-Defaulting Lenders in a manner consistent with Section 2.20(c)(i) (and Defaulting Lenders shall not participate therein); and

(e) any amount payable to such Defaulting Lender hereunder (whether on account of principal, interest, fees or otherwise and including any amount that would otherwise be payable to such Defaulting Lender pursuant to Section 2.17) shall, in lieu of being distributed to such Defaulting Lender, be retained by the Administrative Agent in a segregated account and, subject to any applicable requirements of law, be applied at such time or times as may be determined by the Administrative Agent (i) first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder, (ii) second, pro rata, to the payment of any amounts owing by such Defaulting Lender to the Issuing Bank or Swingline Lender hereunder, (iii) third, to the funding of any Loan or the funding or cash collateralization of any participating interest in any Swingline Loan or Letter of Credit in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent, (iv) fourth, if so determined by the Administrative Agent and the Borrower, held in such account as cash collateral for future funding obligations of the Defaulting Lender under this Agreement, (v) fifth, pro rata, to the payment of any amounts owing to the Borrower or the Lenders as a result of any judgment of a court of competent jurisdiction obtained by the Borrower or any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement and (vi) sixth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if such payment is (x) a prepayment of the principal amount of any Loans or reimbursement obligations in respect of LC Disbursements which a Defaulting Lender has funded its participation obligations and (y) made at a time when the conditions set forth in Section 4.02 are satisfied, such payment shall be applied solely to prepay the Loans of, and reimbursement obligations owed to, all Non-Defaulting Lenders pro rata prior to being applied to the prepayment of any Loans, or reimbursement obligations owed to, any Defaulting Lender.

In the event that the Administrative Agent, the Borrower, the Issuing Bank and the Swingline Lender each agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the Swingline Exposure and LC Exposure of the Lenders shall be readjusted to reflect the inclusion of such Lender's Commitment and on such date such Lender shall purchase at par such of the Loans of the other Lenders (other than Swingline Loans) as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Applicable Percentage.

### ARTICLE III Representations and Warranties

The Borrower represents and warrants to the Lenders that:

SECTION 3.01. Organization; Powers. Each of the Borrower and the other applicable Loan Parties is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

SECTION 3.02. Authorization; Enforceability. The Transactions to be entered into by each Loan Party are within such Loan Party's powers and have been duly authorized by all necessary action. This Agreement has been duly executed and delivered by the Borrower and constitutes, and each other Loan Document to which any Loan Party is to be a party, when executed and delivered by such Loan Party, will constitute, a legal, valid and binding obligation of the Borrower or such Loan Party (as the case may be), enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.03. Governmental Approvals; No Conflicts. The Transactions (a) do not require any material consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect and except filings necessary to perfect Liens created under the Loan Documents, (b) will not violate any applicable law or regulation or the charter, by-laws or other organizational documents of the Borrower or any other applicable Loan Party or any order of any Governmental Authority, (c) will not violate or result in a default under any material indenture, agreement or other instrument binding upon the Borrower or any other Loan Party or their assets, or give rise to a right thereunder to require any payment to be made by the Borrower or any other Loan Party, and (d) will not result in the creation or imposition of any Lien on any asset of the Borrower or any other Loan Party, except Liens created under the Loan Documents.

SECTION 3.04. Financial Condition. The Borrower has heretofore furnished to the Lenders Borrower's consolidated balance sheet and statements of income, equity and cash flows (1) as of and for the fiscal year ended December 31, 2009 and (2) as of and for the fiscal quarter and the portion of the fiscal year ended March 31, 2010, certified by a Financial Officer. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (2) above. Since December 31, 2009, there has been no material adverse change in the business, assets, operations, prospects or condition, financial or otherwise, of the Borrower and its Subsidiaries, taken as a whole. Except as set forth on Schedule 6.01, after giving effect to the Transactions, none of the Borrower or its Subsidiaries has, as of the Effective Date, any material contingent liabilities or unrealized losses.

SECTION 3.05. Properties.

(a) The Borrower and each other Loan Party has good title to, or valid leasehold interests in, all of its real and personal property material to its business (including the Mortgaged Properties), except for (i) minor defects in title that do not interfere with its ability to conduct its business or to utilize such properties for their intended purposes and (ii) in respect of properties acquired in connection with an Acquisition, title defects which could not reasonably be expected to result in a Material Adverse Effect and with respect to which funds have been escrowed in connection with the applicable Acquisition and the correction of such defects is being diligently pursued by appropriate action.

(b) The Borrower and each other Loan Party owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property material to its business, and the use thereof by the Borrower and each other Loan Party does not infringe upon the rights of any other Person, except for any such infringements that could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.06. Litigation and Environmental Matters.

(a) There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened against or affecting the Borrower or any other Loan Party (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected to result in a Material Adverse Effect or (ii) that involve any of the Loan Documents or the Transactions.

(b) Except with respect to any other matters that could not reasonably be expected to result in a Material Adverse Effect, neither the Borrower nor any other Loan Party (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability.

SECTION 3.07. Compliance with Laws and Agreements. The Borrower and each other Loan Party is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

SECTION 3.08. Investment Company Status. Neither the Borrower nor any other Loan Party is an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940.

SECTION 3.09. Taxes. The Borrower and each other Loan Party has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or such other Loan Party, as applicable, has set aside on its books adequate reserves or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.10. ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. The present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plan, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of all such underfunded Plans, in each of such cases so as to cause a Material Adverse Effect.

SECTION 3.11. Disclosure. The Borrower has disclosed to the Lenders all agreements, instruments and corporate or other restrictions to which the Borrower or any other Loan Party is subject, and all other matters known to any of them, that could reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates or other information furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or any other Loan Document or delivered hereunder or thereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, taken as a whole, in the light of the circumstances under which they were made, not misleading; provided, however, that with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

SECTION 3.12. Subsidiaries. The Borrower has no Subsidiaries other than as set forth on Schedule 3.12 hereto. The Borrower owns all of the Equity Interests in and to each Subsidiary listed on Schedule 3.12 hereto.

SECTION 3.13. Insurance. As of the Effective Date, all premiums due in respect of all insurance maintained by the Borrower and each other Loan Party have been paid.

SECTION 3.14. Labor Matters. As of the Effective Date, there are no strikes, lockouts or slowdowns against the Borrower or any other Loan Party pending or, to the knowledge of the Borrower, threatened. The hours worked by and payments made to employees of the Borrower and the other Loan Parties have not been in violation of the Fair Labor Standards Act or any other applicable Federal, state, local or foreign law dealing with such matters, except to the extent contested in good faith by appropriate proceedings and for which the Borrower or such other Loan Party, as applicable, has set aside on its books adequate reserves. All payments due from the Borrower or any other Loan Party, or for which any claim may be made against the Borrower or any other Loan Party, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of the Borrower or such other Loan Party, provided that payments due, as of the date of any applicable Acquisition, by the entity which is the subject of such Acquisition, and which Borrower or any other Loan Party shall be obligated to pay following the closing of such Acquisition, shall not constitute a violation of this provision so long as such payments are paid within six (6) months following the closing of such Acquisition and so long as the failure to pay such amounts earlier could not reasonably be expected to result in a Material Adverse Effect. The consummation of the Transactions will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which the Borrower or any other Loan Party is bound.

SECTION 3.15. Solvency. Immediately after the consummation of the Transactions to occur on the Effective Date and immediately following the making of each Loan and after giving effect to the application of the proceeds of such Loans, (a) the fair value of the assets of each Loan Party, at a fair valuation, will exceed its debts and liabilities, subordinated, contingent or otherwise; (b) the present fair saleable value of the property of each Loan Party will be greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (c) each Loan Party will be able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (d) each Loan Party will not have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted following the Effective Date.

SECTION 3.16. Material Property Subject to Security Documents. The Collateral constitutes all of the real and material personal property owned by Borrower or any of its Subsidiaries (other than Excluded Assets).

SECTION 3.17. Foreign Subsidiaries. As of the Effective Date, the aggregate value (based on the greater of book or market value) of the total assets owned by Foreign Subsidiaries of Borrower does not exceed 5% of the aggregate value (based on the greater of book or market value) of the total assets owned by Borrower and all of its Subsidiaries.

#### ARTICLE IV

##### Conditions

SECTION 4.01. Effective Date. The obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) The Administrative Agent (or its counsel) shall have received from each party hereto either (i) counterparts of this Agreement signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include telecopy transmission of a signed signature page of this Agreement) that such party has signed counterparts of this Agreement.

(b) The Administrative Agent (or its counsel) shall have received from Borrower an original of each Note signed on behalf of Borrower.

(c) The Administrative Agent (or its counsel) shall have received from Borrower and from each other party to the Loan Documents (other than the Notes) either (i) counterparts of each applicable Loan Document signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include telecopy transmission of a signed signature page of the applicable Loan Document) that such party has signed counterparts of such Loan Document.

