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

# FORM 10-Q

**(Mark One)**

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

**For the quarterly period 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 1-8462**

# GRAHAM CORPORATION

(Exact name of registrant as specified in its charter)

| Delaware | 16-1194720 |
|---|---|
| (State or other jurisdiction of incorporation or organization) | (I.R.S. Employer Identification No.) |
| 20 Florence Avenue, Batavia, New York | 14020 |
| (Address of principal executive offices) | (Zip Code) |

585-343-2216
(Registrant's telephone number, including area code)

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 Web site, 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 whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

| Large accelerated filer ☐ | Accelerated filer ☑ | Non-accelerated filer ☐ (Do not check if a smaller reporting company) | Smaller reporting company ☐ |
|---|---|---|---|

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes ☐ No ☑

As of February 3, 2011, there were outstanding 9,839,994 shares of the registrant's common stock, par value $.10 per share.

Graham Corporation and Subsidiaries

Index to Form 10-Q

As of December 31, 2010 and March 31, 2010

and

for the Three and Nine-Month Periods Ended December 31, 2010 and 2009

GRAHAM CORPORATION AND SUBSIDIARIES

FORM 10-Q

DECEMBER 31, 2010

PART I — FINANCIAL INFORMATION

**Item 1. Unaudited Condensed Consolidated Financial Statements**

**GRAHAM CORPORATION AND SUBSIDIARIES**

**CONDENSED CONSOLIDATED BALANCE SHEETS**

(Unaudited)

| | December 31, 2010 | March 31, 2010 |
|---|---|---|
| | (Amounts in thousands, except per share data) | |
| **Assets** | | |
| Current assets: | | |
| Cash and cash equivalents | $ 20,718 | $ 4,530 |
| Investments | 27,516 | 70,060 |
| Trade accounts receivable, net of allowances ($8 and $17 at December 31, and March 31, 2010, respectively) | 6,065 | 7,294 |
| Unbilled revenue | 7,488 | 3,039 |
| Inventories | 5,502 | 6,098 |
| Prepaid expenses and other current assets | 1,164 | 651 |
| Total current assets | 68,453 | 91,672 |
| Property, plant and equipment, net | 11,723 | 9,769 |
| Prepaid pension asset | 7,917 | 7,335 |
| Goodwill | 17,326 | — |
| Other assets | 199 | 203 |
| Total assets | $ 105,618 | $ 108,979 |
| **Liabilities and Stockholders' Equity** | | |
| Current liabilities: | | |
| Current portion of capital lease obligations | $ 48 | $ 66 |
| Accounts payable | 5,739 | 6,623 |
| Accrued compensation | 3,523 | 4,010 |
| Accrued expenses and other liabilities | 2,916 | 2,041 |
| Customer deposits | 14,368 | 22,022 |
| Income taxes payable | 758 | 68 |
| Deferred income tax liability | 143 | 138 |
| Total current liabilities | 27,495 | 34,968 |
| Capital lease obligations | 113 | 144 |
| Accrued compensation | 321 | 292 |
| Deferred income tax liability | 2,564 | 2,930 |
| Accrued pension liability | 237 | 246 |
| Accrued postretirement benefits | 913 | 880 |
| Contingent liability | 1,800 | — |
| Other long-term liabilities | 536 | 445 |
| Total liabilities | 33,979 | 39,905 |
| **Commitments and Contingencies (Note 12)** | | |
| Stockholders' equity: | | |
| Preferred stock, $1.00 par value | | |
| Authorized, 500 shares | | |
| Common stock, $.10 par value | | |
| Authorized, 25,500 shares | | |
| Issued, 10,203 and 10,155 shares at December 31 and March 31, 2010 respectively | 1,020 | 1,016 |
| Capital in excess of par value | 16,002 | 15,459 |
| Retained earnings | 62,219 | 59,539 |
| Accumulated other comprehensive loss | (4,174) | (4,386) |
| Treasury stock (363 and 305 shares at December 31 and March 31, 2010, respectively) | (3,428) | (2,554) |
| Total stockholders' equity | 71,639 | 69,074 |
| Total liabilities and stockholders' equity | $ 105,618 | $ 108,979 |

See Notes to Condensed Consolidated Financial Statements.

**GRAHAM CORPORATION AND SUBSIDIARIES**

**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND RETAINED EARNINGS**

(Unaudited)

| | Three Months Ended December 31, | | Nine Months Ended December 31, | |
|---|---|---|---|---|
| | 2010 | 2009 | 2010 | 2009 |
| | (Amounts in thousands, except per share data) | | | |
| Net sales | $ 19,215 | $ 12,166 | $ 48,289 | $ 48,412 |
| Cost of products sold | 14,352 | 8,345 | 34,229 | 30,459 |
| Gross profit | 4,863 | 3,821 | 14,060 | 17,953 |
| Other expenses and income: | | | | |
| Selling, general and administrative | 3,583 | 2,718 | 9,169 | 8,998 |
| Interest income | (13) | (11) | (47) | (44) |
| Interest expense | 14 | — | 30 | 34 |
| Other expense | — | — | — | 96 |
| Total other expenses and income | 3,584 | 2,707 | 9,152 | 9,084 |
| Income before income taxes | 1,279 | 1,114 | 4,908 | 8,869 |
| Provision for income taxes | 442 | 350 | 1,636 | 3,119 |
| Net income | 837 | 764 | 3,272 | 5,750 |
| Retained earnings at beginning of period | 61,578 | 58,558 | 59,539 | 53,966 |
| Dividends | (196) | (197) | (592) | (591) |
| Retained earnings at end of period | $ 62,219 | $ 59,125 | $ 62,219 | $ 59,125 |
| | | | | |
| Per share data: | | | | |
| Basic: | | | | |
| Net income | $ .08 | $ .08 | $ .33 | $ .58 |
| | | | | |
| Diluted: | | | | |
| Net income | $ .08 | $ .08 | $ .33 | $ .58 |
| | | | | |
| Weighted average common shares outstanding: | | | | |
| Basic: | 9,899 | 9,903 | 9,919 | 9,897 |
| Diluted: | 9,930 | 9,945 | 9,956 | 9,933 |
| | | | | |
| Dividends declared per share | $ .02 | $ .02 | $ .06 | $ .06 |

See Notes to Condensed Consolidated Financial Statements.

**GRAHAM CORPORATION AND SUBSIDIARIES**

**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**

(Unaudited)

| | Nine Months Ended December 31, | |
|---|---|---|
| | 2010 | 2009 |
| | (Amounts in thousands) | |
| Operating activities: | | |
| Net income | $ 3,272 | $ 5,750 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | |
| Depreciation and amortization | 884 | 751 |
| Amortization of unrecognized prior service cost and actuarial losses | 218 | 508 |
| Discount accretion on investments | (44) | (40) |
| Stock-based compensation expense | 336 | 317 |
| Loss on disposal of property, plant and equipment | 18 | 3 |
| Deferred income taxes | (532) | (228) |
| (Increase) decrease in operating asset, net of acquisition: | | |
| Accounts receivable | 2,803 | (855) |
| Unbilled revenue | (3,852) | 8,419 |
| Inventories | 1,149 | 1,027 |
| Income taxes receivable/payable | 690 | 629 |
| Prepaid expenses and other current and non-current assets | (271) | (58) |
| Prepaid pension asset | (582) | (184) |
| Increase (decrease) in operating liabilities: | | |
| Accounts payable | (1,461) | (1,996) |
| Accrued compensation, accrued expenses and other current and non-current liabilities | (569) | (945) |
| Customer deposits | (7,961) | (432) |
| Long-term portion of accrued compensation, accrued pension liability and accrued postretirement benefits | 54 | 57 |
| Net cash (used) provided by operating activities | (5,848) | 12,723 |
| Investing activities: | | |
| Purchase of property, plant and equipment | (1,435) | (502) |
| Proceeds from sale of property, plant and equipment | 14 | 7 |
| Purchase of investments | (138,402) | (134,673) |
| Redemption of investments at maturity | 180,990 | 124,710 |
| Acquisition of Energy Steel & Supply Company (See Note 2) | (17,882) | — |
| Net cash provided (used) by investing activities | 23,285 | (10,458) |
| Financing activities: | | |
| Proceeds from issuance of long-term debt | — | 821 |
| Principal repayments on long-term debt | (49) | (841) |
| Issuance of common stock | 146 | 34 |
| Dividends paid | (592) | (591) |
| Purchase of treasury stock | (874) | (229) |
| Excess tax deduction on stock awards | 66 | 21 |
| Other | — | 4 |
| Net cash used by financing activities | (1,303) | (781) |
| Effect of exchange rate changes on cash | 54 | 4 |
| Net increase in cash and cash equivalents | 16,188 | 1,488 |
| Cash and cash equivalents at beginning of period | 4,530 | 5,150 |
| Cash and cash equivalents at end of period | $ 20,718 | $ 6,638 |

See Notes to Condensed Consolidated Financial Statements.

**GRAHAM CORPORATION AND SUBSIDIARIES**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

December 31, 2010 and 2009

(Unaudited)

(Amounts in thousands, except per share data)

NOTE 1 — BASIS OF PRESENTATION:

Graham Corporation's (the "Company's") Condensed Consolidated Financial Statements include its wholly-owned foreign subsidiary located in China at December 31, 2010 and March 31, 2010 and for the three and nine months ended December 31, 2010 and 2009 and its wholly-owned domestic subsidiary located in Lapeer, Michigan at December 31, 2010 and for the period December 15, 2010 through December 31, 2010 (See Note 2). The Condensed Consolidated Financial Statements have been prepared in accordance with accounting principles generally accepted in the United States ("GAAP") for interim financial information and the instructions to Form 10-Q and Rule 10-01 of Regulation S-X, each as promulgated by the Securities and Exchange Commission. The Company's Condensed Consolidated Financial Statements do not include all information and notes required by GAAP for complete financial statements. The unaudited Condensed Consolidated Balance Sheet as of March 31, 2010 presented herein was derived from the Company's audited Consolidated Balance Sheet as of March 31, 2010. For additional information, please refer to the consolidated financial statements and notes included in the Company's Annual Report on Form 10-K for the fiscal year ended March 31, 2010 ("fiscal 2010"). In the opinion of management, all adjustments, including normal recurring accruals considered necessary for a fair presentation, have been included in the Company's Condensed Consolidated Financial Statements.

The Company's results of operations and cash flows for the three and nine months ended December 31, 2010 are not necessarily indicative of the results that may be expected for the fiscal year ending March 31, 2011 ("fiscal 2011").

NOTE 2 — ACQUISITION:

On December 14, 2010, the Company completed its acquisition of Energy Steel & Supply Co. ("Energy Steel"), a privately-owned code fabrication and specialty machining company located in Lapeer, Michigan dedicated primarily to the nuclear power industry. The Company believes that this acquisition furthers its growth strategy through market and product diversification, broadens its offerings to the energy markets and strengthens its presence in the nuclear sector.

This transaction was accounted for under the purchase method of accounting. Accordingly, the results of Energy Steel were included in the Company's Condensed Consolidated Financial Statements from the date of acquisition. The purchase price was $17,882 in cash. Acquisition-related costs of $666 were expensed in the third quarter of fiscal 2011 and are included in

Selling, general and administrative expenses in the Condensed Consolidated Statement of Operations. The purchase agreement also includes a contingent earn-out, which ranges from $0 to $2,000, dependent upon Energy Steel's earnings performance in calendar years 2011 and 2012. If achieved, the earn-out will be payable in fiscal 2011 and fiscal 2012 and is treated as additional purchase price. In addition, the Company and Energy Steel entered into a five year lease agreement with ESSC Investments, LLC for Energy Steel's manufacturing and office facilities located in Lapeer, Michigan which includes an option to renew the lease for an additional five year term. The Company and Energy Steel also have an option to purchase the leased facility for $2,500 at any time during the first two years of the lease term. ESSC Investments, LLC is partly owned by the President of Energy Steel.

The cost of the acquisition was preliminarily allocated to the assets acquired and liabilities assumed based upon their estimated fair values at the date of the acquisition and the amount exceeding the fair value of $17,326 was recorded as goodwill, which is not deductible for tax purposes. As the values of certain assets and liabilities are preliminary in nature, they are subject to adjustment as additional information is obtained, including, but not limited to, settlement of the contingent payment, the finalization of the valuation of intangible assets, and the final reconciliation and confirmation of tangible assets. The valuation of acquisition-related intangible assets will be finalized within twelve months of the close of the acquisition. The fair value of acquisition-related intangible assets includes customer relationships, teaming partner agreements, permits and certificates. It is estimated that a significant portion of the goodwill will be allocated to acquisition-related intangible assets, some of which may have an indefinite life. Changes to the preliminary valuation will result in material adjustments to the fair value of assets and liabilities acquired. Adjustments to record intangible assets acquired will result in a reduction of goodwill.

The following table summarizes the preliminary allocation of the cost of the acquisition to the assets acquired and liabilities assumed as of the close of the acquisition:

| | December 14, 2010 |
|---|---|
| Assets acquired: | |
| Current assets | $ 2,768 |
| Property, plant & equipment | 1,390 |
| Goodwill | 17,326 |
| Other assets | 32 |
| Total assets acquired | 21,516 |
| Liabilities assumed: | |
| Current liabilities | 1,834 |
| Total liabilities assumed | 1,834 |
| Purchase price | $ 19,682 |

The Condensed Consolidated Statement of Operations for the three and nine months ended December 31, 2010 includes net sales from Energy Steel of $684. The following unaudited pro forma information presents the consolidated results of operations of the Company as if the Energy Steel acquisition had occurred at the beginning of each of the fiscal periods presented:

| | Three Months Ended December 31, | | Nine Months Ended December 31, | |
|---|---|---|---|---|
| | 2010 | 2009 | 2010 | 2009 |
| Sales | $21,274 | $19,596 | $57,355 | $64,520 |
| Net income | 361 | 2,166 | 3,701 | 6,676 |
| Earnings per share | | | | |
| Basic | $ .04 | $ .22 | $ .37 | $ .67 |
| Diluted | $ .04 | $ .22 | $ .37 | $ .67 |

The unaudited pro forma information presents the combined operation results of Graham Corporation and Energy Steel, with the results prior to the acquisition date adjusted to include the pro forma impact of the adjustment of depreciation of fixed assets based on the preliminary purchase price allocation, the adjustment to interest income reflecting the cash paid in connection with the acquisition, including acquisition-related expenses, at the Company's weighted average interest income rate, and the impact of income taxes on the pro forma adjustments utilizing the applicable statutory tax rate.

The unaudited pro forma results are presented for illustrative purposes only. These pro forma results do not purport to be indicative of the results that would have actually been obtained if the acquisition occurred as of the beginning of each of the periods presented, nor does the pro forma data intend to be a projection of results that may be obtained in the future.

NOTE 3 — REVENUE RECOGNITION:

The Company recognizes revenue on all contracts with a planned manufacturing process in excess of four weeks (which approximates 575 direct labor hours) using the percentage-of-completion method. The majority of the Company's revenue is recognized under this methodology. The percentage-of-completion method is determined by comparing actual labor incurred to a specific date to management's estimate of the total labor to be incurred on each contract. Contracts in progress are reviewed monthly, and sales and earnings are adjusted in current accounting periods based on revisions in the contract value and estimated costs at completion. Losses on contracts are recognized immediately when evident. There is no reserve for credit losses related to unbilled revenue recorded for contracts accounted for on the percentage of completion method. Any reserve for credit losses related to unbilled revenue is recorded as a reduction to revenue.

Revenue on contracts not accounted for using the percentage-of-completion method is recognized utilizing the completed contract method. The majority of the Company's contracts have a planned manufacturing process of less than four weeks and the results reported under this method do not vary materially from the percentage-of-completion method. The Company recognizes revenue and all related costs on these contracts upon substantial completion or shipment to the customer. Substantial completion is consistently defined as at least 95%

complete with regard to direct labor hours. Customer acceptance is generally required throughout the construction process and the Company has no further material obligations under its contracts after the revenue is recognized.

At March 31, 2010, the Company's backlog included four orders with a value of $6,655 that had been placed on hold (suspended) pending further customer evaluation. During the nine months ended December 31, 2010, two orders valued at $4,278 were returned to active status and one order valued at $1,588 was cancelled. Production had started on the cancelled project prior to such order being put on hold and the customer requested shipment of the partly completed project on an "as is" basis. At December 31, 2010, one order included in backlog with a value of $1,130 remained on hold (suspended).

NOTE 4 — INVESTMENTS:

Investments consist solely of fixed-income debt securities issued by the United States Treasury with original maturities of greater than three months and less than one year. All investments are classified as held-to-maturity, as the Company has the intent and ability to hold the securities to maturity. The investments are stated at amortized cost which approximates fair value. All investments held by the Company at December 31, 2010 are scheduled to mature between January 6, 2011 and April 7, 2011.

NOTE 5 — INVENTORIES:

Inventories are stated at the lower of cost or market, using the average cost method. For contracts accounted for on the completed contract method, progress payments received are netted against inventory to the extent the payment is less than the inventory balance relating to the applicable contract. Progress payments that are in excess of the corresponding inventory balance are presented as customer deposits in the Condensed Consolidated Balance Sheets. Unbilled revenue in the Condensed Consolidated Balance Sheets represents revenue recognized that has not been billed to customers on contracts accounted for on the percentage-of-completion method. For contracts accounted for on the percentage-of—completion method, progress payments are netted against unbilled revenue to the extent the payment is less than the unbilled revenue for the applicable contract. Progress payments exceeding unbilled revenue are netted against inventory to the extent the payment is less than or equal to the inventory balance relating to the applicable contract, and the excess is presented as customer deposits in the Condensed Consolidated Balance Sheets.

Major classifications of inventories are as follows:

| | December 31, 2010 | March 31, 2010 |
|---|---|---|
| Raw materials and supplies | $ 2,184 | $ 1,843 |
| Work in process | 10,788 | 5,365 |
| Finished products | 424 | 573 |
| | 13,396 | 7,781 |
| Less — progress payments | 7,894 | 1,683 |
| Total | $ 5,502 | $ 6,098 |

NOTE 6 — STOCK-BASED COMPENSATION:

The Amended and Restated 2000 Graham Corporation Incentive Plan to Increase Shareholder Value provides for the issuance of up to 1,375 shares of common stock in connection with grants of incentive stock options, non-qualified stock options, stock awards and performance awards to officers, key employees and outside directors; provided, however, that no more than 250 shares of common stock may be used for awards other than stock options. Stock options may be granted at prices not less than the fair market value at the date of grant and expire no later than ten years after the date of grant.

There were no stock option awards granted in the three months ended December 31, 2010 and 2009. Stock option awards granted in the nine months ended December 31, 2010 and 2009 were 20 and 24, respectively. The stock option awards vest $33^{1}/_{3}\%$ per year over a three-year term. All stock options have a term of ten years from their grant date.

There were no restricted stock awards granted in the three months ended December 31, 2010 and 2009. Restricted stock awards granted in the nine-month periods ended December 31, 2010 and 2009 were 24 and 15, respectively. Performance-vested restricted stock awards granted to officers in fiscal 2011 vest 100% on the third anniversary of the grant date, subject to the satisfaction of the performance metrics established for the applicable three-year period. Time-vested restricted stock awards granted to officers in fiscal 2010 vest 50% on the second anniversary of the grant date and 50% on the fourth anniversary of the grant date. Time-vested restricted stock awards granted to directors in the fiscal 2011 and fiscal 2010 vest 100% on the first anniversary of the grant date.

During the three and nine months ended December 31, 2010, the Company recognized stock-based compensation costs related to stock option and restricted stock awards of $124 and $307, respectively. The income tax benefit recognized related to stock-based compensation was $43 and $106 for the three and nine months ended December 31, 2010, respectively. During the three and nine months ended December 31, 2009, the Company recognized stock-based compensation costs of $119 and $317, respectively. The income tax benefit recognized related to stock-based compensation for the three and nine months ended December 31, 2009 was $41 and $110, respectively.

On July 29, 2010, the Company's stockholders approved the Graham Corporation Employee Stock Purchase Plan (the "ESPP"), which allows eligible employees to purchase shares of the Company's common stock on the last day of a six-month offering period at a purchase price equal to the lesser of 85 percent of the fair market value of the common stock on either the first day or the last day of the offering period. A total of 200,000 shares of common stock may be purchased under the ESPP. During the three and nine months ended December 31, 2010, the Company recognized stock-based compensation costs of $29 related to this Plan.

NOTE 7 — INCOME PER SHARE:

Basic income per share is computed by dividing net income by the weighted average number of common shares outstanding for the period. Common shares outstanding include share equivalent units, which are contingently issuable shares. Diluted income per share is calculated

by dividing net income by the weighted average number of common shares outstanding and, when applicable, potential common shares outstanding during the period. A reconciliation of the numerators and denominators of basic and diluted income per share is presented below:

| | Three Months Ended December 31, | | Nine Months Ended December 31, | |
|---|---|---|---|---|
| | 2010 | 2009 | 2010 | 2009 |
| Basic income per share | | | | |
| Numerator: | | | | |
| Net income | $ 837 | $ 764 | $ 3,272 | $ 5,750 |
| Denominator: | | | | |
| Weighted common shares outstanding | 9,839 | 9,845 | 9,860 | 9,840 |
| Share equivalent units (“SEUs”) | 60 | 58 | 59 | 57 |
| Weighted average common shares and SEUs | 9,899 | 9,903 | 9,919 | 9,897 |
| Basic income per share | $ .08 | $ .08 | $ .33 | $ .58 |
| Diluted income per share | | | | |
| Numerator: | | | | |
| Net income | $ 837 | $ 764 | $ 3,272 | $ 5,750 |
| Denominator: | | | | |
| Weighted average shares and SEUs outstanding | 9,899 | 9,903 | 9,919 | 9,897 |
| Stock options outstanding | 31 | 40 | 37 | 34 |
| Contingently issuable SEUs | — | 2 | — | 2 |
| Weighted average common and potential common shares outstanding | 9,930 | 9,945 | 9,956 | 9,933 |
| Diluted income per share | $ .08 | $ .08 | $ .33 | $ .58 |

Options to purchase a total of 17 shares of common stock were outstanding at December, 31, 2010 and 2009, but were not included in the above computation of diluted income per share given their exercise prices as they would be anti-dilutive upon issuance.

NOTE 8 — PRODUCT WARRANTY LIABILITY:

The reconciliation of the changes in the product warranty liability is as follows:

| | Three Months Ended December 31, | | Nine Months Ended December 31, | |
|---|---|---|---|---|
| | 2010 | 2009 | 2010 | 2009 |
| Balance at beginning of period | $ 431 | $ 279 | $ 369 | $ 366 |
| Expense (income) for product warranties | (136) | 44 | 14 | (30) |
| Product warranty claims paid | (110) | (75) | (198) | (88) |
| Balance at end of period | $ 185 | $ 248 | $ 185 | $ 248 |

The income of $136 and $30 for product warranties in the three months ended December 31, 2010 and nine months ended December 31, 2009, respectively, resulted from the reversal of provisions made that were no longer required due to lower claims experience.

The product warranty liability is included in the line item “Accrued expenses and other liabilities” in the Condensed Consolidated Balance Sheets.

NOTE 9 — CASH FLOW STATEMENT:

Interest paid was $4 and $2 for the nine months ended December 31, 2010 and 2009, respectively. In addition, income taxes paid for the nine months ended December 31, 2010 were $1,319. For the nine months ended December 31, 2009, income taxes paid were $2,697, which was net of a $3,426 refund of an overpayment of taxes in the fiscal year ended March 31, 2009.

During the nine months ended December 31, 2010, non cash activities included the recording of a $1,800 contingent liability for the contingent earn-out related to the acquisition of Energy Steel, which was treated as additional purchase price.

During the nine months ended December 31, 2010 and 2009, stock option awards were exercised. In connection with such stock option exercises, the related income tax benefit realized exceeded the tax benefit that had been recorded pertaining to the compensation cost recognized by $66 and $21, respectively, for such periods. This excess tax deduction has been separately reported under “Financing activities” in the Condensed Consolidated Statements of Cash Flows.

At December 31, 2010 and 2009, there were $34 and $7 of capital purchases that were recorded in accounts payable and are not included in the caption “Purchase of property, plant and equipment” in the Condensed Consolidated Statements of Cash Flows.

NOTE 10 — COMPREHENSIVE INCOME:

Total comprehensive income was as follows:

| | Three Months Ended December 31, | | Nine Months Ended December 31, | |
|---|---|---|---|---|
| | 2010 | 2009 | 2010 | 2009 |
| Net income | $ 837 | $ 764 | $ 3,272 | $ 5,750 |
| Other comprehensive income: | | | | |
| Foreign currency translation adjustment | 26 | — | 69 | 3 |
| Defined benefit pension and other postretirement plans | 47 | 108 | 143 | 325 |
| Total comprehensive income | $ 910 | $ 872 | $ 3,484 | $ 6,078 |

Defined benefit pension and other postretirement plans reflect the amortization of prior service costs and recognized gains and losses related to such plans during the periods.

NOTE 11 — EMPLOYEE BENEFIT PLANS:

The components of pension cost are as follows:

| | Three Months Ended December 31, | | Nine Months Ended December 31, | |
|---|---|---|---|---|
| | 2010 | 2009 | 2010 | 2009 |
| Service cost | $ 97 | $ 79 | $ 289 | $ 237 |
| Interest cost | 335 | 324 | 1,005 | 973 |
| Expected return on assets | (625) | (465) | (1,875) | (1,394) |
| Amortization of: | | | | |
| Unrecognized prior service cost | 1 | 1 | 3 | 3 |
| Actuarial loss | 105 | 205 | 316 | 614 |
| Net pension (income) cost | $ (87) | $ 144 | $ (262) | $ 433 |

The Company made no contributions to its defined benefit pension plan during the nine months ended December 31, 2010 and does not expect to make any contributions to the plan for the balance of fiscal 2011.

The components of the postretirement benefit income are as follows:

| | Three Months Ended December 31, | | Nine Months Ended December 31, | |
|---|---|---|---|---|
| | 2010 | 2009 | 2010 | 2009 |
| Service cost | $ — | $ — | $ — | $ — |
| Interest cost | 12 | 16 | 36 | 46 |
| Amortization of prior service cost | (42) | (41) | (125) | (124) |
| Amortization of actuarial loss | 8 | 5 | 23 | 16 |
| Net postretirement benefit income | $ (22) | $ (20) | $ (66) | $ (62) |

The Company paid benefits of $3 related to its postretirement benefit plan during the nine months ended December 31, 2010. The Company expects to pay benefits of approximately $106 for the balance of fiscal 2011.

NOTE 12 — COMMITMENTS AND CONTINGENCIES:

The Company has been named as a defendant in certain lawsuits alleging personal injury from exposure to asbestos contained in products made by the Company. The Company is a co-defendant with numerous other defendants in these lawsuits and intends to vigorously defend itself against these claims. The claims are similar to previous asbestos suits that named the Company as defendant, which either were dismissed when it was shown that the Company had not supplied products to the plaintiffs' places of work or were settled for amounts below the expected defense costs. The outcome of these lawsuits cannot be determined at this time.

From time to time in the ordinary course of business, the Company is subject to legal proceedings and potential claims. At December 31, 2010, other than noted above, management was unaware of any other material litigation matters.

NOTE 13 — INCOME TAXES:

The Company files federal and state income tax returns in several domestic and foreign jurisdictions. In most tax jurisdictions, returns are subject to examination by the relevant tax authorities for a number of years after the returns have been filed. The Company is currently under examination by the United States Internal Revenue Service (the "IRS") for tax year 2009 and is subject to examination for tax year 2010. The IRS has completed its examination for tax years 2006 through 2008. In June 2010, the IRS proposed an adjustment, plus interest, to disallow substantially all of the research and development tax credit claimed by the Company in tax years 2006 through 2008. The Company filed a protest to appeal the adjustment in July 2010. The Company believes its tax position is correct and will continue to take appropriate actions to vigorously defend its position.

The cumulative tax benefit related to the research and development tax credit for the tax years ended March 31, 1999 through March 31, 2011 was $2,383. The liability for unrecognized tax benefits related to this tax position was $477 and $455 at December 31 and March 31, 2010, respectively, which represents management's estimate of the potential resolution of this issue. Any additional impact on the Company's income tax liability cannot be determined at this time. The tax benefit and liability for unrecognized tax benefits were recorded in the Company's Consolidated Statement of Operations as follows:

| | Year Ended March 31, | | | | | |
|---|---|---|---|---|---|---|
| | 2007 | 2008 | 2009 | 2010 | 2011 | Total |
| Tax benefit of research and development tax credit | $ 1,653 | $ 218 | $ 238 | $ 137 | $ 137 | $ 2,383 |
| Unrecognized tax benefit | — | — | — | (445) | (32) | (477) |
| Net tax benefit of research and development tax credit | $ 1,653 | $ 218 | $ 238 | $ (308) | $ 105 | $ 1,906 |

The Company is subject to examination in state and international tax jurisdictions for tax years 2006 through 2010 and tax years 2009 through 2010, respectively. It is the Company's policy to recognize any interest related to uncertain tax positions in interest expense and any penalties related to uncertain tax positions in selling, general and administrative expense. The Company had no other unrecognized tax benefits as of December, 31, 2010. During the three months ended December 31, 2010 and 2009, the Company recorded $13 and $0, respectively, for interest related to its uncertain tax position. During the nine months ended December 31, 2010 and 2009, $27 and $32, respectively, was recorded for interest related to uncertain tax positions. No penalties related to uncertain tax positions were recorded in any of the three- or nine-month periods ended December 31, 2010 or 2009.

NOTE 14 — DEBT:

On December 3, 2010, the Company entered into a new revolving credit facility agreement that provides a $25,000 line of credit, including letters of credit and bank guarantees, expandable at the Company's option at any time to up to $50,000. There are no sublimits in the agreement with regard to borrowings, issuance of letters of credit or issuance of bank guarantees for the Company's Chinese subsidiary. The agreement has a three year term, with two automatic one year extensions.

At the Company's option, amounts outstanding under the agreement will bear interest at either (i) a rate equal to the bank's prime rate; or (ii) a rate equal to LIBOR plus a margin. The margin is based upon the Company's funded debt to earnings before interest expense, income taxes, depreciation and amortization ("EBITDA") and may range from 2.00% to 1.00%. Amounts available for borrowing under the agreement are subject to an unused commitment fee of between 0.375% and 0.200%, depending on the above ratio.

Outstanding letters of credit under the agreement are subject to a fee of between 1.25% and ..75%, depending on the Company's ratio of funded debt to EBITDA. The agreement allows the Company to reduce the fee on outstanding letters of credit to a fixed rate of .55% by securing outstanding letters of credit with cash and cash equivalents. At December 31, 2010, outstanding letters of credit were secured by cash and cash equivalents.

Under the new revolving credit facility, the Company covenants to maintain a maximum funded debt to EBITDA ratio of 3.5 to 1 and a minimum earnings before interest expense and income taxes to interest ratio of 4.0 to 1. The agreement also provides that the Company is permitted to pay dividends without limitation if it maintains a maximum funded debt to EBITDA ratio equal to or less than 2.0 to 1 and permits the Company to pay dividends in an amount equal to 25% of net income if it maintains a maximum funded debt to EBITDA ratio of greater than 2.0 to 1.

## Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

(Dollar amounts in thousands, except per share data)

### Overview

We are a global designer and manufacturer of custom-engineered ejectors, vacuum systems, condensers, liquid ring pump packages and heat exchangers to the refining and petrochemical industries, and a supplier of components and raw materials to the nuclear power generating market. Our equipment is used in critical applications in the petrochemical, oil refining and electric power generation industries, including nuclear, cogeneration and geothermal plants. Our equipment can also be found in alternative energy applications, including ethanol, biodiesel and coal and gas-to-liquids and other applications, and other diverse applications, such as metal refining, pulp and paper processing, shipbuilding, water heating, refrigeration, desalination, soap manufacturing, food processing, pharmaceuticals, and heating, ventilating and air conditioning.

Our corporate offices are located in Batavia, New York and we have production facilities in both Batavia, New York and Lapeer, Michigan. We have a wholly-owned foreign subsidiary located in Suzhou, China, which supports sales orders from China and provides engineering support and supervision of subcontracted fabrication.

In advancement of our strategy to diversify our products and broaden our offerings to the energy industry, on December 14, 2010, we acquired Energy Steel and Supply Company ("Energy Steel"), which is now a wholly-owned domestic subsidiary of ours located in Lapeer, Michigan. Energy Steel is a code fabrication and specialty machining company which provides products to the nuclear industry, primarily in the United States. This transaction was accounted for under the purchase method of accounting. Accordingly, the results of Energy Steel were included in our Condensed Consolidated Financial Statements from the date of acquisition.

### Highlights

Highlights for the three- and nine-month periods ended December 31, 2010 (the third quarter of the fiscal year ending March 31, 2011 ("fiscal 2011")) include:

- Net sales for the third quarter of fiscal 2011 were $19,215, up 58% compared with $12,166 for the third quarter of fiscal 2010. Net sales for the first nine months of fiscal 2011 were $48,289, compared with net sales of $48,412 for the first nine months of fiscal 2010. Included in net sales were $684 associated with our acquisition of Energy Steel.
- Net income and income per diluted share for the third quarter of fiscal 2011 were $837 or $0.08, respectively, compared with net income of $764 and income per diluted share of $0.08 for the third quarter of the fiscal year ended March 31, 2010 ("fiscal 2010"). Included in the third quarter of fiscal 2011 was $510, net of income tax, or $0.05 per diluted share, of transaction costs, related to our acquisition of Energy Steel. Excluding these transaction costs, net income and income per diluted share for the third quarter of fiscal 2011 were $1,347 or $0.13, respectively. With the transaction costs excluded, net income increased by $583, or 76%.
- Net income and income per diluted share for the first nine months of fiscal 2011 were $3,272 and $0.33, respectively, compared with net income of $5,750 and income per diluted share of $0.58 for the first nine months of fiscal 2010.

Excluding the previously mentioned acquisition transaction costs, net income and income per diluted share for the first nine months of fiscal 2011 were $3,782 and $0.38, respectively.

- Orders booked in the third quarter of fiscal 2011 were $17,784, which included $839 associated with Energy Steel. In total, orders were down 66% compared with the third quarter of fiscal 2010, when orders were $51,644. The prior year quarter benefited from a large order that was in excess of $25,000 with Northrop Grumman Corporation to provide surface condensers for a U.S. Navy aircraft carrier. Orders booked in the first nine months of fiscal 2011 were $36,384, down 60% compared with orders booked of $90,049 in the first nine months of fiscal 2010.
- Backlog was $90,531 at December 31, 2010, representing a 9% increase compared with September 30, 2010, when our backlog was $83,316. There was $8,625 of backlog associated with Energy Steel at the end of the quarter. We believe 70-80% of the current backlog will convert to sales over the next 12 months. Normally, 85-90% of the backlog is expected to convert to sales within the next 12 months.
- Gross profit margin for the three- and nine-month periods ended December 31, 2010 was 25% and 29%, respectively, compared with 31% and 37%, respectively for the three- and nine-month periods ended December 31, 2009.
- Cash and short-term investments at December 31, 2010 were $48,234 compared with $74,590 at March 31, 2010.

**Forward-Looking Statements**

This report and other documents we file with the Securities and Exchange Commission include “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended.

These statements involve known and unknown risks, uncertainties and other factors that may cause actual results to be materially different from any future results implied by the forward-looking statements. Such factors include, but are not limited to, the risks and uncertainties identified by us under the heading “Risk Factors” in Item 1A of our Annual Report on Form 10-K for fiscal 2010 and in Item 1A of this Quarterly Report on Form 10-Q.

Forward-looking statements may also include, but are not limited to, statements about:

- current and future economic environments affecting us and the markets we serve;
- sources of revenue and anticipated revenue, including the contribution from the growth of new products, services and markets;
- plans for future products and services and for enhancements to existing products and services;
- operations in foreign countries;
- estimates regarding liquidity and capital requirements;
- timing of conversion of backlog to sales;
- our ability to achieve expected profitability levels;
- our ability to attract or retain customers;

- the outcome of any existing or future litigation;
- our acquisition strategy;
- our ability to successfully integrate and operate Energy Steel; and
- our ability to increase our productivity and capacity.

Forward-looking statements are usually accompanied by words such as “anticipate,” “believe,” “estimate,” “may,” “intend,” “expect” and similar expressions. Actual results could differ materially from historical results or those implied by the forward-looking statements contained in this report.

Undue reliance should not be placed on our forward-looking statements. Except as required by law, we undertake no obligation to update or announce any revisions to forward-looking statements contained in this report, whether as a result of new information, future events or otherwise.

**Near-Term Market Conditions**

As the global economy slowly recovers, albeit at a sluggish pace, our principal markets, specifically, oil refining and petrochemicals, are improving. Currently, we believe that international markets present greater demand than those in North America. For example, Asia has renewed its activities to invest in new refining and petrochemical capacity. China had slowed its investments somewhat during the global recession, but appears to have reinvigorated its efforts to build capacity. Also, there are a number of refining and petrochemical projects on the horizon in the Middle East, while South America is moving forward with planned investment in new capacity.

Underlying demand from projected economic growth in less developed countries appears to be driving the strengthened and apparently stable price for crude oil that has remained above $75 per barrel for over a year. Likewise, other raw material costs have increased over the past 12 to 18 months, although they remain below their peaks in 2008, with the exception of copper. However, despite that higher commodity prices have an effect on overall project cost for the end user, it appears that the improving economy, which is supporting the strength of the oil market, is spurring new international investment in refineries and petrochemical plants.

In the U.S., renewable energy projects in the U.S. have been very active and are expected to remain so for the next few years. Moreover, investment in the U.S. nuclear power generation market is anticipated to be favorable and will be driven by capital investment in existing nuclear power plants to increase power generation and/or extend their operating lives. In addition, construction of new nuclear power generation capacity is planned.