(d) The Administrative Agent shall have received written opinions (addressed to the Administrative Agent and the Lenders and dated the Effective Date) of Peter R. Buchler, Executive Vice President and General Counsel of the Borrower and the other Loan Parties, in form and substance satisfactory to the Administrative Agent and its counsel, covering such other matters relating to the Loan Parties, the Loan Documents or the Transactions as the Required Lenders shall reasonably request.

(e) The Administrative Agent shall have received such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence and good standing of each Loan Party, the authorization of the Transactions and any other legal matters relating to the Loan Parties, the Loan Documents or the Transactions, all in form and substance satisfactory to the Administrative Agent and its counsel.

(f) The Administrative Agent shall have received a certificate, dated the Effective Date and signed by an appropriate officer or other responsible party acceptable to Administrative Agent on behalf of Borrower, confirming compliance with the conditions set forth in paragraphs (a) and (b) of Section 4.02.

(g) The Administrative Agent shall have received all fees and other amounts due and payable on or prior to the Effective Date, including, to the extent invoiced, reimbursement or payment of all out of pocket expenses (including fees, charges and disbursements of counsel) required to be reimbursed or paid by any Loan Party hereunder or under any other Loan Document.

(h) The Administrative Agent shall have received each of the following:

(i) to the extent applicable, certificates representing all of the outstanding Equity Interests in each Subsidiary of Borrower as of the Effective Date (other than Equity Interests included in the Excluded Assets) and powers of attorney, endorsed in blank, with respect to such certificates;

(ii) all documents and instruments, including Uniform Commercial Code financing statements, required by law or reasonably requested by the Administrative Agent to be filed, registered or recorded to create or perfect the Liens intended to be created under the Security Documents;

(iii) the results of a search of the Uniform Commercial Code (or equivalent) filings made with respect to the Loan Parties in such jurisdictions as the Administrative Agent may require and copies of the financing statements (or similar documents) disclosed by such search and evidence reasonably satisfactory to the Administrative Agent that the Liens indicated by such financing statements (or similar documents) are permitted by Section 6.02 or have been released; and

(iv) evidence reasonably satisfactory to the Administrative Agent that none of the Mortgaged Property lies in an area requiring special notices of flood hazard issues or the purchase of flood hazard insurance, unless such flood hazard insurance has been obtained and is in effect.

(i) The Administrative Agent shall have received evidence that the insurance required by Section 5.07 and the Security Documents is in effect.

(j) The Administrative Agent shall have received, and shall be satisfied with the results of, an environmental report prepared by a consultant acceptable to the Administrative Agent with respect to any Environmental Liabilities that may be attributable to such properties or operations as have been specified by the Administrative Agent for review.

(k) The Administrative Agent shall have received evidence satisfactory to the Administrative Agent that the Borrower and each other Loan Party shall have been released from all liabilities and obligations in respect of Indebtedness (other than the Obligations).

The Administrative Agent shall notify the Borrower and the Lenders of the Effective Date, and such notice shall be conclusive and binding.



SECTION 4.02. Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing, and of the Issuing Bank to issue, amend, renew or extend any Letter of Credit, is subject to receipt of the request therefor in accordance herewith and to the satisfaction of the following conditions:

(a) The representations and warranties of each Loan Party set forth in the Loan Documents shall be true and correct on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable.

(b) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default shall have occurred and be continuing and there shall have occurred no event which would be reasonably likely to have a Material Adverse Effect.

Each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraphs (a) and (b) of this Section.

#### ARTICLE V Affirmative Covenants

Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lenders that:

SECTION 5.01. Financial Statements and Other Information. The Borrower will furnish to the Administrative Agent and each Lender:

(a) within 90 days after the end of each fiscal year of the Borrower, its audited consolidated balance sheet and related statements of operations, shareholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by independent public accountants of recognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) within 45 days after the end of each fiscal quarter of each fiscal year of the Borrower, its consolidated balance sheet and related statements of operations, shareholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) concurrently with any delivery of financial statements under clauses (a) or (b) above, beginning with the financial statement as of June 30, 2010, a certificate of a Financial Officer of the Borrower, in the form of Exhibit B hereto, (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth reasonably detailed calculations demonstrating compliance with Sections 5.13, 6.13 and 6.14 and (iii) stating whether any change in GAAP or in the application thereof has occurred since the Effective Date and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate; and

(d) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Borrower or any other Loan Party, or compliance with the terms of any Loan Document, as the Administrative Agent or any Lender may reasonably request.

SECTION 5.02. Notices of Material Events. The Borrower will furnish to the Administrative Agent prompt written notice of the following:

- (a) the occurrence of any Default;
- (b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting the Borrower or any other Loan Party or any Affiliate thereof that, if adversely determined, could reasonably be expected to result in a Material Adverse Effect;
- (c) any other development that results in, or would reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a statement of a Financial Officer or other executive officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

SECTION 5.03. Information Regarding Borrower.

(a) The Borrower will furnish to the Administrative Agent prompt written notice of any change (i) in any Loan Party's jurisdiction of organization, corporate name or in any trade name used to identify it in the conduct of its business or in the ownership of its properties, (ii) in the location of any Loan Party's chief executive office, its principal place of business, or any facility at which Collateral owned by it is located (including the establishment of any such new facility), (iii) in any Loan Party's identity or corporate structure or (iv) in any Loan Party's Federal Taxpayer Identification Number. The Borrower agrees not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the Uniform Commercial Code or otherwise that are required in order for the Administrative Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral. The Borrower also agrees promptly to notify the Administrative Agent if any material portion of the Collateral is damaged or destroyed and such loss or damage exceeds \$100,000 per occurrence.

(b) After the Effective Date, Borrower will notify the Administrative Agent in writing promptly upon Borrower's or any of its Subsidiaries' acquisition or ownership of any estate (fee simple or leasehold) of real property (other than the Mortgaged Property and other than Excluded Assets) or of any personal property (other than Excluded Assets) not already covered by the Security Documents (such acquisition or ownership being herein called an "Additional Collateral Event") and the property so acquired or owned being herein called "Additional Collateral"). As soon as practicable and in any event within thirty (30) days after an Additional Collateral Event, Borrower shall (a) execute and deliver or cause to be executed and delivered Security Documents, in form and substance satisfactory to Administrative Agent, in favor of Administrative Agent and duly executed by Borrower or the applicable Subsidiary, covering and affecting and granting a first-priority Lien upon the applicable Additional Collateral, and such other documents (including, to the extent required by the Administrative Agent and without limitation, surveys, abstracts, appraisals, environmental assessments, certificates, and legal opinions, all in form and substance satisfactory to Administrative Agent) as may be required by Administrative Agent in connection with the execution and delivery of such Security Documents; (b) with respect to any Additional Collateral which is real property, to the extent required by Administrative Agent, cause a title insurance underwriter satisfactory to Administrative Agent to issue to Administrative Agent a mortgage policy of title insurance, in form and substance satisfactory to Administrative Agent, insuring the first-priority Lien of the applicable Mortgage in such amount as is satisfactory to Administrative Agent, and (c) deliver or cause to be delivered by Subsidiaries of Borrower such other documents or certificates consistent with the terms of this Agreement and relating to the transactions contemplated hereby as Administrative Agent may reasonably request.

(c) At any reasonable time and from time to time during normal business hours and without undue interference to Borrower's or any of its Subsidiaries' businesses, Borrower will permit, and will cause each of its Subsidiaries to permit, representatives of Administrative Agent:

- (i) to examine and make copies of the books and records of, and visit and inspect the properties or assets of Borrower and any of its Subsidiaries and to discuss the business, operations, and financial condition of any such Persons with their respective officers and employees and with their independent certified public accountants;
- (ii) to conduct field audits (consisting of audits, verifications and inspections of the accounts receivable, inventory and assets of Borrower and its Subsidiaries, conducted by an independent third Person selected by Administrative Agent); provided, however, that Borrower shall only be required to reimburse Administrative Agent for one (1) such field audit during any fiscal year of Borrower; and
- (iii) to conduct appraisals of the assets of Borrower and its Subsidiaries; provided, however, that if an Event of Default has occurred and is continuing, the cost of one (1) appraisal of all the assets of Borrower and its Subsidiaries during each calendar year shall be paid by Borrower (otherwise such cost shall be paid by Lenders).

SECTION 5.04. Existence; Conduct of Business. The Borrower will, and will cause each other Loan Party to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges, franchises, patents, copyrights, trademarks and trade names material to the conduct of its business; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03.

SECTION 5.05. Payment of Obligations. The Borrower will, and will cause each other Loan Party to, pay its Indebtedness and other obligations, including liabilities for Taxes, before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Borrower or such other Loan Party has set aside on its books adequate reserves with respect thereto in accordance with GAAP, (c) such contest effectively suspends collection of the contested obligation and the enforcement of any Lien securing such obligation and (d) the failure to make payment pending such contest would not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.06. Maintenance of Properties. The Borrower will, and will cause each other Loan Party to, keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted.

SECTION 5.07. Insurance. The Borrower will, and will cause each other Loan Party to, maintain, with financially sound and reputable insurance companies (a) insurance in such amounts (with no greater risk retention) and against such risks as are customarily maintained by companies of established repute engaged in the same or similar businesses operating in the same or similar locations and (b) all insurance required to be maintained pursuant to the Security Documents. The Borrower will furnish to the Lenders, upon request of the Administrative Agent, information in reasonable detail as to the insurance so maintained.

SECTION 5.08. Casualty and Condemnation. The Borrower (a) will furnish to the Administrative Agent and the Lenders prompt written notice of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any Collateral or any part thereof or interest therein under power of eminent domain or by condemnation or similar proceeding and (b) will ensure that the Net Proceeds of any such event (whether in the form of insurance proceeds, condemnation awards or otherwise) are collected and applied in accordance with the applicable provisions of this Agreement.

SECTION 5.09. Books and Records; Inspection and Audit Rights. The Borrower will, and will cause each other Loan Party to, keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. The Borrower will, and will cause each other Loan Party to, permit any representatives designated by the Administrative Agent, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested.

SECTION 5.10. Compliance with Laws. The Borrower will, and will cause each other Loan Party to, comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.11. Use of Proceeds and Letters of Credit. The Letters of Credit and the proceeds of the Loans will be used only for general working capital and for other general corporate purposes, which may include acquisitions and the repayment of Indebtedness. No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations U and X.

SECTION 5.12. Further Assurances. The Borrower will, and will cause each other Loan Party to, execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents), which may be required under any applicable law, or which the Administrative Agent or the Required Lenders may reasonably request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Security Documents or the validity or priority of any such Lien, all at the expense of the Loan Parties. The Borrower also agrees to provide to the Administrative Agent, from time to time upon reasonable request by the Administrative Agent, evidence reasonably satisfactory to the Administrative Agent as to the perfection and priority of the Liens created or intended to be created by the Security Documents.

SECTION 5.13. Financial Covenants. The Borrower will have and maintain:

- (a) Fixed Charge Coverage Ratio – a Fixed Charge Coverage Ratio of not less than 1.50 to 1.00 at all times.
- (b) Leverage Ratio – a Leverage Ratio of not greater than 2.50 to 1.00 at all times.
- (c) Net Worth – a minimum Net Worth of not less than (1) as of the Effective Date, \$180,000,000 and (2) at the end of each fiscal quarter of Borrower thereafter, the minimum Net Worth required as of the end of the immediately preceding fiscal quarter of Borrower plus 50% of the consolidated net income of Borrower and its Subsidiaries (if positive), for the immediately preceding fiscal quarter of Borrower plus 75% of all issuances of Equity Interests by Borrower during the immediately preceding fiscal quarter of Borrower.

SECTION 5.14. Post-Closing Matters. Borrower shall use commercially reasonable efforts to deliver to the Administrative Agent, within sixty (60) days after the Effective Date, agreements whereby (x) each warehouseman, bailee, agent or processor having possession of any Inventory of Borrower or any of its Subsidiaries which is a Loan Party has subordinated any Lien such warehouseman, bailee, agent or processor may claim therein and agreed to hold all such Inventory for the Administrative Agent's account subject to the Administrative Agent's instruction and (y) each landlord in respect of any space leased by the Borrower or any of its Subsidiaries which is a Loan Party has subordinated any Lien such landlord may claim in any property of the Borrower or any of its Subsidiaries. Within ninety (90) days after the Effective Date, Borrower shall deliver to the Administrative Agent evidence satisfactory to the Administrative Agent that all Vessels owned by a Loan Party and all assets owned by T.W. LaQuay Dredging, LLC, a Texas limited liability company, are free and clear of Liens other than Permitted Liens and other than Liens in favor of the Administrative Agent securing the Obligations.

ARTICLE VI  
Negative Covenants

Until the Commitments have expired or terminated and the principal of and interest on each Loan and all fees payable hereunder have been paid in full and all Letters of Credit have expired or terminated and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lenders that, without the prior written consent of the Required Lenders:

SECTION 6.01. Indebtedness; Certain Equity Securities.

- (a) The Borrower will not, and will not permit any other Loan Party to, create, incur, assume or permit to exist any Indebtedness, except:
  - (i) Indebtedness created under the Loan Documents;
  - (ii) Indebtedness existing on the date hereof and set forth in Schedule 6.01;
  - (iii) Indebtedness of any Domestic Subsidiary to Borrower or any other Domestic Subsidiary and Indebtedness of Borrower to any of its Domestic Subsidiaries;
  - (iv) Indebtedness of any Foreign Subsidiary of Borrower to Borrower or any Domestic Subsidiary in an aggregate amount not to exceed \$100,000 in the aggregate at any one time outstanding and Indebtedness of Borrower or any of its Domestic Subsidiaries to Foreign Subsidiaries not to exceed \$100,000 in the aggregate at any one time outstanding;
  - (v) Guarantees of Indebtedness permitted under this Section 6.01(a);
  - (vi) Capital Lease Obligations or purchase money Indebtedness in an aggregate amount not exceeding, at any one time outstanding, \$2,000,000;
  - (vii) “mark to market” exposure resulting from any Swap Agreement entered into for protection against interest rate risks, and not for speculative purposes;
  - (viii) Bond Obligations;
  - (ix) other indebtedness in an aggregate principal amount not exceeding \$1,000,000 at any one time outstanding; and
  - (x) extensions, renewals and replacements of any of the foregoing that do not increase the outstanding principal amount thereof.
- (b) The Borrower will not, nor will it permit any other Loan Party to, issue any preferred Equity Interests after the Effective Date.

SECTION 6.02. Liens. The Borrower will not, and will not permit any other Loan Party to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including Accounts receivable) or rights in respect of any thereof, except:

- (i) Liens created under the Loan Documents and Liens securing obligations owed to one or more of the Lenders or Affiliates thereof (but not to any Person which is not, at the time such obligations are incurred, a Lender or an Affiliate thereof) under a Swap Agreement or under an agreement governing Banking Services;
- (ii) any Lien on any property or asset of the Borrower or any other Loan Party existing on the date hereof and set forth in Schedule 6.02;
- (iii) Liens created pursuant to Capital Lease Obligations or purchase money Indebtedness permitted pursuant to this Agreement; provided that such Liens are only in respect of the property or assets subject to, and secure only, the respective Capital Lease Obligations or purchase money Indebtedness;
- (iv) Liens on Bonded Receivables, which Liens secure only the related Bond Obligations;
- (v) Liens on cash deposits in an aggregate amount which does not exceed \$250,000 at any time, which Liens secure only Bond Obligations;
- (vi) Liens in favor of the bonding companies of Borrower and its Subsidiaries, which Liens secure only the related Bond Obligations and which Liens are subordinated to the Liens under the Loan Documents securing the Obligations in a manner acceptable to the Administrative Agent (in its sole discretion); and
- (vii) Permitted Encumbrances.

SECTION 6.03. Fundamental Changes.

(a) The Borrower will not, nor will it permit any other Loan Party to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or liquidate or dissolve, except that (i) any Subsidiary may merge into Borrower in a transaction in which Borrower is the surviving Person, (ii) any Subsidiary may merge into any Domestic Subsidiary in a transaction in which the surviving entity is a Domestic Subsidiary and any Foreign Subsidiary of Borrower may merge into any other Foreign Subsidiary, (iii) any Subsidiary may liquidate or dissolve if Borrower determines in good faith that such liquidation or dissolution is in the best interests of Borrower and is not materially disadvantageous to the Lenders and if such Subsidiary is a Domestic Subsidiary, its assets are transferred to Borrower or a Domestic Subsidiary and (iv) Borrower or any Subsidiary may give effect to a merger or consolidation the purpose of which is to effect an investment, disposition or Acquisition permitted under Article VI so long as Borrower continues in existence and the surviving entity is a Domestic Subsidiary.

(b) The Borrower will not, and will not permit any other Loan Party to, engage to any material extent in any business other than businesses of the type conducted by the Borrower and the other Loan Parties on the date of execution of this Agreement and businesses reasonably related thereto.

SECTION 6.04. Investments, Loans, Advances and Guarantees. The Borrower will not, and will not permit any other Loan Party to, purchase, hold or acquire (including pursuant to any merger with any Person that was not a wholly owned Subsidiary of Borrower or that is a Foreign Subsidiary prior to such merger) any Equity Interests in or evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, except:

- (a) investments existing on the date hereof and set forth on Schedule 6.04;
- (b) Permitted Investments;
- (c) loans or advances permitted under Section 6.01(a);
- (d) loans or advances by the Borrower or any of its Subsidiaries to their respective employees in the ordinary course of business, not to exceed \$250,000 in the aggregate at any one time outstanding;
- (e) Accounts receivable owned by the Borrower or any of its Subsidiaries, if created in the ordinary course of business and payable or dischargeable in accordance with customary trade terms;
- (f) Guarantees constituting Indebtedness permitted by Section 6.01; provided that a Subsidiary of Borrower shall not Guarantee any Subordinated Debt;
- (g) investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent Accounts and disputes with, customers and suppliers, in each case in the ordinary course of business;
- (h) investments by any Domestic Subsidiary in Borrower or any other Domestic Subsidiary, investments by Borrower in any of its Domestic Subsidiaries and investments by any Foreign Subsidiary of Borrower in any other Foreign Subsidiary of Borrower;
- (i) investments by Borrower or any of its Domestic Subsidiaries in any Foreign Subsidiary in an aggregate principal amount not to exceed \$100,000 at any time outstanding; and
- (j) other investments in an aggregate amount not to exceed an amount equal to five percent (5%) of the consolidated net worth of the Borrower and its Subsidiaries.