Currently, near-term demand trends that we believe are affecting our customers’ investments include the following:

- As the global economy recovers slowly from the global recession, many emerging economies continue to have relatively strong economic growth. This expansion is driving growing energy requirements and the need for more refined petroleum products.
- The expansion of the Middle Eastern economies and the continued global growth in demand for oil and refined products has renewed investment activity in this geographic area. We believe that such renewed activity is exemplified by the re-

starting of projects in both the petrochemical and refining industries, such as the Jubail and Yanbu export refinery projects in Saudi Arabia.

- Demand for refined petroleum products, such as gasoline, in Asia (specifically China) experienced continued growth during the last two calendar years following reductions in demand during calendar year 2008 when economic uncertainty stymied growth. This continued demand is driving increased investment in petrochemical and refining projects.
- South America, specifically Brazil, Venezuela and Colombia, is seeing increased refining and petrochemical investments that are driven by expanding economies and increased local demand for gasoline and other products derived from oil.
- The U.S. refining market has experienced some recovery from its bottom. However, refinery utilization remains somewhat below levels prior to the global recession. We believe that uncertainty around U.S. energy policy and its potential impact on production costs is also affecting our customers. As a result, there have been fewer investments in capital projects for refineries in the U.S. This trend is expected to continue for the next few years.
- Recently there have been investments in North American oil sands extraction projects in Alberta and foreign investment in Alberta. We expect that refineries in the U.S. may begin investing to upgrade facilities to be able to accommodate for the synthetic feedstock. Historically, downstream investments that involve our equipment occur two to three years after extraction projects.
- Energy policy focus in the United States has generated renewed interest in nuclear power. The time frame to design, permit, fund and build a new nuclear facility is extremely long and we believe it is very early in that process. However, the maintenance, license extension and re-rating of the 104 existing nuclear plants in the United States is quite active and provides us with sales opportunities.

A consequence of the global recession and the shift in geographic opportunities for our products is pressure on our gross margin. The U.S. refining market has historically provided higher margins than certain international markets and there has been significant competition for fewer projects. As the global economy has begun to improve, we believe this pressure is beginning to ease, although we would not expect this to be reflected in our financial results within the next twelve months.

Despite the improving global outlook, we expect that we will continue to experience volatility in our order pattern. For example, sequentially the past seven quarters had new order levels of $8,838, $29,567, $51,644, $18,268, $8,124, $10,476 and $17,784 in the first, second, third and fourth quarters of fiscal 2010 and the first, second and third quarters of fiscal 2011, respectively. We believe that looking at our order level in any one quarter does not provide an accurate indication of our future expectations or performance. Rather, we believe that looking at our orders and backlog over a rolling four-quarter time period provides a better measure of our business. For the next several quarters, we also expect to see smaller value projects than what we had seen during the last expansion cycle. As a result, we will have to win a greater number of orders to achieve a similar or higher level of revenue.

**Shift to International Growth Expected to Drive Next Industry Cycle**

Over the long-term, we expect demand for energy products and, therefore, our customers' markets, to regain their strength and, while remaining cyclical, continue to grow. We anticipate that recovery and growth will initially be sluggish, especially in the U.S. market. We believe the long-term trends remain strong and that the drivers of future growth may include:

*Demand Trends*

- Global consumption of crude oil is estimated to expand significantly over the next two decades, primarily in emerging markets. This is expected to offset estimated flat to slightly declining demand in North America and Europe.
- Increased demand is expected for power, refinery and petrochemical products, stimulated by an expanding middle class in Asia, in particular China and India.
- The requirement for developing clean, low cost electric power in the U.S. is expected to continue.
- Increased development of geothermal electrical power plants in certain regions is expected to help meet projected growth in demand for electrical power.
- Increased global regulations over the refining and petrochemical industries are expected to continue to drive requirements for capital investments.
- Funded defense industry plans for nuclear powered carriers, submarines and destroyers are expected to continue.

*Growth Opportunities*

- Construction of new petrochemical plants in the Middle East, where natural gas is plentiful and less expensive, is expected to continue.
- Increased investments in new power projects are expected in Asia and South America to meet projected consumer demand increases.
- Global oil refining capacity is projected to increase, and is expected to be addressed through new facilities, refinery upgrades, revamps and expansions.
- Long-term growth potential is believed to exist in alternative energy markets, such as nuclear, coal-to-liquids, gas-to-liquids and other emerging technologies, such as biodiesel, ethanol and waste-to-energy.
- Replacement or upgrading of existing equipment in U.S. nuclear power generation plants is expected to continue.
- Construction of new nuclear power generating capacity is expected.
- Construction of new nuclear propelled U.S. naval vessels and replacement of worn equipment on existing vessels is expected.

We believe that all of the above factors offer us long-term growth opportunity to meet our customers' expected capital project needs. In addition, we believe we can continue to grow our less cyclical smaller product lines and aftermarket businesses.

Emerging markets require petroleum-based products and are expected to continue to grow at rates faster than the U.S. Therefore, we expect international opportunities will be more plentiful as they relate to oil refining and petrochemical markets, whereas U.S. power generation markets, both nuclear and alternative energy, are expected to be active and provide us additional opportunities domestically. Our domestic sales as a percentage of

aggregate product sales, which were 63% in fiscal 2009, decreased to 45% in fiscal 2010 and declined to 41% in the first nine months of fiscal 2011.

In the first nine months of fiscal 2011, international orders were 54% of total orders. With the acquisition of Energy Steel, whose sales are almost exclusively domestic, we expect that the weighting of international orders will be less dominant than would have occurred prior to the addition of Energy Steel. Our order rates for fiscal 2010 were 50% domestic and 50% international. However, the fiscal 2010 domestic order level was heavily impacted by a large order (in excess of $25,000) from Northrop Grumman to supply surface condensers for the U.S. Navy. If we exclude this project, the international order percentage in fiscal 2010 would have exceeded 65%.

**Energy Steel Acquisition**

On December 14, 2010, we completed the acquisition of Energy Steel & Supply Co. ("Energy Steel"), a privately-owned code fabrication and specialty machining company located in Lapeer, Michigan dedicated primarily to the nuclear power industry. We believe that this acquisition furthers our growth strategy through market and product diversification, broadens our offerings to the energy markets and strengthens our presence in the nuclear sector.

This transaction was accounted for under the purchase method of accounting. Accordingly, the results of Energy Steel were included in our Condensed Consolidated Financial Statements from the date of acquisition. The purchase price was $17,882 in cash. Acquisition-related costs of $666 were expensed in the third quarter of fiscal 2011 and are included in Selling, general and administrative expenses in the condensed consolidated statement of operations included in Part I, Item 1 of this Quarterly Report on Form 10-Q. The purchase agreement also includes a contingent earn-out, which ranges from $0 to $2,000, dependent upon Energy Steel's earnings performance in calendar years 2011 and 2012. If achieved, the earn-out will be payable in fiscal 2011 and fiscal 2012 and is treated as additional purchase price. In addition, we entered into a five year lease agreement with ESSC Investments, LLC for Energy Steel's manufacturing and office facilities located in Lapeer, Michigan, which agreement includes an option to renew the lease for an additional five year term. We also have an option to purchase the leased facility for $2,500 at any time during the first two years of the lease term. ESSC Investments, LLC is partly owned by the President of Energy Steel.

The cost of the acquisition was preliminarily allocated to the assets acquired and liabilities assumed based upon their estimated fair values at the date of the acquisition and the amount exceeding the fair value of $17,326 was recorded as goodwill, which is not deductible for tax purposes. As the values of certain assets and liabilities are preliminary in nature, they are subject to adjustment as additional information is obtained, including, but not limited to, settlement of the contingent payment, the finalization of the valuation of intangible assets, and the final reconciliation and confirmation of tangible assets. The valuation of acquisition-related intangible assets will be finalized within twelve months of the close of the acquisition. The fair value of acquisition-related intangible assets includes customer relationships, teaming partner agreements, permits and certificates. It is estimated that a significant portion of the goodwill will be allocated to acquisition-related intangible assets, some of which may have an indefinite life. Changes to the preliminary valuation will result in material adjustments to the fair value of assets and liabilities acquired. Adjustments to record intangible assets acquired will result in a reduction of goodwill.

The following table summarizes the preliminary allocation of the cost of the acquisition to the assets acquired and liabilities assumed as of the close of the acquisition:

| | December 14, 2010 |
|---|---|
| Assets acquired: | |
| Current assets | $ 2,768 |
| Property, plant & equipment | 1,390 |
| Goodwill | 17,326 |
| Other assets | 32 |
| Total assets acquired | 21,516 |
| Liabilities assumed: | |
| Current liabilities | 1,834 |
| Total liabilities assumed | 1,834 |
| Purchase price | $ 19,682 |

**Results of Operations**

For an understanding of the significant factors that influenced our performance, the following discussion should be read in conjunction with our condensed consolidated financial statements and the notes to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q.

The following table summarizes our results of operations for the periods indicated:

| | Three Months Ended December 31, | | Nine Months Ended December 31, | |
|---|---|---|---|---|
| | 2010 | 2009 | 2010 | 2009 |
| Net sales | $ 19,215 | $12,166 | $ 48,289 | $48,412 |
| Net income | $ 837 | $ 764 | $ 3,272 | $ 5,750 |
| Diluted income per share | $ 0.08 | $ 0.08 | $ 0.33 | $ 0.58 |
| Total assets | $105,618 | $89,240 | $105,618 | $89,240 |

**The Third Quarter and First Nine Months of Fiscal 2011 Compared With the Third Quarter and First Nine Months of Fiscal 2010**

Sales for the third quarter of fiscal 2011 were $19,215, up 58% compared with sales of $12,166 for the third quarter of fiscal 2010. Included in the quarter was $684 in sales associated with Energy Steel. Other than the addition of Energy Steel, sales growth was driven by improvements in all products, except aftermarket, and higher international sales, which more than offset the decline in sales to the U.S. International sales accounted for 64% and 58% of total sales for the third quarters of fiscal 2011 and fiscal 2010, respectively. International sales year-over-year increased $5,274, or 74%, driven by stronger sales to Asia, Middle East and South America. Domestic sales increased $1,775, or 35%, in the third quarter of fiscal 2011 compared with the third quarter of fiscal 2010. Fluctuations in sales among products and geographic locations can vary measurably from quarter-to-quarter based on timing and magnitude of projects. We believe the growth in international sales will continue into fiscal 2012. With our recent acquisition of Energy Steel, which sells primarily into the domestic market, we expect strong domestic sales growth. Sales in the three months ended December 31, 2010 were 40% to the refining industry, 17% to the chemical and petrochemical industries and 43% to other commercial and industrial applications. Sales in

the three months ended December 31, 2009 were 36% to the refining industry, 44% to the chemical and petrochemical industries and 20% to other commercial and industrial applications. For additional information on anticipated future sales and our markets, see “Orders and Backlog” below.

Sales for the first nine months of fiscal 2011 were $48,289, compared with sales of $48,412 for the first nine months of fiscal 2010. Increases in condensers, pumps and heat exchangers were offset by lower ejector and spare sales. International sales accounted for 59% and 52% of total sales for the first nine months of fiscal 2011 and fiscal 2010, respectively. International sales year-over-year increased $3,389, or 14%. International sales increased in South America, Middle East, Canada and Mexico. These increases were partly offset by lower sales in Asia. Domestic sales decreased $3,512, or 15% in the nine months ended December 31, 2010 compared with the nine months ended December 31, 2009. Sales in the first nine months of fiscal 2011 were 34% to the refining industry, 28% to the chemical and petrochemical industries and 38% to other commercial and industrial applications. Sales in the first nine months of fiscal 2010 were 43% to the refining industry, 32% to the chemical and petrochemical industries and 25% to other commercial and industrial applications. For additional information on future anticipated sales and our markets, see “Orders and Backlog” below.

Gross profit for the third quarter of fiscal 2011 was $4,863, up 27% compared with fiscal 2010. Higher gross profit reflects increased volume. However, as a percentage of sales, gross profit for the third quarter of fiscal 2011 was 25% compared with 31% for the third quarter of fiscal 2010 due to the impact of a more competitive pricing environment in which the projects that were shipped in the third quarter were awarded. Orders for many of these projects were received in the second half of fiscal 2010.

Gross profit for the first nine months of fiscal 2011 was $14,060, down 22% compared with the same period in fiscal 2010. Our gross profit margin for the first nine months of fiscal 2011 was 29% compared with 37% for the first nine months of fiscal 2010. Gross profit decreased primarily due to non-repeatable raw material purchasing benefits achieved in the first quarter of fiscal 2010 and as a result of having lower margin projects due to the more competitive pricing environment associated with the projects shipped during the period that had been awarded six to twelve months earlier as discussed above.

Selling, general and administrative (“SG&A”) expense in the three- and nine-month periods ended December 31, 2010 increased $865, or 32%, and $171 or 2%, respectively, compared with the same periods of the prior year. Included in the third quarter of fiscal 2011 was $666 of transaction costs related to our acquisition of Energy Steel, which closed on December 14, 2010. Excluding these costs, SG&A expense in the three- and nine-month periods ended December 31, 2010 increased $199, or 7%, and decreased $495, or 6%, respectively, compared with the same periods of the prior year. SG&A expenses in the first nine months of fiscal 2011, excluding acquisition costs, were lower due to the savings realized from restructuring, which occurred in fiscal 2010, lower pension expense and variable compensation expenses.

SG&A expense as a percent of sales for the three- and nine-month periods ended December 31, 2010 was consistent at 19%. Excluding the Energy Steel acquisition costs noted above, SG&A expense as a percent of sales for the three- and nine-month periods ended December 31, 2010 was 15% and 18%, respectively. This compared with 22% and 19%, respectively, for the same periods ended December 31, 2009.

Interest income for the three- and nine-month periods ended December 31, 2010 was $13 and $47, respectively. Interest income for the same periods of fiscal 2010 was $11 and $44, respectively. The low level of interest income relative to the amount of cash invested reflects the persistently low interest rates on short term U.S. government securities.

Interest expense was $14 and $30 for the three- and nine-month periods ended December 31, 2010, up from $0, but down from $34 for the quarter and year-to-date period ended December 31, 2009.

Our effective tax rate for the three and nine months ended December 31, 2010 was 35% and 33%, respectively. Our projected effective tax rate for fiscal 2011 is between 33% and 34%. The tax rate in the three and nine months ended December 31, 2009 was 31% and 35%, respectively (the effective tax rate for fiscal 2010 was 37%).

Net income for the three and nine months ended December 31, 2010 was $837 and $3,272, respectively. Excluding the costs associated with our acquisition of Energy Steel, net income for the three and nine months ended December 31, 2010 was $1,347 and $3,782, respectively. These results compare with $764 and $5,750, respectively, for the same periods in the prior fiscal year. Income per diluted share in fiscal 2011 was $0.08 and $0.33 for the three and nine-month periods, $0.13 and $0.38, when the Energy Steel transaction costs are excluded, compared with $0.08 and $0.58 for the same periods of fiscal 2010.

**Liquidity and Capital Resources**

The following discussion should be read in conjunction with our Condensed Consolidated Statements of Cash Flows:

| | December 31, 2010 | March 31, 2010 |
|---|---|---|
| Cash and investments | $ 48,234 | $74,590 |
| Working capital | 40,958 | 56,704 |
| Working capital ratio(1) | 2.5 | 2.6 |

1) Working capital ratio equals current assets divided by current liabilities.

The $5,848 of net cash used in operating activities in the nine months of fiscal 2011 compared with the $12,723 of cash provided by operating activities in the prior year period reflects primarily $2,478 lower net income, $7,961 reduction of customer deposits and $3,852 in reduction of unbilled revenue.

Investing activities included the $17,882 in cash used to purchase Energy Steel during the third quarter. Capital expenditures in the first nine months of fiscal 2011 were $1,435, compared with $502 in the same period the prior year. The higher level of capital spending reflects an investment in a major project for the U.S. Navy. We continue to expect capital expenditures for fiscal 2011 will be between $2,800 and $3,300, of which $1,500 will be used to support our project for the U.S. Navy.

We used $153 and $874 of cash to repurchase 10 and 58 shares of common stock in the three- and nine-month periods ended December 31, 2010. This compares with $0 and $229 which was used to repurchase 0 and 26 shares of common stock in the three and nine month periods ended December 31, 2009. Our board of directors implemented a stock repurchase program which was announced in January 2009. The stock repurchase program is effective through the earlier of July 29, 2011, when all 1,000 shares available under the program are

repurchased by us or when our board of directors terminates the program. In total, 362 shares have been repurchased under this plan at a total cost of $3,392.

Dividend payments in the first nine months of fiscal 2011 were $592 compared with $591 for the first nine months of fiscal 2010.

Our cash, cash equivalents, and investments on December 31, 2010 were $48,234 compared with $74,590 at the end of fiscal 2010. Investments on December 31, 2010 were $27,516 compared with $70,060 on March 31, 2010. Investments are made in United States government instruments, generally with maturity periods of 91 to 120 days. Starting in the third quarter of fiscal 2010, we made a decision to keep a portion of our cash and investments in a short term, money market account with Bank of America, to cash collateralize our letters of credit and receive a discounted fee. Cash and equivalents on December 31, 2010 were $20,718 compared with $4,530 on March 31, 2010.

Our current cash, cash equivalents, and investments position includes $14,368 in customer deposits. A small number of major customers provided upfront, negotiated cash payments to assist in lowering our cost to complete their projects in the fourth quarter of fiscal 2010. This cash is being utilized to procure materials for these customers' projects in the fiscal years ended March 31, 2011 and 2012. Although we often obtain progress payments for large projects from our customers throughout the procurement and manufacturing process, during fiscal 2010 more cash was provided for certain orders shortly after the order was secured. During the remainder of fiscal 2011 and into fiscal 2012, we expect operating cash flow may be negative at times, as the customer deposits balance is utilized to procure materials to support production. Through the first nine months of fiscal 2011, our customer deposit liability decreased by $7,961.

The acquisition of Energy Steel included a contingent earn-out, which ranges from $0 to $2,000, dependent upon Energy Steel's earnings performance in calendar years 2011 and 2012. A contingent liability of $1,800 was recorded related to the earn-out and will be payable in fiscal 2011 and fiscal 2012, if achieved. In addition, we entered into an agreement to lease the manufacturing and office facilities of Energy Steel, which provides us with an option to purchase the leased facility for $2,500 at any time during the first two years of the five year lease term.

We entered into a new revolving credit facility with Bank of America, N.A. in December 2010. The new facility provides us with a line of credit of $25,000, including letters of credit and bank guarantees. In addition, the facility has an accordion feature, which allows us to increase the facility by as much as an additional $25,000, for a total of $50,000. Borrowings under our credit facility are secured by all of our assets. Letters of credit outstanding under our credit facility on December 31, 2010 and March 31, 2010 were $15,016 and $9,584, respectively. Other utilization of our credit facility limits at December 31, 2010 and March 31, 2010 were $0. Our borrowing rate as of December 31, 2010 was Bank of America's prime rate, or 3.25%. We believe that cash generated from operations, combined with our investments and available financing capacity under our credit facility, will be adequate to meet our cash needs for the immediate future.

**Orders and Backlog**

Orders for the three- and nine-month periods ended December 31, 2010 were $17,784 and $36,384, respectively, compared with $51,644 and $90,049 for the same periods in the prior fiscal year. Orders represent communications received from customers requesting us to supply products and services. Included in orders for the three-month period ended December 2010 was $839 associated with the acquisition of Energy Steel.

During the third quarter of fiscal 2011, we experienced a decline in orders in all markets, compared with the record orders received in the third quarter of fiscal 2010 (which included the previously mentioned U.S. Navy order in excess of $25,000).

Domestic orders were $8,953 or 50% of total orders, while international orders were $8,831 in the third quarter. In the third quarter of fiscal 2010, domestic orders were $36,981 and international orders were $14,663, or 72% and 28% of total orders, respectively.

For the first nine months of fiscal 2011, domestic orders were 46% of total orders or $16,696, while international orders were 54%, or $19,688. During the first nine months of fiscal 2010, domestic orders were 52%, or $47,078, and international orders were 48% of total orders, or $42,971.

Backlog was down 4% to $90,531 at December 31, 2010, compared with a record $94,255 backlog at March 31, 2010. The current backlog includes Energy Steel, which accounts for $8,625. Backlog is defined as the total dollar value of orders received for which revenue has not yet been recognized. All orders in backlog represent orders from our traditional markets in established product lines. Approximately 70% to 80% of orders currently in backlog are expected to be converted to sales within the next twelve months. This differs from our normal conversion rate, which is approximately 85% to 90% of backlog converting to sales over a twelve-month period. Our current backlog conversion period has been lengthened due to a small number of large projects (especially the project for the U.S. Navy), with extended delivery requirements. At December 31, 2010, 38% of our backlog was attributable to equipment for refinery project work, 8% to chemical and petrochemical projects, and 54% for other commercial or industrial applications (including the Northrop Grumman order for the U.S. Navy). At December 31, 2009, 40% of our backlog was attributed to equipment for refinery project work, 20% to chemical and petrochemical projects, and 40% for other commercial or industrial applications.

At March 31, 2010, our backlog included four orders with a value of $6,655 that had been placed on hold (suspended) pending further customer evaluation. During the nine months ended December 31, 2010, two orders valued at $4,278 were returned to active status and one order valued at $1,588 was cancelled. Production had started on the cancelled project prior to such order being put on hold and the customer requested shipment of the partly completed project on an “as is” basis. At December 31, 2010, one order included in backlog with a value of $1,130 remained on hold (suspended).

**Outlook**

Sales have begun to improve, as evidenced in the second and third quarters of fiscal 2011. Sales increased sequentially by 22% in the third quarter compared with the second quarter, at $19,215, up from $15,723 after an increase of 18% in the second quarter of fiscal 2011 compared with the first quarter of fiscal 2011 of $13,351. We expect the sequential sales growth, which occurred over the past two quarters of fiscal 2011, to continue into the fourth quarter of fiscal 2011. Sales in the first nine months of fiscal 2011 were $48,289. We expect sales for the full fiscal year to be between $69,000 and $72,000.

Orders in the third quarter of fiscal 2011 of $17,784, including $839 from Energy Steel, were improved from the previous two trailing quarters and were about equivalent to the combined order total of $18,600 from the first two quarters of fiscal 2011. Our order activity was strong in fiscal 2010 and included a few very large orders with extended delivery schedules. With the addition of the Energy Steel backlog of $8,625, total backlog on December 31, 2010 was $90,531, just 4% below the March 2010 record level of $94,255.

We expect near term order levels to continue to be variable by quarter. While we have seen some improvements in the Middle East, Asia and recently, South America, it is not clear that the recovery in the international markets has fully taken hold. We also believe the domestic market in refining and chemical processing will be relatively weak for the remainder of fiscal 2011 and beyond. Although we are generally encouraged by the outlook, we anticipate that recovery will commence slowly, particularly in the U.S. markets. We are encouraged at the strength of the domestic nuclear market and the opportunities that this will provide for us with the acquisition of Energy Steel.

For fiscal 2011, we expect sales to increase by 11% to 16%, to between $69,000 and $72,000 when compared with fiscal 2010. This is at the upper end of our previous guidance range, due to the addition of Energy Steel for a few weeks of the third quarter and the entire fourth quarter of fiscal 2011.

We believe that our gross profit margin for fiscal 2011 will be in the 28% to 30% range. This margin level is below the gross profit margin level we achieved in fiscal 2010, which had improved margins in the first two quarters resulting from raw material purchasing benefits. We expect that our margins in fiscal 2011 will be affected by the following:

- A significantly enhanced competitive environment, as we and our competitors have been aggressively pursuing fewer projects.
- A shift toward international markets, where margins are generally lower when compared with domestic projects.
- Continued expected underutilization of capacity, especially in the first two quarters of fiscal 2011.

Gross profit margins are expected to improve beyond fiscal 2011 as volumes increase. We believe the gross profit margin percentage at the peak of the next cycle will be in the mid-to-upper 30% range.

SG&A spending is expected to be between $12,400 and $12,800 for fiscal 2011, excluding the $656 transaction costs related to the Energy Steel acquisition. Our effective tax rate during fiscal 2011 is expected to be between 33% and 34%, absent one time adjustments.

Cash flow in fiscal 2011 is expected to be negative due to our acquisition of Energy Steel, which utilized $17,882 in cash, and the drawdown of customer deposits (which have decreased 36% to $14,368 on December 31, 2010). Customer deposits grew in the fourth quarter of fiscal 2010 from $5,461 at December 31, 2009 to $22,022 at March 31, 2010. The increase in customer deposits was due to a small number of major customers who provided upfront negotiated cash payments to assist in lowering our cost to complete their projects. This cash was and will continue to be utilized to procure materials for these customers' projects through fiscal 2013. We also expect to spend $2,800 to $3,300 in capital spending, above our typical $1,500 to $2,000 range, due to a $1,500 capital project required for the project for the U.S. Navy.

**Commitments and Contingencies**

We have been named as a defendant in certain lawsuits alleging personal injury from exposure to asbestos contained in our products. We are a co-defendant with numerous other defendants in these lawsuits and intend to vigorously defend ourselves against these claims. The claims are similar to previous asbestos lawsuits that named us as a defendant. Such previous lawsuits either were dismissed when it was shown that we had not supplied products to the

plaintiffs' places of work or were settled by us for amounts below expected defense costs. Neither the outcome of these lawsuits nor the potential for liability can be determined at this time.

From time to time in the ordinary course of business, we are subject to legal proceedings and potential claims. As of December 31, 2010, other than noted above, we were unaware of any material litigation matters.

**Critical Accounting Policies, Estimates, and Judgments**

Our unaudited condensed consolidated financial statements are based on the selection of accounting policies and the application of significant accounting estimates, some of which require management to make significant assumptions. We believe that the most critical accounting estimates used in the preparation of our condensed consolidated financial statements relate to labor hour estimates used to recognize revenue under the percentage-of-completion method, accounting for contingencies, under which we accrue a loss when it is probable that a liability has been incurred and the amount can be reasonably estimated, accounting for pensions and other postretirement benefits and determining fair value estimates as they relate to assets acquired and liabilities assumed in business combinations. For further information, refer to Item 7 "Management's Discussion and Analysis of Financial Condition and Results of Operations" and Item 8 "Financial Statements and Supplementary Data" included in our Annual Report on Form 10-K for the year ended March 31, 2010.

**Off Balance Sheet Arrangements**

We did not have any off balance sheet arrangements as of December 31, 2010 or March 31, 2010, other than operating leases.

**Item 3. Quantitative and Qualitative Disclosures About Market Risk**

The principal market risks (i.e., the risk of loss arising from changes in the market) to which we are exposed are foreign currency exchange rates, price risk and project cancellation risk.

The assumptions applied in preparing the following qualitative and quantitative disclosures regarding foreign currency exchange rate, price risk and project cancellation risk are based upon volatility ranges experienced by us in relevant historical periods, our current knowledge of the marketplace, and our judgment of the probability of future volatility based upon the historical trends and economic conditions of the markets in which we operate.

**Foreign Currency**

International sales for the three- and nine-month periods ending December 31, 2010 were 64% and 59% of total sales, respectively, compared with 58% and 52% for the same periods of fiscal 2010. Operating in markets throughout the world exposes us to movements in currency exchange rates. Currency movements can affect sales in several ways, the foremost being our ability to compete for orders against foreign competitors that base their prices on relatively weaker currencies. Business lost due to competition for orders against competitors using a relatively weaker currency cannot be quantified. In addition, cash can be adversely impacted by the conversion of sales made by us in a foreign currency to U.S. dollars.

In the first nine months of each of fiscal 2011 and fiscal 2010, all sales by us and our wholly-owned Chinese subsidiary, for which we were paid, were denominated in the local currency (the vast majority of which were in U.S. dollars, with a small amount of sales denominated in Chinese RMB). We have limited exposure to foreign currency purchases. In the first nine months of fiscal 2011 and 2010, our purchases in foreign currencies represented 1% and 1%, respectively, of the cost of products sold. At certain times, we may utilize forward foreign currency exchange contracts to limit currency exposure. Forward foreign currency exchange contracts were not used in the periods being reported on in this Quarterly Report on Form 10-Q and as of December 31, 2010 and March 31, 2010, we held no forward foreign currency contracts.

**Price Risk**

Operating in a global marketplace requires us to compete with other global manufacturers which, in some instances, benefit from lower production costs and more favorable economic conditions. Although we believe that our customers differentiate our products on the basis of our manufacturing quality and engineering experience and excellence, among other things, such lower production costs and more favorable economic conditions mean that certain of our competitors are able to offer products similar to ours at lower prices. Moreover, the cost of metals and other materials used in our products have experienced significant volatility. Such factors, in addition to the global effects of the recent volatility and disruption of the capital and credit markets, have resulted in downward demand and pricing pressure on our products.

**Project Cancellation and Project Continuation Risk**

As described in Note 3 to the Condensed Consolidated Financial Statements included in Item 1 of this report, at March 31, 2010, our backlog included four orders with a value of $6,655 that had been placed on hold (suspended) pending further customer evaluation. During the nine months ended December 31, 2010, two orders valued at $4,278 were returned to active status and one order valued at $1,588 was cancelled. Production had started on the cancelled project prior to such order being put on hold and the customer requested shipment of the partly completed project on an “as is” basis. At December 31, 2010, one order included in backlog with a value of $1,130 remained on hold (suspended). We attempt to mitigate the risk of cancellation by structuring contracts with our customers to maximize the likelihood that progress payments made to us for individual projects cover the costs we have incurred. As a result, we do not believe we have a significant cash exposure to projects which may be cancelled.

Open orders are reviewed continuously through communications with customers. If it becomes evident to us that a project is delayed well beyond its original shipment date, management will move the project into placed on hold (suspended) category. Furthermore, if a project is cancelled by our customer, it is removed from our backlog.

## Item 4. Controls and Procedures

*Conclusion regarding the effectiveness of disclosure controls and procedures*

Our President and Chief Executive Officer (principal executive officer) and Vice President-Finance & Administration and Chief Financial Officer (principal financial officer) each have evaluated the effectiveness of our disclosure controls and procedures (as defined in Exchange

Act Rules 13a-15(e) and 15d-15(e)) as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on such evaluation, and as of such date, our President and Chief Executive Officer and Vice President-Finance & Administration and Chief Financial Officer concluded that our disclosure controls and procedures were effective in all material respects.

*Changes in internal control over financial reporting*

Other than the events discussed under the section entitled Energy Steel acquisition below, there has been no change to our internal control over financial reporting during the quarter covered by this Quarterly Report on Form 10-Q that has materially affected, or that is reasonably likely to materially affect, our internal control over financial reporting.

*Energy Steel Acquisition*

On December 14, 2010, we acquired Energy Steel, a code fabrication and specialty machining company dedicated exclusively to the nuclear power industry and located in Lapeer, Michigan. For additional information regarding the acquisition, refer to Note 2 to the Unaudited Condensed Consolidated Financial Statements and Management's Discussion and Analysis of Financial Condition and Results of Operations included in Item 2 in this Quarterly Report on Form 10-Q.

As permitted by Securities and Exchange Commission guidance, we plan to exclude the Energy Steel acquisition from the scope of our Sarbanes-Oxley Section 404 report on internal control over financial reporting for the fiscal year ending March 31, 2011. We are in the process of implementing our internal control structure over the Energy Steel acquisition and we expect that this effort will be completed during the fiscal year ending March 31, 2012.

GRAHAM CORPORATION AND SUBSIDIARY

FORM 10-Q

December 31, 2010

PART II — OTHER INFORMATION

**Item 1A. Risk Factors**

***Our acquisition of Energy Steel & Supply Co. may not be successful.***

On December 14, 2010, we acquired Energy Steel & Supply Co., which provides products to the nuclear industry. We cannot provide any assurances that we will be able to integrate the operations of Energy Steel without encountering difficulties, including unanticipated costs, difficulty in retaining customers and supplier or other relationships, failure to retain key employees, diversion of management's attention, failure to integrate our information and accounting systems or establish and maintain proper internal control over financial reporting, any of which would harm our business and results of operations.

Furthermore, we may not realize the revenue and net income that we expect to achieve or that would justify our investment in Energy Steel, and we may incur costs in excess of what we anticipate. To effectively manage our expected future growth, we must continue to successfully manage our integration of Energy Steel and continue to improve our operational systems, internal procedures, accounts receivable and management, financial and operational controls. If we fail in any of these areas, our business and results of operations could be harmed.

***Our acquisition of Energy Steel might subject us to unknown liabilities.***

Energy Steel may have unknown liabilities, including, but not limited to, product liability, workers' compensation liability, tax liability and liability for improper business practices. Although we are entitled to indemnification from the seller of Energy Steel for these and other matters, we could experience difficulty enforcing those obligations or we could incur material liabilities for the past activities of Energy Steel. Such liabilities and related legal or other costs could harm our business or results of operations.

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

Under our previously announced stock repurchase program, we may make repurchases of our common stock from time to time either in the open market or through privately negotiated transactions and fund such repurchases with current cash on hand and cash generated from operations. Our stock repurchase program terminates at the earlier of the expiration of the program in July 2011, when all 1,000 shares authorized thereunder are repurchased or when our Board of Directors otherwise determines to terminate the program. Common stock repurchases in the quarter ended December 31, 2010 were as follows:

| Period | (a) Total Number of Shares Purchased | (b) Average Price Paid Per Share | (c)(1) Total Number of Shares Purchased As Part of Publicly Announced Plans or Programs | (d) Maximum Number of Shares that May Yet Be Purchased Under The Plans or Programs |
|---|---|---|---|---|
| 10/1/2010 — 10/31/2010 | 10 | $ 14.98 | 362 | 638 |
| 11/1/2010 — 11/30/2010 | — | — | 362 | 638 |
| 12/1/2010 — 12/31/2010 | — | — | 362 | 638 |
| Total | 10 | $ 14.98 | 362 | 638 |

(1) The total number of shares repurchased as part of our publicly announced program includes all shares repurchased since the commencement of the stock repurchase program on January 29, 2009.

**Item 6. Exhibits**

See index to exhibits on page 36 of this report.

SIGNATURES

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

GRAHAM CORPORATION

By: /s/ Jeffrey Glajch
Jeffrey Glajch
Vice President - Finance & Administration and Chief Financial Officer

Date: February 8, 2011

INDEX TO EXHIBITS

| | | | |
|---|---|---|---|
| (3) | (ii) | Bylaws | |
| | | 3.2 | Amended and Restated By-Laws of Graham Corporation, are incorporated herein by reference from Exhibit 3.2 to the Company's Current Report on Form 8-K dated October 28, 2010. |
| | (10) | Material Contracts | |
| * | | 10.1 | Stock Purchase Agreement dated December 14, 2010 by and among Graham Corporation, ES Acquisition Corp., Energy Steel & Supply Co. and Lisa D. Rice, individually, and as Trustee of the Lisa D. Rice Revocable Trust dated June 5, 2003. |
| * | | 10.2 | Earn Out Agreement dated December 14, 2010 by and between Energy Steel Acquisition Corp., Graham Corporation and Lisa D. Rice, individually, and as Trustee of the Lisa D. Rice Revocable Trust dated June 5, 2003. |
| * | | 10.3 | Escrow Agreement dated December 14, 2010 by and among PNC Bank, National Association, ES Acquisition Corp. and Lisa D. Rice, individually and as Trustee of the Lisa D. Rice Revocable Trust dated June 5, 2003. |
| * | | 10.4 | Lease Agreement by and between ESSC Investments, LLC, Energy Steel & Supply Co., and Graham Corporation dated December 14, 2010. |
| | | 10.5 | Loan Agreement between the Company and Bank of America, N.A., dated December 3, 2010, is incorporated herein by reference from Exhibit 99.1 to the Company's Current Report on Form 8-K dated December 3, 2010. |
| | | 10.6 | Trademark Security Agreement Amendment 1 between the Company and Bank of America, N.A., dated December 3, 2010, is incorporated herein by reference from Exhibit 99.2 to the Company's Current Report on Form 8-K dated December 3, 2010. |
| | (31) | Rule 13a-14(a)/15d-14(a) Certifications | |
| * | | 31.1 | Certification of Principal Executive Officer |
| * | | 31.2 | Certification of Principal Financial Officer |
| | (32) | Section 1350 Certifications | |
| * | | 32.1 | Section 1350 Certifications |

* Exhibits filed with this report.

**EXHIBIT 10.1**

# STOCK PURCHASE AGREEMENT

**by and among**

**GRAHAM CORPORATION,**

**ES ACQUISITION CORP.,**

**ENERGY STEEL & SUPPLY CO.**

**and**

**LISA D. RICE, individually**
**and as Trustee of the LISA D. RICE REVOCABLE TRUST DATED JUNE 5, 2003**

**Dated as of December 14, 2010**

**STOCK PURCHASE AGREEMENT**

This **STOCK PURCHASE AGREEMENT** (this "***Agreement***") has been made as of December 14, 2010 ("***Effective Date***"), by and among **GRAHAM CORPORATION**, a Delaware corporation ("***Graham***"), **ES ACQUISITION CORP.**, a Delaware corporation and a direct wholly-owned Subsidiary of Graham ("***Buyer***"), **ENERGY STEEL & SUPPLY CO.**, a Michigan corporation ("***Energy Steel***"), and **LISA D. RICE individually ("*Rice*") and as sole Trustee of the LISA D. RICE REVOCABLE TRUST DATED JUNE 5, 2003** (the "***Trust***", collectively referred to with Rice as the "***Seller***"). Graham, Buyer, Energy Steel and the Seller are collectively referred to herein as the "***parties,***" and each is a "***party***" as described further below.