SECTION 6.05. Asset Sales. The Borrower will not, and will not permit any other Loan Party to, sell, transfer, lease or otherwise dispose of any asset, including any Equity Interest owned by it, nor will the Borrower permit any of its Subsidiaries to issue any additional Equity Interest in such Subsidiary, except:

- (a) sales of scrap materials, inventory, used or surplus equipment and Permitted Investments in the ordinary course of business;



(b) sales, transfers and dispositions to the Borrower or to any of its Subsidiaries; provided that any such sales, transfers or dispositions involving a Subsidiary of Borrower that is not a Loan Party shall be made in compliance with Section 6.09; and

(c) other sales by the Borrower or any of its Subsidiaries which do not exceed, in the aggregate, \$5,000,000 in any fiscal year;

provided that all sales, transfers, leases and other dispositions permitted hereby (other than those permitted by clause (b) above) shall be made for fair value and solely for cash consideration.

SECTION 6.06. Sale and Leaseback Transactions. The Borrower will not, and will not permit any other Loan Party to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereinafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred.

SECTION 6.07. Swap Agreements. The Borrower will not, and will not permit any other Loan Party to, enter into any Swap Agreement, other than Swap Agreements entered into in the ordinary course of business to hedge or mitigate risks to which the Borrower or any other Loan Party is exposed in the conduct of its business or the management of its liabilities.

SECTION 6.08. Restricted Payments. The Borrower will not, nor will it permit any other Loan Party to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except (i) the Borrower may declare and pay dividends with respect to its Equity Interests payable solely in additional shares of its Equity Interests, and (ii) Subsidiaries of Borrower may declare and pay dividends ratably with respect to their Equity Interests and (iii) so long as no Default or Event of Default shall have occurred and be continuing, or would result therefrom, the Borrower may repurchase shares of its Equity Interests during the term of this Agreement in any amount, so long as the Borrower can demonstrate, after giving effect to such purchase (A) compliance on a pro forma basis with the financial covenants set forth in Section 5.13 hereof and (B) the Leverage Ratio of the Borrower on a pro forma basis shall not exceed 1.00 to 1.00.

SECTION 6.09. Transactions with Affiliates. The Borrower will not, nor will it permit any other Loan Party to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates which is on terms which are less favorable than are obtainable from any Person who is not an Affiliate of the Loan Party or another Loan Party. The foregoing shall not prohibit (a) transactions between or among the Borrower and any Loan Party not involving any other Affiliate or (b) any Restricted Payment permitted by Section 6.08.

SECTION 6.10. Restrictive Agreements. The Borrower will not, nor will it permit any other Loan Party to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of the Borrower or any other Loan Party to create, incur or permit to exist any Lien upon any of its property or assets, or (b) the ability of any Subsidiary of Borrower to pay dividends or other distributions with respect to any of its Equity Interests or to make or repay loans or advances to the Borrower or any other Subsidiary of Borrower or to Guarantee Indebtedness of the Borrower or any of its Subsidiaries; provided that the foregoing shall not apply to restrictions and conditions imposed by law or by any Loan Document.

SECTION 6.11. Amendment of Material Documents. The Borrower will not, nor will it permit any other Loan Party to, amend, modify or waive any of its rights under (a) any Subordinated Debt Document or (b) its organizational documents (in any manner adverse to the Lenders).

SECTION 6.12. Additional Subsidiaries. The Borrower will not, and will not permit any other Loan Party to, form or acquire any Subsidiary after the Effective Date except that Borrower or any of its Subsidiaries may form, create or acquire a wholly-owned Subsidiary so long as (a) immediately thereafter and giving effect thereto, no event will occur and be continuing which constitutes a Default; (b) such Subsidiary (and, where applicable, Borrower) shall execute and deliver a Guaranty (or, at the option of Administrative Agent, a joinder to the Guaranty executed concurrently herewith) and such Security Documents as the Administrative Agent may reasonably require to effectuate the provisions of this Agreement regarding Collateral to be covered by the Security Documents (provided that no Foreign Subsidiary shall be required to execute and deliver such a Guaranty or such Security Documents unless the delivery of such documents would not reasonably be expected to result in adverse tax consequences), and (c) Administrative Agent is given prior notice of such formation, creation or acquisition. Borrower shall not permit any Foreign Subsidiary to form, create or acquire a Domestic Subsidiary.

SECTION 6.13. Property of Foreign Subsidiaries. Borrower will not permit the aggregate value (based on the greater of book or market value) of the total assets owned by Foreign Subsidiaries of Borrower to exceed 5% of the aggregate value (based on the greater of book or market value) of the total assets owned by Borrower and all of its Subsidiaries.

SECTION 6.14. Acquisitions. None of the Loan Parties will consummate any Acquisition other than Acquisitions which satisfy the following conditions precedent:

- (a) the Acquisition of Equity Interests shall require the acquisition of all (but not less than all) of the Equity Interests in and to the applicable Person;
- (b) no Default or Event of Default shall have occurred and be continuing or, on a pro forma basis, would reasonably be expected to result from such Acquisition (to be demonstrated by pro forma financial statements giving effect to such Acquisition);
- (c) the Borrower can demonstrate, on a pro forma basis, after giving effect to such Acquisition that the Leverage Ratio does not exceed 2.00 to 1.00; and
- (d) all of the requirements of Sections 5.03(b) and 6.12 hereof shall have been satisfied;
- (e) Administrative Agent shall have received such other documents as may be reasonably requested by the Administrative Agent in connection with such Acquisition;
- (f) Administrative Agent shall have received a copy of the fully executed acquisition agreement (each a “Purchase Agreement”), relating to the Acquisition, which Purchase Agreement shall be in form and substance reasonably satisfactory to the Required Lenders, and the closing terms and conditions set forth in such Purchase Agreement shall not have been materially amended or waived without prior approval by the Administrative Agent (such approval not to be unreasonably withheld or delayed);

(g) Administrative Agent shall have received copies of the material documents evidencing the closing of the transactions contemplated by such Purchase Agreement, which documents shall be in form and substance reasonably satisfactory to the Administrative Agent; and

(h) Borrower shall deliver to the Administrative Agent evidence reasonably satisfactory to the Administrative Agent that all consents and approvals required to be obtained from any Governmental Authority or other Person in connection with the applicable Acquisition shall have been obtained, and all applicable waiting periods and appeal periods shall have expired, in each case without the imposition of any burdensome conditions.

ARTICLE VII  
Events of Default

If any of the following events ("Events of Default") shall occur:

(a) the Borrower shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under this Agreement or any other Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three Business Days;

(c) any representation or warranty made or deemed made by or on behalf of the Borrower or any other Loan Party in or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material respect when made or deemed made;

(d) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in Sections 5.02, 5.03(b), 5.07, 5.11 or 5.13 or in Article VI;

(e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in any Loan Document (other than those specified in clauses (a), (b) or (d) of this Article), and such failure shall continue unremedied for a period of 20 days after the earlier of (i) the Borrower becoming aware of such failure and (ii) notice thereof from the Administrative Agent to the Borrower (which notice will be given at the request of the Required Lenders);

(f) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity;

(g) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any other Loan Party or their debts, or of a substantial part of their assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any other Loan Party or for a substantial part of their assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(h) the Borrower or any other Loan Party shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (g) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any other Loan Party or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(i) the Borrower or any other Loan Party shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(j) one or more judgments for the payment of money in an aggregate amount in excess of \$500,000 (exclusive of amounts covered by insurance) shall be rendered against the Borrower or any other Loan Party and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower or any other Loan Party to enforce any such judgment;

(k) an ERISA Event shall have occurred that, in the opinion of the Required Lenders, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;

(l) any Lien purported to be created under any Security Document shall cease to be a valid and perfected Lien on any Collateral, with the priority required by the applicable Security Document, except as a result of the sale or other disposition of the applicable Collateral in a transaction permitted under the Loan Documents, and the same shall not be fully cured within 30 days after notice thereof to the Borrower by the Administrative Agent, or any Lien purported to be created under any Security Document shall be asserted by any Loan Party not to be a valid and perfected Lien on any Collateral, with the priority required by the applicable Security Document, except as a result of the sale or other disposition of the applicable Collateral in a transaction permitted under the Loan Documents;

(m) a Change in Control shall occur;

(n) Borrower or any of its Subsidiaries (i) shall fail to have adequate bonding capacity to operate their respective businesses in the ordinary course of business as reasonably determined by the Administrative Agent in good faith and such failure shall continue for thirty (30) days or (ii) shall receive notice that bonding capacity is to be or has been denied, terminated or withdrawn and a period of thirty (30) days shall elapse following the date of receipt of such notice by Borrower or such Subsidiary without Borrower or such Subsidiary replacing such denied, terminated or withdrawn bonding capacity with another bonding agent;

then, and in every such event (other than an event with respect to the Borrower described in clauses (h) or (i) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and in case of any event with respect to the Borrower described in clauses (h) or (i) of this Article, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

#### ARTICLE VIII The Administrative Agent

Each of the Lenders and the Issuing Bank hereby irrevocably appoints the Administrative Agent as its agent and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto.