**WHEREAS**, the Seller is the sole beneficial and record holder of nine thousand (9,000) shares of no par value voting common stock of Energy Steel, which constitute all of the issued and outstanding shares of capital stock of Energy Steel (the "***Energy Steel Shares***");

**WHEREAS**, the Buyer desires to acquire from the Seller, and the Seller desires to sell to the Buyer, for the consideration hereinafter provided, the Energy Steel Shares; and

**NOW, THEREFORE,** in consideration of the premises and the representations, warranties and covenants herein contained, the parties agree as follows:

## ARTICLE 1.

## DEFINITIONS

**1.1 Definitions.**

In addition to the other definitions contained in this Agreement, the following terms will, when used in this Agreement, have the following respective meanings:

"***Actual Unpaid Transaction Expenses***" means the actual amount of all Energy Steel Transaction Expenses that were not paid by Energy Steel as of the close of business on the Closing Date.

"***Affiliate***" means a Person which, directly or indirectly, controls, is controlled by, or is under common control with, the referenced party.

"***Business***" means the business conducted by Energy Steel, both as of the date hereof and as of the Closing, that being principally the manufacture and supply of certain products and raw materials to the nuclear industry.

"***Capital Expenditure***" means any expenditures by Energy Steel for the acquisition, lease, repair or improvement of fixed or capital assets, including any and all improvements or repairs to equipment.

"***Certifying Officers***" means: (a) in the case of Energy Steel, its President; and (b) in the case of Graham, any one of its duly elected executive officers.

"***Claim***" means any actual or threatened contest, claim, demand, assessment, action, suit, cause of action, complaint, litigation, proceeding, hearing, arbitration, investigation or notice involving any Person.

"***Closing***" means the consummation of the purchase and sale of the Energy Steel Shares as set forth in Section 2.3.

"***Code***" means the Internal Revenue Code of 1986, as amended, together with all rules and regulations promulgated thereunder.

"***Competition Laws***" means and includes the Sherman Act, as amended, the Clayton Act, as amended, the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, the Federal Trade Commission Act, as amended, national competition Laws, European Union competition Laws and all other U.S. or non-U.S. Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade.

"***Contracts***" means and includes all contracts, subcontracts, agreements, leases, licenses, sublicenses, options, notes, bonds, mortgages, indentures, deeds of trust, collateral assignments, obligations, instruments, concessions, guarantees, franchises, purchase orders, arrangements, commitments, undertakings and understandings of any kind, whether written or oral.

"***Disclosure Schedules***" means the disclosure schedules, in the form approved by the Buyer and Graham (as evidenced by their execution of this Agreement), and delivered by Energy Steel to Graham and Buyer concurrently with the execution and delivery of this Agreement.

"***Earn Out Agreement***" means the earn out agreement delivered by Buyer to Seller at the Closing in the form attached hereto as Exhibit A.

"***Encumbrances***" means and includes all liens, charges, encumbrances, mortgages, pledges, security interests, options and any other restrictions or third party rights, including without limitation guarantees.

"***Energy Steel Debt***" means all indebtedness of Energy Steel on which interest accrues (including both the current and long-term portions of any long-term indebtedness), all as identified on Schedule 1.1.

"***Energy Steel Transaction Expenses***" means fees and expenses incurred by Energy Steel, on its behalf or on behalf of Seller (including any obligation of Energy Steel to reimburse the Seller for any such fees and expenses), in respect of (i) legal, accounting, investment banking services and other professional services, in each case on the sell-side of the transaction in connection with the transactions contemplated under this Agreement through and including the Closing Date, (ii) any severance or stay bonus payment payable to directors, officers, employees and respective Affiliates of Energy Steel at or prior to the Closing as a result of or in contemplation of the consummation of the transactions contemplated by this Agreement, (iii) any fees paid by the Seller or Energy Steel on behalf of the Seller to the Unrelated Accounting Firm and (iv) any fees or expenses paid by or due

from Seller or Energy Steel in connection with that certain Letter Agreement with August Mack Environmental, Inc. dated November 8, 2010, accepted by Energy Steel on November 16, 2010 and that certain Letter Agreement with Kurschat & Company dated November 11, 2010, accepted by Energy Steel on November 16, 2010.

"***Environmental Laws***" means, collectively, all U.S. federal, national, state and local statutes, regulations, ordinances, codes, published guidelines and policies, directives and orders (including all amendments thereto) pertaining to environmental matters (which includes air, water vapor, surface water, groundwater, soil, natural resources, chemical use, health, safety and sanitation), including the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Clean Air Act, the Federal Water Pollution Control Act, the Safe Water Drinking Act, the Toxic Substance Control Act and the Occupational Safety and Health Act.

"***ERISA***" means the Employee Retirement Income Security Act of 1974, as amended, together with all rules and regulations promulgated thereunder.

"***Escrow Agent***" means PNC Bank, National Association.

"***Escrow Agreement***" means the escrow agreement by and among Buyer, Seller and Escrow Agent in the form attached hereto as Exhibit B.

"***Estimated Net Working Capital***" means the Net Working Capital, as set forth on the Estimated Working Capital and Unpaid Transaction Expenses Schedule.

"***Estimated Unpaid Transaction Expenses***" means the estimate, as prepared and specified in the Estimated Working Capital and Unpaid Transaction Expenses Schedule, of the amount of all Energy Steel Transaction Expenses that will not be paid by Energy Steel as of the close of business on the Closing Date and that are to be paid by Energy Steel after the Closing Date.

"***Estimated Working Capital and Unpaid Transaction Expenses Schedule***" means the draft schedule of the Net Working Capital as of the Closing Date, prepared and delivered by Energy Steel and the Seller at the Closing in accordance with the calculation formula attached hereto as Exhibit C.

"***Exchange Act***" means the Securities Exchange Act of 1934, as amended, together with all rules and regulations promulgated thereunder.

"***Excluded Assets and Claims***" means all assets and claims of Energy Steel listed on Schedule 2.5.

"***Final Working Capital and Unpaid Transaction Expenses Schedule***" means the schedule of the Net Working Capital and Estimated Unpaid Transaction Expenses as of the Closing Date, which shall be in the same format as the Estimated Working Capital and Unpaid Transaction Expenses Schedule and will include a calculation of the Net Working Capital, as finally agreed to or otherwise determined by operation of Section 2.2(b), and the Working Capital Deficit or Working Capital Surplus, if any, and the Actual Unpaid Transaction Expenses.

"***Fiscal 2008***" means Energy Steel's fiscal year beginning on October 1, 2007 and ending on September 30, 2008.

"***Fiscal 2009***" means Energy Steel's fiscal year beginning on January 1, 2009 and ending on December 31, 2009.

"***Foreign Corrupt Practices Act***" means the Foreign Corrupt Practices Act of 1977, as amended, and the regulations promulgated thereunder.

"***GAAP***" means United States generally accepted accounting principles as in effect from time to time.

"***GAAP Exceptions***" means the exceptions to GAAP and/or the accounting principles and methods of Energy Steel which modify or interpret GAAP, all as set forth on Exhibit D.

"***Governmental Entity***" means any U.S. or non-U.S. federal, national, state or local court, legislative body, governmental or quasi-governmental body, municipality, political subdivision, department, commission, board, bureau, tribunal, department, administration, council, agency, arbitrator, authority or other instrumentality.

"***Hazardous Substances***" means and includes: (a) any hazardous materials, hazardous wastes, hazardous substances and toxic substances as those or similar terms are defined under any Environmental Law; (b) any asbestos or any material that contains any hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophylite and/or actinolite, whether friable or non-friable; (c) any polychlorinated biphenyls or polychlorinated biphenyl-containing materials or fluids; (d) radon; (e) any other hazardous, radioactive, toxic or noxious substance, material, pollutant, contaminant or solid, liquid or gaseous waste; (f) any petroleum, petroleum hydrocarbons, petroleum products, crude oil or any fractions thereof, natural gas or synthetic gas; and (h) any substance that, whether by its nature or its use, is or becomes subject to regulation under any Environmental Laws or with respect to which any Environmental Laws or Governmental Entity requires or will require environmental investigation, monitoring or remediation.

"***Improvements***" means all buildings, structures, fixtures, building systems and equipment, and all components thereof, including the roof, foundation, load-bearing walls and other structural elements thereof, heating, ventilation, air conditioning, mechanical, electrical, plumbing and other building systems, environmental control, remediation and abatement systems, sewer, storm and waste water systems, irrigation and other water distribution systems, parking facilities, fire protection, security and surveillance systems, and telecommunications, computer, wiring and cable installations, included in any Leased Real Property (as defined below).

"***Intellectual Property***" means all of the following in any jurisdiction throughout the world: (a) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions, and reexaminations thereof; (b) all trademarks, service marks, trade dress, logos, slogans, trade names, corporate names, internet domain names, and rights in telephone numbers (excluding the cellular telephone number of Seller, whether or not a paid expense of Energy Steel), together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all

applications, registrations, and renewals in connection therewith; (c) all copyrightable works, all copyrights, and all applications, registrations, and renewals in connection therewith; (d) all mask works and all applications, registrations, and renewals in connection therewith; (e) all trade secrets and confidential business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer, contact and supplier lists (including, without limitation, all addresses, phone numbers and other relevant contact information in whatever medium for any of the aforementioned), pricing and cost information, and business and marketing plans and proposals); (f) all computer software (including source code, executable code, data, databases and related documentation); (g) all advertising and promotional materials; (h) all other proprietary rights; and (i) all copies and tangible embodiments thereof (in whatever form or medium).

"***IRS***" means the U.S. Internal Revenue Service.

"***Laws***" means, collectively, all U.S. laws, statutes, rulings, rules, regulations, judgments, orders, decrees, awards, injunctions, writs, requirements, permits, certificates and ordinances of any Governmental Entity, as in effect from time to time.

"***Leases***" means all leases, subleases, licenses, concessions and other agreements (written or oral), including all amendments, extensions, renewals, guaranties and other agreements with respect thereto, pursuant to which Energy Steel holds any real property, including the right to all security deposits and other amounts and instruments deposited by or on behalf of Energy Steel thereunder.

"***Liability***" means any liability (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due), including any liability for Taxes.

"***Loss***" or "***Losses***" means any and all judgments, losses, Liabilities, amounts paid in settlement, damages, fees, fines, penalties, deficiencies, costs and expenses (including interest, court costs, reasonable fees and expenses of attorneys, accountants and other experts or other reasonable expenses of litigation or other proceedings or of any claim, default or assessment).

"***Material Adverse Effect"*** or "***Material Adverse Change***" means, with respect to any entity any occurrence, incident, action, failure to act, event, change or effect that is or could reasonably be expected to be, materially adverse to the condition (financial or otherwise), properties, assets, liabilities, business, results of operations, or prospects of such entity and its subsidiaries, taken as a whole, or to the enforcement of this Agreement and any agreement contemplated herein, except changes or any effect resulting from (a) the announcement or other disclosure of this Agreement, (b) changes in general business and/or economic conditions, hostilities involving the United States or in general financial market conditions; (c) any changes in Laws directly or indirectly affecting the Buyer, Seller or Energy Steel; and (d) general developments affecting the industry in which Energy Steel competes (so long as such changes do not disproportionately and adversely affect Energy Steel to a materially disproportionate degree as compared to similarly situated businesses).

"***Mitchell***" means Michael Mitchell.

"***Mitchell Note***" means that certain promissory note between Seller and Michael Mitchell dated August 28, 2003, as amended.

"***Net Working Capital***" means the current assets (other than cash) less the current liabilities of Energy Steel as of the close of business on the Closing Date less debt paid as of the Closing Date, prepared in accordance with GAAP consistently applied and the other terms and conditions set forth herein. Current liabilities shall specifically exclude any that relate to any Energy Steel Transaction Expenses, which shall be and remain the sole responsibility of the Seller.

"***Ordinary Course of Business***" means, when used with respect to any Person, the ordinary course of business of such Person, consistent with past custom and practice of such Person (including with respect to quantity and frequency).

"***Person***" means and includes any individual, partnership, corporation, trust, company, unincorporated organization, joint venture or other entity, and any Governmental Entity.

"***Pre-Closing Taxes***" means (i) all Taxes (or the non-payment thereof) of Energy Steel attributable to any Pre-Closing Tax Period; (ii) any Tax Liability resulting from the operations of Energy Steel for the Pre-Closing Tax Period; (iii) all Taxes (or the non-payment thereof) of any member of an affiliated, consolidated, combined or unitary group of which Energy Steel was a member prior to the Closing Date imposed on Energy Steel, including pursuant to Treasury Regulation Section 1.1502-6 or any analogous or similar state, local, or foreign law or regulation, and (iv) all Taxes (or the non-payment thereof) of any Person (other than Energy Steel) imposed on Energy Steel as a transferee or successor, by Contract or pursuant to any Law, rule or regulation, which Taxes relate to an event or transaction occurring prior to Closing. In the case of any taxable period that includes (but does not end on) the Closing Date (a "***Straddle Period***"), the amount of any Taxes based on or measured by income or receipts of Energy Steel for the Pre-Closing Tax Period shall be determined based on an interim closing of the books as of the close of business on the Closing Date (and for such purpose, the taxable period of any partnership or other pass-through entity in which Energy Steel holds a beneficial interest shall be deemed to terminate at such time) and the amount of other Taxes of Energy Steel that relate to the Pre-Closing Tax Period shall be deemed to be the amount of such Tax for the entire taxable period multiplied by a fraction, the numerator of which is the number of days in the taxable period ending on and including the Closing Date and the denominator of which is the number of days in the entire taxable period.

"***Pre-Closing Tax Period***" means any taxable period or portion thereof ending on or before the Closing Date. In the case of any Straddle Period, the portion of the Straddle Period through the end of the Closing Date shall constitute a Pre-Closing Tax Period.

"***Prime Rate***" means the per annum rate of interest publicly announced from time to time by HSBC Bank, N.A. as its prime rate (or reference rate).

"***Release***" means the release, deposit, disposal or leakage of any Hazardous Substance at, into, upon or under any land, water or air, or otherwise into the environment or in any other manner that threatens human health or the environment, including without limitation, by means of burial, disposal, discharge, emission, injection, spillage, leakage, seepage, leaching, dumping, pumping, pouring, escaping, placement and the like.

"***Representatives***" means, when used with respect to any Person, such Person's attorneys, accountants and other advisors.

"***SEC***" means the U.S. Securities and Exchange Commission.

"***Securities Act***" means the Securities Act of 1933, as amended, together with all rules and regulations promulgated thereunder.

"***Subsidiary***" means, with respect to any Person, any corporation, partnership, joint venture, trust or other entity of which such Person, directly or indirectly through an Affiliate, owns an amount of voting securities, or possesses other ownership interests, having the power, direct or indirect, to elect a majority of the board of directors or other governing body thereof.

"***Target Working Capital***" means an amount specified in and/or derived from application of the Working Capital Formula Schedule attached hereto as Exhibit E.

"***Tax***" or "***Taxes***" means, collectively, U.S. and non-U.S. federal, national, state and local income, payroll, withholding, employment, excise, sales, use, real and personal property, use and occupancy, business and occupation, gross receipts, mercantile, real estate, capital stock and franchise or other taxes, duties or assessments of any nature whatsoever, including all penalties, interest or addition thereon and estimated or deferred taxes.

"***U.S.***" means the United States of America.

"***Violation***" means that the referenced fact or event: (a) conflicts with, or results in any violation of, or a default (with or without notice or lapse of time, or both) under, or gives rise to a right of termination, cancellation or acceleration of any obligation or the loss of a material benefit under, or the creation of an Encumbrance (other than a Permitted Encumbrance) on assets in connection with, the referenced Contract or other document; or (b) conflicts with, or results in any violation (with or without notice or lapse of time, or both) under, or gives rise to any Liability, damages, penalty or remedial action under, the referenced Law.

"***Working Capital Deficit***" means the amount, if any, by which the Net Working Capital reflected on the Final Working Capital and Unpaid Transaction Expenses Schedule is less than the Estimated Net Working Capital applying the Working Capital Formula.

"***Working Capital Formula***" means the formula utilized in determining both the Target Working Capital and the Final Working Capital as set forth on Exhibit E.

"***Working Capital Surplus***" means the amount, if any, by which the Net Working Capital reflected on the Final Working Capital and Unpaid Transaction Expenses Schedule is more than the Estimated Net Working Capital.

**1.2 Interpretation.**

In this Agreement, unless the express context otherwise requires:

(a) the words "***herein***," "***hereof***" and "***hereunder***" and words of similar import refer to this Agreement as a whole, including the Disclosure Schedules and the Exhibits, and not to any particular provision of this Agreement;

(b) references to "***Article***" or "***Section***" are to the respective Articles and Sections of this Agreement, and references to "***Exhibit***" are to the respective Exhibits annexed hereto;

(c) references to a "***party***" means a party to this Agreement and include references to such party's successors and permitted assigns;

(d) references to a "***third party***" means a Person that is neither a party to this Agreement nor an Affiliate thereof;

(e) the terms "***dollars***" and" means U.S. dollars;

(f) the terms ***"knowledge"*** or "***known***" means those facts or things of which a party has actual information. For purposes of this Agreement, the (i) term "***Energy Steel's knowledge***" or "***knowledge of Energy Steel***" shall mean the actual knowledge of Seller, Allan Valentine, Robert Paton, Waylon Waters, Arthur Olson, Timothy Shepherd, Neal Lake and Wendy Kirk, and (ii) term "***knowledge of Graham***" or "***knowledge of Buyer***" shall mean the actual knowledge of Jeffrey F. Glajch, James R. Lines and Jennifer R. Condame;

(g) terms defined in the singular have a comparable meaning when used in the plural, and vice versa;

(h) the masculine pronoun includes the feminine and the neuter, and vice versa, as appropriate in the context; and

(i) wherever the word "***include***," "***includes***" or "***including***" is used in this Agreement, it will be deemed to be followed by the words *"without limitation*," unless the context provides otherwise, i.e., ***"****including only. . . .* "

**ARTICLE 2.**

**PURCHASE AND SALE OF ENERGY STEEL SHARES**

**2.1 Basic Transaction**.

On and subject to the terms and conditions of this Agreement, the Buyer agrees to purchase from the Seller, and the Seller agree to sell the Energy Steel Shares free and clear of all Encumbrances for a purchase price comprised of: (a) a fixed amount of Eighteen Million Dollars ($18,000,000) in cash (the "***Initial Cash Payment***"); and (b) an amount up to Two Million Dollars ($2,000,000) (the "***Earn Out Amount***"), plus or minus any adjustments determined in accordance with Section 2.2(b) (collectively, the "***Purchase Price***").

**2.2 Payment of Purchase Price; Adjustments.**

(a) Closing Payments. The Purchase Price shall be paid by Graham to Seller in accordance with Subsections 2.2(a)(i), (ii), (iii) and (iv) below at the Closing as follows:

(i) Initial Cash Payment — On the Closing Date, Graham will pay to Seller the Initial Cash Payment, in cash or immediately available funds by wire transfer to an account specified by Seller in writing at least two (2) days prior to the Closing Date, less any of the following: (1) to the holder of the Energy Steel Debt an amount equal to the Energy Steel Debt contemplated to be paid in cash in accordance with the instructions set forth in the Pay-Off Letter(s); (2) to Mitchell in an amount equal to the outstanding balance under the Mitchell Note to be paid in cash in accordance with the instructions set forth in the Pay-Off Letter(s); (3) the payment of the Estimated Unpaid Transaction Expenses in the amount set forth on Schedule 2.2(a); (4) the amount, if any, by which the Target Working Capital exceeds the Estimated Net Working Capital; and (5) the Escrow Amount (as defined below).

(ii) Earn Out Amount — On the Closing Date, Graham shall execute and deliver to Seller the Earn Out Agreement in the amount of Two Million Dollars ($2,000,000);

(iii) Escrow Amount — On the Closing Date, Graham shall deliver One Million Seven Hundred Fifty Thousand Dollars ($1,750,000) (the "***Escrow Amount***") to the Escrow Agent to be held pursuant to the terms and conditions of the Escrow Agreement; and

(iv) Preliminary/Working Capital Surplus/Deficit — On the Closing Date, in addition to the Initial Cash Payment and the Escrow Amount, Graham shall pay to the Seller a cash payment in an amount equal to the amount, if any, by which the Estimated Net Working Capital exceeds the Target Working Capital.

(b) Post-Closing Adjustments. Graham shall prepare and by May 31, 2011 deliver to the Seller the Final Working Capital and Unpaid Transaction Expenses Schedule. Graham shall provide the Seller and its accounting and tax representatives, at the Seller's sole cost and expense, with full and prompt access to the books and records of Energy Steel for purposes of validating the Final Working Capital and Unpaid Transaction Expenses Schedule. In the absence of any objections from the Seller within thirty (30) days following receipt of such calculation, Graham's determination of the Final Working Capital and Unpaid Transaction Expenses Schedule shall be conclusive, final and binding on the parties for purposes of determining the Net Working Capital, Working Capital Surplus, Working Capital Deficit and the Actual Unpaid Transaction Expenses. However, such determination shall not affect any other of Graham's or Buyer's rights under this Agreement, including without limitation under Article 7. If Seller objects to the Final Working Capital and Unpaid Transaction Expenses Schedule within thirty (30) days following receipt of such calculation from Graham, the Seller shall deliver a written dispute notice to Graham which shall set forth the specific line items in dispute and provide the basis for such dispute in reasonable detail, including but not limited to a claim that Seller and Representatives have not been furnished adequate information to confirm or refute the determination of Graham. If, after ten (10) days from the date notice of a dispute is given hereunder, the Seller and Graham cannot agree on the resolution of all of the disputed items, the Final Working Capital and Unpaid Transaction Expenses Schedule shall be adjusted to the extent of any items that are not in dispute, and the items still in dispute shall be referred to Grant Thornton LLP or another independent public accounting firm acceptable to both the Seller and Graham (the ***"Unrelated Accounting Firm"***) to resolve the dispute, whose decision as to the issues in dispute shall be conclusive, final and binding upon the Seller and Graham for purposes of this Agreement. The Unrelated Accounting Firm shall address only those issues in dispute in accordance with the terms of this Section 2.2(b) and may not assign a value to any item

greater than the greatest value for such item claimed by either party or less than the smallest value for such item claimed by either party. The fees and expenses of the Unrelated Accounting Firm shall be paid 50/50 by the Seller and Buyer.

(c) Upon finalizing the Final Working Capital and Unpaid Transaction Expenses Schedule, either by agreement or by the Unrelated Accounting Firm: (i) to the extent there is a Working Capital Surplus, Graham will pay the Seller an amount equal to such Working Capital Surplus within ten (10) days of delivery of the Final Working Capital and Unpaid Transaction Expenses Schedule. If such Working Capital Surplus is not paid within such ten (10) day period, then interest shall accrue and be due and payable from Graham on the Working Capital Surplus from and including the Closing through and including the date of payment at Prime Rate plus two percent (2%) per annum; and (ii) to the extent there is a Working Capital Deficit or the Actual Unpaid Transaction Expenses exceeds the Estimated Unpaid Transaction Expenses, within ten (10) days following the delivery of the Final Working Capital and Unpaid Transaction Expenses Schedule, the Seller will pay to Graham in cash (by wire transfer of immediately available funds to an account designated by Graham) the amount of the Working Capital Deficit and the amount by which the Actual Unpaid Transaction Expenses exceeds the Estimated Unpaid Transaction Expenses, if any. If such amounts are not paid within such fifteen (15) day period, then interest shall accrue and be due and payable from the Seller on such amounts from and including the Closing through and including the date of payment at Prime Rate plus two percent (2%) per annum.

(d) Delivery of all payments required under this Section 2.2 or any provision hereof shall be made in cash by the wire transfer of immediately available funds to such bank account as designated in writing by the recipient or, in the case of any payments owed Graham or Buyer by the Seller, may be offset against any future amounts that Buyer or Graham may owe the Seller under this Agreement or the Earn Out Agreement.

**2.3 The Closing.**

The Closing of the transactions contemplated by this Agreement shall take place at a location mutually agreed to by the Buyer and Seller commencing on the date of this Agreement (the **"*Closing Date*"**).

**2.4 Deliveries at the Closing.**

At the Closing, (i) Energy Steel and the Seller will execute and deliver or cause to be executed and delivered to the Buyer the agreements, certificates, instruments, and documents referred to in Section 6.2 or otherwise contemplated herein, (ii) Graham and the Buyer will execute and deliver or cause to be executed and delivered to the Seller the agreements, certificates, instruments, and documents referred to in Section 6.3 or otherwise contemplated herein, (iii) the Seller will deliver to the Buyer stock certificates representing all of the Energy Steel Shares, endorsed in blank or accompanied by duly executed assignment documents, and (iv) Graham and the Buyer will deliver the Purchase Price as specified in Section 2.2(a).

**2.5 Excluded Assets.**

Notwithstanding anything to the contrary set forth herein, all of the tangible and intangible assets, rights and claims listed onSchedule 2.5 shall be excluded from the sale contemplated by this

Agreement and shall remain the property of the Seller or shall be transferred and assigned by Energy Steel to Seller prior to Closing.

## ARTICLE 3.

## REPRESENTATIONS AND WARRANTIES OF ENERGY STEEL AND THE SELLER

Energy Steel and the Seller jointly and severally represent and warrant to Graham and Buyer that the statements contained in this Section are correct and true as of the date of this Agreement and will be correct and true as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this Article), except as set forth in the Disclosure Schedules.

**3.1 Organization, Standing and Power.**

(a) Energy Steel is a corporation duly organized, validly existing and in good standing under the Laws of the State of Michigan. Energy Steel has no Subsidiaries and does not own an equity interest in any Person. Energy Steel has all requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted and, except as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, is duly qualified and in good standing to do business in each other jurisdiction in which the nature of its business or the ownership or leasing of its properties makes such qualification necessary. Energy Steel has heretofore made available to Graham and Buyer true, correct and complete copies of the articles of incorporation and bylaws, as currently in effect, of Energy Steel and has made available to Graham and Buyer true, correct and complete minute books and stock records of Energy Steel. The stock records fairly and accurately reflect the ownership of all of outstanding shares of capital stock of Energy Steel. The minute books contain accurate records of the proceedings of all material actions formally taken by the shareholders, the board of directors and each committee of the board of directors of Energy Steel. The other books and records of Energy Steel have been maintained in accordance with reasonable business practices in accordance with past practices of Energy Steel. Energy Steel is not in default under or in violation of any provision of its charter or bylaws.

**3.2 Capital Structure.**

(a) The authorized capital stock of Energy Steel consists entirely of sixty thousand (60,000) shares ofno par value common stock.

(b) As of the date hereof, the only shares of capital stock issued and outstanding of Energy Steel are the Energy Steel Shares (being nine thousand (9,000) shares of common stock issued to or otherwise held in the name of Seller).

(c) All of the Energy Steel Shares have been duly authorized, are validly issued, fully paid, and nonassessable. Except as provided on Schedule 3.2, there are no outstanding or authorized options, warrants, purchase rights, subscription rights, conversion rights, exchange rights, or other contracts or commitments that could require Energy Steel to issue, sell, or otherwise cause to become outstanding any additional shares of Energy Steel capital stock. Except as provided on Schedule 3.2, there are no outstanding or authorized stock appreciation, phantom stock, profit

participation, or similar rights with respect to Energy Steel. Except as provided on Schedule 3.2, there are no voting trusts, proxies, or other agreements or understandings with respect to the voting of the capital stock of Energy Steel.

(d) The Seller holds of record and beneficially owns all of the Energy Steel Shares as more particularly described in Schedule 3.2(d), free and clear of any restrictions on transfer (other than any restrictions under the Securities Act and state securities laws), Taxes, Encumbrances, options, warrants, purchase rights, contracts, commitments, equities, claims, and demands. The Seller is not a party to any option, warrant, purchase right, or other agreement, contract or commitment involving any shares of Energy Steel capital stock, including any agreement, contract or commitment that would require the Seller to sell, transfer, or otherwise dispose of any capital stock of Energy Steel (other than this Agreement). The Seller has full voting power over all of the Energy Steel Shares and none of them is a party to any voting trust, proxy, or other agreement or understanding with respect to the voting of any shares of the Energy Steel Shares. Other than this Agreement, there is no agreement between any Seller and any other Person with respect to the disposition of the Energy Steel Shares, except for the existing Shareholder Agreement which shall terminate effective as of the Closing Date.

**3.3 Authority; Binding Effect.**

Energy Steel has all requisite corporate power and authority and the Seller has the requisite power and trust power (as evidenced by that certain Certificate of Trust Existence and Authority dated December 10, 2010 (the "***Trust Certificate***")) to enter into this Agreement and, subject to the approval of the Seller (which is evidenced by the execution and delivery of this Agreement), to consummate the transactions contemplated hereby. The representations and certifications made in the Trust Certificate are true and accurate in all respects as of the Closing Date. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Energy Steel and the Seller, including without limitation the approval of the Seller. The board of directors of Energy Steel and the Seller have, as of the date of this Agreement, duly adopted resolutions which unanimously approve and adopt this Agreement and the consummation of the transactions contemplated herein. This Agreement has been duly executed and delivered by Energy Steel and the Seller and, assuming the due execution and delivery hereof by Graham and Buyer, constitutes the valid and binding obligation of Energy Steel and the Seller, enforceable against Energy Steel and the Seller in accordance with its terms, except as the enforceability hereof may be limited by (i) bankruptcy, insolvency or other Laws relating to or affecting creditors' rights generally, and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**3.4 No Conflict.**

Except for the Required Approvals set forth on Schedule 3.4, the execution and delivery of this Agreement by Energy Steel and the Seller does not, and the consummation of the transactions contemplated hereby and the fulfillment of its obligations and undertakings hereunder will not, result in any Violation (other than Violations, if any, arising solely out of the failure to obtain a Required Approval as described below and as set forth on the Disclosure Schedules) of any provision of: (a) the articles of incorporation or bylaws of Energy Steel; (b) any material Contract applicable to

Energy Steel, the Seller, or any of their respective assets; or (c) any Law applicable to Energy Steel, the Seller, or any of their respective assets; except, in the case of Contracts and Laws, for Violations which could not reasonably be expected to have, individually or in the aggregate, any adverse effect on the validity or enforceability of this Agreement or a Material Adverse Effect. Except as set forth in Schedule 3.4 (each, a "***Required Approval***"), to Energy Steel's and the Seller's knowledge no consent, approval, order or authorization of, or registration, declaration or filing with, or notice to, any Governmental Entity or other third party is required by or with respect to Energy Steel in connection with the execution and delivery of this Agreement by Energy Steel or the Seller or the consummation by Energy Steel or the Seller of the transactions contemplated hereby.

**3.5 Energy Steel Financial Statements; Internal Accounting Controls.**

(a) Attached as Schedule 3.5(a) to the Disclosure Schedules are (i) the unaudited balance sheets, statements of income for Energy Steel for Fiscal 2008 (ending September 30) and 2009 (ending December 31), (ii) the unaudited balance sheet and statement of income for Energy Steel as of and for the three (3) month period ended December 31, 2008, and (iii) the unaudited balance sheet and statement of income for Energy Steel as of and for the six (6) and nine (9) month periods ended June 30, 2010 and September 30, 2010 (all such financial statements collectively referred to as the "***Financial Statements***"). The Financial Statements (including the notes thereto) are complete and accurate in all material respects and have been applied and prepared on a consistent basis throughout the periods covered thereby (except as to GAAP Exceptions), and present fairly the financial condition of Energy Steel as of such dates and the results of operations of Energy Steel for such periods, are correct and complete in all material respects.

(b) Subject to the application of the GAAP Exceptions, the books and records of Energy Steel accurately and fairly reflect the income, expenses, assets and liabilities for the periods covered and Energy Steel maintains internal accounting controls which provide reasonable assurances that: (A) transactions are executed in accordance with the general or specific authorization of Energy Steel's management, and (B) transactions are recorded as necessary to permit preparation of such financial statements.

**3.6 No Additional Material Liabilities.**

Except as set forth in the Financial Statements or inSchedule 3.6: (a) Energy Steel has not had since October 31, 2010 any material liabilities or accrued expenses, whether accrued, absolute, contingent or otherwise, of a kind or character that would be required (in accordance with GAAP, subject to application of the GAAP Exceptions) to be reflected in the balance sheet of Energy Steel as of October 31, 2010; (b) since October 31, 2010, except for trade payables and accrued expenses incurred in the Ordinary Course of Business, Energy Steel has not incurred any such liabilities; and (c) since October 31, 2010, Energy Steel has not drawn down on any line of credit. All liabilities of Energy Steel incurred since October 31, 2010 have been properly recorded in their books and records. Schedule 1.1 sets a complete and accurate list of all of the Energy Steel Debt.

**3.7 Energy Steel Permits; Compliance with Laws.**

(a) Schedule 3.7(a) contains a complete and accurate list, as of the date hereof, of all licenses, permits, certificates, registrations, accreditations, orders, franchises, authorizations,

approvals, consents, variances and exemptions of any Governmental Entity which are necessary for the operation of the Business as currently operated and which are held by Energy Steel (collectively, the "***Energy Steel Permits***"), including the respective termination dates thereof. Except as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (i) Energy Steel duly holds all Energy Steel Permits; (ii) all of the Energy Steel Permits are in full force and effect; (iii) Energy Steel is in compliance with the terms of each of the Energy Steel Permits; and (iv) no action is pending, or to the knowledge of Seller or Energy Steel, threatened or recommended, by any Governmental Entity to revoke, condition, withdraw or suspend any Energy Steel Permit.

(b) The Business of Energy Steel is being, and since January 1, 2005 has been, conducted in compliance with all Laws, except for such Violations that could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. No investigation or review by any Governmental Entity with respect to Energy Steel is pending or threatened nor has any Governmental Entity indicated an intention to conduct the same.

**3.8 Assets; Title; Absence of Liens and Encumbrances.**

Except as provided on Schedule 3.8 and except with respect to Intellectual Property (which is the subject of Section 3.10), Energy Steel owns or validly leases all properties and assets, real, personal and mixed, tangible and intangible, comprising and employed in the operation of or associated with the Business. Except for leased assets, Energy Steel has good and marketable title to each and all of its assets, including those reflected in the balance sheet of Energy Steel as of October 31, 2010, free and clear of all asserted and threatened title defects, Claims and Encumbrances except, with respect to all such assets, the following Encumbrances (collectively, "***Permitted Encumbrances***"): (a) Encumbrances securing debt reflected as liabilities in the Financial Statements, which Encumbrances are listed in Schedule 3.8; (b) mechanics', carriers', workers', repairmen's, statutory or common law liens being contested in good faith and by appropriate proceedings, which contested liens are listed in Schedule 3.8; (c) liens or obligations for current Taxes not yet due and payable which have been fully reserved against, or which, if due, are being contested in good faith and by appropriate proceedings, which contested liens are listed in Schedule 3.8; (d) such imperfections of title, easements and Encumbrances, if any, against the Leased Real Property as are set forth in the Leases or which are not, individually or in the aggregate, substantial in character, amount or extent, and do not, individually or in the aggregate, materially detract from the value, or interfere with the present use of the Leased Real Property or otherwise have a Material Adverse Effect; and (e) those additional Encumbrances listed in Schedule 3.8.

**3.9 Real Property.**

(a) Energy Steel does not own any real property and, instead, leases real property as a tenant pursuant to the Leases. Schedule 3.9(a) contains a true, correct and complete list of all real property leased, operated or used by Energy Steel (collectively, the "***Leased Real Property***"). Energy Steel has delivered to Graham and Buyer a true and complete copy of each of the Leases for the Leased Real Property.

(b) Except as set forth in Schedule 3.9(b), with respect to each of the Leases for the Leased Real Property:

(i) assuming the due execution by lessor and enforceability against the lessor, such Lease is legal, valid, binding, enforceable and in full force and effect;

(ii) the transaction contemplated by this Agreement does not require the consent of any other party to such Lease, will not result in a breach of or default under such Lease, and will not otherwise cause such Lease to cease to be legal, valid, binding, enforceable and in full force and effect on identical terms following the Closing;

(iii) Energy Steel's possession and quiet enjoyment of the Leased Real Property under such Lease has not been disturbed and there are no disputes with respect to such Lease;

(iv) neither Energy Steel nor any other party to the Lease is in breach or default under such Lease, and no event has occurred or circumstance exists which, with the delivery of notice, the passage of time or both, would constitute such a breach or default, or permit the termination, modification or acceleration of rent under such Lease;

(v) the other party to such Lease is not an Affiliate of, and otherwise does not have any economic interest in Energy Steel;

(vi) Energy Steel has not assigned, subleased, licensed or otherwise granted any Person the right to use or occupy such Leased Real Property or any portion thereof;

(vii) Energy Steel has not assigned, transferred, conveyed, mortgaged, deeded in trust or encumbered any leasehold or subleasehold interest under any such Lease; and

(viii) the Leased Real Property, comprises all of the real property used or intended to be used in, or otherwise related to the Business; and Energy Steel is not a party to any agreement or option to purchase any real property or interest therein.

(c) Except as set forth in Schedule 3.9(c), to Energy Steel's and the Seller's knowledge, all Improvements are in reasonably good condition and repair, ordinary wear and tear excepted, have been appropriately and routinely maintained, and are sufficient for the operation of the Business as currently conducted. To Energy Steel's and the Seller's knowledge, there are no structural deficiencies or latent defects affecting any of the Improvements and to their knowledge there are no facts or conditions affecting any of the Improvements which would, individually or in the aggregate, interfere in any material manner with the use or occupancy of the Improvements or any portion thereof in the operation of the Business as currently conducted thereon.