The bank serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower or any of its Subsidiaries or other Affiliate thereof as if it were not the Administrative Agent hereunder.

The Administrative Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that the Administrative Agent is required to exercise in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02), and (c) except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02) or in the absence of its own gross negligence or willful misconduct, BUT REGARDLESS OF THE PRESENCE OF ORDINARY NEGLIGENCE. The Administrative Agent shall not be deemed to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by the Borrower or a Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

The Administrative Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

Subject to the appointment and acceptance of a successor Administrative Agent as provided in this paragraph, the Administrative Agent may (and, in the event (i) neither the Administrative Agent nor any Affiliate of the Administrative Agent, as a Lender, has any Revolving Exposure or unused Commitment and (ii) the Required Lenders so request, the Administrative Agent shall) resign at any time by notifying the Lenders, the Issuing Bank and the Borrower. Upon any such resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Bank, appoint a successor Administrative Agent which shall be a bank with an office in Houston, Texas, or an Affiliate of any such bank. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the Administrative Agent's resignation hereunder, the provisions of this Article and Section 9.03 shall continue in effect for the benefit of such retiring Administrative Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent.

Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or related agreement or any document furnished hereunder or thereunder.

#### ARTICLE IX Miscellaneous

##### SECTION 9.01. Notices.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(i) if to the Borrower, to it at 12000 Aerospace Avenue, Suite 300, Houston, Texas 77034, Attention: Mark Stauffer, Executive Vice President & Chief Financial Officer (Telecopy No. 713-852-6530), with a copy to Peter R. Buchler, Executive Vice President & General Counsel (Telecopy No. 713-852-6594);

(ii) if to the Administrative Agent, to Wells Fargo Bank, National Association, 1525 W WT Harris Blvd., Charlotte, NC 28262, with a copy to Wells Fargo Bank, National Association, 1000 Louisiana, Suite 300, MAC T5001-031, Houston, TX 77002, Attention: Tim Gebauer;

(iii) if to the Issuing Bank, to Wells Fargo Bank, National Association, 1525 W WT Harris Blvd., Charlotte, NC 28262, with a copy to Wells Fargo Bank, National Association, 1000 Louisiana, Suite 300, MAC T5001-031, Houston, TX 77002, Attention: Tim Gebauer;

(iv) if to the Swingline Lender, to Wells Fargo Bank, National Association, 1525 W WT Harris Blvd., Charlotte, NC 28262, with a copy to Wells Fargo Bank, National Association, 1000 Louisiana, Suite 300, MAC T5001-031, Houston, TX 77002, Attention: Tim Gebauer; and

(v) if to any other Lender, to it at its address (or telecopy number) set forth in its Administrative Questionnaire.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article II unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

(c) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

#### SECTION 9.02. Waivers; Amendments.

(a) No failure or delay by the Administrative Agent, the Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Bank and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender or the Issuing Bank may have had notice or knowledge of such Default at the time.



(b) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, in each case with the consent of the Required Lenders; provided that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender affected thereby, (iii) postpone the scheduled date of payment (including any mandatory prepayment) of the principal amount of any Loan or LC Disbursement, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender affected thereby, (iv) change Section 2.17(b) or (c) in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender, (v) change any of the provisions of this Section or the definition of "Required Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders (or Lenders of any Class) required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender (or each Lender of such Class, as the case may be), (vi) release all or substantially all of the Guarantors from liability under the Guaranty or limit the liability of all or substantially all of the Guarantors in respect of the Guaranty, without the written consent of each Lender, (vii) release all or substantially all of the Collateral from the Liens of the Security Documents, without the written consent of each Lender or (viii) change any provisions of any Loan Document in a manner that by its terms adversely affects the rights in respect of payments due to Lenders holding Loans of any Class differently than those holding Loans of any other Class, without the written consent of Lenders holding a majority in interest of the outstanding Loans and unused Commitments of each affected Class; provided further that any change to Section 2.20 shall require the written consent of each of the Administrative Agent and the Issuing Bank and the Swingline Lender and no agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or the Issuing Bank or the Swingline Lender without the prior written consent of the Administrative Agent or the Issuing Bank or the Swingline Lender, as the case may be.

SECTION 9.03. Expenses; Indemnity; Damage Waiver.

(a) The Borrower shall pay (i) all reasonable out of pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Administrative Agent, in connection with the syndication of the credit facilities provided for herein, the preparation and administration of the Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by the Administrative Agent, the Issuing Bank or any Lender, including the fees, charges and disbursements of any counsel for the Administrative Agent, the Issuing Bank or any Lender, in connection with the enforcement or protection of its rights in connection with the Loan Documents, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) The Borrower shall indemnify the Administrative Agent, the Issuing Bank and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnatee") against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnatee, incurred by or asserted against any Indemnatee arising out of, in connection with, or as a result of (i) the execution or delivery of any Loan Document or any other agreement or instrument contemplated hereby, the performance by the parties to the Loan Documents of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by the Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any Mortgaged Property or any other property currently or formerly owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnatee is a party thereto; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses resulted from the gross negligence or willful misconduct of such Indemnatee, BUT THE PRESENCE OF ORDINARY NEGLIGENCE SHALL NOT AFFECT THE AVAILABILITY OF SUCH INDEMNITY.

(c) To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent or the Issuing Bank or the Swingline Lender under paragraphs (a) or (b) of this Section, each Lender severally agrees to pay to the Administrative Agent or the Issuing Bank or the Swingline Lender, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent or the Issuing Bank in its capacity as such. For purposes hereof, a Lender's "pro rata share" shall be determined based upon (without duplication) its share of the sum of the total Revolving Exposures and unused Commitments at the time.

(d) To the extent permitted by applicable law, neither the Borrower nor any other Loan Party shall assert, and each hereby waives, any claim against any Indemnatee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof.

(e) All amounts due under this Section shall be payable not later than three Business Days after written demand therefor.

#### SECTION 9.04. Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) of:

(A) the Borrower, provided that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default has occurred and is continuing, any other assignee, and provided further that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof; and

(B) the Administrative Agent, provided that no consent of the Administrative Agent shall be required for an assignment of any Commitment to an assignee that is a Lender with a Commitment immediately prior to giving effect to such assignment; and

(C) the Issuing Bank and the Swingline Lender.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5,000,000, and shall not result in the assigning Lender holding a Commitment of less than \$5,000,000, unless each of the Borrower and the Administrative Agent otherwise consent, provided that no such consent of the Borrower shall be required if an Event of Default has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement, provided that this clause shall not be construed to prohibit the assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of one Class of Commitments or Loans;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; and

- (D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

For the purposes of this Section, the term “Approved Fund” has the following meaning:

“Approved Fund” means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender’s rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.14, 2.15, 2.16 and 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the “Register”). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent, the Issuing Bank, the Swingline Lender and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, the Issuing Bank, the Swingline Lender and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee’s completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to this Agreement, the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) (i) Any Lender may, without the consent of the Borrower, the Administrative Agent or the Issuing Bank or the Swingline Lender, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent, the Issuing Bank, the Swingline Lender and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that affects such Participant. Subject to paragraph (c)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.14, 2.15 and 2.16 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.17(c) as though it were a Lender.

(ii) A Participant shall not be entitled to receive any greater payment under Sections 2.14 or 2.16 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.16 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 2.16(e) as though it were a Lender.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

**SECTION 9.05. Survival.** All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, the Issuing Bank, the Swingline Lender or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.14, 2.15, 2.16 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

SECTION 9.06. Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 9.07. Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.08. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of the Borrower against any of and all the obligations of the Borrower now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 9.09. Governing Law; Jurisdiction; Consent to Service of Process.

- (a) This Agreement shall be construed in accordance with and governed by the law of the State of Texas.

(b) The Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of each court of the State of Texas sitting in Harris County and of the United States District Court of the Southern District of Texas (Houston Division), and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such Texas State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent, the Issuing Bank, the Swingline Lender or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against the Borrower or its properties in the courts of any jurisdiction.