(d) Neither Energy Steel nor Seller have been served with any written notice of a condemnation, expropriation or other proceeding in eminent domain, pending or threatened, affecting any parcel of Leased Real Property or any portion thereof or interest therein. There is no injunction, decree, order, writ or judgment outstanding, nor any claims, litigation, administrative actions or similar proceedings, pending or, to the knowledge of Energy Steel and Seller, threatened, relating to the ownership, lease, use or occupancy of the Leased Real Property or any portion thereof, or the operation of the Business as currently conducted thereon.

(e) To Energy Steel's and the Seller's knowledge, the Leased Real Property as currently used by Energy Steel is in material compliance with all applicable building, zoning, subdivision, environmental, health and safety requirements and other land use laws, including The Americans with Disabilities Act of 1990, as amended (collectively, the "***Real Property Laws***"), and the current use and occupancy of the Leased Real Property and operation of the Business thereon does not violate any Real Property Laws. Energy Steel has not received any notice of violation of any Real Property Laws and, to Energy Steel's and the Seller's knowledge, there is no basis for the issuance of any such notice or the taking of any action for such violation.

(f) None of the Improvements or any portion thereof is dependent for its access, use or operation on any land, building, improvement or other real property interest which is not included in the Leased Real Property, except as would be disclosed on a survey of the Leased Real Property or of public record.

(g) To Energy Steel's and the Seller's knowledge, all water, oil, gas, electrical, steam, compressed air, telecommunications, sewer, storm and waste water systems and other utility services or systems for the Leased Real Property have been installed and are operational and sufficient for the operation of the Business as currently conducted thereon, ordinary wear and tear excepted.

(h) All certificates of occupancy, permits, licenses, franchises, approvals and authorizations (collectively, the "***Real Property Permits***") of all Governmental Entities, board of fire underwriters, association or any other entity having jurisdiction over the Leased Real Property, which are required or appropriate to use or occupy the Leased Real Property or operate the Business as currently conducted thereon, have been issued and are in full force and effect. Schedule 3.9(h) lists all Real Property Permits held by Energy Steel with respect to each parcel of Leased Real Property. Energy Steel has not received any notice from any governmental authority or other entity having jurisdiction over the Leased Real Property threatening a suspension, revocation, modification or cancellation of any Real Property Permit and, to the knowledge of each, there is no basis for the issuance of any such notice or the taking of any such action.

(i) The classification of each parcel of Leased Real Property under applicable zoning laws, ordinances and regulations permits the use and occupancy of such parcel and the operation of the Business as currently conducted thereon, and permits the Improvements located thereon as currently constructed, used and occupied. There are sufficient parking spaces, loading docks and other facilities at such parcel to comply with such zoning laws, ordinances and regulations.

(j) To Energy Steel's and the Seller's knowledge, the current use and occupancy of the Leased Real Property and the operation of the Business as currently conducted thereon do not violate any easement, covenant, condition, restriction or similar provision in any instrument of record or other unrecorded agreement affecting such Leased Real Property, except to the extent such violation could reasonably be likely to have a Material Adverse Effect. Neither of the Seller nor Energy Steel has received any notice of violation of any such documents, and there is no basis for the issuance of any such notice or the taking of any action for such violation.

(k) There are no taxes, assessments, fees, charges or similar costs or expenses imposed by any Governmental Entity, association or other entity having jurisdiction over the Leased Real Property with respect to any Leased Real Property or portion thereof which are delinquent.

(l) Energy Steel does not occupy or possess any real property pursuant to an oral lease.

**3.10 Intellectual Property.**

(a) "***Energy Steel Intellectual Property***" means all Intellectual Property used or held for use in, related to or which arise out of the Business or its products or services including, without limitation, the following:

(i) all trademarks, service marks, trade names, trade dress, product names, product configurations, slogans and logos, applications and registrations, including those listed in Schedule 3.10(a)(i), and corresponding foreign applications, registrations and rights thereto, whether or not registered (collectively, the "***Trademarks***");

(ii) all source code, object code, design documentation and procedures for product generation and testing of all computer software and firmware, including the software and firmware listed in Schedule 3.10(a)(ii) and including the software rules and algorithms, flowcharts, trade secrets, know-how, inventions, patents, copyrights, designs, technical processes, works of authorship and technical data included in or relating to the same (collectively, the "***Software***"); provided, however, that the terms "Software" and "Energy Steel Intellectual Property" do not include: (A) "shrink wrap" and "click wrap" software; (B) shareware and freeware software not incorporated in any of the Products (as defined below) or any of Energy Steel's business systems; and (C) software and firmware that is owned by a third party and is the subject of a License to Energy Steel;

(iii) all product development projects planned as of the date of this Agreement, as listed inSchedule 3.10(a)(iii);

(iv) all Contracts by which: (i) Energy Steel uses Intellectual Property owned by a third party (other than (A) supply Contracts providing for the license solely of Intellectual Property not incorporated in any of the Products or any of Energy Steel's business systems and (B) Contracts relating solely to "shrink wrap" or "click wrap" software); or (ii) a third party uses Intellectual Property owned by Energy Steel (other than Contracts relating solely to "shrink wrap" or "click wrap" software); all as listed in Schedule 3.10(a)(iv) (collectively, the "***Licenses***"); and

(v) all internet, intranet and World Wide Web content, sites and pages, and all HTML and other code related thereto; all as listed inSchedule 3.10(a)(v).

(b) Energy Steel does not own or license any patents or patent applications (or any division, continuation, continuation-in-part, continuing prosecution application, continued examination application, reinstatement, reexamination, revival, reissue, extension or substitution of any thereof) (collectively, the "***Patents***"). Except as set forth on Schedule 3.16(a), Energy Steel does not license any Patents. Energy Steel owns or has the right to use (pursuant to written License) all of the Energy Steel Intellectual Property. Subject to the receipt or making of all Required Approvals specifically identified for this purpose in Schedule 3.4, each item of Energy Steel Intellectual Property will be owned or available for continued use by the Energy Steel immediately after the Closing Date, without the payment of any additional amounts to any third party (except as may be required subsequent to the Closing Date by the express terms of any License). Without

making any representation or warranty as to the substantive patentability of the Intellectual Property, at the Closing Date and except as set forth in Schedule 3.10(b), all available Patent rights (other than Patents that are the subject of a License to Energy Steel) that may encompass any of the Software or any of the Products may be pursued exclusively by Energy Steel, other than non-exclusive rights to third party software included within the Software or the Products.

(c) Energy Steel currently owns and will own as of the Closing Date, free and clear of all Encumbrances (other than Permitted Encumbrances), all Intellectual Property and other proprietary information, processes and formulae used in, related to or arising from the Business or otherwise necessary for the ownership, maintenance and use of the Products and the conduct of the Business, other than Intellectual Property that is owned by a third party and is the subject of a License in favor of Energy Steel.

(d) To Energy Steel's and the Seller's knowledge, Energy Steel has not interfered with, infringed upon, misappropriated or otherwise violated (whether through the use of the Energy Steel Intellectual Property or otherwise) any Intellectual Property rights of any third party, and no Claim has been asserted (and is currently pending) or to Energy Steel's and Seller's knowledge threatened by any Person as to the use of the Energy Steel Intellectual Property by Energy Steel or alleging any such interference, infringement, misappropriation or violation (including any such Claim that Energy Steel must license or refrain from using any Intellectual Property rights of any third party), and to their knowledge there is no valid basis for any such Claim, except for those Claims listed in Schedule 3.18. Except as set forth in Schedule 3.10(d), to Energy Steel's and the Seller's knowledge no third party has interfered with, infringed upon, misappropriated or otherwise violated any rights of Energy Steel with respect to the Energy Steel Intellectual Property. Energy Steel does not possess any infringement studies, including any opinions of counsel, prepared by or on behalf of Energy Steel.

(e) Schedule 3.10(a)(i) identifies each trademark, service mark, trade name, trade dress, product name, slogan and logo currently used or held for use by Energy Steel in, related to or arising out of the Business. Energy Steel has made available to Graham correct and complete copies of all Trademarks, as amended to date, and correct and complete copies of all other written documentation evidencing ownership and prosecution (if applicable) of each Trademark. Except as set forth in Schedule 3.10(e), with respect to each Trademark:

(i) the item is not subject to any outstanding injunction, judgment, order, decree, ruling, or charge nor, to the knowledge of Energy Steel and Seller, is any of the foregoing threatened;

(ii) no Claim is pending or, to the knowledge of Energy Steel and Seller, threatened which challenges the legality, validity, enforceability, use or ownership of the item; and

(iii) except for the terms and conditions contained in the Contracts listed on Schedule 3.16(a), Energy Steel has not agreed to indemnify any Person for or against any interference, infringement, misappropriation or other violation with respect to the item.

(f) Schedules 3.10(a)(ii) and 3.10(a)(iv) identifies all software, firmware (other than "shrink wrap" and "click wrap" software and shareware and freeware software not incorporated in any of the Products or any of Energy Steel's business systems) and components thereof used or held for use by Energy Steel. Except as set forth in Schedule 3.10(f), with respect to each item of the Software:

(i) the item is not subject to any outstanding injunction, judgment, order, decree, ruling, or charge nor, to the knowledge of Energy Steel and Seller, is any of the foregoing threatened;

(ii) no Claim is pending or to the knowledge of Energy Steel and Seller, threatened in writing which challenges the legality, validity, enforceability, use or ownership of the item;

(iii) except for standard terms and conditions contained in the Contracts entered into in the ordinary course of business and except for the Contracts listed on Schedule 3.16(a), Energy Steel has not agreed to indemnify any Person for or against any interference, infringement, misappropriation or other violation with respect to the item;

(iv) to Energy Steel's and the Seller's knowledge, the Software as used by Energy Steel or its licensees does not infringe any copyright, patent, trademark, trade secret or other Intellectual Property rights of any third party; and there are no copyright, trademark, trade secret or patent Claims, asserted or threatened, by any third party, or any acts of Energy Steel upon the basis of which Energy Steel has any reason to believe that the Software will infringe any proprietary rights, including patent, copyright, trademark or trade secret of any third party;

(v) to Energy Steel's and the Seller's knowledge, no third party that is not duly authorized by Energy Steel is engaged in any activity which would constitute an infringement or misappropriation of any proprietary rights in the Software;

(vi) to Energy Steel's and the Seller's knowledge, none of the Software contains any "back door," "time bomb," "Trojan Horse," "worm," "drop dead device," "virus," "trap" or other software routines designed to permit unauthorized access, to disable or erase software, hardware or data, or perform any other similar actions.

**3.11 Tangible Assets.**

(a) All of the tangible assets owned or leased by Energy Steel (i) to Energy Steel's and the Seller's knowledge, are free from defects (patent and latent), (ii) have been reasonably maintained in accordance with normal industry practice, is in operating condition and repair, subject to normal wear and tear and except for unused or obsolete assets, if any, and (iii) are currently suitable for the purposes for which it presently is used.

(b) Schedule 3.11(b) is a true, correct and complete listing of: (i) all material tangible assets, including without limitation, all equipment, computer equipment and hardware, furniture, fixtures, vehicles, machinery, apparatus, media, tools, appliances, implements, supplies and other tangible personal property of Energy Steel as of October 31, 2010, together with the cost and

depreciation recorded therefor; and (ii) all material additions to and dispositions of the foregoing made between October 31, 2010 and the date hereof. Except as set forth in Schedule 3.11(b), to Energy Steel's and the Seller's knowledge, such assets are in a usable state of repair and condition, ordinary wear and tear excepted.

(c) Schedule 3.11(c) is a listing of all personal and tangible property of Seller located at the Business.

(d) Schedule 3.11(d) is a true, correct and complete listing as of the date hereof of substantially all products and services of the Business, including all approved development projects (collectively, the "***Products***").

**3.12 Inventory.**

(a) Energy Steel's inventories consist of a quantity and quality historically useable or saleable in the Ordinary Course of Business. Energy Steel's inventories in its balance sheet for the period ended October 31, 2010 and in its books and records are in material accordance with GAAP (subject to application of the GAAP Exceptions), with inventory recorded at a lower cost (determined on a first-in, first-out basis) or market.

(b) Schedule 3.12(b) contains and/or Energy Steel has provided to Graham a list of all suppliers, purchasing agents and third party manufacturers from or through whom Energy Steel has purchased inventory during the previous fiscal year and the current fiscal year up to December 9, 2010. Energy Steel is not a party to any minimum purchase order arrangements with such suppliers, purchasing agents and third party manufacturers, except as expressly stated on purchase orders or other contracts of purchase.

(c) Energy Steel has made available to Graham a true and complete list of all purchase orders or commitments placed as of December 9, 2010 by it with suppliers, purchasing agents or manufacturers for the purchase of inventory and an accurate and complete breakdown and aging of Energy Steel's accounts payable, in each case as of December 9, 2010.

(d) Neither the Seller nor Energy Steel has received any written notice specifying that any suppliers, purchasing agents or manufacturers will or plans to terminate or cancel its relationship with Energy Steel at any time, including after the Closing Date.

(e) Schedule 3.12(e) is a true, correct and complete listing, by category and volume level as of December 9, 2010, of all of Energy Steel's inventories of (i) Products, including finished products, work-in-process, and raw material inventory, and (ii) all other unused or reusable materials and supplies (the "***Current Inventory***"). All of such Current Inventory have been properly costed and valued or properly reserved for, and properly presented in the Financial Statements. All of such Current Inventory of Products, materials, stores and supplies are usable and fit for their intended purpose.

**3.13 Environmental Matters.**

Except as disclosed in Schedule 3.13, to Energy Steel's and the Seller's knowledge:

(a) None of the Leased Real Property is in Violation of any Environmental Laws and there is no outstanding or pending Liability under the Environmental Laws related to the Leased Real Property or any property previously owned or leased by Energy Steel;

(b) Energy Steel's use, handling, and disposal of Hazardous Substances has not resulted in a Violation of or Liability under any Environmental Laws;

(c) None of the Leased Real Property has (i) ever had any underground storage tanks regulated under Environmental Laws, whether empty, filled or partially filled with any substance, or (ii) any asbestos or any material that contains any hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophylite and/or actinolite, whether friable or non-friable;

(d) Energy Steel has not received any request for information, notice or order alleging that it may be a potentially responsible party or otherwise have Liability under any Environmental Laws for investigation, remediation or other response action related to Hazardous Substances;

(e) No event has occurred with respect to any property owned or leased by Energy Steel including the Leased Real Property which, with the passage of time or the giving of notice, or both, is reasonably expected to constitute a Violation of, non-compliance with or Liability under any applicable Environmental Law or Energy Steel Permit;

(f) There is no Encumbrance (other than a Permitted Encumbrance), Claim or threat thereof relating to a Release or threatened Release of any Hazardous Substance on, about or beneath the Leased Real Property (or any portion thereof), or the migration of any Hazardous Substance to or from property adjoining or in the vicinity of the Leased Real Property, or alleging any Liability under Environmental Laws; and

(g) Energy Steel holds, and is in compliance with, all Energy Steel Permits required under any Environmental Law in connection with its use of the Leased Real Property or the operation of the Business, and all such Environmental Permits are valid and in good standing and will remain so through the Closing Date and are not subject to meritorious challenge. A true and complete list of all such Energy Steel Permits is set forth in Schedule 3.7(a).

**3.14 Employee Plans.**

(a) Schedule 3.14(a) lists all employee benefit plans and collective bargaining, employment or severance agreements or other similar arrangements which Energy Steel currently sponsors, maintains, or to which contributions are made, or for which obligations have been incurred and currently exist, for the benefit of employees or former employees of Energy Steel including, without limitation, (1) any "employee benefit plan" (within the meaning of Section 3(3) of ERISA), (2) any profit-sharing, deferred compensation, bonus, stock option, stock purchase, restricted stock, equity incentive, pension, retainer, compensation, consulting, retirement, severance, indemnification, retention, change-in-control, welfare or incentive plan, agreement or arrangement, (3) any plan, agreement or arrangement providing for "fringe benefits" or perquisites to employees, officers, directors or agents, including but not limited to benefits relating to automobiles, clubs, vacation, child care, parenting, sabbatical, sick leave, tuition reimbursement, medical, dental, hospitalization, life insurance, disability insurance and other types of insurance, and (4) any employment agreement.

The plans, agreements and arrangements described in this Section 3.14(a) are referred to herein as "***Employee Plans***."

(b) Energy Steel has delivered to Graham true, correct and complete copies of all Employee Plans, all related summary plan descriptions, the most recent determination letters and/or opinion letters received from the IRS, Form 5500 Annual Reports for the last three (3) years (including all schedules and attachments thereto), all communications received from or sent to the IRS or the U.S. Department of Labor within the last five (5) years (including any Forms 5330) with respect to any Employee Plan, the most recent financial reports and summary annual reports, summaries of material modifications and material communications distributed within the last year to participants of each Employee Plan and, where applicable, summary descriptions of any Employee Plans not otherwise reduced to writing. Except as set forth in Schedule 3.14(b), there are no negotiations, demands or proposals that are pending or have been made since the respective dates of the Employee Plans which concern matters now covered, or that would be covered, by any Employee Plan. Energy Steel has maintained all employee data necessary to administer each Employee Plan, including all data required to be maintained under Sections 107 and 209 of ERISA, and such data are true and correct.

(c) Except as set forth in Schedule 3.14(c), Energy Steel and each of the Employee Plans (and any related trust agreement, insurance contract or fund) has been maintained, funded and administered in accordance with its terms and any applicable collective bargaining agreement, and Energy Steel is in compliance in all respects with the applicable provisions of the Code, ERISA and all other applicable Laws.

(d) All contributions (including all employer contributions and employee salary reduction contributions) and premium payments which are or have been due have been paid to or with respect to each Employee Plan within the time required by law. All required or discretionary (in accordance with historical practices) payments, premiums, contributions, reimbursements, or accruals for all periods ending prior to or as of the Closing Date shall have been made or properly accrued on the Closing balance sheets or will be properly accrued on the books and records of Energy Steel as of the Closing date. None of the Employee Plans has any unfunded liabilities which are not reflected on the Closing balance sheet or the books and records of Energy Steel. Energy Steel does not have any assets subject to (or expected to be subject to) a lien for unpaid contributions to any Employee Plan. Energy Steel has performed in all respects all of their obligations under all of the Employee Plans, including the payment of all applicable Taxes.

(e) Neither Energy Steel nor any Employee Plan fiduciary has, with respect to the Employee Plans, engaged in a breach of fiduciary duty or engaged or permitted an Employee Plan to engage in a non-exempt "prohibited transaction," as such term is defined in Section 4975 of the Code or Section 406 of ERISA. To Energy Steel's and the Seller's knowledge, no event has occurred and no condition exists with respect to any Employee Plan which would give rise to any liability under the Code or ERISA or other applicable law, including but not limited to Sections 511, 4971, 4972, 4975, 4976, 4977, 4979, 4980B, 4980D, 4980E, 4980F or 6652 of the Code, or to any fine or civil penalty under Sections 502, 4069 or 4071 of ERISA. None of the Employee Plans, nor any fiduciary thereof, is or has been the direct or indirect subject of an audit, investigation or examination by any Governmental Entity within the last five (5) years, and to Energy Steel's and the Seller's knowledge, there are no facts which could give rise to any liability in the event of any

investigation, audit, review or other proceeding. There are no Claims (other than routine undisputed Claims for benefits) pending or threatened against or arising out of any of the Employee Plans or the respective assets thereof and to Energy Steel's and the Seller's knowledge, no facts exist which could give rise to any such Claims which could reasonably be expected to have, individually or in the aggregate, a material adverse effect on any Employee Plan, or a Material Adverse Effect.

(f) Each Employee Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter (or an opinion letter on which it is entitled to rely) from the Internal Revenue Service that such Employee Plan is qualified under Section 401(a) of the Code, and such determination letter or opinion letter considers the Economic Growth & Tax Relief Reconciliation Act of 2001. Each Employee Plan that is intended to be qualified under Section 401(a) of the Code has been timely amended to reflect the provisions of all statutory or regulatory changes requiring amendments for which the deadline for amendment has passed, and if not entitled to rely upon an opinion letter has been timely submitted for a determination letter in accordance with Revenue Procedure 2007-44. To Energy Steel's and the Seller's knowledge, no event has occurred that will or could give rise to the revocation of any applicable determination letter or the loss of the right to rely on any applicable opinion letter, or the disqualification or loss of tax-exempt status of any such Employee Plan or trust under Sections 401(a) or 501(a) of the Code.

(g) Energy Steel does not maintain and has not at any time maintained, and does not and could not have any liability with respect to, any Employee Plan subject to Title IV of ERISA or Section 412 of the Code. No Employee Plan is or ever has been a "multiemployer plan" within the meaning of Section 3(37) of ERISA. Energy Steel does not have and could not have any liability with respect to a "multiemployer plan" as defined under Section 3(37) of ERISA. No Employee Plan now holds or has heretofore held any stock or other securities issued by Energy Steel. Energy Steel has not established or contributed to, is not required to contribute to, and does not have nor has ever had any liability with respect to any "voluntary employees' beneficiary association" within the meaning of Section 501(c)(9) of the Code, any "welfare benefit fund" within the meaning of Section 419 of the Code, any "qualified asset account" within the meaning of Section 419A of the Code, or any "multiple employer welfare arrangement" within the meaning of Section 3(40) of ERISA.

(h) Each Employee Plan that constitutes a "welfare benefit plan," within the meaning of Section 3(1) of ERISA, and for which contributions are claimed by Energy Steel as deductions under any provision of the Code, is in compliance with all applicable requirements pertaining to such deduction. Schedule 3.14(h) discloses whether each welfare plan is (i) unfunded, (ii) with respect to welfare plans subject to the provisions of the Code, funded through a "welfare benefit fund," as such term is defined in Section 419(e) of the code, or other funding mechanism, or (iii) insured.

(i) All group health plans of Energy Steel have been operated in compliance in all material respects with the group health plan continuation coverage requirements of Sections 601 through 608 of ERISA and Section 4980B of the Code or applicable state law, Title XXII of the Public Health Service Act, the Health Insurance Portability and Accountability Act of 1996, the Medicare Part D requirements of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and the provisions of the Social Security Act, to the extent such requirements are applicable. Except to the extent required under Section 4980B of the Code or applicable state law, no Employee Plan or any other arrangement provides for or continues medical or health or other welfare benefits (through the purchase of insurance or otherwise) for or to any retired employee, any former

employee or any other individual who is not an employee, and there has been no communication to any employee, retired employee, former employee or other individual that could reasonably be expected to promise or guarantee any such benefits.

(j) Except with respect to statutory post-termination benefits arising under non U.S. Laws and except as set forth in Schedule 3.14(j), no provision of any Employee Plan restricts the ability of Graham or Energy Steel to terminate the future accruals of obligations thereunder after the Closing Date or requires the increase or acceleration of benefit entitlements, contributions or compensation in connection with such termination; provided, however, that no such representation or warranty is made with respect to the ability to cancel liabilities already accrued at the time of such termination.

(k) All reports, returns and similar documents with respect to each Employee Plan required to be filed with any Governmental Entity or distributed to any participant of any Employee Plan (including each Form 5500 required to be filed by Energy Steel) have been duly and timely filed or distributed in accordance with all applicable Laws. There are no unpaid fees, penalties, interest or assessments due from the Energy Steel or from any other Person that are or could become a lien on any asset of Energy Steel or could otherwise adversely affect the business or assets of Energy Steel. Energy Steel has collected or withheld all amounts that are required to be collected or withheld by them to discharge their obligations, and all of those amounts have been paid to the appropriate Governmental Entities or set aside in appropriate accounts for future payment when due.

(l) To Energy Steel's and the Seller's knowledge, no condition exists as a result of which Energy Steel would have any liability, whether absolute or contingent, including any obligations under any Employee Plan, with respect to any misclassification of a Person performing services for Energy Steel as an independent contractor rather than as an employee.

(m) Except as described in Schedule 3.14(m), the consummation of the transactions contemplated by this Agreement will not entitle any Person to severance pay, and will not accelerate the time of payment or vesting, or increase the amount, of compensation due to any Person. Schedule 3.14(m) lists all severance obligations of Energy Steel owed to any Person. None of the Employee Plans obligates Energy Steel to pay separation, severance, termination or similar benefits solely as a result of any transaction contemplated by this Agreement or solely as a result of a "change in the ownership or effective control of the corporation, or in the ownership of a substantial portion of the assets of the corporation" (as defined in Section 280G of the Code).

(n) Except as described in Section 3.14(n), each "nonqualified deferred compensation plan" (as defined in Section 409A(d)(1) of the Code) with respect to which Energy Steel is a "service recipient" (within the meaning of Section 409A of the Code) has been operated since January 1, 2005, in compliance with the applicable provisions of Section 409A of the Code and the treasury regulations and other official guidance issued thereunder (or similar provision of state law) (collectively, "Section 409A"), and has been since January 1, 2009, in documentary compliance with the applicable provisions of Section 409A; and Energy Steel has not been required to report any Taxes due as a result of a failure of an Employee Plan to comply with Section 409A. With respect to each Employee Plan, Energy Steel does not have any indemnity obligation for any Taxes or interest imposed or accelerated under Section 409A.

(o) Solely for purposes of this Section 3.14, all references to Energy Steel includes any Person which, together with Energy Steel, is considered an affiliated organization within the meaning of Sections 414(b), 414(c), 414(m) or 414(o) of the Code or sections 3(5) or 4001(b)(1) of ERISA.

(p) Except as described in Schedule 3.14(p), Energy Steel does not provide to any of its non-U.S. employees any termination, severance, pension, healthcare or other benefits in excess of statutory requirements.

**3.15 Employment Matters.**

(a) Except as disclosed in Schedule 3.15(a), (i) to Energy Steel's and the Seller's knowledge, Energy Steel is, and since January 1, 2005 has been, in compliance in all material respects with all Laws relating to affirmative action, employment, equal employment opportunity, nondiscrimination, immigration, wages, overtime, classification of employees, fringe benefits, wage supplements, hours or work, benefits, collective bargaining, the withholding and payment of social security and similar Taxes, occupational safety and health, employment termination, reductions in force or plant closings (collectively, "***Employment Laws***") and with any contract or subcontract with any Governmental Entity or other Person; (ii) Energy Steel has not experienced any strikes, grievances or asserted or threatened Claims of unfair labor practice; (iii) Energy Steel has no knowledge of any organizational effort being made or threatened by or on behalf of any labor union with respect to any employees of Energy Steel; (iv) there has not been, and there is not pending or existing or to Energy Steel's and the Seller's knowledge, threatened, any strike, work stoppage, labor arbitration or proceeding in respect of the grievance of any employee, any application, complaint or unfair labor practice charge filed by an employee, union or works council with the National Labor Relations Board or any comparable Governmental Entity, organizational activity or other labor dispute against Energy Steel and the knowledge of Energy Steel and the Seller, there is no basis for any such grievance, charge or complaint; (v) no application for certification of a collective bargaining agent is pending or to Energy Steel's or the Seller's knowledge, threatened; (vi) there is no lockout of any employees by Energy Steel; (vii) Energy Steel has withheld from the wages and salaries of its employees as is required by law and is not liable for any arrears of wages or any tax or penalty in connection therewith; (viii) there are no Claims currently pending or to Energy Steel's and the Seller's knowledge threatened, against Energy Steel alleging the violation of any Employment Laws, or any other asserted or to Energy Steel's and the Seller's knowledge threatened Claim whatsoever, whether based in tort, contract or Law, arising out of or relating in any way to any Person's employment (actual or alleged), application for employment or termination of employment with Energy Steel and to the knowledge of Energy Steel, there is no basis for any such Claim; (ix) no current or former employee of Energy Steel is owed by Energy Steel overtime pay (other than overtime pay for the current payroll period), wages or salary for any period other than the current payroll period, vacation, holiday or other time off or pay in lieu thereof (other than time off or pay in lieu thereof earned in respect to the current year); (x) Energy Steel is not, nor immediately after the Closing will be, liable for severance pay or any other payment of monies to any employee of Energy Steel as a result of the execution of this Agreement or Energy Steel's performance of its terms, or for any other reason in any way related to the consummation of the transactions contemplated hereby, including any change of ownership of Energy Steel; and (xi) no Governmental Entity has found Energy Steel to be liable for the payment of Taxes, fines, penalties or other amounts, however designated, for failure to comply with any of Employment Laws.

(b) Schedule 3.15(b) contains a true and complete list, as of the date hereof, of all employees employed by Energy Steel, including each such employee's (i) name, (ii) title, and (iii) current salary and other compensation arrangement (i.e. commission rate).

(c) Schedule 3.15(c) contains a true and complete list, as of the date hereof of all consultants, non-employed technicians and other independent contractors who are providing services to Energy Steel (the "***Independent Contractors***"), including (i) each such Independent Contractor's name, (ii) each Independent Contractor's license number and expiration date therefore, and (ii) the type of services being provided by each Independent Contractor.

**3.16 Material Agreements.**

(a) Schedule 3.16(a) lists the following Contracts to which Energy Steel is a party which are or contain provisions relating to any of the following (hereinafter referred to individually as a "***Material Agreement***" and collectively as the "***Material Agreements***"):

(i) any Contracts which are Leases of personal property to or from any Person;

(ii) any Contract (or group of related Contracts) for the purchase or sale of products, or other personal property, or for the furnishing or receipt of services, the performance of which will extend over a period of more than one year, or involve consideration in excess of $10,000 per annum;

(iii) any Contract concerning a partnership or joint venture;

(iv) any Contract (or group of related Contracts) under which it has created, incurred, assumed, or guaranteed any indebtedness for borrowed money, or any capitalized lease obligation, in excess of $10,000 or under which it has imposed a Encumbrances on any of its assets, tangible or intangible;

(v) any Contract with any officer or director of the Energy Steel and/or its Affiliates, or any entity in which any officer or director of Energy Steel, the Seller or any trustee or beneficiary of the Seller holds equity or any other economic interest;

(vi) any Contract concerning non-competition, non-solicitation or confidentiality;

(vii) collective bargaining agreements or other Contracts to or with any labor unions or other employee representatives, groups of employees, works councils or the like;

(viii) employment Contracts or other Contracts to or with individual current or prospective employees, consultants or agents (other than Contracts with Energy Steel's attorneys, accountants or advertising agencies that are cancelable without material penalty, cost or expense upon advance notice of ninety [90] days or less);

(ix) any Contract concerning a bonus, profit sharing, incentive, deferred compensation, severance, or change in control (exclusive of generally applicable severance policy) or other material plan or arrangement for the benefit of any of Energy Steel's managers, directors, officers or employees;

(x) the Leases;

(xi) the Licenses;

(xii) Contracts by which Energy Steel indemnifies any Person;

(xiii) Contracts by which Energy Steel provides warranties related to any Product or services which involve consideration in excess of $10,000 or will extend for a period of more than one (1) year;

(xiv) Contracts providing for the payment of royalties by Energy Steel based in any manner on the revenue or profits of Energy Steel;

(xv) Contracts with obligations to supply parts or replacement parts for a period after termination of the Contract;

(xvi) Contracts guaranteeing the debt of any third party;

(xvii) Contracts requiring the exclusive use of third party goods or services or containing a right of first refusal to a third party in the supply of goods or services;

(xviii) Contracts to acquire stock, merge or consolidate, or to create a joint venture;

(xix) Contracts to borrow funds, except for trade payables incurred in the Ordinary Course of Business;

(xx) Contracts to lend to officers, employees or other third parties, except for accounts receivable incurred in the Ordinary Course of Business;

(xxi) Contracts that require Energy Steel to maintain insurance; and

(xxii) other Contracts, if any: (A) the default of which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; or (B) which require consent or waiver in connection with consummation of the transactions contemplated herein, and the failure to obtain such consent or waiver could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) All of the Material Agreements are listed in the Disclosure Schedules. Except for the Material Agreements, Energy Steel is not a party to or bound by any Contract affecting in any material respect the operation of the Business. Without limiting the generality of the foregoing, Energy Steel is not a party to any Contract providing for guaranteed minimum payments in excess of $10,000 for the twelve (12) month period ending after the Closing Date which are not listed in the Disclosure Schedules or which is not cancelable without material penalty, cost or expense upon advance notice of ninety (90) days or less.

(c) Energy Steel has made available to Graham true and complete copies of each Material Agreement that is in written form (or, in the case of Material Agreements that are in standard form, true and complete samples of such standard forms), and true and complete written summaries of

each Material Agreement that is oral, in each case as amended to date. To Energy Steel's and the Seller's knowledge, each of the Material Agreements constitutes the valid and legally binding obligation of Energy Steel and the other parties thereto, and is enforceable in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency or other Laws relating to or affecting creditors' rights generally, and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). Each of the Material Agreements (including any amendments, supplemental or special terms and other modifications) constitutes the entire agreement of the respective parties thereto relating to the subject matter thereof. Except as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and except as set forth in Schedule 3.16(c), to the knowledge of Energy Steel and Seller no act or omission has occurred or failed to occur which, with the giving of notice, the lapse of time or both would after notice and lapse of applicable cure period constitute a default under any of the Material Agreements or permit termination, modification or acceleration thereunder, and each of the Material Agreements is in full force and effect without default on the part of Energy Steel and, to the knowledge of Energy Steel and Seller, any of the other parties thereto. Without limiting the generality of the foregoing, no written or oral notice of termination or default has been given or received by Energy Steel with respect to any Material Agreement.

(d) Except for the Required Approvals with respect to Material Agreements set forth inSchedule 3.4, no Contract to which Energy Steel is a party requires consent or waiver in connection with consummation of the transactions contemplated herein.

(e) With respect to each Lease: (i) there are no disputes, oral agreements or forbearance programs in effect; (ii) Energy Steel has not assigned, transferred, conveyed, mortgaged, deeded in trust or encumbered any interest in the leasehold represented by any of the Leases; and (iii) except as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, Energy Steel has obtained all authorizations of Governmental Entities (including licenses and permits) required to be obtained in connection with their operation of the Business at the premises leased under any of the Leases, and have operated and maintained such premises in all material respects in accordance with applicable Laws.

(f) Schedule 3.16(f) sets forth in detail Energy Steel's standard terms and conditions of sale or lease, purchase orders, contracts or agreements for the sale of Products or for the performance of any services by Energy Steel or any Independent Contractor.

(g) Except as set forth in Schedule 3.16(g), no Material Agreement was awarded to Energy Steel pursuant to any program (e.g. small business, small disadvantaged business, woman owned business, etc.) or as a result of Energy Steel's "woman owned business" status or "small business" status or other preferred status under any applicable Law. To Energy Steel's or the Seller's knowledge, no Material Agreement with respect to the provision of any products or services by Energy Steel is entirely dependent upon Energy Steel being a small business or woman owned business, whether certified or otherwise.

**3.17 Product and Service Warranty and Liability.**

(a) Except as provided on Schedule 3.17(a), to Energy Steel and Seller's knowledge, all of the Products and services provided, distributed, manufactured, sold, licensed or delivered by

Energy Steel have conformed in all material respects with all applicable contractual commitments, all applicable Laws, and all express and implied warranties with respect thereto and Energy Steel has no notice and is not otherwise aware of any material liability (whether asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, and due or to become due) for replacement thereof or other damages in connection therewith. As of the Closing Date, the Business will have no liability for replacement of any Products (or other damages in connection therewith) or for the performance of any services except contingent contractual warranty obligations. Energy Steel has made available to Graham true, correct and complete copies of the standard terms and conditions of sale and for service performed by the Business, which contain all (express as opposed to implied) applicable guaranty, warranty and indemnity provisions and, except as provided on Schedule 3.17(a), no Products provided or services performed by Energy Steel are subject to contractual guaranty, warranty or indemnity obligations beyond the standard terms and conditions.

(b) Except as disclosed on Schedule 3.17(b), Energy Steel does not have any continuing Liability for replacement or repair or other damages in connection with any product manufactured, sold, leased or delivered.

**3.18 Litigation.**

Except as set forth on Schedule 3.18, there is no Claim pending or to Energy Steel's or the Seller's knowledge, threatened against or affecting Energy Steel (or any of their respective officers or directors in connection with the Business), which if adversely determined could reasonably be expected to have, individually or in the aggregate, an adverse effect on the consummation of the transactions contemplated herein, or a Material Adverse Effect, nor is there any judgment, injunction, decree, rule or order of any Governmental Entity outstanding against Energy Steel which could reasonably be expected to have, individually or in the aggregate, any such effect.

**3.19 Tax Matters.**

Except as set forth in Schedule 3.19:

(a) Energy Steel (or affiliated, consolidated, unitary or combined group of which Energy Steel has been a member) has timely filed all federal, state, local and foreign Tax returns that are required to be filed by it on or before the date hereof. All such Tax returns were correct and complete in all respects and were prepared in compliance with all applicable Laws. All Taxes due and owing by Energy Steel (whether or not shown on such returns) have been paid. The Financial Statements reflect an adequate accrual in accordance with GAAP, based on the facts and circumstances existing as of the respective dates thereof, for all Taxes payable or accrued by Energy Steel through the respective dates thereof; the unpaid Taxes of Energy Steel do not exceed that reserve as adjusted for the passage of time through the Closing Date in accordance with past custom and practice of Energy Steel in filing its tax returns. Energy Steel is not currently the beneficiary of any extension of time within which to file any Tax return. No Claim has ever been made by an authority in a jurisdiction where Energy Steel does not file Tax Returns that Energy Steel is or may be subject to taxation by that jurisdiction.