(c) The Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

**SECTION 9.10. WAIVER OF JURY TRIAL. BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.**

**SECTION 9.11. Headings.** Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.12. Interest Rate Limitation. Borrower and the Lenders intend to strictly comply with all applicable federal and Texas laws, including applicable usury laws (or the usury laws of any jurisdiction whose usury laws are deemed to apply to the Notes or any other Loan Documents despite the intention and desire of the parties to apply the usury laws of the State of Texas). Accordingly, the provisions of this Section shall govern and control over every other provision of this Agreement or any other Loan Document which conflicts or is inconsistent with this Section, even if such provision declares that it controls. As used in this Section, the term “interest” includes the aggregate of all charges, fees, benefits or other compensation which constitute interest under applicable law, provided that, to the maximum extent permitted by applicable law, (a) any non-principal payment shall be characterized as an expense or as compensation for something other than the use, forbearance or detention of money and not as interest, and (b) all interest at any time contracted for, reserved, charged or received shall be amortized, prorated, allocated and spread, using the actuarial method, during the full term of the Notes. In no event shall Borrower or any other Person be obligated to pay, or any Lender have any right or privilege to reserve, receive or retain, (a) any interest in excess of the maximum amount of nonusurious interest permitted under the laws of the State of Texas or the applicable laws (if any) of the United States or of any other jurisdiction, or (b) total interest in excess of the amount which such Lender could lawfully have contracted for, reserved, received, retained or charged had the interest been calculated for the full term of the Notes at the Ceiling Rate. The daily interest rates to be used in calculating interest at the Ceiling Rate shall be determined by dividing the applicable Ceiling Rate per annum by the number of days in the calendar year for which such calculation is being made. None of the terms and provisions contained in this Agreement or in any other Loan Document (including, without limitation, Article VII hereof) which directly or indirectly relate to interest shall ever be construed without reference to this Section, or be construed to create a contract to pay for the use, forbearance or detention of money at any interest rate in excess of the Ceiling Rate. If the term of any Note is shortened by reason of acceleration or maturity as a result of any Default or by any other cause, or by reason of any required or permitted prepayment, and if for that (or any other) reason any Lender at any time, including but not limited to, the stated maturity, is owed or receives (and/or has received) interest in excess of interest calculated at the Ceiling Rate, then and in any such event all of any such excess interest shall be canceled automatically as of the date of such acceleration, prepayment or other event which produces the excess, and, if such excess interest has been paid to such Lender, it shall be credited pro tanto against the then-outstanding principal balance of Borrower’s obligations to such Lender, effective as of the date or dates when the event occurs which causes it to be excess interest, until such excess is exhausted or all of such principal has been fully paid and satisfied, whichever occurs first, and any remaining balance of such excess shall be promptly refunded to its payor.

SECTION 9.13. USA Patriot Act. Each Lender that is subject to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”) hereby notifies the Borrower that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Act.



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

ORION MARINE GROUP, INC.,  
a Delaware corporation

By: [Signed]

J. Michael Pearson,  
President & CEO

**[Credit Agreement Signature Page]**

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, individually and as  
Administrative Agent and as Issuing Bank and  
Swingline Lender

By: \_\_\_\_\_ [Signed] \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**[Credit Agreement Signature Page]**

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AMEGY BANK NATIONAL ASSOCIATION,  
individually and as Issuing Bank in respect of the  
Existing Letters of Credit

By: \_\_\_\_\_ [Signed] \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**[Credit Agreement Signature Page]**

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## EXHIBIT A

### ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between \_\_\_\_\_ (the "Assignor") and \_\_\_\_\_ (the "Assignee"). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including any letters of credit, guarantees and swingline loans included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the "Assigned Interest"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: \_\_\_\_\_
2. Assignee: \_\_\_\_\_  
[and is an Affiliate/Approved Fund of \_\_\_\_\_]
3. Borrower(s): ORION MARINE GROUP, INC., a Delaware corporation
4. Administrative Agent: Wells Fargo Bank, National Association, as the administrative agent under the Credit Agreement
5. Credit Agreement: The Credit Agreement dated as of June 29, 2010 among ORION MARINE GROUP, INC., a Delaware corporation, the Lenders parties thereto, Wells Fargo Bank, National Association, as Administrative Agent, and the other lenders parties thereto

## EXHIBIT A

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6. Assigned Interest:

Facility Assigned	Aggregate Amount of Commitment/Loans for all Lenders	Amount of Commitment/Loans Assigned	Percentage Assigned of Commitment/Loans <sup>1</sup>
Commitment	\$ _____	\$ _____	____%

Effective Date: \_\_\_\_\_, 20\_\_\_\_ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ASSIGNEE

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

<sup>1</sup> Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

**EXHIBIT A**

Consented to and Accepted:

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Administrative Agent,  
as Issuing Bank and as Swingline Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Consented to:

ORION MARINE GROUP, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

## ANNEX 1

### STANDARD TERMS AND CONDITIONS FOR ASSIGNMENT AND ASSUMPTION

#### 1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of any Loan Party or their respective Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by any Loan Party or their respective Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it satisfies the requirements, if any, specified in the Credit Agreement that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 5.01 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender, and (v) if it is a Foreign Lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

#### EXHIBIT A

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3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be construed in accordance with and governed by the law of the State of Texas.

**EXHIBIT A**



**EXHIBIT B**

**COMPLIANCE CERTIFICATE**

The undersigned hereby certifies that he or she is the \_\_\_\_\_ of ORION MARINE GROUP, INC., a Delaware corporation (the "Borrower"), and that as such he or she is authorized to execute this certificate on behalf of the Borrower pursuant to the Credit Agreement (the "Agreement") dated as of June 29, 2010, by and among Borrower, WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent, and the lenders therein named; and that a review has been made under his or her supervision with a view to determining whether the Loan Parties have fulfilled all of their respective obligations under the Agreement, the Notes and the other Loan Documents; and further certifies, represents and warrants that to his or her knowledge (each capitalized term used herein having the same meaning given to it in the Agreement unless otherwise specified):

(a) The financial statements delivered to the Administrative Agent concurrently with this Compliance Certificate have been prepared in accordance with GAAP consistently followed throughout the period indicated and fairly present the financial condition and results of operations of the applicable Persons as at the end of, and for, the period indicated (subject, in the case of quarterly financial statements, to normal changes resulting from year-end adjustments and the absence of certain footnotes).

(b) No Default or Event of Default has occurred and is continuing. In this regard, the compliance with the provisions of Sections 5.13 and 6.13 as of the effective date of the financial statements delivered to the Administrative Agent concurrently with this Compliance Certificate is as follows:

(i) **Section 5.13(a) – Fixed Charge Coverage Ratio**

Actual

\_\_\_\_\_ to 1.00

Required

\_\_\_\_\_ to 1.00

(ii) **Section 5.13(b) – Leverage Ratio**

Actual

\_\_\_\_\_ to 1.00

Required

\_\_\_\_\_ to 1.00

(iii) **Section 5.13(c) – Net Worth**

Actual

\$ \_\_\_\_\_

Required

\$ \_\_\_\_\_

**EXHIBIT B**

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(c) There has been no change in GAAP or in the application thereof since the Effective Date which would reasonably be expected to affect the calculation of the financial covenants set forth in the Agreement or, if any such change has occurred, the effects of such change on the financial statements of the respective Loan Parties are specified on an attachment hereto.

(d) Since the date of the Agreement, no event has occurred which would be reasonably likely to have a Material Adverse Effect.

DATED as of \_\_\_\_\_, 20\_\_\_\_.

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**[SIGNATURE OF AUTHORIZED OFFICER]**

**EXHIBIT B**

## EXHIBIT C-1

### NOTE

(Revolving Loans)

\$ \_\_\_\_\_ Houston, Texas \_\_\_\_\_, 201 \_\_\_\_\_

FOR VALUE RECEIVED, ORION MARINE GROUP, INC., a Delaware corporation (together with permitted successors, herein collectively called "Maker"), promises to pay to the order of \_\_\_\_\_ ("Payee"), at the office of Wells Fargo Bank, National Association, at 1525 W WT Harris Blvd., Charlotte, NC 28262, in immediately available funds and in lawful money of the United States of America, the principal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (or the unpaid balance of all principal advanced against this note, if that amount is less), together with interest on the unpaid principal balance of this note from time to time outstanding at the rate or rates provided in that certain Credit Agreement (as amended, supplemented, restated or replaced from time to time, the "Credit Agreement") dated as of June 29, 2010 among Maker, certain signatory banks named therein (including the Payee) and Wells Fargo Bank, National Association, as Administrative Agent; provided, that for the full term of this note the interest rate produced by the aggregate of all sums paid or agreed to be paid to the holder of this note for the use, forbearance or detention of the debt evidenced hereby shall not exceed the Ceiling Rate. Any term defined in the Credit Agreement which is used in this note and which is not otherwise defined in this note shall have the meaning ascribed to it in the Credit Agreement.

1. Credit Agreement; Advances; Security. This note has been issued pursuant to the terms of the Credit Agreement, and is one of the Notes referred to in the Credit Agreement. Advances against this note by Payee or other holder hereof shall be governed by the terms and provisions of the Credit Agreement. Reference is hereby made to the Credit Agreement for all purposes. Payee is entitled to the benefits of and security provided for in the Credit Agreement. The unpaid principal balance of this note at any time shall be the total of all amounts lent or advanced against this note less the amount of all payments or permitted prepayments made on this note and by or for the account of Maker. All loans and advances and all payments and permitted prepayments made hereon may be endorsed by the holder of this note on a schedule which may be attached hereto (and thereby made a part hereof for all purposes) or otherwise recorded in the holder's records; provided, that any failure to make notation of (a) any advance shall not cancel, limit or otherwise affect Maker's obligations or any holder's rights with respect to that advance, or (b) any payment or permitted prepayment of principal shall not cancel, limit or otherwise affect Maker's entitlement to credit for that payment as of the date received by the holder.

2. Mandatory Payments of Principal and Interest.

- (a) Accrued and unpaid interest on the unpaid principal balance of this note shall be due and payable as provided in the Credit Agreement.

## EXHIBIT C-1

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(b) On the Revolving Maturity Date, the entire unpaid principal balance of this note and all accrued and unpaid interest on the unpaid principal balance of this note shall be finally due and payable.

(c) All payments hereon made pursuant to this Paragraph shall be applied first to accrued interest, the balance to principal.

(d) If any payment provided for in this note shall become due on a day other than a Business Day, such payment may be made on the next succeeding Business Day (unless the result of such extension of time would be to extend the date for such payment into another calendar month or beyond the Revolving Maturity Date, and in either such event such payment shall be made on the Business Day immediately preceding the day on which such payment would otherwise have been due), and such extension of time shall in such case be included in the computation of interest on this note.

(e) The Credit Agreement provides for required prepayments of the indebtedness evidenced hereby upon terms and conditions specified therein.

3. Default. The Credit Agreement provides for the acceleration of the maturity of this note and other rights and remedies upon the occurrence of certain events specified therein.

4. Waivers by Maker and Others. Except to the extent, if any, that notice of default is expressly required herein or in any of the other Loan Documents, Maker and any and all co-makers, endorsers, guarantors and sureties severally waive notice (including, but not limited to, notice of intent to accelerate and notice of acceleration, notice of protest and notice of dishonor), demand, presentment for payment, protest, diligence in collecting and the filing of suit for the purpose of fixing liability and consent that the time of payment hereof may be extended and re-extended from time to time without notice to any of them. Each such person agrees that his, her or its liability on or with respect to this note shall not be affected by any release of or change in any guaranty or security at any time existing or by any failure to perfect or to maintain perfection of any lien against or security interest in any such security or the partial or complete unenforceability of any guaranty or other surety obligation, in each case in whole or in part, with or without notice and before or after maturity.

5. Paragraph Headings. Paragraph headings appearing in this note are for convenient reference only and shall not be used to interpret or limit the meaning of any provision of this note.

6. Choice of Law. **THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE APPLICABLE LAWS OF THE STATE OF TEXAS AND THE UNITED STATES OF AMERICA FROM TIME TO TIME IN EFFECT.**

7. Successors and Assigns. This note and all the covenants and agreements contained herein shall be binding upon, and shall inure to the benefit of, the respective legal representatives, heirs, successors and assigns of Maker and Payee.

#### EXHIBIT C-1

8. Records of Payments. The records of Payee shall be prima facie evidence of the amounts owing on this note.

9. Severability. If any provision of this note is held to be illegal, invalid or unenforceable under present or future laws, the legality, validity and enforceability of the remaining provisions of this note shall not be affected thereby, and this note shall be liberally construed so as to carry out the intent of the parties to it.

10. Revolving Loan. Subject to the terms and provisions of the Credit Agreement, Maker may use all or any part of the credit provided to be evidenced by this note at any time before the Revolving Maturity Date. Maker may borrow, repay and reborrow hereunder, and except as set forth in the Credit Agreement there is no limitation on the number of advances made hereunder.

11. Business Loans. Maker warrants and represents to Payee and all other holders of this note that all loans evidenced by this note are and will be for business, commercial, investment or other similar purpose and not primarily for personal, family, household or agricultural use, as such terms are used in the Texas Finance Code.

ORION MARINE GROUP, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT C-1**

## EXHIBIT C-2

### NOTE

(Swingline Loans)

\$5,000,000

Houston, Texas

\_\_\_\_\_, 2010

FOR VALUE RECEIVED, ORION MARINE GROUP, INC., a Delaware corporation (together with permitted successors, herein collectively called "Maker"), promises to pay to the order of WELLS FARGO BANK, NATIONAL ASSOCIATION ("Payee"), at the office of Wells Fargo Bank, National Association at 1525 W WT Harris Blvd., Charlotte, NC 28262, in immediately available funds and in lawful money of the United States of America, the principal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (or the unpaid balance of all principal advanced against this note, if that amount is less), together with interest on the unpaid principal balance of this note from time to time outstanding at the rate or rates provided in that certain Credit Agreement (as amended, supplemented, restated or replaced from time to time, the "Credit Agreement") dated as of June 29, 2010 among Maker, certain signatory banks named therein (including the Payee) and Wells Fargo Bank, National Association, as Administrative Agent; provided, that for the full term of this note the interest rate produced by the aggregate of all sums paid or agreed to be paid to the holder of this note for the use, forbearance or detention of the debt evidenced hereby shall not exceed the Ceiling Rate. Any term defined in the Credit Agreement which is used in this note and which is not otherwise defined in this note shall have the meaning ascribed to it in the Credit Agreement.

1. Credit Agreement; Advances; Security. This note has been issued pursuant to the terms of the Credit Agreement, and is one of the Notes referred to in the Credit Agreement. Advances against this note by Payee or other holder hereof shall be governed by the terms and provisions of the Credit Agreement. Reference is hereby made to the Credit Agreement for all purposes. Payee is entitled to the benefits of and security provided for in the Credit Agreement. The unpaid principal balance of this note at any time shall be the total of all amounts lent or advanced against this note less the amount of all payments or permitted prepayments made on this note and by or for the account of Maker. All loans and advances and all payments and permitted prepayments made hereon may be endorsed by the holder of this note on a schedule which may be attached hereto (and thereby made a part hereof for all purposes) or otherwise recorded in the holder's records; provided, that any failure to make notation of (a) any advance shall not cancel, limit or otherwise affect Maker's obligations or any holder's rights with respect to that advance, or (b) any payment or permitted prepayment of principal shall not cancel, limit or otherwise affect Maker's entitlement to credit for that payment as of the date received by the holder.

2. Mandatory Payments of Principal and Interest.

- (a) Accrued and unpaid interest on the unpaid principal balance of this note shall be due and payable as provided in the Credit Agreement.

## EXHIBIT C-2

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(b) On the Revolving Maturity Date, the entire unpaid principal balance of this note and all accrued and unpaid interest on the unpaid principal balance of this note shall be finally due and payable.

(c) All payments hereon made pursuant to this Paragraph shall be applied first to accrued interest, the balance to principal.

(d) If any payment provided for in this note shall become due on a day other than a Business Day, such payment may be made on the next succeeding Business Day (unless the result of such extension of time would be to extend the date for such payment into another calendar month or beyond the Revolving Maturity Date, and in either such event such payment shall be made on the Business Day immediately preceding the day on which such payment would otherwise have been due), and such extension of time shall in such case be included in the computation of interest on this note.

(e) The Credit Agreement provides for required prepayments of the indebtedness evidenced hereby upon terms and conditions specified therein.

3. Default. The Credit Agreement provides for the acceleration of the maturity of this note and other rights and remedies upon the occurrence of certain events specified therein.

4. Waivers by Maker and Others. Except to the extent, if any, that notice of default is expressly required herein or in any of the other Loan Documents, Maker and any and all co-makers, endorsers, guarantors and sureties severally waive notice (including, but not limited to, notice of intent to accelerate and notice of acceleration, notice of protest and notice of dishonor), demand, presentment for payment, protest, diligence in collecting and the filing of suit for the purpose of fixing liability and consent that the time of payment hereof may be extended and re-extended from time to time without notice to any of them. Each such person agrees that his, her or its liability on or with respect to this note shall not be affected by any release of or change in any guaranty or security at any time existing or by any failure to perfect or to maintain perfection of any lien against or security interest in any such security or the partial or complete unenforceability of any guaranty or other surety obligation, in each case in whole or in part, with or without notice and before or after maturity.

5. Paragraph Headings. Paragraph headings appearing in this note are for convenient reference only and shall not be used to interpret or limit the meaning of any provision of this note.

6. Choice of Law. **THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE APPLICABLE LAWS OF THE STATE OF TEXAS AND THE UNITED STATES OF AMERICA FROM TIME TO TIME IN EFFECT.**

7. Successors and Assigns. This note and all the covenants and agreements contained herein shall be binding upon, and shall inure to the benefit of, the respective legal representatives, heirs, successors and assigns of Maker and Payee.