(b) as of the date hereof, there are no deficiencies for any Taxes proposed, asserted or assessed against Energy Steel, and no requests for waivers of the time to assess any Taxes are pending;

(c) Energy Steel has complied with all Laws relating to the payment and withholding of Taxes and has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder or other Person;

(d) No federal, state, local, or non-U.S. tax audits or administrative or judicial Tax proceedings are pending or being conducted with respect to Energy Steel. Energy Steel has not received from any federal, state, local, or non-U.S. taxing authority (including jurisdictions where Energy Steel has not filed Tax returns) any (a) notice indicating an intent to open an audit or other review, (ii) request for information related to Tax matters, or (iii) notice of deficiency or proposed adjustment for any amount of Tax proposed, asserted, or assessed by any taxing authority against Energy Steel. To the extent that the Tax returns of Energy Steel have been examined by and settled with the IRS or other relevant taxing authority (or the applicable statue of limitations has expired), all assessments for Taxes due with respect to such completed and settled examinations or any concluded litigation have been fully paid;

(e) as of the date hereof, there are no Encumbrances for Taxes (other than for current Taxes not yet due and payable) on the assets of Energy Steel;

(f) Energy Steel is not bound by any Contract with any Person with respect to Taxes;

(g) Energy Steel has not constituted either a "distributing corporation" or a "controlled corporation" (within the meaning of section 355(a)(1)(A) of the Code) in a distribution of stock qualifying for tax-free treatment under section 355 of the Code (i) in the two (2) years prior to the date of this Agreement or (ii) in a distribution which could otherwise constitute part of a "plan" or "series of related transactions" (within the meaning of section 355(e) of the Code) in conjunction with the closing the transactions contemplated herein;

(h) Energy Steel has never been a member of an affiliated, unitary or combined group of corporations (within the meaning of section 1504 of the Code and any analogous provision of Law) and has no liability for the Taxes of any Person under Treasury Regulation 1.1502-6, as a transferee or successor, by contract or otherwise;

(i) Energy Steel has not waived any statute of limitations in respect of any Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency;

(j) Energy Steel has not agreed to make, or is required to make, any adjustment under section 481(a) of the Code or any similar provision of Law by reason of a change in accounting methods or otherwise;

(k) Energy Steel is not a party to any closing agreement described in section 7121 of the Code (or any corresponding provision of state, local or foreign income tax Law) executed on or prior to the Closing Date;

(l) no asserted or threatened Claim has been made by a taxing authority in a jurisdiction where Energy Steel does not file Tax returns that Energy Steel is or may be subject to taxation in that jurisdiction;

(m) Energy Steel is not obligated under any Contract that provides for the payment of any amount which would not be deductible by reason of section 280G of the Code, nor will Energy Steel make any "excess golden parachute payment" under sections 280G or 4999 of the Code;

(n) Energy Steel has delivered or made available to Graham true and complete copies of (i) all income Tax returns of Energy Steel (or the portion of any affiliated, unitary or combined Tax return relating to Energy Steel) for the three taxable years preceding the year of this Agreement, and (ii) any audit report, statement of deficiency or similar report issued within the last three (3) years (or otherwise with respect to any audit or proceeding in progress) relating to Taxes of Energy Steel (or any member of an affiliated, consolidated, unitary or combined group of which Energy Steel was a member);

(o) Energy Steel will not be required to include any item of income for any taxable period (or portion thereof) ending after the Closing Date as a result of any installment sale or open transaction disposition made on or prior to the Closing Date or any prepaid amount received on or prior to the Closing Date;

(p) Energy Steel is not and has never been a party to any reportable transaction as defined in Section 6707A(c)(1);

(q) Energy Steel is not a party to any tax-sharing or similar agreements; and

(r) Energy Steel (and any predecessor to Energy Steel) has been a validly electing S corporation within the meaning of Code §1361 and §1362 at all times since January 1, 2009 and Energy Steel will be an S corporation up to and including the day before the Closing Date. In addition, Seller was and remains the sole shareholder of Energy Steel since January 1, 2009. Except for the stock sale contemplated by this Agreement, no action has been taken by Energy Steel or the Seller that may result in the revocation of any such election.

**3.20 Events Subsequent to October 31, 2010.**

Since October 31, 2010, except as disclosed inSchedule 3.20, Energy Steel has conducted the Business only in the Ordinary Course of Business and no Material Adverse Effect has occurred with respect to Energy Steel or the Business. Without limiting the generality of the foregoing, except as disclosed in Schedule 3.20, since October 31, 2010, Energy Steel has not:

(i) sold, leased, transferred, or assigned any of its assets, tangible or intangible, other than for a fair consideration in the Ordinary Course of Business;

(ii) entered into any Contract outside the Ordinary Course of Business;

(iii) accelerated, terminated, modified, or cancelled any Contract to which Energy Steel is a party or by which any of them is bound;

(iv) imposed any Security Interest upon any of its assets, tangible or intangible;

(v) made any Capital Expenditure (or series of related Capital Expenditures) more than $10,000 in the aggregate;

(vi) made any capital investment in, any loan to, or any acquisition of the securities or assets of, any other Person (or series of related capital investments, loans, and acquisitions) more than $10,000 in the aggregate;

(vii) issued any note, bond, or other debt security or created, incurred, assumed, or guaranteed any indebtedness for borrowed money or capitalized lease obligation either involving more than $5,000 singly or $10,000 in the aggregate;

(viii) delayed or postponed the payment of accounts payable or any other Liabilities;

(ix) cancelled, compromised, waived, or released any right or claim (or series of related rights and claims) more than $10,000 in the aggregate;

(x) granted any license or sublicense of any rights under or with respect to any Intellectual Property;

(xi) made or authorized any change in the charter or bylaws of Energy Steel;

(xii) issued, sold, or otherwise disposed of any of its capital stock, or granted any options, warrants, or other rights to purchase or obtain (including upon conversion, exchange, or exercise) any of its capital stock;

(xiii) declared, set aside, or paid any dividend or made any distribution with respect to its capital stock (whether in cash or in kind) or redeemed, purchased, or otherwise acquired any of its capital stock;

(xiv) experienced any damage, destruction, or loss (whether or not covered by insurance) to its property more than $10,000 in the aggregate;

(xv) made any loan to, or entered into any other transaction with, the Seller, any Affiliate of the Seller or Energy Steel, or any of the directors, officers, or employees of Energy Steel or any of its Affiliates other than compensation in the Ordinary Course of Business;

(xvi) entered into any employment contract or collective bargaining agreement, written or oral, or modified the terms of any existing such contract or agreement;

(xvii) granted any increase in the base compensation of any of its directors, officers, and employees in excess of three percent (3%) per annum;

(xviii) adopted, amended, modified, or terminated (nor has any entity affiliated with Energy Steel within the meaning of Section 3.14(o) adopted, amended, modified or

terminated) any Employee Plan or any other bonus, profit sharing, incentive, severance, or other plan, contract, or commitment for the benefit of any of its directors, officers, and employees;

(xix) made any other change in employment terms for any of its directors, officers, and employees outside the Ordinary Course of Business;

(xx) made any change in its Tax or accounting principles, practices or methodologies (including, but not limited to, Tax or accounting elections);

(xxi) disclosed any material Confidential Information (as defined below) to any third party without appropriate legal protection;

(xxii) obtained new revolving loans or caused letters of credit to be issued, other than for the purchase of inventory or other working capital needs in the Ordinary Course of Business; and

(xxiii) legally committed itself to any of the foregoing.

**3.21 Insurance.**

Schedule 3.21 sets forth the following information with respect to each insurance policy (including policies providing property, casualty, liability, and workers' compensation coverage and bond and surety arrangements) to which Energy Steel is a party, a named insured, or otherwise the beneficiary of coverage or under which Energy Steel has a pending claim or could make a claim:

(i) the name, address, and telephone number of the agent;

(ii) the name of the insurer, the name of the policyholder, and the name of each covered insured;

(iii) the policy number and the period of coverage; and

(iv) a description of any retroactive premium adjustments or other loss-sharing arrangements.

With respect to each such insurance policy in effect on the date hereof: (A) the policy is legal, valid, binding, enforceable, and in full force and effect; (B) nothing exists within the policy or has occurred that would preclude or interfere with the policy continuing after the consummation of the transactions contemplated hereby to be legal, valid, binding, enforceable, and in full force and effect on identical terms as exists prior to the consummation of the transactions contemplated hereby (based upon the manner in which the Business is currently operated); (C) neither Energy Steel nor any other party to the policy is in breach or default (including with respect to the payment of premiums or the giving of notices), and to the knowledge of Energy Steel or Seller no event has occurred which, with notice or the lapse of time, would constitute such a breach or default, or permit termination, modification, or acceleration, under the policy; and (D) no party to the policy has repudiated any provision thereof. Schedule 3.21 describes any self-insurance arrangements affecting Energy Steel.

**3.22 Notes Receivable and Accounts Receivable.**

All notes receivable and accounts receivable of Energy Steel are reflected properly on their books and records, are valid receivables, and are current and collectible. None of the notes receivables or accounts receivable of Energy Steel are subject to known pending or threatened Claims by customers for setoffs or counterclaim. To the knowledge of Energy Steel and Seller, no facts exist which would entitle any Governmental Entity to exercise any rights of setoff or counterclaim against any notes receivable or accounts receivable of Energy Steel.

**3.23 Customers; Suppliers; Accounts Payable.**

(i) Energy Steel has made available to Graham a listing backlog of all pending customer orders or commitments placed as of the Effective Date with Energy Steel.

(ii) Neither Energy Steel nor the Seller has any knowledge or reason for believing any single sales representative, distributor, licensee, licensor, customer or any group of affiliated sales representatives, distributor, licensee, licensor or customers who represented five percent (5%) or more of the consolidated revenues of Energy Steel during the twelve (12) months ended November 30, 2010, will or to Energy Steel's or Seller's knowledge, plans to terminate or cancel its relationship with Energy Steel. To Energy Steel's and the Seller's knowledge, there does not exist any condition, state of facts or circumstances that could reasonably be expected to cause any of such sales representatives, distributors, licensees, licensors or customers to terminate their relationships or for any prospective customers to refuse to consider a prospective relationship with Energy Steel. To the knowledge of Energy Steel and Seller, none of the business or prospective business of Energy Steel is in any manner dependent upon the making or receipt of any improper payments, discounts or other inducements to any officers, directors, employees, representatives or agents of any customer.

(iii) All accepted and unfulfilled orders for the sale of Products entered into by Energy Steel and all outstanding contracts or commitments for the purchase of inventory, supplies and services by or from Energy Steel were made in bona fide transactions in the Ordinary Course of Business. There are no material claims against Energy Steel to return products as a result of alleged over-shipments, defective products or otherwise, or of products in the hands of customers, retailers, distributors or sales representative under an understanding that such products would be returnable.

(iv) To Energy Steel's and the Seller's knowledge Energy Steel does not have any Liability arising out of or related to (i) any injury to individuals or property as a result of the ownership, possession, or use of any product manufactured, sold, leased, or delivered by Energy Steel, or (ii) returned products which were manufactured, sold, leased or delivered by Energy Steel.

**3.24 Guaranties.**

Except as set forth on Schedule 3.24, Energy Steel is not a guarantor or otherwise is liable for any Liability or obligation (including indebtedness) of any other Person.

**3.25 Brokers or Finders.**

Except for UHY Advisors MI, Inc. ("***UHY***"), no agent, broker, investment banker, financial advisor or other Person is or will be entitled to any broker's or finder's fee or any other commission or similar fee from the Seller or Energy Steel in connection with any of the transactions contemplated by this Agreement.

**3.26 Foreign Corrupt Practices Act.**

Neither Energy Steel nor any of its respective officers, directors, nor, to Energy Steel's or the Seller's knowledge, any employees or agents (or stockholders), distributors, representatives or other persons acting on the express, implied or apparent authority of Energy Steel, have paid, given or received or have offered or promised to pay, give or receive, any bribe or other unlawful payment of money or other thing of value, any unlawful discount, or any other unlawful inducement, to or from any person or Governmental Authority in the United States or elsewhere in connection with or in furtherance of the business of Energy Steel (including, without limitation, any unlawful offer, payment or promise to pay money or other thing of value (i) to any foreign official, political party (or official thereof) or candidate for political office for the purposes of influencing any act, decision or omission in order to assist Energy Steel in obtaining business for or with, or directing business to, any person, or (ii) to any person, while knowing that all or a portion of such money or other thing of value will be offered, given or promised unlawfully to any such official or party for such purposes). The business of Energy Steel is not in any manner dependent upon the making or receipt of such unlawful payments, discounts or other inducements. Energy Steel has not otherwise taken any action that could cause Energy Steel to be in violation of the Foreign Corrupt Practices Act or any applicable Laws of similar effect.

**3.27 Backlog**.

As of the date specified on Schedule 3.27, Energy Steel has a backlog of "orders" (meaning a customer has issued a purchase order in respect of the orders listed, and not necessarily that the order is irrevocable or otherwise not subject to cancellation in certain circumstances dictated by applicable terms and conditions) for the sale of its products and services as set forth in Schedule 3.27. As of the date specified on Schedule 3.27, Energy Steel has not received notice from a respective customer that any of such orders have been cancelled or materially reduced, and each of such orders on backlog is at a price and on terms (including margin) generally consistent with Energy Steel's past practices and the Ordinary Course of Business.

**3.28 Full Disclosure.**

All documents and other papers delivered by or on behalf of the Seller or Energy Steel in connection with the transactions contemplated by this Agreement are accurate and complete, as of the date and for the periods covered or therein specified, in all material respects, are authentic and to the knowledge of Energy Steel and Seller copies of originals. To the knowledge of Energy Steel and Seller, no representation or warranty of the Seller or Energy Steel contained in this Agreement contains any untrue statement of a fact or omits to state a fact necessary in order to make such respective representations and warranties the statements in this Agreement, in light of the circumstances under which they were made, not misleading.

**3.29 Certain Acts or Omissions.**

Seller has not knowingly, intentionally, or in a grossly negligent manner committed any act or action or omitted to take any act or action in breach of her duties to Energy Steel the occurrence of which has or could reasonably be expected to give rise to a Claim by or against Energy Steel whether based in contract, tort, breach of fiduciary duty or otherwise.

## ARTICLE 4.

## REPRESENTATIONS AND WARRANTIES OF GRAHAM AND BUYER

Graham and Buyer represent and warrant to Energy Steel and Seller as follows:

**4.1 Organization, Standing and Power.**

Graham is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. Each of Graham and Buyer has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now being conducted, and is duly qualified and in good standing to do business in the State of Michigan and each jurisdiction in which the nature of its business or the ownership or leasing of its properties makes such qualification necessary, other than in such jurisdictions where the failure so to qualify could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

**4.2 Authority; Binding Effect.**

Each of Graham and Buyer has all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of each of Graham and Buyer. This Agreement has been duly executed and delivered by each of Graham and Buyer and, assuming the due execution and delivery hereof by Energy Steel, constitutes the valid and binding obligation of each of Graham and Buyer, enforceable against each of them in accordance with its terms, except as the enforceability hereof may be limited by (a) bankruptcy, insolvency or other Laws relating to or affecting creditors' rights generally and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). No vote of any creditor or security holder of Graham is required in connection with the execution and delivery of this Agreement by Graham or Buyer, or the consummation of the transactions contemplated by this Agreement by either. Graham has adopted this Agreement as the sole stockholder of Buyer and is jointly and severally liable for all obligations and liabilities of itself and Buyer as a direct party to this Agreement.

**4.3 No Conflict.**

The execution and delivery of this Agreement by each of Graham and Buyer does not, and the consummation of the transactions contemplated hereby and the fulfillment of the obligations and

undertakings hereunder will not, result in any Violation of any provision of: (a) the certificate of incorporation or bylaws of Graham or of Buyer; (b) any material Contract applicable to Graham, Buyer or any of their respective assets; or (c) any Law applicable to Graham, Buyer or any of their respective assets; except, in the case of Contracts and Laws, for Violations which could not reasonably be expected to have, individually or in the aggregate, any adverse effect on the validity or enforceability of this Agreement or a Material Adverse Effect. No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity is required by or with respect to Graham or Buyer in connection with the execution and delivery of this Agreement by Graham or Buyer, or for the consummation by each of Graham and Buyer of the transactions contemplated hereby, except for: (i) filings and notices required under Competition Laws; (ii) the filing of such documents with, and the obtaining of such orders from, state authorities, including state securities authorities, that are required in connection with the transactions contemplated by this Agreement; and (iii) such consents, approvals, orders, authorizations or registrations the failure to obtain which could not reasonably be expected, individually or in the aggregate, to have any adverse effect on the validity or enforceability of this Agreement or a Material Adverse Effect.

**4.4 Litigation.**

Except as disclosed in Graham's filings with the SEC, there is no Claim pending or to Graham's knowledge threatened against or affecting Graham, which if adversely determined could reasonably be expected, individually or in the aggregate, to have an adverse effect on the consummation of the transactions contemplated herein or a Material Adverse Effect, nor is there any judgment, injunction, decree, rule or order of any Governmental Entity outstanding against Graham which could reasonably be expected, individually or in the aggregate, to have any such effect.

**4.5 Brokers or Finders.**

Except for Harvey & Company, LLC, no agent, broker, investment banker, financial advisor or other Person is or will be entitled to any broker's or finder's fee or any other commission or similar fee from Graham in connection with any of the transactions contemplated by this Agreement.

**4.6 No Breach.**

Neither Buyer nor Graham has knowledge of a breach by Seller or Energy Steel of any of their representations or warranties made in this Agreement which are of a nature which entitle Buyer or Graham a right to indemnification under this Agreement.

**4.7 Purchase for Investment.**

Buyer is acquiring the Energy Steel Shares for its own account for investment purposes and not with a view to the distribution of the Energy Steel Shares. Buyer has such knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of its investment in the Energy Steel Shares and has had an adequate opportunity to conduct an investigation of Energy Steel. Buyer is an "accredited investor" as defined in Rule 501 under the Securities Act of 1933, as amended. Buyer will not, directly or indirectly, dispose of the Energy Steel Shares except in compliance with applicable federal and state securities laws.

**4.8 Financing.**

Graham and/or Buyer have sufficient funds available to satisfy, among other things, the obligation to pay: (a) the Purchase Price; and (b) all expenses incurred by Buyer in connection with the transactions contemplated hereby.

## ARTICLE 5.

## COVENANTS OF EACH PARTY

**5.1 Additional Agreements; Commercially Reasonable Efforts.**

Subject to the terms and conditions of this Agreement, each of the parties agrees to use commercially reasonable efforts to take or cause to be taken all action, and to do or cause to be done all things necessary, proper or advisable under applicable Laws, to consummate and make effective the transactions contemplated by this Agreement, including cooperating fully with the other parties, providing information, making all necessary filings and giving all necessary notices in connection with, among other things, Competition Laws, the Securities Act, the Exchange Act and state securities Laws. Each of the parties will take or cause to be taken all reasonable actions necessary to obtain (and will cooperate with each other in obtaining) any consent, authorization, order or approval of, or any exemption by, any Governmental Entity or other public or private third party, required to be obtained or made by any of them in order to consummate the transactions contemplated herein or the taking of any action contemplated by this Agreement as agreed to be so necessary by the parties, including without limitation the Required Approvals. In case at any time after the Closing Date any further action is necessary or desirable to carry out the purposes of this Agreement, each party will reasonably cooperate to take all such necessary action.

**5.2 Expenses.**

Graham and Seller will each bear their respective legal, accounting and other expenses in connection with the transactions contemplated hereby, whether or not the transactions contemplated herein are consummated, except as provided in Article 7, or as otherwise necessary to enforce this Agreement and the transactions contemplated hereby.

**5.3 Other Actions.**

(a) Energy Steel, the Seller and Graham will refrain from knowingly taking any action that would or is reasonably likely to cause any of its representations and warranties set forth in this Agreement to be untrue as of the date made or any of the conditions to the transactions contemplated herein set forth in Article 6 not to be satisfied. Prior to the Closing Date, each of the parties will use commercially reasonable efforts to: (a) obtain the satisfaction of its conditions to Closing as set forth in Article 6 as soon as practicable; (b) facilitate contacts, negotiations and communications with any Persons reasonably necessary to ensure a smooth transition of control of the Business; and (c) assist one another in obtaining any consents required from any Person to effect the consummation of the transactions contemplated hereby.

(b) Prior to the Closing Date, neither Energy Steel nor the Seller shall revoke Energy Steel's election to be taxed as an S corporation within the meaning of Code §1361 and §1362, nor shall Energy Steel or Seller take or allow any action (other than the sale of Energy Steel's stock pursuant to this Agreement) that would result in the termination of Energy Steel's status as a validly electing S corporation within the meaning of Code §1361 and §1362.

**5.4 Confidentiality.**

Graham and Buyer (treated as one party for this purpose) and Energy Steel and the Seller (each, a "***Receiving Party***") will, and will use commercially reasonable efforts to cause its Affiliates, employees, representatives and agents to, hold in strict confidence all Confidential Information of the other party (each, the "***Disclosing Party***"), unless compelled to disclose the same by judicial or administrative process or, in the opinion of counsel, by other Laws; provided, however, that in either such case the Receiving Party will provide the Disclosing Party with prompt prior notice thereof so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Section. In the event that such protective order or other remedy is not obtained, or the Disclosing Party waives compliance with the provisions hereof, the Receiving Party will furnish only that portion of Confidential Information which, in the written advice of the Receiving Party's counsel, is required, and the Receiving Party will exercise commercially reasonable efforts to obtain reliable assurance that confidential treatment will be accorded such of the disclosed Confidential Information as the Disclosing Party so designates. The Receiving Party will not otherwise disclose Confidential Information to any Person, except with the consent of the Disclosing Party. In the event that the transactions contemplated herein are not consummated or this Agreement is terminated, the Receiving Party will promptly return all Confidential Information to the Disclosing Party. For the purposes hereof, "***Confidential Information***" means all information of any kind concerning the Disclosing Party or any of its Affiliates, obtained directly or indirectly from the Disclosing Party or any of its Affiliates, employees, representatives or agents in connection with the transactions contemplated hereby, except information (a) ascertainable or obtained from public or published sources, (b) received from a third party not known by the Receiving Party to be under an obligation to keep such information confidential, (c) which is or becomes known to the public (other than through a breach of this Agreement), or (d) which was in the Receiving Party's possession prior to disclosure thereof to the Receiving Party and which was not subject to any obligation to keep such information confidential. The Receiving Party recognizes that any breach of the provisions of this Section would result in irreparable harm to the Disclosing Party and its Affiliates and, therefore, that the Disclosing Party will be entitled to an injunction to prohibit any such breach or anticipated breach, without the necessity of posting a bond, cash or otherwise, in addition to all of its other legal and equitable remedies.

**5.5 Publicity.**

Neither Energy Steel nor the Seller shall issue any press release or make any public announcement relating to the subject matter of this Agreement without the prior written approval of Graham which consent shall not be unreasonably withheld or delayed after the consummation of the Closing. In addition, Energy Steel and the Seller covenant and agree to cooperate with Graham in connection with the preparation and making of any public disclosure by Graham which Graham

elects to or is required to make by applicable Law or any listing or trading requirement concerning Graham's publicly-traded securities.

**5.6 Cooperation in Preparation of Audited Financial Statements and SEC Reports.**

Energy Steel and the Seller agree to cooperate with Graham, at Graham's expense, in the preparation of all filings with the SEC in connection with this Agreement and the consummation of the transactions contemplated herein.

**5.7 Restrictions on Certain Activities.**

(a) The Seller shall not during the longer period of: (i) one (1) year after the time in which she may be employed by Graham or any Subsidiary of Graham; or (ii) for a period of five (5) years after the Closing Date (the "***Restriction Period***"), anywhere in the United States, Canada, Germany, Korea, Slovenia, Brazil and China and if employed by Graham or an Affiliate in any other country where Graham or any Subsidiary conducts business, directly or indirectly, as a partner, joint venturer, investor, lender, manager, licensor, manufacturer, retailer or otherwise, engage in any business that engages in any activity which is competitive with the Business or the businesses operated by Graham, or own stock or otherwise have an ownership interest in any person, corporation, firm, partnership or other entity engaged in any such business except owning five percent (5%) or less of any publically-traded company engaged in a competitive business.

(b) The Seller will not, during the Restriction Period hire or offer to hire (as an employee, independent contractor or otherwise) any person who on the date hereof is a director, officer or employee of Graham, including Buyer or Energy Steel, except Danna Unrue.

(c) The Seller agrees that a violation of Section 5.7(a) or 5.7(b) will cause irreparable injury to Graham and Buyer, and Graham and Buyer will be entitled, in addition to any other rights and remedies it may have at law or in equity, to apply for an injunction enjoining and restraining the Seller, as the case may be, from doing or continuing to do any such act and any other violations or threatened violations of this Section 5.7 hereof without the necessity of posting a bond or undertaking.

(d) The Seller acknowledges and agrees that the covenants set forth in this Section 5.7 are reasonable and valid in geographical and temporal scope and in all other respects. If any of such covenants are found to be invalid or unenforceable by a final determination of a court of competent jurisdiction (i) the remaining terms and provisions hereof shall be unimpaired and (ii) the invalid or unenforceable term or provision shall be deemed replaced by a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision. In the event that, notwithstanding the first sentence of this Section 5.7(d), any of the provisions of this Section 5.7 relating to the geographic or temporal scope of the covenants contained therein or the nature of the business restricted thereby shall be declared by a court of competent jurisdiction to exceed the maximum restrictiveness such court deems enforceable, such provision shall be deemed to be replaced herein by the maximum restriction deemed enforceable by such court.

**5.8 Tax Matters**

(a) ***Final Tax Returns***. All Tax returns for Energy Steel that are to be filed after Closing and include a period, or part of a period that began before Closing (each a ***Final Tax Return***"), will be prepared by UHY and filed by Seller, at Seller's sole cost and expense, with opportunity given to Buyer to first review and provide comments on such Final Tax Return. All Final Tax Returns shall be prepared by UHY in a manner consistent with prior Tax returns of Energy Steel, unless otherwise required by Law. At least twenty (20) days prior to the due date for filing a Final Tax Return, Seller shall deliver a copy of each such Final Tax Return to Buyer for review and comment. Seller will accept all reasonable comments of Buyer made to the Final Tax Returns. To the extent permitted by applicable law, the Seller shall include any income, gain, loss, deduction or other tax items for such periods on the Seller's Tax returns in a manner consistent with the Schedule K-1s furnished by Energy Steel to the Seller for such periods. The Buyer shall be entitled to retain all refunds provided, however, that the Seller may retain all refunds with respect to Pre-Closing Tax Periods.

(b) ***Tax Return Preparation***. Graham, Buyer, the Seller and Energy Steel shall cooperate fully, as and to the extent reasonably requested by the other parties, in connection with the filing of any Tax returns, and any audit, litigation or other proceeding with respect to Taxes. Graham, Buyer, the Seller and Energy Steel shall, as soon as practicable, provide the other with written notice of any audit, litigation or other proceeding with respect to Taxes. Such cooperation shall include the retention and (upon the other party's request) the provision of records and information which are reasonably relevant to any such Tax return, or any such audit, litigation or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Graham, Buyer, the Seller and Energy Steel agree (i) to retain or cause to be retained all books and records with respect to Tax matters pertinent to Energy Steel relating to any Tax period beginning before the Closing Date until the expiration of the applicable statute of limitations (and, to the extent notified by Graham or the Seller, any extensions thereof) of the respective Tax periods, and to abide by all record retention agreements entered into with any Tax authority, (ii) to provide to the other party, upon request, all books and records with respect to Tax matters pertinent to Energy Steel relating to any taxable period beginning before the Closing Date until the expiration of the statute of limitations (and, to the extent notified by Graham or the Seller, any extensions thereof) of the respective periods, and (iii) to give the other parties reasonable written notice prior to transferring, destroying or discarding any such books and records and, if any of the other parties so requests, the other parties shall allow such requesting party to take possession of such books and records.

**5.9 Certain Taxes and Fees.**

All transfer, documentary, sales, use, stamp, registration and other such Taxes, and all conveyance fees, recording charges and other fees and charges (including any penalties and interest) incurred in connection with the consummation of the transactions contemplated by this Agreement, other than real estate Taxes, shall be paid by the Seller when due, and the Seller will, file all necessary Tax returns and other documentation with respect to all such Taxes, fees and charges. The expense of such filings shall be paid by the Seller.

**5.10 Termination of Existing Working Capital Line of Credit.**

The parties agree that effective as of the Closing Date any existing line of credit or other commercial loan facility of Energy Steel will be terminated. Buyer shall be obligated to establish new credit facilities as it determines appropriate on the Closing Date.

**5.11 Termination of Energy Steel 401(k) Plan.**

Energy Steel shall have delivered resolutions of its board of directors terminating the Energy Steel 401(k) Plan and and provide Graham and Buyer with written evidence of such termination in a form satisfactory to Graham, provided that such termination shall not be required to become effective until immediately prior to the Closing Date.

**5.12 Section 338(h)(10) Election**.

At the sole discretion of Graham and the Buyer upon written notice delivered to Seller no later than February 1, 2011, the Seller agrees to make a timely election under Code Section 338(h)(10) ("***338(h)(10) Election***"), and Graham and Buyer shall indemnify and hold harmless Seller from and against any and all Tax liabilities imposed on Seller (or imposed on Energy Steel and passed through to Seller) as a result of having made any such 338(h)(10) Election to the extent that such Tax liabilities exceed the Tax liabilities that the Seller would incur in the absence of such election (the "***Buyer Tax Payments***"). In the event that the Seller incurs any Tax obligations as a result of the 338(h)(10) Election which are in excess of amounts due had the transactions set forth herein been taxed as a stock sale, then the amount that Graham and the Buyer shall be required to reimburse Seller under this Section (1) shall be grossed up to assure that Seller does not incur any Tax cost as a result of the 338(h)(10) Election and the reimbursement payments under this Section and (2) shall take into account the highest marginal income tax rate applicable to payments of this type at the applicable times as they apply to the Seller. Any Buyer Tax Payments shall be treated by the parties as additional Purchase Price and shall be paid to Seller not less than five (5) days prior to the time Seller is required to pay such amounts with a Federal Tax return or estimate. Any amounts payable hereunder to the Seller shall be paid in cash unless otherwise agreed to in writing by the Seller. Graham and Buyer will prepare and timely file with the appropriate taxing authorities any forms used to make the 338(h)(10) Election. Buyer and Graham shall pay, as incurred, any and all fees (including fees of UHY), costs and expenses associated with the 338(h)(10) election. In the event that the 338(h)(10) election is denied by the IRS, Seller agrees that is shall refund the amount of any such Buyer Tax Payments paid by Buyer and Graham to Seller. Such refund amount from Seller shall be paid in cash unless otherwise agreed in writing or, at Graham's and Buyer's election such amount may be setoff against the Escrow Amount or any payments due to Seller under the Earn Out Agreement.

## ARTICLE 6.

## CONDITIONS PRECEDENT TO PARTIES' OBLIGATIONS

**6.1 Conditions to Each Party's Obligation.**

The respective obligations of Energy Steel, the Seller, Graham and Buyer to effect the transactions contemplated herein are subject to the satisfaction prior to the Closing Date of each of the following conditions:

(a) ***Governmental Approvals.*** All licenses, franchises, certificates, permits, accreditations, authorizations, consents, orders or approvals of, or registrations, declarations or filings with, or expirations of waiting periods imposed by, any Governmental Entity the failure to obtain which would materially delay, prevent or hinder the consummation of the transactions contemplated herein, will have occurred, been filed or been obtained, including any authorizations, filings or notices required under Competition Laws.

(b) ***No Injunctions or Restraints.*** No temporary restraining order, preliminary or permanent injunction or other order or Law issued by any court of competent jurisdiction or other Governmental Entity, or other legal restraint or prohibition, preventing the consummation of the transactions contemplated herein shall have been issued and pending at the time of Closing.

**6.2 Conditions to Obligations of Graham and Buyer.**

The obligations of Graham and Buyer to effect the transactions contemplated herein are subject to the satisfaction of the following additional conditions, unless waived by Graham:

(a) ***Representations and Warranties.*** The representations and warranties of Energy Steel and the Seller set forth in this Agreement will be true and correct in each case as of the date of this Agreement and as of the Closing Date, with the same force and effect as if made on and as of the Closing Date, in each case except for representations and warranties that speak only as of a specific date, which will have been true and correct as of such date; and Graham will have received a certificate to such effect signed on behalf of Energy Steel by its Certifying Officer.

(b) ***Performance of Obligations of Energy Steel and Seller.*** Energy Steel and the Seller will have performed in all material respects all obligations required to be performed by them under this Agreement at or prior to the Closing Date, and Graham will have received a certificate to such effect signed on behalf of Energy Steel by its Certifying Officers and the Seller.

(c) ***No Material Adverse Effect.*** Between the date hereof and the Closing Date, there will not have occurred or been discovered one or more events or conditions which have, or which could be expected to have, individually or in the aggregate, a Material Adverse Effect, and Graham will have received a certificate to such effect signed on behalf of Energy Steel by its Certifying Officers and the Seller.

(d) ***No Amendments to Resolutions.*** Neither the board of directors of Energy Steel nor the Seller will have amended, modified, rescinded or repealed the resolutions heretofore adopted by the board of directors which approve this Agreement, the consummation of the transactions contemplated herein and the performance of all of Energy Steel's and the Seller's obligations hereunder, and will not have adopted any other resolutions in connection with this Agreement and the transactions contemplated hereby inconsistent with such resolutions, and Graham will have received a certificate to such effect signed on behalf of Energy Steel by its Certifying Officers and the Seller.

(e) ***Articles of Incorporation.*** With respect to Energy Steel, Graham will have received a copy, certified as of a date reasonably proximate to the Closing Date by the Secretary of State (or other appropriate Governmental Entity) of its jurisdiction of organization, of its complete articles of incorporation (or similar organizational document), including all amendments to date.

(f) ***Consents Under Agreements.*** Energy Steel will have obtained the consent or approval of each Person whose consent or approval is required in order to permit the continuation or succession by Buyer pursuant to the transactions contemplated herein to any obligation, right or interest of Energy Steel under any Intellectual Property or Contract which are deemed Required Approvals by the parties as evidenced by inclusion on Schedule 3.4.

(g) ***New Lease Agreement.*** Buyer and ESSC Investments, L.L.C. shall have executed and delivered a new lease agreement for the property located at 3123 John Conley Drive, Lapeer, Michigan in substantially the same form as attached hereto as Exhibit F.

(h) ***Escrow Agreement.*** Graham, Buyer, Seller and Escrow Agent shall have executed and delivered the Escrow Agreement in substantially the same form as attached hereto as Exhibit B.

(i) ***Pay-Off Letters; Satisfaction of Energy Steel Debt; Release of Energy Steel Guarantees.*** Graham and Buyer shall have received letters, in form and substance reasonably satisfactory to Graham and Buyer, from the lenders of the Energy Steel Debt and from Mitchell for the Mitchell Note (the "***Pay-Off Letters***") (A) stating the aggregate amount of all the outstanding debt (including a list of all outstanding letters of credit of Energy Steel, as of the Closing Date), and (B) agreeing that if such amount so identified is paid and such letters of credit are terminated at Closing or any time stated thereafter, such prepayment and terminations shall not be subject to any prepayment premiums or penalties or any other fees or expenses associated with payment thereof, and that on such payment and letter of credit terminations all Encumbrances and liens in assets of Energy Steel or the Energy Steel Shares held by such lenders or Mitchell shall be terminated effective as of the Closing. The Seller shall provide satisfactory evidence that the Energy Steel Debt and the Mitchell Note have been paid in their entirety in accordance with the Pay-Off Letters. In addition, Energy Steel and the Seller shall deliver releases of all guarantees of any indebtedness guaranteed by Energy Steel, including without limitation any indebtedness of ESSC Investments, L.L.C.

(j) ***Employees; Seller Employment Agreement.*** Graham and Buyer will be satisfied that all Energy Steel employees, who they deem necessary to operate the Business and to whom Graham or Buyer have offered employment, including without limitation the Seller (on terms and conditions substantially similar to her employment terms and work arrangements other than salary, benefit programs and bonus as of the Closing Date) prior to the anticipated Closing Date, have agreed to be employed by Graham, Buyer or one of their Affiliates. In addition, Graham and the Seller shall have entered into an employment agreement on terms and conditions mutually satisfactory to Graham and the Seller.

(k) ***Assignment of Excluded Assets***. Energy Steel and Seller shall execute and deliver an Assignment and Assumption of Excluded Assets in form and substance satisfactory to Graham and Buyer.

(l) ***General Releases.*** The Seller and each of the officers and directors of Energy Steel shall have executed and delivered general releases to Energy Steel, releasing any claim to severance or termination payments and to all other claims and causes of action which any of them may now or ever have against Energy Steel other than for accrued compensation, each of which shall be in form and substance reasonably satisfactory to Graham and Buyer.

(m) ***Resignations***. Graham and the Buyer shall have received the resignations, effective as of the Closing Date, of each director and officer of Energy Steel.

(n) ***Opinion of Counsel to Energy Steel and Seller.*** Graham and the Buyer shall have received from Howard and Howard Attorneys PLLC, counsel to Energy Steel and counsel to the Seller an opinion as of the Closing Date substantially in the form set forth on Exhibit G, of which shall be addressed to Graham and the Buyer.

(o) ***Mitchell Release***. Mitchell shall have executed and delivered to Energy Steel a General Release in the form of Exhibit H attached hereto and Energy Steel shall have delivered a copy thereof delivered to Graham and Buyer. This Release shall contain a waiver and release as to any consideration that is or may be due as a result of this Agreement and the transactions contemplated hereby other than any payments due pursuant to the Purchase Agreement between the Seller and Mitchell dated August 28, 2003, as amended by an amendment dated September 9, 2003. In addition, the Release will contain restrictive covenants from Mitchell in favor of Graham, Buyer and their Affiliates.

(p) ***Termination of Shareholders Agreements, Purchase Agreement and Collateral Pledge Agreement*** Energy Steel, Seller and Mitchell shall have executed and delivered a release and termination with respect to that certain Shareholders Agreement dated as of January 2004, the Purchase Agreement between Seller and Mitchell dated August 28, 2003, as amended, and the Collateral Pledge Agreement between Seller and Mitchell dated August 28, 2003, as amended, which release and termination shall be in form and substance satisfactory to Graham and Buyer.