#### EXHIBIT C-2

8. Records of Payments. The records of Payee shall be prima facie evidence of the amounts owing on this note.

9. Severability. If any provision of this note is held to be illegal, invalid or unenforceable under present or future laws, the legality, validity and enforceability of the remaining provisions of this note shall not be affected thereby, and this note shall be liberally construed so as to carry out the intent of the parties to it.

10. Revolving Loan. Subject to the terms and provisions of the Credit Agreement, Maker may use all or any part of the credit provided to be evidenced by this note at any time before the Revolving Maturity Date. Maker may borrow, repay and reborrow hereunder, and except as set forth in the Credit Agreement there is no limitation on the number of advances made hereunder.

11. Business Loans. Maker warrants and represents to Payee and all other holders of this note that all loans evidenced by this note are and will be for business, commercial, investment or other similar purpose and not primarily for personal, family, household or agricultural use, as such terms are used in the Texas Finance Code.

ORION MARINE GROUP, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT C-2**



### **EXISTING LETTERS OF CREDIT**

Letter of credit dated September 30, 2009 issued by Amegy Bank National Association upon the application of King Fisher Marine Services LP in the amount of \$133,432 LC for benefit of Signal Mutual Indemnity Association Ltd. with a current expiration date of September 30, 2010.

Letter of credit dated July 22, 2009 issued by Amegy Bank National Association upon the application of Orion Construction LP in the amount of \$769,152 LC for benefit of Signal Mutual Indemnity with a current expiration date of July 22, 2010 and scheduled for auto renewal to July 22, 2011.

### **SCHEDULE 1.01**

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Lender	Revolving Commitments
Wells Fargo Bank, National Association	\$ 45,000,000
Amegy Bank National Association	\$ 30,000,000

**SCHEDULE 2.01**

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**SUBSIDIARIES**

<b>Company Name</b>	<b>Tax ID</b>	<b>Authorized Signor</b>	<b>State of Formation</b>	<b>States Registered</b>
Orion Marine Group, Inc.	26-0097459	J. Michael Pearson, President & CEO	DE	TX
Orion Administrative Services, Inc.	71-0945404	J. Michael Pearson, Chairman, President & CEO	TX	N/A
F. Miller Construction, LLC	20-5538311	J. Michael Pearson, Sole Manager	LA	AL, MS
King Fisher Marine Service, LP	74-1327835	KFMSGP, LLC By: J. Michael Pearson, Sole Manager	TX	AL, FL, LA, MS, SC
KFMSLP, LLC	Disregarded Entity	J. Michael Pearson, President	NV	N/A
KFMSGP, LLC	Disregarded Entity	J. Michael Pearson, Sole Manager	TX	FL
Misener Marine Construction, Inc.	59-1158596	J. Michael Pearson, Chairman & CEO	FL	AL, GA, NC, SC, VA
Northwest Marine Construction, Inc.	27-1333783	J. Michael Pearson, President & CEO	DE	TX, CA, WA, ID, AK, OR, BC
ACC North Equipment, ULC	86096 9963 RC0001	J. Michael Pearson, President	BC	N/A
Orion Construction, LP	76-0431089	OCGP, LLC By: J. Michael Pearson, Sole Manager	TX	FL, AL, GA, HI, LA, MS, CA, WA
OCLP, LLC	Disregarded Entity	J. Michael Pearson, President	NV	N/A
OCGP, LLC	Disregarded Entity	J. Michael Pearson, President	TX	FL
Orion Dredging Services, LLC	26-1983644	J. Michael Pearson, Sole Member	FL	MS, SC, AL, LA
SSL South, LLC	26-2877150	J. Michael Pearson, Executive General Manager	FL	DR
Seagull Services, LLC	27-1759782	J. Michael Pearson, President & CEO	DE	TX
T.W. LaQuay Dredging, LLC	27-1789350	J. Michael Pearson, President & CEO	TX	FL, MS, SC, NC, AL, LA
Industrial Channel and Dock Company	17415552425	J. Michael Pearson, President	TX	N/A
Commercial Channel and Dock Company	17415025158	J. Michael Pearson, President	TX	N/A

**SCHEDULE 3.12**

**INDEBTEDNESS**

NONE

**SCHEDULE 6.01**

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**LIENS**

Liens in favor of Amegy Bank National Association which are subject to termination concurrently herewith

Permitted Encumbrances

**SCHEDULE 6.02**

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**INVESTMENTS**

Investments in Subsidiaries

**SCHEDULE 6.04**

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## LIST OF SUBSIDIARIES

Name of subsidiary	Jurisdiction of Formation	Effective Ownership	
Orion Administrative Services, Inc.	Texas	Orion Marine Group, Inc.	100%
OCLP, LLC	Nevada	Orion Marine Group, Inc.	100%
OCGP, LLC	Texas	OCLP, LLC	100%
Orion Construction, LP	Texas	OCLP, LLC	99%
		OCGP, LLC	1%
Misener Marine Construction, Inc.	Florida	Orion Construction, LP	100%
KFMSLP, LLC	Nevada	Orion Construction, LP	100%
KFMSGP, LLC	Texas	KFMSLP, LLC	100%
King Fisher Marine Service LP	Texas	KFMSLP, LLC	99%
		KFMSGP, LLC	1%
F. Miller Construction, LLC	Louisiana	Orion Marine Group, Inc.	100%
Orion Dredging Services, LLC	Florida	Orion Marine Group, Inc.	100%
SSL South, LLC	Florida	Orion Dredging Service, LLC	100%
Northwest Marine Construction, Inc.	Delaware	Orion Marine Group, Inc.	100%
ACC North Equipment, ULC	Canada	Northwest Marine Construction, Inc.	100%
Seagull Services, LLC	Delaware	Orion Marine Group, Inc.	100%
T.W. LaQuay Dredging, LLC	Texas	Seagull Services, LLC	100%

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We have issued our reports dated March 7, 2011 with respect to the consolidated financial statements, schedule and internal control over financial reporting included in this Annual Report on Form 10-K of Orion Marine Group, Inc. for the year ended December 31, 2010. We hereby consent to the incorporation by reference of said reports in the Registration Statements of Orion Marine Group on Form S-3 (File No. 333-160719, effective August 7, 2009) and on Form S-8 (File No. 333-148301, effective December 21, 2007).

/s/ Grant Thornton LLP  
Houston, Texas  
March 7, 2011

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**CERTIFICATION OF CHIEF EXECUTIVE OFFICER  
PURSUANT TO RULE 13a – 14(a)/15d – 14(a)  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, J. Michael Pearson, certify that:

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

March 7, 2011

By: /s/ J. Michael Pearson  
J. Michael Pearson  
President and Chief Executive Officer

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**CERTIFICATION OF CHIEF FINANCIAL OFFICER  
PURSUANT TO RULE 13a – 14(a)/15d – 14(a)  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Mark R. Stauffer, certify that:

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

March 7, 2011

By: /s/ Mark R. Stauffer

Mark R. Stauffer

Executive Vice President and Chief Financial Officer

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**SECTION 1350 CERTIFICATIONS  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Orion Marine Group, Inc. (the "Company") on Form 10-K for the year ended December 31, 2010 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), we, J. Michael Pearson and Mark R. Stauffer, Chief Executive Officer and Chief Financial Officer, respectively, of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that to our knowledge:

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

March 7, 2011

By: /s/ J. Michael Pearson  
J. Michael Pearson  
President and Chief Executive Officer

March 7, 2011

By: /s/ Mark R. Stauffer  
Mark R. Stauffer  
Executive Vice President and Chief Financial Officer

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## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and  
Shareholders of Orion Marine Group, Inc.

We have audited in accordance with the standards of the Public Company Accounting Oversight Board (United States) the consolidated financial statements of Orion Marine Group, Inc. and subsidiaries referred to in our report dated March 7, 2011, which is included in the annual report to security holders and incorporated by reference in Part II of this form. Our audits of the basic financial statements included the financial statement schedule listed in the index appearing under Item 15 (2), which is the responsibility of the Company's management. In our opinion, this financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

/s/ Grant Thornton LLP  
Houston, Texas  
March 7, 2011

### ORION MARINE GROUP, INC.

#### SCHEDULE II – VALUATION AND QUALIFYING ACCOUNTS (Dollars in thousands)

Description	Balance at the Beginning of the Period	Charged to Revenue, Cost or Expense	Deduction	Balance at the End of the Period
Year ended December 31, 2008:				
Provision for Doubtful Accounts	\$ 500	\$ 800	\$ (500)	\$ 800
Year ended December 31, 2009:				
Provision for Doubtful Accounts	\$ 800	\$ 442	\$ —	\$ 1,202
Year ended December 31, 2010:				
Provision for Doubtful Accounts	\$ 1,202	\$ (285)	\$ (917)	\$ —