(q) ***UHY Limited Release and Waiver.*** UHY shall have executed and delivered to Energy Steel a waiver and limited release as to any consideration that is or may be due as a result of this Agreement and the transactions contemplated hereby other than the amount paid to them at Closing Date, which waiver and limited release shall be in form and substance satisfactory to Graham and Buyer.

(r) ***Direction to Apply Proceeds***. Graham and Buyer shall have received from the Seller instructions and authorization (in form and substance satisfactory to Graham and Buyer) directing Buyer to pay UHY all amounts due to such parties as a result of this Agreement and the transactions contemplated hereby.

(s) ***Other Closing Deliveries.*** Graham will have received the following:

(i) reasonable evidence of satisfaction of the covenants contained in Article 6;

(ii) duly executed resignations of all directors and officers of Energy Steel (in those capacities and not as employees); and

(iii) certificates of good standing as of a date reasonably proximate to the Closing Date with respect to Energy Steel from the respective Secretaries of State (or other appropriate Governmental Entities) of its jurisdiction of organization and any other jurisdictions in which it conducts business.

**6.3 Conditions to Obligations of Energy Steel and the Seller.**

The obligation of Energy Steel and the Seller to effect the transactions contemplated herein are subject to the satisfaction of the following additional conditions, unless waived by Energy Steel:

(a) ***Representations and Warranties.*** The representations and warranties of Graham set forth in this Agreement will be true and correct in each case as of the date of this Agreement and as of the Closing Date, with the same force and effect as if made on and as of the Closing Date, in each case except for representations and warranties that speak only as of a specific date, which will have been true and correct as of such date; and Energy Steel will have received a certificate to such effect signed on behalf of Graham by its Certifying Officer.

(b) ***Performance of Obligations of Graham and Buyer.*** Graham and Buyer will have performed in all material respects all obligations required to be performed by them under this Agreement at or prior to the Closing Date and a covenant to duly perform all post-closing obligations, and Energy Steel will have received a certificate to such effect signed on behalf of Graham by its Certifying Officer.

(c) ***Seller's Employment Agreement.*** Seller and Graham shall have entered into an employment agreement on terms and conditions mutually satisfactory to Graham and the Seller.

(d) ***New Lease Agreement.*** Buyer and ESSC Investments, L.L.C. shall have executed and delivered a new lease agreement for the property located at 3123 John Conley Drive, Lapeer, Michigan in substantially the same form as attached hereto as Exhibit F.

(e) ***Escrow Agreement.*** Graham, Buyer, Seller and Escrow Agent shall execute and deliver the Escrow Agreement in substantially the same form asExhibit B.

(f) ***Purchase Price***. Graham and Buyer shall have paid the Purchase Price in accordance with the terms of Section 2.2 above, including delivery of the fully-executed and enforceable Earn Out Agreement.

## ARTICLE 7.

## INDEMNIFICATION

**7.1 Survival.**

The representations and warranties in this Agreement (other than the representations and warranties contained in Sections 3.1 (Organization, Standing and Power), 3.2 (Capital Structure), 3.3 (Authority; Binding Effect), 3.8 (Assets; Title; Absence of Liens and Encumbrances), 3.10 (Intellectual Property), 3.13 (Environmental Matters), 3.14 (Employee Plans), 3.15 (Employment Matters), 3.19 (Tax Matters), 3.26 (Foreign Corrupt Practices Act), 4.1 (Organization, Standing and Power), 4.2 (Authority; Binding Effect), and 4.7 (No Breach) collectively, the "***Surviving Representations and Warranties,***" which shall survive the Closing for the applicable statute of limitations) shall survive the Closing for a period of twenty-one (21) months from the Closing, at which time they shall terminate; provided that a claim based on the Surviving Representations and

Warranties, any claim based on fraud or intentional misrepresentation by the Seller or Energy Steel in connection with this Agreement or any other agreements delivered in connection herewith and any claim based on fraud or intentional misrepresentation by Graham or Buyer in connection with this Agreement shall survive the Closing indefinitely, subject to any applicable statute of limitations.

**7.2 Indemnification by Energy Steel and the Seller.**

From and after the Closing Date, for the applicable survival period set forth in Section 7.1, Energy Steel and the Seller shall jointly and severally indemnify, save and hold harmless Graham and Buyer, and their respective directors, officers and stockholders and Representatives, or any of them (collectively, "***Graham Indemnitees***") from and against any and all Losses asserted against, resulting to, imposed on, sustained, incurred or suffered by any of them based upon, arising out of, related to or otherwise in respect of any of the following (including any action, suit or proceeding based upon, arising out of, related to or otherwise in respect of any thereof):

(a) the inaccuracy in or breach of any representation or warranty of Energy Steel or the Seller contained in Article 3 or any certificate delivered by Energy Steel or the Seller to Graham and Buyer in connection with this Agreement;

(b) any failure to perform or observe or any breach of any covenant or agreement made by Energy Steel or the Seller or any of their respective Affiliates in this Agreement or any other agreement delivered by Energy Steel or the Seller;

(c) any undisclosed Liability of Energy Steel or the Seller;

(d) any Liabilities related, in any way, to (i) the employment of any employees of Energy Steel on or prior to the Closing Date which are not assumed by Buyer or Graham, or (ii) employees terminated by Energy Steel or any Affiliate on or prior to the Closing Date;

(e) any Liabilities related, in any way, to "deferred compensation packages" of any Energy Steel employees, including without limitation the deferred compensation packages with Allan L. Valentine and Robert J. Paton;

(f) any Pre-Closing Taxes, including, without limitation, (i) any Taxes incurred during any period prior to the Closing Date when Energy Steel was taxable as a 'C' corporation, and (ii) any Taxes which may be incurred by Energy Steel, Graham or Buyer for any period prior to the Closing Date as a result of, relating to or otherwise in respect of the accounting change by Energy Steel to 'percentage of completion' (as disclosed on Schedule 3.19) whether or not such accounting change is approved or denied by the IRS;

(g) any Liabilities related in any way to the matters described in Schedules 1.1, 2.2(a), 2.5, 3.2(item 1), (item 2) and (item 3), 3.6, 3.8, 3.13, 3.14(a)(item 10) and (item 11), 3.14(c), 3.14(n), 3.15(a), 3.19(item 1), (item 2) and (item 3), 3.20(item 7) and 3.24;

(h) any Liabilities related in any way to the use of or operation of the Business at the facility located at 2715 Paldan Drive, Auburn Hills, Michigan or any other property or facility utilized by Energy Steel prior to the Closing Date; and

(i) any Liabilities related in any way to Energy Steel's failure to timely qualify to do business in any jurisdiction in which Energy Steel operates its Business prior to the Closing Date.

**7.3 Indemnification by Graham.**

From and after the Closing Date, for the applicable survival period set forth in Section 7.1, Graham shall indemnify, save and hold harmless the Seller and her heirs (collectively, "***Seller Indemnitees***") from and against any and all Losses asserted against, resulting to, imposed on, sustained, incurred or suffered by any them based upon, arising out of, related to or otherwise in respect of any of the following (including any action, suit or proceeding based upon, arising out of, related to or otherwise in respect of any thereof):

(a) the inaccuracy in or breach of any representation or warranty by Graham or Buyer contained in Article 4 or any certificate delivered by Graham in connection with this Agreement;

(b) any failure to perform or observe or any breach of any covenant or agreement made by Graham or Buyer or any of their respective Affiliates in this Agreement or any other agreement delivered by Graham or Buyer in connection with this Agreement; and

(c) any and all liabilities arising out of Graham or Buyer's ownership or operation of Energy Steel or the Business after the Closing Date.

**7.4 Limitations.**

(a) The Seller shall be required to indemnify and hold harmless pursuant to Sections 7.2(a) and (b) with respect to Losses incurred by Graham Indemnitees only to the extent the aggregate Losses exceed One Hundred Fifty Thousand Dollars ($150,000) (the "***Basket***"), whereupon the Seller shall be liable for all such Losses in excess of the Basket; provided, that the maximum aggregate liability of the Seller to all Graham Indemnitees taken together for all Losses pursuant to Section 7.2 shall not exceed an amount equal to Five Million Dollars ($5,000,000) (the "***Indemnification Cap***"). Notwithstanding the foregoing, the Basket and the Indemnification Cap shall not apply to (a) any claims that relate to a breach or inaccuracy of the Surviving Representations and Warranties, (b) any claims resulting from, arising out of, relating to or in the nature of, or caused by intentional misrepresentations, fraud or willful misconduct by the Seller or Energy Steel, (c) any claims resulting from, arising out of relating to or in the nature of, or caused by any matter which required approval by Energy Steel's board of directors and/or shareholders and which was not authorized by resolutions specifically detailing the actions approved, but rather was approved through an omnibus and general resolution, or (d) any claims under Sections 7.2(c), (d), (e), (f), (g), (h) and (i).

(b) Graham shall be required to indemnify and hold harmless pursuant to Section 7.3(a) and (b) with respect to Losses incurred by Seller Indemnitees only to the extent the aggregate Losses exceed the Basket, whereupon Graham shall be liable for all Losses in excess of the Basket; provided that the maximum aggregate liability of Graham to all Seller Indemnitees taken together for all Losses pursuant to Section 7.3 shall not exceed the Indemnification Cap. Notwithstanding the foregoing, the Basket and aforementioned liability limit shall not apply to any claims resulting from, arising out of, relating to or in the nature of, or caused by intentional misrepresentations, fraud or

willful misconduct by Graham and shall not in any manner limit Graham's and Buyer's obligations pursuant to Section 4.5 (Brokers or Finders), Section 4.7 (No Breach), and Section 2.2 (Payment of Purchase Price or Adjustments), the Earn Out Agreement or the Seller's Employment Agreement.

**7.5 Notice of Claims.**

(a) Except as provided in Section 7.6, if any Graham Indemnitee or the Seller Indemnitee (an "***Indemnified Party***") believes that it has suffered or incurred any Losses for which it is entitled to indemnification under this Article 7, such Indemnified Party shall so notify the party from whom indemnification is being claimed (the "***Indemnifying Party***") with reasonable promptness and reasonable particularity in light of the circumstances then existing. If any claim is instituted by or against a third party with respect to which any Indemnified Party intends to claim indemnification under this Article 7, such Indemnified Party shall promptly notify the Indemnifying Party of such claim. The notice provided by the Indemnified Party to the Indemnifying Party shall describe the claim (the "***Asserted Liability***") in reasonable detail and shall indicate the amount (or an estimate) of the Losses that have been or may be suffered by the Indemnified Party. The failure of an Indemnified Party to give any notice required by this Section 7.5 shall not affect any of the Indemnified Party's rights under this Article 7 or otherwise except and to the extent that such failure is prejudicial to the rights or obligations of the Indemnifying Party. Notwithstanding the foregoing, if prior to the stated expiration of any representation and warranty there shall have been given notice of an Asserted Liability by an Indemnified Party, such Indemnified Party shall continue to have the right to such indemnification with respect to such noticed claim notwithstanding such expiration.

(b) To the extent a claim for Losses is made by any Graham Indemitees for indemnification under Section 7.2 and the Seller refuses to provide such indemnification in reliance on a breach by Buyer or Graham of Section 4.7 (No Breach), then the burden of proof shall be on the Seller to demonstrate that such representation and warranty was breached by Buyer or Graham.

**7.6 Opportunity to Defend Third Party Claims.**

(a) Any Indemnifying Party will have the right to defend the Indemnified Party against any third party claim for which it is entitled to indemnification from such Indemnifying Party under this Article 7 with counsel reasonably satisfactory to the Indemnified Party so long as (i) any of the Indemnifying Parties notifies the Indemnified Party in writing within twenty (20) days after the Indemnified Party has given notice of the third party claim that all of the Indemnifying Parties will indemnify the Indemnified Party from and against the entirety of Losses the Indemnified Party may suffer resulting from, arising out of, relating to, in the nature of or caused by the third party claim, (ii) the Indemnifying Parties provide the Indemnified Party with evidence reasonably acceptable to the Indemnified Party that the Indemnifying Parties will have the financial resources to defend against the third party claim and fulfill their indemnification obligations hereunder, (iii) the third party claim involves only money damages and does not seek an injunction or other equitable relief, (iv) settlement of, or an adverse judgment with respect to, the third party claim is not, in the good faith judgment of the Indemnified Party, likely to establish a precedential custom or practice materially adverse to the continuing business interests of the Indemnified Party, and (v) the Indemnifying Parties diligently conduct the defense of the third party claim.

(b) Notwithstanding the foregoing, without the prior consent of the Indemnified Party, the Indemnifying Parties shall not settle or compromise any third party claim or consent to the entry of a judgment in connection therewith that: (i) does not provide for the claimant to give an unconditional release to the Indemnified Party in respect of the Asserted Liability; (ii) involves relief other than monetary damages; (iii) places restrictions or conditions on the operation of the business of the Indemnified Party or any of its Affiliates; or (iv) involves any finding or admission of criminal liability or of any Laws.

(c) So long as the Indemnifying Party has undertaken to conduct the defense of the third party claim in accordance with Section 7.6(a), (i) the Indemnified Party may retain separate co-counsel at its sole cost and expense and participate in the defense of the third party claim, (ii) the Indemnified Party will not consent to the entry of any judgment or enter into any settlement with respect to the third party claim without the prior written consent of the Indemnifying Party, and (iii) the Indemnifying Party shall keep the Indemnified Party reasonably informed as to the status of the claim for which it is providing a defense. Notwithstanding the foregoing or Section 7.6(a), in the event that (w) any of the conditions in Section 7.6(a)(i) is or becomes unsatisfied or; (x) the Indemnifying Party shall not have employed counsel reasonably satisfactory to the Indemnified Party to defend such action within thirty (30) days after the Indemnifying Party notifies the Indemnified Party of its intent to defend against the Asserted Liability; (y) the Indemnified Party shall have reasonably concluded, based upon written advice of counsel, that it has defenses available to it that are different from or additional to those available to the Indemnifying Party (in which case the Indemnifying Party shall not have the right to direct the defense of such action on behalf of the Indemnified Party with respect to such different defenses); or (z) representation of such Indemnified Party by the counsel retained by the Indemnifying Party would be inappropriate due to actual or potential differing interests between such Indemnified Party and any other party represented by such counsel in such proceeding, then the Indemnified Party may defend against the third party claim in any manner it may deem appropriate and, the Indemnifying Parties will be responsible for the Indemnified Party's costs of defending against the third party claim (including reasonable attorneys' fees and expenses), and the Indemnifying Parties will remain responsible for the entirety of the Losses the Indemnified Party may suffer resulting from, arising out of or caused by the third party claim.

**7.7 Recoupment and Set-Off.**

(a) With respect to any indemnification to which a Graham Indemnified Party is entitled under this Agreement as a result of any Losses it may suffer, such Graham Indemnified Party may offset such Losses from any amounts due under the Escrow Agreement, Earn Out Agreement or the Graham Indemnified Parties may recoup such unpaid Losses from the Seller directly. Any indemnification payment or set-off against the Escrow Amount or Earn Out Agreement made pursuant to this Section shall be treated, to the extent permitted or required by Laws, by all parties as an adjustment to the Purchase Price.

(b) With respect to any indemnification to which Seller is entitled under this Agreement as a result of any Losses it may suffer, Seller may offset such Losses from any amounts due under any agreement between Seller and Graham (or Buyer) or a Seller Indemnified Party may recoup such unpaid Losses from Graham and/or Buyer directly.

**7.8 Mitigation.**

No Indemnified Party shall be entitled to recover more than the full amount of any Loss incurred by such Indemnified Party under the provisions of this Agreement in respect of any such Loss. Without limiting the generality of the foregoing, the amount of any Losses subject to indemnification under Sections 7.2 and 7.3 shall be reduced by the amounts actually recovered by the Indemnified Party incurring such Loss under applicable insurance policies with respect to claims related to such Losses.

**7.9 Exclusive Remedy.**

Except as otherwise expressly provided for in this Agreement following the Closing, the indemnification provided by this Article 7 shall be the exclusive remedy for Graham, Buyer or Seller, as the case may be, with respect to this Agreement and the transactions contemplated by this Agreement; provided, however, that nothing herein will limit in any way any such Indemnified Party's (A) remedies in respect of fraud or willful or intentional breach of any representation, warranty, covenant or agreement herein, or (B) rights hereunder to injunctive or other equitable relief to enforce its rights under this Agreement, the Earn Out Agreement, the Escrow Agreement, the Seller Employment Agreement, the Lease or in connection with the transactions contemplated thereby.

## ARTICLE 8.

## TERMINATION

**8.1 Termination.**

This Agreement may be terminated at any time prior to the Closing:

(a) by mutual written consent of the Seller and Graham;

(b) by Graham, upon notice to the Seller, if (without any breach by Graham of any of its obligations hereunder) compliance with any condition set forth in Sections 6.1 or 6.2 becomes impossible, and such failure of compliance is not waived by Graham;

(c) by Energy Steel or Seller, upon notice to Graham, if (without any breach by Energy Steel or Seller of any of its obligations hereunder) compliance with any condition set forth in Sections 6.1 or 6.3 becomes impossible, and such failure of compliance is not waived by Energy Steel or Seller;

(d) by Graham or by Energy Steel, upon notice to the other, at any time after December 31, 2010 if Closing has not occurred by that date (except that the right to terminate under this Section 8.1(d) will not be available to any party whose failure to perform its obligations hereunder has been the cause of the failure of Closing to occur by such date);

(e) by Graham, upon notice to the Seller in the event the Seller or Energy Steel breach any representation, warranty, or covenant contained in this Agreement in any respect, Graham has

notified the Seller of the breach, and the breach has continued without cure for a period of thirty (30) days after the notice of breach; or

(f) by Seller, upon notice to Graham in the event Graham or Buyer breach any representation, warranty, or covenant contained in this Agreement in any respect, Seller has notified Graham of the breach, and the breach has continued without cure for a period of thirty (30) days after the notice of breach.

**8.2 Effect of Termination.**

In the event of termination of this Agreement by any party, this Agreement will immediately become void and of no effect, and there will be no liability or obligation on the part of Graham, Buyer, Energy Steel and the Seller or any of their respective officers or directors, as applicable, to any other party hereto, except in the case of willful material breach of this Agreement.

## ARTICLE 9.

## GENERAL PROVISIONS

**9.1 Amendment; Waiver.**

This Agreement may not be amended except by an instrument in writing signed by each of the parties. No waiver of compliance with any provision or condition hereof, and no consent provided for herein, will be effective unless evidenced by an instrument in writing duly executed by the party sought to be charged therewith. No failure on the part of any party to exercise, and no delay in exercising, any of its rights hereunder will operate as a waiver thereof, nor will any single or partial exercise by either party of any right preclude any other or future exercise thereof or the exercise of any other right.

**9.2 Notices.**

Each notice and other communication given hereunder will be in writing and will be deemed given when delivered personally, sent by telecopier (receipt of which is confirmed), or mailed, freight prepaid, by internationally recognized overnight courier (with receipt confirmed) to the party for which it is intended at the following address (or at such other address for a party as is specified by like notice):

(a) if to Seller and Energy Steel, to:

c/o Lisa D. Rice
2647 Invitational Drive
Oakland, Michigan 48363
Fax: (248) 645-1568

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

Howard & Howard Attorneys PLLC
450 West Fourth Street
Royal Oak, Michigan 48067
Attention: Joseph J. DeVito
Fax: (248) 645-1568

(b) if to Graham or Buyer, to:

c/o Graham Corporation
20 Florence Avenue
Batavia, New York 14020
Attention: James R. Lines, President and Chief Executive Officer
Fax: (585) 343-1097

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

Harter, Secrest & Emery LLP
1600 Bausch & Lomb Place
Rochester, New York 14604-2711
Attention: Daniel Kinel
Fax: (585) 232-2152

**9.3 Disclosure Schedules and Other Instruments.**

The Disclosure Schedules, each certificate provided hereunder and each written disclosure required hereby is incorporated by reference into this Agreement and will be considered a part hereof as if set forth herein in full; provided, however, that information set forth in the Disclosure Schedules or in any certification or written disclosure constitutes a representation and warranty of the party providing the same, and not the mutual agreement of the parties as to the facts therein stated. The Disclosure Schedules may not be amended or updated after the date of its delivery, except by the written agreement of Graham which shall not be unreasonably withheld or delayed.

**9.4 Inferences.**

Inasmuch as this Agreement is the result of negotiations between sophisticated parties of equal bargaining power represented by counsel, no inference in favor of or against any party will be drawn from the fact that any portion of this Agreement has been drafted by or on behalf of such party.

**9.5 Governing Law; Jurisdiction and Venue.**

This Agreement will be governed by and construed in accordance with the Laws of the State of New York without regard to its principles of conflicts of laws. The parties agree that the sole and exclusive forum for any Claim related to this Agreement, the interpretation or construction hereof and the transactions contemplated hereby will be the Supreme Court of and for the County of Monroe, State of New York. Each party unconditionally and irrevocably agrees not to bring any Claim in any other forum and not to plead or otherwise attempt to defeat the trial of such a matter in

such court whether by asserting that such court is an inconvenient forum, lacks jurisdiction (personal or other) or otherwise. Each party hereby waives the right to a trial by jury.

**9.6 Assignment.**

Neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned by any of the parties (whether by operation of Law or otherwise) without the prior written consent of the other parties, except that Buyer may assign, in its sole discretion, any or all of its rights, interests and obligations hereunder to any direct wholly-owned Subsidiary of Graham, provided such subsidiary assumes all of Buyer's obligations jointly and severally and Buyer shall remain liable to Seller hereunder.

**9.7 Benefit.**

Subject to express provisions herein to the contrary, this Agreement will inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing contained herein shall (i) be treated as an amendment to any particular employee benefit plan of Graham, Buyer, Energy Steel or any Affiliate of any of them, (ii) obligate Graham, Buyer or any of their Affiliates to (A) maintain any particular benefit plan or arrangement or (B) retain the employment of any particular employee, (iii) prevent Graham, Buyer or any of their Affiliates from amending or terminating any benefit plan or arrangement, or (iv) give any third party the right to enforce any of the provisions of this Agreement.

**9.8 Entire Agreement.**

This Agreement (including the documents and instruments referred to in this Agreement) constitutes the entire agreement of the parties and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof and is not intended to confer upon any other Person any rights or remedies hereunder.

**9.9 Headings.**

The heading references herein and the tables and indexes hereto are for convenience purposes only, do not constitute a part of this Agreement and will not be deemed to limit or affect any of the provisions hereof.

**9.10 Counterparts.**

This Agreement, and any document or instrument required or permitted hereunder, may be executed in counterparts, each of which will be deemed an original and all of which together will constitute but one and the same instrument.

**9.11 Independent Counsel**.

The parties covenant and agree that they have carefully read this Agreement, know its contents, and freely and voluntarily agree to all of its terms and conditions. Each party acknowledges that it has had the opportunity to engage independent legal counsel of its choice throughout all the negotiations that preceded the execution of this Agreement, and each party

acknowledges that it was given the opportunity to seek the consent and advice of independent legal counsel prior to the execution of this Agreement and consummation of the transactions contemplated herein. Each party shall bear its own legal fees incurred as a result of the preparation, review and negotiation of this Agreement, except that the Seller shall bear responsibility for all Energy Steel Transaction Expenses.

**9.12 Cooperation Following the Closing.**

Following the Closing, each party hereto shall deliver to the other parties hereto such further information and documents and shall execute and deliver to the other parties hereto such further instruments and agreements as any other party hereto shall reasonably request to consummate or confirm the transactions provided for in this Agreement, to accomplish the purpose of this Agreement or to assure to any other party hereto the benefits of this Agreement.

***[signature page follows]***

**IN WITNESS WHEREOF**, each of Graham, Buyer, Energy Steel and the Seller have caused this Agreement to be duly executed and delivered as of the date first above written.

**GRAHAM CORPORATION**

By: /s/ James R. Lines
Name: James R. Lines
Title: President and Chief Executive Officer

**ES ACQUISITION CORP.**

By: /s/ Jeffrey F. Glajch
Name: Jeffrey F. Glajch
Title: Chief Financial Officer

**ENERGY STEEL & SUPPLY CO.**

By: /s/ Lisa D. Rice
Name: Lisa D. Price
Title: President

/s/ Lisa D. Rice
**LISA D. RICE**
Individually and as sole Trustee of the Lisa D. Rice Revocable Trust dated June 5, 2003

Exhibits and Schedules to Stock Purchase Agreement

| | |
|---|---|
| Exhibit A | Earn Out Agreement |
| Exhibit B | Escrow Agreement |
| Exhibit C | Estimated Target Working Capital & Unpaid Transaction Expenses |
| Exhibit D | GAAP Departure and IRS Change in Accounting Methods |
| Exhibit E | Working Capital Formula Schedule |
| Schedule 1.1 | Energy Steel Debt |
| Schedule 2.2(a) | Estimated Unpaid Transaction Expenses |
| Schedule 2.5 | Excluded Assets and Claims |
| Schedule 3.2 | Capital Structure |
| Schedule 3.2(d) | Capital Structure |
| Schedule 3.4 | Required Approvals |
| Schedule 3.5(a) | Financial Statements |
| Schedule 3.6 | Material Liabilities |
| Schedule 3.7(a) | Permits |
| Schedule 3.8 | Encumbrances |
| Schedule 3.9(a), (b), (c) and (h) | Real Property |
| Schedule 3.10(a)(i), (ii), (iii) and (iv) | Intellectual Property |
| Schedule 3.10(b), (d), (e) and (f) | Intellectual Property |
| Schedule 3.11(b), (c) and (d) | Tangible Assets |
| Schedule 3.12(b) and (e) | Inventory |
| Schedule 3.13 | Environmental |
| Schedule 3.14(a), (b), (c), (h), (j), (m), (n) and (p) | Employee Plans |
| Schedule 3.15(b) and (c) | Employment Matters |
| Schedule 3.16(a), (c), (f) and (g) | Material Agreements |
| Schedule 3.17(a) and (b) | Product and Service Warranty and Liability |
| Schedule 3.18 | Litigation |
| Schedule 3.19 | Tax Matters |
| Schedule 3.20 | Subsequent Events |
| Schedule 3.21 | Insurance |
| Schedule 3.24 | Guaranties |
| Schedule 3.27 | Backlog |

Pursuant to Regulation S-K Item 601(b)(2), the above schedules and exhibits have been omitted and will be furnished supplementally to the Securities and Exchange Commission upon request

**EXHIBIT 10.2**

## EARN OUT AGREEMENT

**THIS EARN OUT AGREEMENT** (the "***Agreement***"), is entered into this 14th day of December, 2010 by and between ENERGY STEEL ACQUISITION CORP., a Delaware corporation ("***ESAC***"), Graham Corporation, a Delaware corporation ("***Graham***" in its capacity of Guarantor under Section 2.3 and otherwise as expressly provided herein as a direct party to this Agreement), and LISA D. RICE, individually and as the Trustee of the Lisa D. Rice Revocable Trust dated June 5, 2003 ("***Seller***"). Capitalized terms not otherwise defined in this Agreement shall have the meaning ascribed to them in that certain Stock Purchase Agreement by and among Graham, ESAC, Energy Steel & Supply Co., a Michigan corporation ("***Energy Steel***") and the Seller dated on even date herewith (the "***Stock Purchase Agreement***").

**WHEREAS**, the Seller beneficially owns all of the outstanding shares of capital stock of Energy Steel, which is engaged in the manufacture and supply of products and raw materials to the nuclear power generation industry (the "***Energy Steel Business***");

**WHEREAS**, simultaneously with the execution of this Agreement, ESAC is acquiring Energy Steel pursuant to and subject to the conditions set forth in the Stock Purchase Agreement; and

**WHEREAS**, as a condition to the consummation of the transactions set forth in the Stock Purchase Agreement, the Stock Purchase Agreement provides that this Agreement shall be entered into by the parties, pursuant to which Seller shall be eligible to receive certain performance-based payments from ESAC if certain performance conditions are satisfied (the "***Earn Out Consideration***") with respect to the Energy Steel Business.

**NOW**, **THEREFORE**, in consideration of the foregoing recitals and of the mutual covenants and conditions contained herein and such other consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

## ARTICLE I.

## EARN OUT CONSIDERATION

**Section 1.1 Defined Terms**.

"***2011 EBITDA Thresholds***" and "***2012 EBITDA Thresholds***" mean those EBITDA thresholds set forth in the following tables:

| 2011 EBITDA Thresholds | Amount of First Year Payment |
|---|---|
| [3] $3,625,000 | $250,000 |
| [3] $3,750,000 | $500,000 |
| [3] $3,875,000 | $750,000 |
| [3] $4,000,000 | $1,000,000 |

| 2012 EBITDA Thresholds | Amount of Second Year Payment |
|---|---|
| [3] $3,625,000 | $250,000 |
| [3] $3,750,000 | $500,000 |
| [3] $3,875,000 | $750,000 |
| [3] $4,000,000 | $1,000,000 |

"***Catch-Up EBITDA Threshold***" means, subject to the satisfaction of conditions set forth in Sections 1.3 and 1.4, an aggregate EBITDA of Energy Steel for Fiscal Year 2011 and Fiscal Year 2012 of $7,250,000.

**"*EBITDA*"** means, for any period, Energy Steel's net income from continuing operations for such period on a stand alone basis, plus Energy Steel's (i) provisions for taxes based on income for such period, (ii) interest expenses for such period, and (iii) depreciation and amortization of tangible and intangible assets of Energy Steel for such period as determined in accordance with GAAP and subject to the GAAP Exceptions. Further, EBITDA shall be adjusted as described in the last sentence of this definition, and by excluding the effects of, or otherwise taking into account, any and all of the following accounting principles to the extent otherwise included in the determination of earnings from operations:

(a) gains, losses or profits realized by Energy Steel from the sale of assets other than in the ordinary course of business and any "extraordinary items" of gain or loss (as determined in accordance with GAAP and subject to the GAAP Exceptions);

(b) any management fees, general overhead expenses, or other intercompany charges, of whatever kind or nature, charged by ESAC, Graham or any other Affiliates to the Energy Steel Business, except to the extent they offset expenses that would otherwise be incurred by Energy Steel (e.g., blanket insurance coverage);

(c) any legal or accounting fees and expenses incurred in connection with this Agreement or the Stock Purchase Agreement.

(d) material modifications to staffing levels and compensation packages during the earn out period will require the reasonable agreement of the Seller prior to the implementation of such strategy. If the Seller disagrees with the addition, we would partition out both the costs and corresponding benefits of such addition to be excluded from the EBITDA calculation.

(e) Items deemed to be outside the course of normal operations of the Energy Steel Business which are non-recurring or non-operational shall be an adjustment for purposes of the earn out calculation.

(f) For purposes of the earn out calculation, material variances in the use of estimates, accounting methodologies, prepaid and accrued expense treatment, and application of GAAP shall be adjustments.

(g) As of the date of closing, Graham has simultaneously entered into a real estate lease for the premises on which Energy Steel conducts its business. The provisions of the lease also grant Graham on option to purchase the real estate. To the extent that Graham exercises its option to purchase the real estate, adjustments will be made to the earn out EBITDA such that the expenses reflect those which would have occurred under the terms of the lease had the option not been exercised.

In determining earnings from operations, the purchase and sales prices of goods and services sold by Energy Steel (or ESAC) to Graham or its Affiliates, or purchased by the Energy Steel (or ESAC) from Graham or its Affiliates, or payment of royalties, shall be adjusted to reflect the amounts that Energy Steel (or ESAC) would have received or paid if dealing with an independent party in an arm's-length commercial transaction.

"***First Year Payment***" means the amount(s) specified in the chart included in the definition of 2011 EBITDA Thresholds and 2012 EBITDA Thresholds above.

"***Fiscal Year 2011***" means Energy Steel's year ending December 31, 2011.

"***Fiscal Year 2012***" means Energy Steel's year ending December 31, 2012.

"***Fiscal Year 2011 EBITDA***" means the EBITDA of Energy Steel for the Fiscal Year 2011, based on the audited financial statements of Energy Steel, as determined by Graham's independent auditors in their reasonable discretion.

"***Fiscal Year 2012 EBITDA***" means the EBITDA of Energy Steel for the Fiscal Year 2012 as determined by Graham's independent auditors in their reasonable discretion.

"***Second Year Payment***" means the amount(s) specified in the chart included in the definition of 2011 EBITDA Thresholds and 2012 EBITDA Thresholds above.

**Section 1.2 Generally**.

(a) On the terms and subject to the conditions set forth in this Agreement, the Seller shall be eligible to receive the Earn Out Consideration (as more particularly defined below). Subject to the satisfaction of the conditions set forth herein, the Earn Out Consideration may consist of two cash payments. The first payment shall be for and measured against the performance of the Energy Steel Business during the Fiscal Year 2011, and it shall be known as the "***First Year Payment***." The second payment shall be for and measured against the performance of the Energy Steel Business during the Fiscal Year 2012, and it shall be known as the "***Second Year Payment***" (collectively, the First Year Payment and the Second Year Payment shall comprise the "***Earn Out Consideration***"). Except as set forth in Section 1.4 below, each payment is intended to be separate from and independent of the other payment. Thus, the Seller need not receive the First Year Payment in order to be eligible to receive the Second Year Payment (and vice versa). The amount of each payment shall be determined in accordance with Section 1.5 hereof, and no payment shall be made unless the associated conditions to payment are satisfied in accordance with Sections 1.3 and 1.4 hereof.

(b) ESAC shall pay to the Seller (i) the First Year Payment that corresponds to the 2011 EBITDA Threshold attained by Energy Steel as set forth in the table above, and (ii) the Second Year Payment that corresponds to the 2012 EBITDA Threshold attained by Energy Steel as set forth in the table above.

**Section 1.3 Conditions to First Year Payment, Second Year Payment and Catch-Up Payment**

(a) ESAC shall pay to the Seller the First Year Payment if, and only if, the Energy Steel Business as operated by ESAC (or an affiliate thereof), generates EBITDA equal to or in excess of $3,625,000 during the Fiscal Year 2011.

(b) ESAC shall pay to the Seller the Second Year Payment if, and only if, the Energy Steel Business as operated by ESAC (or an affiliate thereof), generates EBITDA equal to or in excess of $3,625,000 during the Fiscal Year 2012.

(c) ESAC shall pay the Seller the Catch-Up Payment if, and only if, the Energy Steel Business as operated by ESAC (or an affiliate thereof), generates EBITDA equal to or in excess of the Catch-Up EBITDA Threshold set forth in the table below.

**Section 1.4 Catch-Up Payment**.

(a) In the event that no First Year Payment is made during Fiscal Year 2011 as a result of Energy Steel's failure to meet the minimum EBITDA threshold of $3,625,000, the Seller will be entitled to receive a catch-up payment in the amount of up to $1,000,000 (the "***Catch-Up Payment***"), if Energy Steel's Fiscal Year 2011 EBITDA plus Energy Steel's Fiscal Year 2012 EBITDA exceeds the Catch-Up EBITDA Thresholds, as set forth below:

| Catch-Up Payment Thresholds | Amount of Catch-Up Payment |
|---|---|
| ³ $7,250,000 | $250,000 |
| ³ $7,500,000 | $500,000 |
| ³ $7,750,000 | $750,000 |
| ³ $8,000,000 | $1,000,000 |

By way of examples: (i) if the Fiscal Year 2011 EBITDA is $3,500,000 (an event in which the First Year Payment would not be earned) and the Fiscal Year 2012 EBITDA is $4,500,000, ESAC shall make pay Seller the Second Year Payment of $1,000,000 plus a Catch-Up Payment in the amount of $1,000,000; and (ii) if the Fiscal Year 2011 EBITDA is $3,500,000 (an event in which the First Year Payment would not be earned) and the Fiscal Year 2012 EBITDA is $4,000,000, ESAC shall pay Seller a Catch-Up Payment in the amount of $500,000.

(b) Notwithstanding the aforementioned subsection (a), Seller's right to receive the Catch-Up Payment is conditioned upon Energy Steel's Fiscal Year 2011 EBITDA being in excess of $3,000,000. For example, if the Fiscal Year 2011 EBITDA is $2,900,000 (an event in which the First Year Payment would not be earned) no Catch-Up Payment would be made regardless of the Fiscal Year 2012 EBITDA attained.

**Section 1.5 Calculation and Payment of Earn Out Consideration**.

(a) Within a period of ten (10) calendar days following ESAC's receipt of final financial statements for Energy Steel for Fiscal Year 2011 and Fiscal Year 2012 (which shall be prepared not more than one hundred twenty (120) days following the end of such fiscal year), ESAC will deliver to Seller (i) a calculation of the EBITDA for each such year, and (ii) a statement as to whether the Seller is entitled to the First Year Payment, Second Year Payment or Catch-Up Payment, as applicable. If ESAC determines that any payment is due hereunder, each such payment shall be made within ten (10) business days of the delivery of the calculation of such payment to the Seller. When payments are due hereunder, in each case, ESAC shall make the payment to the Seller by issuing a check in the payment amount. If any payment date hereunder falls on a day that is a Saturday, Sunday or holiday on which ESAC is closed, such payment shall be due on the next day on which ESAC is open for business.

(b) The parties agree that any dispute as to whether Earn Out Consideration is earned hereunder shall be resolved in accordance with the procedures set forth in Section 2.2 of the Stock Purchase Agreement.

## ARTICLE II.

## ADDITIONAL COVENANTS AND ACKNOWLEDGMENTS

**Section 2.1 Commercially Reasonable Efforts**. In consideration of the opportunity pursuant to this Agreement to earn the Earn Out Consideration, Seller agrees to use her commercially reasonable efforts to promote the interests of Graham, ESAC and the Energy Steel Business during the periods of time covered by this Agreement. ESAC and Graham agree that

they will use commercially reasonable efforts to promote the interests and EBITDA of the Energy Steel Business and in carrying out its obligations under this Agreement. In this regard, Graham and ESAC shall ensure that the Energy Steel Business has adequate working capital and other resources necessary to carry on the business and affairs consistent with past practice in the ordinary course of business throughout Fiscal Year 2011 and 2012.

**Section 2.2 Right of Setoff**. The Seller acknowledges and agrees that any and all amounts of Earn Out Consideration owed to her pursuant to this Agreement shall be subject to the right of setoff in favor of Graham and ESAC contained in the Stock Purchase Agreement.

**Section 2.3 Guarantee of Graham.** Graham hereby unconditionally and irrevocably guarantees each and every obligation of ESAC under this Agreement as if Graham was the direct party obligated for all payments due hereunder to Seller, as Graham will benefit directly and indirectly from the transactions contemplated by this Agreement and the Stock Purchase Agreement. Graham hereby waives all defenses afforded a guarantor or surety under applicable Laws. Graham's obligations hereunder shall be binding upon its successors and assigns and shall not be extinguished by any bankruptcy or reorganization of ESAC.

**Section 2.4 Covenants of ESAC as to Operation During Earn Out Periods.**

(a) ESAC and Graham will maintain the Energy Steel Business as a separate enterprise within their corporate structure;

(b) ESAC and Graham will provide sufficient working capital for operation of the Energy Steel Business throughout Fiscal Years 2011 and 2012;

(c) ESAC shall utilize reasonable commercial efforts to maintain Key Employees of Energy Steel throughout the Fiscal Years 2011 and 2012;

(d) ESAC shall operate and market the Energy Steel Business using the name "Energy Steel" (or any derivative thereof deemed appropriate by Graham) throughout Fiscal Years 2011 and 2012; and

(e) ESAC and Graham shall direct all new orders in the same product line as the Energy Steel Business to Energy Steel and shall not otherwise divert opportunities of Energy Steel to its Affiliates.

**Section 2.5 Acceleration and Early Termination.** The payment obligations of ESAC and Graham hereunder shall be subject to acceleration upon the occurrence of any one (1) of the following events:

(a) ESAC determines in its discretion to terminate this Agreement for its business purposes;

(b) The sale (subsequent to the date hereof) of all or substantially all of the assets of Energy Steel, ESAC and/or Graham;

(c) A change in control of Energy Steel, ESAC and/or Graham occurs; or

(d) ESAC and/or Graham have committed a material breach of any of their payment obligations, covenants, or agreements under this Agreement; provided Seller has notified Graham and ESAC of the breach, and the breach has continued without cure for a period of thirty (30) days after the written notice of breach.

In the event of an acceleration under this Section 2.5, Seller shall be entitled to immediate payment of the maximum payments available for each Fiscal Year. Seller acknowledges that the maximum payments hereunder shall not exceed $2,000,000 in the aggregate.

## ARTICLE III.

## GENERAL PROVISIONS

**Section 3.1 Amendment and Waiver**. Only a writing executed by each of the parties hereto may amend this Agreement. No waiver of compliance with any provision or condition hereof, and no consent provided for herein, will be effective unless evidenced by an instrument in writing duly executed by the party sought to be charged therewith. No failure on the part of any party to exercise, and no delay in exercising, any of its rights hereunder will operate as a waiver thereof, nor will any single or partial exercise by any party of any right preclude any other or future exercise thereof or the exercise of any other right.

**Section 3.2 Assignment**. No party will assign or attempt to assign any of its rights or obligations under this Agreement without the prior written consent of each of the other parties hereto and any attempted assignment will be null and void; provided, however, that without such consent, but upon notice to Seller, ESAC may assign all of its rights and obligations hereunder to any subsidiary of Graham so designated by Graham, it being agreed that such assignment will not relieve ESAC from its obligations hereunder.

**Section 3.3 Notices, Etc**. Each notice, report, demand, waiver, consent and other communication required or permitted to be given hereunder will be in writing and will be sent in accordance with Section 9.2 of the Stock Purchase Agreement.

**Section 3.4 Binding Effect**. Subject to the provisions of Section 3.2, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns. This Agreement creates no rights of any nature in any Person not a party hereto.

**Section 3.5 Governing Law**. This Agreement will be governed by and construed in accordance with the Laws of the State of New York without regard to its principles of conflicts of laws. The parties agree that the sole and exclusive forum for any Claim related to this Agreement, the interpretation or construction hereof and the transactions contemplated hereby will be the Supreme Court of and for the County of Monroe, State of New York. Each party unconditionally and irrevocably agrees not to bring any Claim in any other forum and not to plead or otherwise attempt to defeat the trial of such a matter in such court whether by asserting that such court is an inconvenient forum, lacks jurisdiction (personal or other) or otherwise. Each party hereby waives the right to a trial by jury.

**Section 3.6 Entire Agreement**. This Agreement sets forth the entire understanding of the parties, and supersedes any and all prior agreements, arrangements and understandings, written or oral, relating to the subject matter hereof.

**Section 3.7 Headings; Counterparts**. The headings of this Agreement are for convenience of reference only and do not form a part hereof and do not in any way modify, interpret or construe the intention of the parties. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. The parties agree that facsimile copies of signatures will be deemed originals for all purposes hereof and that a party may produce such copies, without the need to produce original signatures, to prove the existence of this Agreement in any proceeding brought hereunder.

**Section 3.8 Independent Counsel; Seller Taxes.** The parties state that they have carefully read this Agreement, know its contents, and freely and voluntarily agree to all of its terms and conditions. Each party acknowledges that it has been represented by independent legal counsel of its choice throughout all the negotiations that preceded the execution of this Agreement, and this Agreement has been executed with the consent and upon the advice of such independent legal counsel. Each party shall bear its own legal fees incurred as a result of the preparation, review and negotiation of this Agreement. Seller shall be responsible for all taxes incurred by Seller as a result of this Agreement and neither ESAC not Graham shall be required to withhold any payments made hereunder except as may be required by law.

[**SIGNATURE PAGE FOLLOWS**]

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first written above.

**ESAC:**

ENERGY STEEL ACQUISITION CORP.,
a Delaware corporation

By: /s/ Jeffrey F. Glajch
Jeffrey F. Glajch
Its: Chief Financial Officer

**GRAHAM:**

GRAHAM CORPORATION, a Delaware
corporation

By: /s/ James R. Lines
James R. Lines
Its: President and Chief Executive Officer

**SELLER:**

/s/ Lisa D. Rice
LISA D. RICE, individually and as the Trustee of the Lisa D. Rice
Revocable Trust dated June 5, 2003

**EXHIBIT 10.3**

## ESCROW AGREEMENT

**THIS ESCROW AGREEMENT** (this *"Agreement"*), dated as of this 14th day of December, 2010, is by and among PNC BANK, NATIONAL ASSOCIATION ("***Escrow Agent***"), ES ACQUISITION CORP., a Delaware corporation (*"**Purchaser***"), and LISA D. RICE, individually and as Trustee of the Lisa D. Rice Revocable Trust dated June 5, 2003 (collectively, the "***Seller***").

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

A. Purchaser, Seller and Graham Corporation have entered into that certain Stock Purchase Agreement of even date herewith (the *"**Purchase Agreement**"*).

B. The execution and delivery of this Agreement is a condition to the consummation of the transactions contemplated by the Purchase Agreement.

C. Capitalized terms used in this Agreement but not defined are used in this Agreement as defined in the Purchase Agreement.

### A G R E E M E N T:

**NOW THEREFORE,** in consideration of the mutual promises and subject to the terms and conditions herein contained, and other good and valuable consideration, had and received the sufficiency and receipt of which are hereby acknowledged, the parties hereto agree as follows:

1. **Appointment of Escrow Agent.** Purchaser and Seller hereby appoint and designate the Escrow Agent as the escrow agent for the purposes set forth in this Agreement, and the Escrow Agent hereby accepts such appointment under the terms and conditions set forth in this Agreement. Notwithstanding the references in this Agreement to the Purchase Agreement, Purchaser and Seller acknowledge that the Escrow Agent is not a party to the Purchase Agreement for any purpose or responsible for its interpretation or enforcement.

2. **Deposit in Escrow.** Concurrently with the execution and delivery of this Agreement, Purchaser shall deposit **$1,750,000.00** by wire transfer of immediately available funds to a separate account (the *"**Escrow Amount**"*) maintained by the Escrow Agent. The Escrow Agent shall hold and, subject to the terms and conditions of this Agreement, disburse the Escrow Amount and any and all income earned on the Escrow Amount (together, the "***Escrow Funds***") as permitted by **Section 3** and otherwise in accordance with the terms and conditions of this Agreement.

3. **Investment.** The Escrow Agent shall invest the Escrow Funds in a manner specified in writing from time to time by Purchaser and Seller. Absent such written direction, the Escrow Agent shall invest the Escrow Funds in a PNC Bank Money Market Deposit Account (MMDA), or a successor or similar fund or account offered by the Escrow Agent. The Escrow

4. Agent is hereby authorized to execute purchases and sales of permitted investments through the facilities of its own trading or capital markets operations or those of any affiliated entity. Any investment income realized on the Escrow Funds is to be reinvested in the account from which the income was earned. Any and all taxes realized with respect to the investment income realized on the Escrow Funds shall be paid by Seller. Promptly following the conclusion of each calendar year, the Escrow Agent shall deliver to Seller (a) a written statement of account with respect to any investment income realized on the Escrow Funds, and (b) a form 1099 for Seller with respect to all investment income earned during the immediately preceding calendar year. At or prior to the time of execution of this Agreement, Seller shall furnish to the Escrow Agent a certified copy of a form W-9. Seller understands that if such tax reporting documentation is not provided and certified to the Escrow Agent, the Escrow Agent may be required by the Internal Revenue Code of 1986, as amended, and the Regulations promulgated thereunder, to withhold a portion of any interest or other income earned on the Escrow Funds. The Escrow Agent shall have no responsibility for the preparation and/or filing of any tax or information return with respect to any transactions, whether or not related to this Agreement, that occurs outside the Escrow Account. To the extent that the Escrow Agent becomes liable for the payment of any taxes in respect of income derived from the investment of the Escrow Funds, the Escrow Agent shall satisfy such liability to the extent possible from the Escrow Funds. Seller hereby agrees to indemnify, defend and hold the Escrow Agent harmless from and against any tax, late payment, interest, penalty or other cost or expense that may be assessed against the Escrow Agent on or with respect to the Escrow Funds and the investment thereof unless such tax, late payment, interest, penalty or other expense was directly caused by the gross negligence or willful misconduct of the Escrow Agent. The indemnification provided by this **Section 3** is in addition to the indemnification provided in **Section 8** and shall survive the resignation or removal of the Escrow Agent and the termination of this Agreement.

5. **Voting of Proxies.** The parties hereto other than the Escrow Agent hereby instruct Escrow Agent to vote all proxies in accordance with the proxy policy in effect from time to time for the Escrow Agent unless otherwise specifically instructed jointly by the parties. Each of said parties specifically acknowledges that it understands that this provision may involve the Escrow Agent's voting shares of mutual funds that pay fees to the Escrow Agent or its affiliates and that, in voting such shares, the Escrow Agent may be in a position to vote to change fees paid at the mutual fund level to itself or to an affiliate.

6. **Escrow Investments (FDIC insurance).** Shares of mutual funds are not insured by the FDIC (or have limited FDIC insurance), are not deposits of or guaranteed by the Escrow Agent or its affiliate(s) and are subject to investment risks, including the loss of principal.

7. **Security Transaction Confirmation Disclosure.** During the term of this Agreement, the Escrow Agent shall provide each of Purchaser and Seller (for purposes of this paragraph, the "Recipient") with quarterly statements containing the beginning balance in the Escrow Account as well as all principal and income transactions for the statement period. Recipient shall be responsible for reconciling such statements. The Escrow Agent shall be forever released and discharged from all liability with respect to the accuracy of such statements and the transactions listed therein, except with respect to any such act or transaction as to which Recipient shall, within ninety (90) days after making the statement available, file written

objections with the Escrow Agent. Recipient is aware that Federal Regulations require the Escrow Agent, without charge and within one business day of its receipt of a broker/dealer confirmation for each security transaction in the Escrow Account to forward to Recipient a written notification which discloses, among other things: the Escrow Agent's name, Recipient's name, the capacity (capacities) in which the Escrow Agent is acting, the date (and time, within a reasonable period, upon written request of Recipient) of execution, the identity, price, number of shares or units or principal amount of debt securities purchased or sold by Recipient, the name of the broker/dealer, the amount of any remuneration received by such broker/dealer from Recipient and the amount of any remuneration received by the Escrow Agent. Recipient is also aware that, under the terms of this Agreement, the Escrow Agent will be providing to Recipient periodic statements that include a listing of all securities transactions, receipts and disbursements during the period, together with a current listing of the assets held in the Escrow Account. Recipient shall accept such periodic statements in satisfaction of the Escrow Agent's obligation to provide written notification as described above; provided, that upon Recipient's request, the Escrow Agent will provide to Recipient within a reasonable time and at no additional cost the information required by Federal Regulations.

8. No Liability for Investment Losses. The Escrow Agent shall be entitled to sell or redeem any investments held in the Escrow Account as necessary to make any distributions required under this Escrow Agreement and shall not be liable or responsible for any loss resulting from any such sale or redemption. The Escrow Agent shall not be liable or responsible for any fluctuations in value of any such investments.

9. **Escrow Claims and Distributions.**

During the term of this Agreement, the Escrow Funds will be utilized for reimbursement of Losses (as defined in the Purchase Agreement) incurred by Purchaser in respect of which Seller is obligated pursuant to **Article 7** of the Purchase Agreement to indemnify Purchaser ("***Indemnified Losses***").

9.1 **Escrow Funds Distribution and Termination.**

(a) From time to time prior to the distribution of the Escrow Funds to the Seller as set forth below, Purchaser may deliver to the Escrow Agent a written notice (an "***Escrow Claim***") requesting an immediate distribution to Purchaser of a specified amount of the Escrow Funds in full or partial payment of the Indemnified Losses obligations of the Seller to Purchaser pursuant to Article 7 of the Purchase Agreement, along with a delivery receipt or other proof of delivery to the Seller of a copy of such Escrow Claim. The Escrow Claim shall include evidence that Purchaser has notified the Escrow Agent that an Asserted Liability (as defined in the Purchase Agreement) has been properly and timely made in good faith under the Purchase Agreement and the amount of the Escrow Funds (which shall be no more than the Indemnified Losses set forth in the Asserted Liability) to be withheld from distribution to the Seller.

(b) If the Escrow Agent is not in actual receipt of a written objection from the Seller to an Escrow Claim for an immediate distribution within thirty (30) days following the date of the Escrow Agent's actual receipt of such Escrow Claim, then on the thirty-

first (31st) day following such actual receipt (or if the thirty-first (31st) day is not a business day for the Escrow Agent, then on the first business day after the thirty-first (31st) day), the Escrow Agent shall disburse to Purchaser the amount of the Escrow Funds specified in the Escrow Claim. If the Escrow Agent is in actual receipt of a written objection from the Seller to an Escrow Claim within thirty (30) days following the date of the Escrow Agent's actual receipt of such Escrow Claim (or if the thirtieth (30th) day is not a business day for the Escrow Agent, then on the first business day after the thirtieth (30th) day), the Escrow Agent shall withhold from the Escrow Funds distributable pursuant to this **Section 4** an amount sufficient to satisfy such Escrow Claim and such funds shall be disbursed in accordance with **Section 4.1(c)** below.

(c) Except for the distribution of Escrow Funds pursuant to either **Section 4.1(b), 4.1(d) or 4.1(e)**, the Escrow Agent shall not disburse any Escrow Funds until it shall have received either (i) non-conflicting written instructions from the Seller and Purchaser as to the disposition of the Escrow Funds, or (ii) an order of a court having jurisdiction over the matter which is final and not subject to further court proceedings or appeal. Upon receipt of any such written instructions or order, the Escrow Agent shall distribute the Escrow Funds it holds in accordance therewith.

(d) Except as otherwise provided in this **Section 4**, on the ten and one-half (10.5) month anniversary of the Closing, the Escrow Agent shall release and disburse from the Escrow Funds to an account designated by Seller, the amount, if any, by which the then-existing Escrow Funds exceed the sum of (i) $875,000.00, plus (ii) the amount of any Escrow Claims under this Agreement that are then pending (whether disputed or not).

(e) Except as otherwise provided in this **Section 4**, on the twenty-first (21st) month anniversary of the Closing (the "***Final Release Date***"), the Escrow Agent shall release and disburse from the Escrow Funds to an account designated by Seller, the amount, if any, by which the then-existing Escrow Funds exceed the sum of any Escrow Claims under this Agreement that are then pending (whether disputed or not). In addition, in accordance with the foregoing, if any Escrow Funds continue to be held after the Final Release Date for any Escrow Claim pending as of the Final Release Date, then such Escrow Funds shall be disbursed as provided herein and as provided in the Purchase Agreement.

10. **Escrow Agent Compensation.** The Escrow Agent is to be compensated in accordance with the fee schedule attached to this Agreement as **Exhibit B** for the performance of its duties under this Agreement (the "*Escrow Fees*") and for reimbursement of its reasonable out-of-pocket expenses including, but not by way of limitation, the fees and costs of attorneys or agents which it may reasonably find necessary to engage in performance of its duties hereunder. The Escrow Fees are to be borne out of the Escrow Funds and shall be paid first out of income realized on the Escrow Amount and then out of the principal, at the times such Escrow Fees are due. The Escrow Agent shall have, and is hereby granted, a prior lien upon the Escrow Funds with respect to its unpaid fees, non-reimbursed expenses and unsatisfied indemnification rights, superior to the interests of any other persons or entities and is hereby granted the right to set off and deduct any unpaid fees, non-reimbursed expenses and unsatisfied indemnification rights from the Escrow Funds.

11. **Obligations and Liabilities of the Escrow Agent.**

(a) The Escrow Agent has no duties or obligations other than those specifically set forth in this Agreement.

(b) The Escrow Agent is not responsible in any manner whatsoever for any failure or inability of any party other than the Escrow Agent to honor any of the provisions of this Agreement.

(c) The Escrow Agent is fully protected in acting or refraining from acting upon and relying upon any written notice, direction, request, waiver, consent, receipt or other paper or document that the Escrow Agent in good faith reasonably believes to have been signed or presented by the proper party or parties. Concurrent with the execution of this Agreement, the Parties shall deliver to the Escrow Agent authorized signers' forms in the form of **Exhibit C-1** and **Exhibit C-2** to this Agreement.

(d) The Escrow Agent will not be liable, directly or indirectly, for any (i) damages, losses or expenses arising out of the services provided hereunder, other than damages, losses or expenses which have been finally adjudicated to have directly resulted from the Escrow Agent's gross negligence, willful misconduct or act of bad faith or (ii) special, indirect or consequential damages or losses of any kind whatsoever (including without limitation lost profits) even if the Escrow Agent has been advised of the possibility of such losses or damages and regardless of the form of action.

(e) The Escrow Agent may consult with, and obtain advice from, legal counsel in the event of any dispute or construction of any of the provisions of this Agreement or its duties under this Agreement, and the Escrow Agent will incur no liability and will be fully protected in acting or refraining from acting in good faith in accordance with the opinion and instruction of such counsel.

12. **Automatic Succession; Resignation and Removal of Escrow Agent.**

(a) Any company into which the Escrow Agent may be merged or with which it may be consolidated or any company to whom the Escrow Agent may transfer a substantial amount of its global escrow business, will be the successor to the Escrow Agent without the execution or filing of any paper or further act on the part of any parties, notwithstanding anything in this Agreement to the contrary.

(b) The Escrow Agent may resign as escrow agent at any time with or without cause by giving written notice to Purchaser and Seller, such resignation to be effective 30 calendar days following the date such notice is given. In addition, Purchaser and Seller jointly may remove the Escrow Agent as escrow agent at any time with or without cause by an instrument (which may be executed in counterparts), given to the Escrow Agent, which instrument must designate the effective date of such removal. If any such resignation or removal occurs, a successor escrow agent will be appointed by Purchaser and Seller. Any such successor escrow agent shall deliver to Purchaser and Seller a written instrument accepting such

appointment and upon such delivery it will succeed to all of the rights and duties of the Escrow Agent under this Agreement and will be entitled to receive the Escrow Funds.

(c) If Purchaser and Seller are unable to agree upon a successor escrow agent or have failed to appoint a successor escrow agent prior to the expiration of 30 calendar days following the date of the notice of resignation or removal, the then acting escrow agent shall petition any court of competent jurisdiction for the appointment of a successor escrow agent or other appropriate relief, and any such resulting appointment will be binding upon all of the parties to this Agreement.

(d) Upon acknowledgment by any successor escrow agent of the receipt of the Escrow Funds, the then replaced escrow agent will be fully relieved of all duties, responsibilities and obligations under this Agreement except with respect to actions previously taken or omitted by such replaced escrow agent.

13. **Indemnification of Escrow Agent.** In partial consideration of the Escrow Agent's acceptance of this appointment, Purchaser and Seller shall indemnify and hold the Escrow Agent harmless as to any liability incurred by it to any Person by reason of its having accepted such appointment or in carrying out the terms of this Agreement and, subject to **Section 5** of this Agreement, shall reimburse the Escrow Agent for all of its reasonable costs and expenses, including, among other things, reasonable attorneys' fees and expenses arising out of any matter for which the Escrow Agent is entitled to indemnification under this **Section 8**. Notwithstanding the foregoing, no indemnity need be paid in case of any liability caused by the Escrow Agent's gross negligence, willful misconduct or breach of this Agreement. This paragraph shall survive the termination of this Agreement for any reason and the resignation and removal of the Escrow Agent.

14. **Right to Interplead.** Should any dispute arise with respect to this Escrow Agreement or the Escrow Account, whether such dispute arises between the parties hereto and others, or between the parties hereto themselves, it is understood and agreed that the Escrow Agent may petition (by means of an interpleader or any other appropriate measure) any court of competent jurisdiction for instructions with respect to such dispute and the other parties hereto will hold the Escrow Agent harmless and indemnify it against all consequences and expenses that may be incurred by the Escrow Agent in connection therewith, which indemnity shall survive the termination of this Escrow Agreement or the resignation or removal of Escrow Agent.

15. **Attachment of Escrow Funds; Compliance with Legal Orders.** In the event that any Escrow Funds shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the Escrow Funds, the Escrow Agent is hereby expressly authorized, in its sole discretion, upon five (5) days advance written notice to Purchaser and Seller, to respond as it deems appropriate or to comply with all writs, orders or decrees so entered or issued, or which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction. In the event that the Escrow Agent obeys or complies with any such writ, order or decree it shall not be liable to any of the parties or

to any other person, firm or corporation, should, by reason of such compliance notwithstanding, such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

16. **Notices.** All notices must be in writing and will be deemed to have been given (i) if delivered in person or by a nationally recognized overnight courier service or (ii) upon confirmation of receipt if sent by facsimile, to the following addresses:

| | |
|---|---|
| (a) If to Purchaser: | ES Acquisition Corp.<br>c/o Graham Corporation<br>20 Florence Avenue<br>Batavia, New York 14020<br>Attention: Chief Financial Officer<br>Fax No.: (585) 343 — 1097 |
| with copies to: | Harter Secrest & Emery LLP<br>One Bausch and Lomb Place<br>Rochester, New York 14064<br>Attention: Daniel R. Kinel, Esq.<br>Fax No.: (585) 232 — 2152 |
| (b) If to Seller: | Lisa D. Rice<br>c/o 2647 Invitational Drive<br>Oakland, Michigan 48363<br>Fax No.: 248) 645-1568 |
| with copies to: | Howard & Howard Attorneys PLLC<br>450 West Fourth Street<br>Royal Oak, Michigan 48067<br>Attention: Joseph J. DeVito, Esq.<br>Fax No.: (248) 645-1568 |
| (c) If to Escrow Agent: | PNC Bank, National Association<br>1900 East Ninth Street, 13th Floor<br>Locator B7-YB13-13-2<br>Cleveland, Ohio 44114<br>Attention: Lissa Vitale<br>Fax No.: (216) 222-0178 |

17. **Bank Bound Only by Actual Receipt.** Notwithstanding anything to the contrary herein, Escrow Agent shall not be bound by any notice unless actually received by Escrow Agent.

18. **Binding Effect.** This Agreement is binding and inures to the benefit of the parties and their respective successors and assigns.

19. **Assignment.** This Agreement may not be assigned or transferred except upon a written agreement executed by each of the parties to this Agreement; provided, however, that Purchaser may assign this Agreement to any of its lenders or any Affiliate of Purchaser. The foregoing proviso notwithstanding, no such assignment shall be binding on the Escrow Agent unless and until written notice of such assignment shall be delivered to and acknowledged by the Escrow Agent.

20. **Third Party Beneficiaries.** Nothing in this Agreement is intended or will be construed to confer on any Person other than the parties or their successors and assigns any rights or benefits under this Agreement.

21. **Headings.** The headings in this Agreement are intended solely for the convenience of reference and will be given no effect in the construction or interpretation of this Agreement.

22. **Exhibits.** The Exhibits and other attachments hereto will be deemed to be a part of this Agreement.

23. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which will be deemed an original, and all of which together will constitute one and the same document.

24. **Governing Law.** This Agreement must be governed by and construed in accordance with the laws of the State of Pennsylvania, without regard to conflict of laws principles.

25. **Amendment.** No amendment of this Agreement is binding unless made in a written instrument that specifically refers to this Agreement and is signed by Purchaser, Seller and the Escrow Agent.

26. **Entire Agreement.** This Agreement and its Exhibits contains the entire understanding among the parties and supersedes any prior understanding and agreements between them, in each case respecting this subject matter. There are no representations, agreements or understandings, oral or written, between or among the parties to this Agreement relating to the subject matter of this Agreement that are not fully expressed in this Agreement.

*[REMAINDER OF PAGE INTENTIONALLY BLANK]*

**IN WITNESS WHEREOF,** the parties hereto have executed this Agreement as of the date first above written.

**ESCROW AGENT:**

PNC BANK, NATIONAL ASSOCIATION

By: /s/ Robert Grimaldi
Its: Robert Grimaldi
Vice President

**PURCHASER::**

ES ACQUISITION CORP., a Delaware corporation

By: /s/ Jeffrey F. Glajch
Jeffrey F. Glajch
Its: Chief Financial Officer

**SELLER:**

/s/ Lisa D. Rice
LISA D. RICE, individually and as Trustee
for the Lisa D. Rice Revocable Trust dated
June 5, 2003

**EXHIBIT A**

_____ __, 20__

PNC Bank, National Association
1900 East Ninth Street, 13th Floor
Locator B7-YB13-13-2
Cleveland, Ohio 44114
Attention: Lissa Vitale
Fax No.: (216) 222-0178

***[Address]***
***[City, State ZIP]***
Attention: ***[_____]***
Facsimile: ***[_____]***

Ladies and Gentlemen:

Reference is hereby made to the Escrow Agreement, dated _____, 2010 (the ***"Escrow Agreement"***), by and among Purchaser, Seller and you, as Escrow Agent. Capitalized terms used but not defined in this notice are used as defined in the Escrow Agreement.

Pursuant to **Section 4.1** of the Escrow Agreement, this letter will serve as instructions to the Escrow Agent to deliver $_____***[specify portion of Escrow Funds, which amount shall take into account any applicable limitations set forth in the Purchase Agreement]*** of the Escrow Funds to ***[specify Person or Persons to receive such portion]***, for ***[specify the matter or matters entitling such Person or Persons to the Escrow Funds and the aggregate dollar amount of Indemnified Losses sustained or estimated to be sustained (including the amount by which the Indemnified Losses claimed hereunder exceed the limitations set forth in the Purchase Agreement)]***, via wire transfer as follows: ***[specify wire transfer instructions of recipient(s)]***. Such amount must be delivered in accordance with the terms of Section 4.1 of the Escrow Agreement, unless the Escrow Agent receives a Counter Notice within thirty (30) calendar days of its receipt of this letter.

Very Truly Yours,

**ES ACQUISITION CORP.**

By: _____
Name:
Title:

**EXHIBIT B**

**ESCROW AGENT'S FEE SCHEDULE**

Annual administrative escrow fee payable upon execution of this Agreement, and annually thereafter upon the anniversary date of the account opening:

***Annual Administrative Fee: $3,500.00***
***One Time Legal Fee: $750.00***

Any reasonable out-of-pocket expenses or extraordinary fees or expenses such as reasonable attorney's fees or messenger costs, are additional and are not included in this schedule.

These fees cover a full year, or any part thereof, and thus are not prorated in the year of termination. The annual fee is billed in advance and payable prior to that year's service.

**EXHIBIT C-1**

**CERTIFICATE AS TO AUTHORIZED SIGNATURES**

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of ES Acquisition Corp., a Delaware corporation, and are authorized to initiate and approve transactions of all types for the escrow account or accounts established under the Escrow Agreement to which this Exhibit C-1 is attached, on behalf of Purchaser.

| Name / Title | Specimen Signature |
|---|---|
| James R. Lines<br>*Name* | /s/ James R. Lines<br>*Signature* |
| Chairman<br>*Title* | |
| Jeffrey Glajch<br>*Name* | /s/ Jeffrey Glajch<br>*Signature* |
| Chief Financial Officer<br>*Title* | |

**EXHIBIT C-2**

**CERTIFICATE AS TO AUTHORIZED SIGNATURES**

The specimen signatures shown below is the specimen signature of LISA D. RICE, who is authorized to initiate and approve transactions of all types for the escrow account or accounts established under the Escrow Agreement to which this Exhibit C-2 is attached, on behalf of Seller.

| Name / Title | Specimen Signature |
|---|---|
| Lisa D. Rice | /s/ Lisa D. Rice |
| *Name* | *Signature* |

individually and as Trustee of the Lisa D. Rice Revocable Trust dated June 5, 2003

# LEASE AGREEMENT

**THIS LEASE AGREEMENT** ("Lease") is made as of the 14th day of December, 2010, by and between**ESSC INVESTMENTS, LLC**, a Michigan limited liability company ("Landlord"), and **ENERGY STEEL & SUPPLY CO., a Michigan corporation, and GRAHAM CORPORATION**, **a Delaware corporation**, **jointly and severally** (collectively, the "Tenant"), for use of the land and approximately 60,000 sq. ft. building located at the premises commonly known as 3123 John Conley Drive, Lapeer, Michigan 48446 (such building being herein referred to as the "Building"; and the Building, together with the land upon which it is situated [the "Land"], being herein referred to as the "Premises"). The following Section 1 (the "Schedule") sets forth certain basic terms of this Lease:

1.(A) SCHEDULE OF BASIC LEASE PROVISIONS ("SCHEDULE")

| | | |
|---|---|---|
| 1.1 | Premises Address: | 3123 John Conley Drive<br>Lapeer, Michigan 48446 |
| 1.2. | Commencement Date: | December 14, 2010 |
| 1.3. | Expiration Date: | November 30, 2015 |
| 1.4. | Term: | Approximately five (5) year initial Term, with one (1) — five (5) year option to renew (as set forth in Section 1.B.(i) and (ii) herein) |
| 1.5 | Rent: | **Three Hundred Thousand Dollars ($300,000.00)** per year payable in equal monthly installments of**Twenty Five Thousand Dollars ($25,000.00)** each |
| 1.6. | Security Deposit: | None |
| 1.7. | Broker: | None |
| 1.8 | Permitted Use: | Manufacturing, office, and warehouse uses and any lawful, ancillary uses related thereto |
| 1.9. | Exhibits: | Exhibit A: Legal Description of the Land;<br>Exhibit B: Purchase and Sale Agreement;<br>Exhibit C: Memorandum of Lease;<br>Exhibit D: Termination of Memorandum; and<br>Exhibit E: Non-Disturbance Agreement. |

| | | |
|---|---|---|
| 2.0. | Additional Rent | Tenant shall pay all: (a) Taxes (as defined in Section 2(B)(iii); (b) Insurance (as defined in Section 10); and (c) Maintenance costs (as defined in Section 5[B]), together with all of costs, expenses and fees reasonably necessary to maintain the Premises (unless such obligations relating to maintenance and repair are expressly the obligation of Landlord under the terms hereof), and conduct its business at the Premises (unless otherwise set forth herein). Landlord shall promptly supply Tenant with copies of all invoices for Taxes, Insurance, and other relevant invoices required to be paid by Tenant hereunder. |

**1. DEMISE AND TERM.**

**A. Term.** Landlord leases to Tenant and Tenant leases from Landlord the Premises described in Item 1.1 of the Schedule, including the Land as more particularly described in the attached Exhibit A and all improvements located thereon including the Building, subject to the covenants, terms and conditions set forth in this Lease, for a five (5) year initial term (the "Term") commencing on the date (the "Commencement Date") described in Item 1.2 of the Schedule and expiring on the date (the "Expiration Date") described in Item 1.3 of the Schedule, unless terminated earlier as otherwise provided in this Lease. Tenant shall have access to the Premises twenty four hours per day, 365/366 days per year, in accordance with the terms and conditions of this Lease, and provided no uncured Default exists.

**B. Option to Renew.**

(i) The Tenant shall have the option to renew the Term of this Lease for one (1) consecutive period of five (5) years, commencing on the Expiration Date of the Term. For purposes of this Lease, the renewal period shall be referred to as the "Option Period". The same terms and conditions of this Lease shall apply during the Option Period, except that the Base Rent shall be increased as follows:

| YEAR | MONTHLY | ANNUAL |
|---|---|---|
| #6 | $ 27,500.00 | $ 330,000.00 |
| #7 | $ 28,050.00 | $ 336,600.00 |
| #8 | $ 28,611.00 | $ 343,332.00 |
| #9 | $ 29,183.00 | $ 350,196.00 |
| #10 | $ 29,767.00 | $ 357,204.00 |

(ii) In order to exercise the Option Period, the Tenant shall be required to: (i) provide at least ninety (90) days' written notice to Landlord prior to the expiration of the Term (the "Option Notice"), and (ii) be in good standing under the Lease and not be in default under any of the terms and conditions herein beyond any applicable notice and cure period, both at the time of the providing of notice of the option to renew, and at the time of the

commencement of the Option Period. Tenant's failure to provide the Option Notice as required herein shall be deemed to mean that Tenant has elected not to exercise the Option Period, and the Lease shall terminate on the Expiration Date, or earlier as otherwise provided in this Lease.

**2. RENT.**

**A. Definitions.** For purposes of this Lease, the following terms shall have the following meanings:

(i) Intentionally Deleted.

(ii) "Rent" shall mean Base Rent and Additional Rent (all as defined below) and any other sums or charges due by Tenant hereunder.

(iii) "Taxes" shall mean all taxes, sewer fees, assessments (general and special) and fees of any kind or nature, levied upon the Premises, the personal property of Landlord and/or Tenant located therein or the rents collected therefrom, or charges of any type by any governmental entity based upon the ownership, leasing, renting or operation of the Building, including all costs and expenses of protesting any such taxes, assessments or fees, whether now or hereinafter imposed. Taxes shall not include any net income, single business tax, capital stock, succession, transfer, franchise, gift, estate or inheritance taxes; provided, however, if at any time during the Term, a tax or excise on income is levied or assessed by any governmental entity, in lieu of or as a substitute for, in whole or in part, real estate taxes or other *ad valorem* taxes, such tax shall constitute and be included in Taxes. Only to the extent permitted under the terms and conditions of the Landlord's existing financing documents with its Lender, JP Morgan Chase ("Chase"), and the related tax-exempt bond financing documents and agreements (collectively, the "Bond Documents"), and by Chase, Landlord shall reasonably cooperate with Tenant, at Tenant's sole expense, in its efforts to secure all available tax incentives for the benefit of Tenant. Taxes shall be appropriately pro-rated for any partial years occurring during the Lease Term.

(iv) "Utilities" shall mean all utility services provided at or on the Premises, including but not limited to water, sewer, gas, telephone, other communication devices, electricity, heat, light and other services delivered to the Premises, by any third party.

**B. Components of Rent.** Tenant agrees to pay the following amounts to Landlord at such place as Landlord designates:

(i) Base Rent ("Base Rent") shall be paid in monthly installments in the amount set forth in Item 1.5 of the Schedule on or before the first (1st) day of each calendar month, in advance, and without notice or demand, and without set off or deduction (unless expressly allowed herein), with the first month's Base Rent being due on the Commencement Date. Payment of Rent is an independent covenant of Tenant. December 2010 Base Rent shall be prorated based on the Commencement Date and the days remaining in December, and shall be paid by Tenant upon execution of this Lease.

(ii) As additional rent ("Additional Rent"), Tenant shall pay all Taxes directly to the appropriate taxing authority on or before the applicable due date, and shall pay Insurance in accordance with the provisions of Section 10 below. With respect to Taxes, in the event that bills or invoices for Taxes are not sent directly to Tenant, Landlord shall provide Tenant with copies of all actual bills for Taxes promptly following receipt of same so that Tenant shall have adequate time to cause the direct payment of same prior to any due date. Only to the extent permitted under the Bond Documents, or by Chase, Tenant shall have the right to challenge any Taxes (whether such challenge is as to the assessment or tax levy) provided that any such challenge shall not subject Landlord to any loss or forfeiture of the Premises or any penalties or fine. At no expense to Landlord, Landlord agrees to cooperate with Tenant in any such challenge. Within ten (10) days after request for same from Landlord, Tenant shall provide Landlord with evidence of its payment of any component of Additional Rent. If Tenant fails to make timely payment of such Taxes (which failure is not due to the failure of Landlord to provide Tenant with copies of such bills for Taxes in a timely manner), Tenant shall also pay the amount of any interest, penalties, or late charges due to the appropriate governmental authority. Nothing in this Section 2.B. (ii) shall limit any of Landlord's other rights or remedies set forth in this Lease or under law.

(iii) Tenant agrees to pay its pro-rata portion of the Summer 2010 and Winter 2010 Taxes upon execution of this Lease, in amounts as agreed to by Tenant and Landlord, based upon actual Tax bills or invoices.

**C. Payment of Rent.** The following provisions shall govern the payment of Rent: (i) if this Lease commences or ends on a day other than the first day or last day of a calendar year, respectively, the Rent for the year in which this Lease so begins or ends shall be prorated; (ii) all Rent shall be paid to Landlord without notice, demand, offset or deduction (unless otherwise expressly allowed herein), and the covenant to pay Rent shall be independent of every other covenant in this Lease; and (iii) Tenant shall pay Landlord a late charge for any Rent payment which is paid more than five (5) days after receipt by Tenant from Landlord of notice of its failure to pay such Rent payment when due, which late charge shall be equal to Five Hundred and 00/100 Dollars ($500.00) for the first late payment, and such late charge shall be doubled in each following month that a late payment occurs (month 2 late charge is $1,000.00, month 3 late charge is $2,000.00, and months 4 — 12 late charge is $4,000.00; provided however, the late charge shall re-set to $500.00 after each 12-month period and shall not exceed $4,000.00 in any one (1) month. Notwithstanding the aforementioned, Landlord shall only have the obligation to provide Tenant with five (5) days notice of each such failure, the late charge shall be imposed after Tenant's failure to pay Rent within five (5) days after it is due without any further notification of such failure. Landlord's obligation to give notice under this Section 2.C. is solely for purposes of assessing late charges. In addition to the late charge, if Tenant fails to pay any component of Rent within twenty (20) days after such is due (unless otherwise expressly set forth herein), Tenant shall also pay interest on such unpaid component of Rent at a per annum rate of twelve percent (12%) until said amount is paid in full; and (iv) any amount owed to Landlord under this Lease for which the date of payment is not expressly fixed shall be due on the same date as the Rent listed on the statement showing such amount is due.

**D. Right to Audit.** Landlord shall maintain books and records (using its best efforts to provide all original invoices) relating to all items of Additional Rent charged to Tenant

during the Term, and shall maintain copies thereof throughout the Term and for one (1) year after the expiration or earlier termination of this Lease. Tenant, at its sole cost and expense, shall have the right, no more frequently than once per calendar year, and upon thirty (30) days prior written notice to Landlord, to examine, or to have an independent certified public accountant (or reputable lease audit firm) retained by Tenant examine, Landlord's books and records relating to Additional Rent charged to Tenant for all or any portion of the Term during normal business hours only and at a time reasonably agreed upon by Landlord and Tenant.

**E. Net Lease.** It is the purpose and intent of Landlord and Tenant that, unless otherwise set forth herein expressly to the contrary, this Lease shall be absolutely net to Landlord and that Tenant shall pay all Rent due hereunder, without notice, demand, abatement, deduction or set off (unless otherwise expressly provided herein), and hold Landlord harmless from and against, all costs, taxes, insurance premiums and expenses and obligations of every kind and nature whatsoever relating to the Premises which may arise or become due during the Term of this Lease.

**3. USE.** Tenant agrees that it shall occupy and use the Premises only for the permitted use set forth in Item 1.8 of the Schedule and for no other purposes without Landlord's prior written consent. Further, no activity shall be conducted on the Premises that does not comply with any applicable law.

**4. CONDITION OF PREMISES.** Tenant accepts the Premises in its "AS IS" "WHERE IS" condition, and Tenant's taking possession of the Premises shall be conclusive evidence that the Premises were in good order and satisfactory condition when Tenant took possession; and (2) Tenant acknowledges that there is no agreement of Landlord to alter, remodel, decorate, clean or improve the Premises or the Building (or to provide Tenant with any credit or allowance for the same), and no representation regarding the condition of the Premises or the Building, have been made by or on behalf of Landlord or relied upon by Tenant unless otherwise expressly set forth herein. Tenant hereby waives all claims against Landlord regarding the condition of the Premises. LANDLORD HEREBY WAIVES AND DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**5. REPAIRS AND MAINTENANCE.**

**A. Landlord's Obligations**. Landlord, as its sole maintenance and repair obligation hereunder, shall keep and maintain in good repair the structural, but not cosmetic, condition of the exterior walls, interior load-bearing walls, the foundation and the roof of the Building, exclusive of doors, door frames, door checks, windows and window frames all of which are the responsibility of Tenant. In addition, Landlord shall make all "major repairs" and all replacements the following mechanical systems, if required (except to the extent that the preventative maintenance and minor repairs of some of such mechanical systems are expressly the obligations of Tenant as set forth in Section 5(B) below) in the Premises: (i) heating, ventilating and air conditioning; (ii) electrical and lighting; (iii) plumbing and sewerage; and (iv) fire/life safety systems. As used in this Lease, the term "major repairs" shall mean any single repair which costs more than **Ten Thousand Dollars ($10,000.00).** However, Landlord shall

not be called upon to make any such repairs or replacements occasioned by the acts, errors or omissions of Tenant, its agents, employees, invitees, customers, licensees or contractors, except to the extent that Landlord is fully reimbursed therefore under any policy of insurance. Landlord shall not be called upon to make any other improvements or repairs, of any kind, upon the Premises except as may be otherwise expressly required under the provisions of this Lease. Tenant shall promptly notify Landlord in writing of all repairs which it deems to be Landlord's responsibility. Landlord shall not be required to make the same repair more than once during each 12-month term of this Lease (even if the repair is a major repair).

**B. Tenant's Obligations**. Except as provided in Section 5.A. above, Tenant shall, at its sole cost and expense, keep and maintain in good order, condition, repair (and replace, if necessary) the interior and exterior of Building and Premises (subject to Section 5(A) above), including, without limitation, non-load-bearing interior walls, windows, glass, doors, and all sidewalks, landscaping, driveways, parking lots and fences in or about the Premises. Except to the extent such is the express obligation of Landlord, Tenant agrees to perform all ordinary and necessary maintenance in and to the Premises as is reasonably necessary to keep and maintain the Premises in the same order, condition and repair as existed on the Commencement Date, ordinary wear and tear excepted (casualty and/or condemnation events that effect the condition of the Premises are dealt with in Sections 12 and 13 herein). In addition, Tenant shall procure and maintain, at its sole cost and expense, a preventative maintenance contract on the heating, ventilating and air conditioning and boiler systems serving the Premises such that routine repair and maintenance of such systems shall be performed at Tenant's expense. Notwithstanding the foregoing sentence, however, Tenant shall have no obligation to pay for or cause to be made any major repairs or any replacements of such heating, ventilating and air conditioning systems serving the Premises. which shall be the sole responsibility and cost of Landlord (unless the required replacement is due to Tenant's failure to maintain or repair, in which case the Tenant must pay for any major repairs or replacements of such systems). Tenant shall, however, be responsible to maintain and make minor repairs to such mechanical systems. Tenant agrees to indemnify and hold Landlord harmless from any expenses incurred in connection with the breach of this Section 5.B. by Tenant, its agents, employees, licensees or contractors. In addition, Tenant, at its sole cost and expense, shall keep and maintain the Premises in a clean, sanitary and safe condition in accordance with applicable law and in accordance with all directions, rules and regulations of the health officer, fire marshal, building inspector or other proper officials of governmental agencies having jurisdiction. Tenant shall furnish the Premises, at its sole cost and expense, with all security services, window washing, janitor, garbage disposal services, and other services reasonably necessary to Tenant's use of the Premises in accordance with this Lease. Tenant shall, at its sole expense, promptly repair any damage to the Premises caused by Tenant or any agent, officer, employee, contractor, licensee or invitee of Tenant, or due to Tenants breach of any portion of this Lease. Tenant may use any existing warranty that benefits Landlord, to pay for all or a portion of a repair or maintenance obligation of Tenant hereunder, provided, Tenant shall pay any required deductibles.

**C. Compliance with Laws.** As of the Commencement Date, Landlord represents to Tenant that to the best of its knowledge, the Building (including the Premises) is in material compliance with all applicable laws, ordinances, codes, rules, regulations, orders, and other lawful requirements associated with construction, operation, use and maintenance of the Building, including the Premises, for the uses permitted hereunder. From and after the

Commencement Date, Tenant shall, at its sole cost, comply with all requirements of all laws, rules, orders, requirements, regulations or ordinances either currently existing, or hereinafter enacted and otherwise, including, without limitation, the Americans with Disabilities Act of 1990 affecting the Premises and shall permit no waste, damage or injury thereto.

**6. UTILITIES.** Tenant shall contract directly for all Utilities with the utility provider or supplier of same, except water, and pay for all Utilities (including water) for the entire Premises. Tenant shall pay the water bill for the Premises upon presentment of a copy of such bill by Landlord (or if mailed directly from municipality) to Tenant on or before its due date. Landlord shall promptly provide Tenant with a copy of any such water bill following receipt of same by Landlord. Tenant shall be responsible for the payment of all Utilities as soon as an invoice is presented so that no past due accounts arise, and provide Landlord with evidence of payment upon request. Landlord shall not be liable for damages for interruptions of Utilities, because of any casualties, or labor disputes, because of necessary repairs or improvements or for any other causes beyond the reasonable control of Landlord.

**7. CERTAIN RIGHTS RESERVED TO LANDLORD.** Provided that such activities shall not unreasonably interfere with Tenant's use and occupancy of or access to the Premises, Landlord reserves the following rights, each of which Landlord may exercise without notice to Tenant and without liability to Tenant, and the exercise of any such rights shall not be deemed to constitute an eviction or disturbance of Tenant's use or possession of the Premises and shall not give rise to any claim for set-off or abatement of rent or any other claim or liability against Landlord: (a) to make repairs, alterations, additions or improvements, only as required herein ("Repair Activities"), and for such purposes to enter upon the Premises at reasonable times upon twenty-four hour prior written notice; (b) to show or inspect the Premises (and determine if Tenant is performing its obligations hereunder) at reasonable times upon twenty-four (24) hour prior telephonic or written notice (or at any time, without notice of any kind, if necessary, due to an emergency situation) to Tenant; (c) to take any other action which Landlord deems reasonable in connection with the operation, maintenance, marketing or preservation of the Building; (d) to reasonably approve the weight, size and location of safes or other heavy equipment or articles, which articles may be moved in, about or out of the Building or Premises only at such times and in such manner as Landlord shall reasonably direct, at Tenant's sole risk and responsibility; and (e) in the last ninety (90) days of the Term (if Tenant does not exercise its Option Period), and if Tenant exercises the Option Term, in the last ninety (90) days of the Option Term, to market and show the Premises to prospective tenants for future occupancy.

**8. SIGNS.** Unless such signs are erected in full compliance with all applicable laws, and unless Tenant has received Landlord's prior consent, which will not be unreasonably withheld, delayed or conditioned. Tenant shall not erect or install any signs on the exterior of the Premises. Upon the expiration or earlier termination of the Term of this Lease, Tenant shall promptly remove all such signs and repair any damage caused by the installation of same. Notwithstanding anything contained herein to the contrary, Landlord hereby approves all signage existing as of the Commencement Date.

**9. TENANT ALTERATIONS.**

**A. <u>Requirements</u>.**

(i) Tenant shall not make any replacement, alteration, improvement or addition to or removal from the Premises (collectively an "alteration") without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed, provided that Tenant complies with this Section 9(A). In the event Tenant proposes to make any alteration, Tenant shall, prior to commencing such alteration, submit to Landlord for prior written reasonable approval: (i) detailed plans and specifications (if appropriate for the alteration contemplated by Tenant); (ii) the names, addresses and copies of contracts for all contractors; (iii) all necessary permits evidencing compliance with all applicable governmental rules, regulations and requirements; (iv) certificates of insurance in form and amounts reasonably required by Landlord, naming Landlord, its managing and leasing agent and any other parties reasonably designated by Landlord as additional insureds; and (v) all other documents and information as Landlord may reasonably request in connection with such alteration. Tenant agrees to pay Landlord's reasonable charges for review of all such items of the alteration. Neither approval of the plans and specifications nor any supervision of the alteration by Landlord shall constitute a representation or warranty by Landlord as to the accuracy, adequacy, sufficiency or propriety of such plans and specifications or the quality of workmanship or the compliance of such alteration with applicable law. Tenant shall pay the entire cost of the alteration. Each alteration shall be performed in a good and workmanlike manner, in accordance with the plans and specifications reasonably approved by Landlord, and shall meet or exceed the standards for construction and quality of materials reasonably established by Landlord for the Building. In addition, each alteration shall be performed in compliance with all applicable governmental and insurance company laws, regulations and requirements. Each alteration shall be performed by Tenant, and in harmony with any of Landlord's employees and contractors employed at the Premises. Each alteration, whether temporary or permanent in character, made by Landlord or Tenant in or upon the Premises (excepting only Tenant's furniture, equipment and trade fixtures) shall become Landlord's property and shall remain upon the Premises at the expiration or termination of this Lease without compensation to Tenant; provided, however, that Landlord shall have the right to require Tenant to remove such alteration at Tenant's sole cost and expense in accordance with the provisions of Paragraph 15 of this Lease, which required removal will be specified by Landlord when Landlord consents to Tenant's requested alterations, except, however, Landlord may require removal of any electronic, phone, data or other telecommunications conduit and cabling and related equipment installed by or on behalf of Tenant from and after the Commencement Date, by notice to Tenant given at any time prior to the expiration or earlier termination of this Lease. Any alteration required by applicable law, statute or ordinance, or by any governmental agency having jurisdiction over the Premises, that is required due to Tenant's specific use and occupancy of the Premises shall be made promptly, at Tenant's sole cost in accordance with this Section 9.

(ii) Notwithstanding the foregoing, Tenant may make alterations, the cost of which does not exceed**Twenty-five Thousand and 00/100 ($25,000.00) Dollars**at any one time, without the prior written consent of Landlord, provided that such alterations are "cosmetic". For purposes of this Lease, a "cosmetic" alteration shall be one that does not effect the structure or mechanics of the Building and for example, would include installing new carpet or other flooring or painting. Further, the Tenant shall not make any alteration that is not cosmetic without Landlord's prior written consent as set forth in Section 9.A(i).

**B. Liens.** Upon completion of any alteration, Tenant shall promptly furnish Landlord with sworn owner's and contractors' statements and full and final waivers of lien covering all labor and materials included in such alteration. Tenant shall not permit any mechanic's lien to be filed against the Premises, or any part thereof, arising out of any alteration performed, or alleged to have been performed, by or on behalf of Tenant. If any such lien is filed, Tenant shall within ten (10) days after Tenant's receipt of notice of the filing of same, have such lien released of record or deliver to Landlord a bond in form, amount, and issued by a surety reasonably satisfactory to Landlord, indemnifying Landlord against all costs and liabilities resulting from such lien and the foreclosure or attempted foreclosure thereof. If Tenant fails to have such lien so released or to deliver such bond to Landlord, Landlord, without investigating the validity of such lien, may pay or discharge the same, and Tenant shall reimburse Landlord upon demand 100% of the amount so paid by Landlord, including Landlord's reasonable expenses and reasonable attorneys' fees.

**10. INSURANCE.** In consideration of the leasing of the Premises at the rent stated herein, Tenant agrees to pay for and/or maintain insurance as follows:

**A.** Landlord shall maintain, throughout the term of this Lease: (i) Special Perils all-risk commercial property insurance covering the Building, including the Premises, in an amount equal to 100 percent of the reasonably estimated replacement cost thereof, including, without limitation, malicious mischief and sprinkler leakage, demolition and debris removal; (ii) business interruption insurance including Landlord's rental loss or abatement, from damage or destruction from environmental hazards, fire or other casualty, and (iii) boiler and machinery insurance (collectively, the "Landlord's Insurance"). Within thirty (30) days (or such earlier date required by the insurance company) after receipt of an invoice for same from Landlord, Tenant shall pay all insurance premiums paid or payable by Landlord for Landlord's Insurance. If Tenant is able to procure any or all of such Landlord's Insurance at a cost that is less than the cost of same procured by Landlord, Landlord shall agree to procure such coverage from the companies suggested by Tenant provided that such company is acceptable to Landlord's lender. If the coverage period of any of such insurance obtained by Landlord commences before or extends beyond the Term, the premium therefore shall be prorated to the Term. Should Tenant's occupancy or use of the Premises at any time change and thereby cause an increase in such insurance premiums on the Premises and/or Building, Tenant shall pay to Landlord the entire amount of such reasonably documented increase.

**B.** Tenant shall, at its sole cost and expense, keep in force and effect during the Term hereof, insurance which is available at commercially reasonable rates and otherwise carried by tenants in the area, under policies issued by insurers of recognized responsibility licensed to do business in the State of Michigan on all personal property owned by Tenant located in the Premises. Tenant also agrees to maintain commercial general liability insurance on an occurrence basis covering Tenant as the insured party, and naming Landlord as an additional insured, against claims for bodily injury and death and property damage occurring in or about the Premises, with combined single limits of not less than **Three Million Dollars ($3,000,000.00)** per occurrence.

**C.** All such policies shall be written in a form and with an insurance company reasonably satisfactory to Landlord. Such policy shall name "Landlord" and its wholly owned

subsidiaries and agents and any mortgagees of Landlord as loss payees (or other designation required by such mortgagees) (with respect to Landlord's Insurance) and additional named insureds (with respect to all insurance required of Tenant by this Section 10). On or prior to the Commencement Date, Tenant shall deliver to Landlord copies of certificates evidencing the existence of the amounts and forms of coverage reasonably satisfactory to Landlord and shall supply copies of the policy and all endorsements upon the request of Landlord. Tenant shall, within thirty (30) days' prior to the expiration of such policies, furnish Landlord with renewals or "Binders" thereof, or, following ten (10) days prior written notice of such default to Tenant, Landlord may order such insurance and charge the cost thereof to Tenant as Additional Rent. All policies maintained by Tenant will provide that they may not be terminated or cancelled nor may coverage be reduced except after thirty (30) days' prior written notice to Landlord. To the extent of losses caused by Tenant or its agents or employees, all commercial general liability and all-risk property policies maintained by Tenant shall be written as primary policies, not contributing with and not supplemental to the coverage that Landlord may carry. Landlord and Tenant each hereby waives on behalf of themselves and their respective insurers any and all rights of recovery against the other, its officers, members, agents and employees occurring or arising out of the use and occupation of the Premises or the Building to the extent such loss or usage is covered by proceeds received from insurance required under this Lease to be carried by the other party. This waiver of subrogation provision shall be limited to loss or damage to the property of Landlord and Tenant. It is understood that this waiver is intended to extend to all such loss or damage whether or not the same is caused by the fault or neglect of either Landlord or Tenant and whether or not such insurance is in force. If required by policy conditions, each party shall secure from its property insurer a waiver of subrogation endorsement to its policy, and deliver a copy of such endorsement to the other party to this Lease if requested.

**11. INDEMNIFICATION.**

**A.** Tenant shall indemnify and hold Landlord harmless from and against all costs, damages, claims, liabilities and expenses (including reasonable attorney's fees) suffered by or claimed against Landlord, directly based on, arising out of or resulting from (i) Tenant's use and occupancy of the Premises or the business conducted by Tenant therein, (ii) any negligent act or omission by Tenant or its employees or guests, or (iii) any breach or default by Tenant in the performance or observance of its covenants or obligations under this Lease.

**B.** Landlord shall indemnify and hold Tenant harmless from and against all costs, damages, claims, liabilities and expenses (including reasonable attorney's fees) suffered by or claimed against Tenant, directly based on, arising out of or resulting from (i) any negligent act or omission of Landlord, its employees or agents or (ii) any breach by Landlord in the performance or observance of its covenants or obligations under this Lease.

**12. FIRE OR OTHER CASUALTY.**

**A. Destruction of the Building.** If the Building should be "substantially destroyed" (which, as used herein, means destruction or damage to at least twenty five percent (25%) of the Building) by fire or other casualty, either party hereto may, at its option, terminate this Lease by giving written notice thereof to the other party within thirty (30) days of such casualty. In such event, the Rent shall be apportioned to and shall cease as of the date of such

casualty. In the event neither party exercises this option, then the Premises shall be reconstructed and restored, at Tenant's expense (to extent insurance proceeds are not available), to substantially the same condition as they were prior to the casualty.

**B. Destruction of the Premises.** If the Premises are damaged, in whole or in part, by fire or other casualty, but the Building is not substantially destroyed as provided in 12(A) above, then the parties hereto shall have the following options:

(i) If, in Landlord's reasonable judgment, the Premises cannot be reconstructed or restored within one hundred twenty (120) days of the date of such casualty to substantially the same condition as they were in prior to such casualty, Landlord may terminate this Lease by written notice given to Tenant within thirty (30) days of the date of the casualty. If, in Landlord's reasonable judgment, the Premises cannot be reconstructed or restored within one hundred twenty (120) days of such casualty to substantially the same condition as they were in prior to such casualty, but nonetheless Landlord does not so elect to terminate this Lease, then Landlord shall notify Tenant, within thirty (30) days of the casualty, of the amount of time necessary, as reasonably estimated by Landlord, to reconstruct or restore the Premises. After receipt of such notice from Landlord, Tenant may elect to terminate this Lease. This election shall be made by Tenant by giving written notice to Landlord within fifteen (15) days after the date of Landlord's notice. If neither party terminates this Lease pursuant to the foregoing, Landlord shall proceed to reconstruct and restore the Premises to substantially the same condition as they were in prior to the casualty. In such event this Lease shall continue in full force and effect to the balance of the term, upon the same terms, conditions and covenants as are contained herein; provided, however, that the Rent shall be abated in the proportion which the approximate area of the damaged portion bears to the total area in the Premises, from the date of the casualty until substantial completion of the reconstruction of the Premises.

Notwithstanding the above, if the casualty occurs during the last twelve (12) months of the term of this Lease, either party hereto shall have the right to terminate this Lease as of the date of the casualty, which right shall be exercised by written notice to be given by either party to the other party within thirty (30) days therefrom. If this right is exercised, Rent shall be apportioned to and shall cease as of the date of the casualty.

Additionally, notwithstanding anything contained herein to the contrary, Landlord shall have no duty to repair or restore the Premises or Building if the damage is due to an uninsurable casualty, or if insurance proceeds are insufficient to pay for such repair or restoration, or if the holder of any mortgage, deed of trust or similar instrument applies proceeds of insurance to reduce its loan balance and the remaining proceeds, if any, available to Landlord are not sufficient to pay for such repair or restoration.

(ii) If, in Landlord's reasonable judgment, the Premises are able to be restored within one hundred twenty (120) days of such casualty to substantially the same condition as they were prior to such casualty, Landlord shall so notify Tenant within thirty (30) days of the casualty, and Landlord shall then proceed, with reasonable diligence and speed, to reconstruct and restore the damaged portion of the Premises, to substantially the same condition as it was prior to the casualty. Rent shall be abated in the proportion which the approximate area of the damaged portion bears to the total area in the Premises from the date of the casualty until

substantial completion of the reconstruction repairs, and this Lease shall continue in full force and effect for the balance of the Term, upon the same terms, conditions and covenants as are contained herein.

(iii) In the event Landlord undertakes reconstruction or restoration of the Premises pursuant to subparagraph (i) or (ii) above, Landlord shall use reasonable diligence in completing such reconstruction repairs, but in the event Landlord fails to substantially complete the same within one hundred eighty (180) days from the date of the casualty (except however, if under subparagraph (i) above Landlord notified Tenant that it would take longer than one hundred twenty (120) days to reconstruct or restore the Premises, but Tenant nonetheless elected not to terminate the Lease but require Landlord to reconstruct or restore the Premises, then the foregoing one hundred and eighty (180) day period shall be extended to the time period set forth in Landlord's notice plus sixty (60) days), except as a result of any of the force majeure occurrences set forth in Paragraph 25.H. below, Tenant may, at its option, terminate this Lease upon giving Landlord written notice to that effect, whereupon both parties shall be released from all further obligations and liability hereunder.

**13. CONDEMNATION.** If the Premises or the Building is rendered untenantable by reason of a condemnation (or by a deed given in lieu thereof), then either party may terminate this Lease by giving written notice of termination to the other party within thirty (30) days after such condemnation, in which event this Lease shall terminate effective as of the date of such condemnation. If this Lease so terminates, Rent shall be paid through and apportioned as of the date of such condemnation. If such condemnation does not render the Premises or the Building untenantable, this Lease shall continue in effect and Landlord shall promptly restore the portion not condemned to the extent reasonably possible to the condition existing prior to the condemnation. In such event, however, Landlord shall not be required to expend an amount in excess of the proceeds received by Landlord from the condemning authority. Rent shall be appropriately abated or adjusted for the portion of the Premises rendered untenantable by or subject to the taking. Notwithstanding the foregoing, all condemnation proceeds, awards, damages, compensation, income, rent and/or interest payable in connection with such taking, shall be paid to and be the property of Landlord but nothing contained herein shall prohibit or prevent Tenant from maintaining its own claim for loss of its trade fixtures and relocation/moving expenses.

**14. ASSIGNMENT AND SUBLETTING.**

**A. Landlord's Consent.** Tenant shall not, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed: (i) assign, convey, mortgage or otherwise transfer this Lease or any interest hereunder, or sublease the Premises, or any part thereof, whether voluntarily or by operation of law; or (ii) permit the use of the Premises by any person other than Tenant and its employees. Any such transfer, sublease or use described in the preceding sentence (a "Transfer") occurring without the prior written consent of Landlord shall be void and of no effect and shall constitute a Default hereunder. Landlord's consent to any Transfer shall not constitute a waiver of Landlord's right to withhold its consent to any future Transfer. Landlord's consent to any Transfer or acceptance of Rent from any party other than Tenant shall not release Tenant from any covenant or obligation under this Lease. Landlord may require as a condition to its consent to any assignment of this

Lease that the assignee execute an instrument in which such assignee assumes the obligations of Tenant hereunder. Further, for the purposes of this paragraph, the transfer (whether direct or indirect) of all or a majority of the Tenant's equity/capital interests (whether stock, LLC membership interests, partnership interests, or otherwise) (other than the shares of the capital stock of a corporate Tenant whose stock is publicly traded) or the merger, consolidation or reorganization of such Tenant or any other transaction that results in a change of Tenant's voting control (whether direct or indirect) shall be considered a Transfer.

**B. Standards for Consent.** If Tenant desires the consent of Landlord to a Transfer, Tenant shall submit to Landlord, at least twenty (20) days prior to the proposed effective date of the Transfer, a written notice which includes such information as Landlord may reasonably require about the proposed Transfer and the transferee.

**C. Recapture.** Except in the case of the sale of Tenant's business conducted in the Premises in which event, Landlord shall not have any right to recapture the Premises and/or terminate this Lease; provided that no uncured Default by Tenant exists at the time of such sale, Landlord shall have the right to terminate this Lease as to that portion of the Premises covered by a Transfer. Landlord may exercise such right to terminate by giving notice to Tenant at any time within twenty (20) days after the date on which Tenant has furnished to Landlord all of the items required under Paragraph 14.B. If Landlord exercises such right to terminate, Landlord shall be entitled to recover possession of, and Tenant shall surrender such portion of, the Premises (with appropriate demising partitions erected at the expense of Tenant) on the effective date of the proposed Transfer. In the event Landlord exercises such right to terminate, Landlord shall have the right to enter into a lease with the proposed transferee without incurring any liability to Tenant on account thereof. Except in the case of the sale of Tenant's business conducted in the Premises in which event, Landlord shall not have any right to share in the profits of same, if Landlord consents to any Transfer, Tenant shall pay to Landlord one-half (1/2) of all net Rent and other net consideration under the Lease received by Tenant in excess of the Rent paid by Tenant hereunder for the portion of the Premises so transferred. As used herein, the terms "net Rent" and/or "net consideration" shall mean the excess of the Base Rent, Additional Rent and other consideration paid by such assignee or subtenant above the Base Rent and Additional Rent paid by Tenant hereunder after deduction of all reasonable and customary expenses incurred by Tenant in connection with such assignment or sublease including, but not limited to, brokerage commissions, leasehold improvement costs and attorney's fees. Such Rent shall be paid as and when received by Tenant. In addition, Tenant shall pay to Landlord any reasonable attorneys' or other fees and expenses incurred by Landlord in connection with any proposed Transfer, whether or not Landlord consents to such Transfer and whether or not Landlord exercises its termination rights hereunder.

**15. SURRENDER.** Upon termination of the Term or Tenant's right to possession of the Premises, Tenant shall return the Premises to Landlord in good order and condition as received on the Commencement Date, reasonable wear and damage by casualty or condemnation excepted to the extent that such casualty or condemnation damages are covered by insurance or condemnation proceeds payable to Landlord. If Landlord requires Tenant to remove any alterations pursuant to Section 8, then such removal shall be done in a good and workmanlike manner, and upon such removal Tenant shall restore the Premises to its same condition prior to the installation of such alterations. If Tenant does not remove such alterations within five (5)

business days after the expiration or earlier termination of the Term hereof, Landlord may remove the same and restore the Premises, and Tenant shall pay the cost (plus interest at rate of twelve percent (12%)) of such removal and restoration to Landlord upon demand. Tenant shall also remove its furniture, equipment, trade fixtures and all other items of personal property from the Premises prior to termination of the Term or Tenant's right to possession of the Premises. If Tenant does not remove such items on or before the last day of the Term or the Option Period, as applicable, Tenant shall be conclusively presumed to have conveyed the same to Landlord without further payment or credit by Landlord to Tenant, or at Landlord's sole option such items shall be deemed abandoned, in which event Landlord may cause such items to be removed and disposed of at Tenant's expense, which shall be one hundred five percent (105%) of Landlord's actual cost of removal, without notice to Tenant and without obligation to compensate Tenant.

**16. DEFAULTS AND REMEDIES.**

**A. Default.** The occurrence of any of the following shall constitute a default or event of default (a "Default") by Tenant under this Lease: (i) Tenant fails to pay any Rent within five (5) days after written notice is received by Tenant from Landlord of Tenant's failure to pay such Rent when due; (ii) Tenant fails to perform any other provision of this Lease and such failure is not cured within thirty (30) days after notice from Landlord provided that if such default cannot be cured within such thirty (30) day period but Tenant commences such cure within such thirty (30) day period and diligently pursues such cure thereafter, the thirty (30) day period shall be extended for such period of time as may be reasonably necessary to complete such cure but not to exceed an additional forty-five (45) days without Landlord's reasonable prior written consent ; (iii) the leasehold interest of Tenant is levied upon or attached under process of law; or (iv) any voluntary or involuntary proceedings are filed by or against Tenant or any guarantor of this Lease under any bankruptcy, insolvency or similar laws and, in the case of any involuntary proceedings, are not dismissed within thirty (30) days after filing; and (v) Tenant abandons or vacates the Premises and does not continue to perform all of its obligations hereunder.

**B. Right of Re-Entry.** Upon the occurrence of a Default, Landlord may elect to terminate this Lease or, without terminating this Lease, terminate Tenant's right to possession of the Premises. Upon any such termination, Tenant shall immediately surrender and vacate the Premises and deliver possession thereof to Landlord. Upon any such termination, using all due process of law, Tenant grants to Landlord the right to enter and repossess the Premises and, using all due process of law, to expel Tenant and any others who may be occupying the Premises and to remove any and all property therefrom, without being deemed in any manner guilty of trespass and without relinquishing Landlord's rights to Rent or any other right given to Landlord hereunder or by operation of law.

**C. Termination of Right to Possession.** If Landlord terminates Tenant's right to possession of the Premises without terminating this Lease, Landlord may relet the Premises or any part thereof. In such case, Landlord shall use reasonable efforts to relet the Premises on such terms as Landlord shall reasonably deem appropriate. Tenant shall reimburse Landlord for the reasonable costs and expenses of reletting the Premises including, but not limited to, all brokerage, advertising, legal, reasonable alteration, reasonable redecorating, repairs and other reasonable expenses incurred to secure a new tenant for the Premises. In

addition, if the consideration collected by Landlord upon any such reletting, after payment of the expenses of reletting the Premises which have not been reimbursed by Tenant, is insufficient to pay monthly the full amount of the Rent, Tenant shall pay to Landlord the amount of each monthly deficiency as it becomes due. If such consideration is greater than the amount necessary to pay the full amount of the Rent, the full amount of such excess shall be retained by Landlord and shall in no event be payable to Tenant but shall be available as a credit against installments of Rent thereafter becoming due from Tenant.

**D. Termination of Lease.** If Landlord terminates this Lease, Landlord may recover from Tenant and Tenant shall pay to Landlord, on demand, as and for liquidated and final damages, an accelerated lump sum amount equal to a sum which, at the time of the Event of Default, equals the aggregate Base Rent payable hereunder for the period of time from such which would have become payable by Tenant hereunder through the day previously set as the Expiration Date less the then fair market rental value of the Premises for the balance of the Term, or the Option Term, if exercised by Tenant (which is to be determined at such time, taking into consideration any reasonable reletting period and deducting therefrom all costs and expenses which Landlord would reasonably incur in connection with reletting or subletting, including without limitation, brokerage commissions, legal expenses and expenses of preparing the Premises for tenant(s) or subtenant(s) occupancy), which sum shall be discounted to its then present value in accordance with accepted financial practice using a rate equal to seven percent (7.0%) per annum.

**E. Other Remedies.** Unless otherwise set forth herein, and following ten (10) days prior written notice to Tenant, Landlord may, but shall not be obligated to, perform any obligation of Tenant under this Lease, and, if Landlord so elects, all costs and expenses paid by Landlord in performing such obligation, together with interest at the rate of twelve (12%) percent per annum, shall be reimbursed by Tenant to Landlord on demand. Any and all remedies set forth in this Lease: (i) shall be in addition to any and all other remedies Landlord may have at law or in equity; (ii) shall be cumulative; and (iii) may be pursued successively or concurrently as Landlord may elect. The exercise of any remedy by Landlord shall not be deemed an election of remedies or preclude Landlord from exercising any other remedies in the future. Tenant waives any right of redemption arising as a result of Landlord's exercise of any of its remedies under this Lease.

**F. Bankruptcy.** If Tenant becomes bankrupt (voluntarily or involuntarily), the bankruptcy trustee shall not have the right to assume or assign this Lease unless the trustee complies with all requirements of the United States Bankruptcy Code, and Landlord expressly reserves all of its rights, claims and remedies thereunder.

**G. Waiver of Trial by Jury.** Landlord and Tenant waive trial by jury in the event of any action, proceeding or counterclaim brought by either Landlord or Tenant against the other in connection with this Lease.

**H. Venue.** If either Landlord or Tenant desires to bring an action against the other in connection with this Lease, such action shall be brought in the Lapeer County Circuit Court, Michigan. Landlord and Tenant consent to the jurisdiction of such courts and waive any

right to have such action transferred from such courts on the grounds of improper venue or inconvenient forum.

**I. Tenant's Primary Duty.** All agreements and covenants to be performed or observed by Tenant under this Lease shall be at Tenant's sole cost and expense, except as otherwise set forth herein, and, except as expressly allowed herein without any abatement of Rent. Unless otherwise set forth herein, and following ten (10) days prior written notice to Tenant, if Tenant fails to pay any sum of money to be paid by Tenant or to perform any other act to be performed by Tenant under this Lease, Landlord shall have the right, but shall not be obligated, and without waiving or releasing Tenant from any obligations of Tenant, to make any such payment or to perform any such other act on behalf of Tenant in accordance with this Lease. All sums so paid by Landlord and all costs incurred or paid by Landlord shall be deemed Additional Rent hereunder and Tenant shall pay the same to Landlord on written demand, together with interest on all such sums and costs from the date of expenditure by Landlord to the date of repayment by Tenant at the rate of twelve percent (12%) per annum.

**J. Landlord's Default.** If Landlord defaults in the performance of any material duty or obligation hereunder and such default continues unremedied for a period of thirty (30) days following written notice from Tenant to Landlord and to any mortgagee or ground lessor of Landlord to whom Landlord has requested in writing that notices of default be sent, then Tenant shall have the right to cause the Landlord's default to be cured and to recover from Landlord the reasonable costs and expenses incurred by Tenant in curing Landlord's default through a legal action against Landlord. Tenant shall not be entitled to offset any such costs against Rent due hereunder, unless and until Tenant obtains a final judgment against Landlord to the effect that Landlord has defaulted in the performance of a material duty or obligation hereunder. Tenant agrees to accept performance of any of Landlord's obligations hereunder by any mortgagee or ground lessor of the Project. Notwithstanding the foregoing, if the nature of Landlord's default is such that it can not reasonably be cured within thirty (30) days after notice, then the time permitted for Landlord to cure the default shall be extended as necessary to permit the cure to be accomplished, if Landlord promptly commences the cure after receiving notice from Tenant and thereafter diligently pursues the cure to completion, but not to exceed an additional forty-five (45) days, without Tenant's reasonable prior written consent.

**K. No Consequential Damages.** Neither party shall be liable to the other for consequential or other indirect damages of the other (including, without limitation, lost profits or business interruption).

**17. HOLDING OVER.** If Tenant retains possession of the Premises after the expiration or termination of the Term or Tenant's right to possession of the Premises, Tenant shall be considered a "holdover" tenant, and Tenant shall pay Base Rent computed on a daily rate basis equal to one hundred ten percent (110%) of the daily Base Rent in effect at the end of the Lease Term for the first thirty (30) days or part thereof of holdover and then at a daily rate equal to one hundred twenty five percent (125%) of the daily Base Rent in effect at the end of the Lease Term for the next thirty (30) days or part thereof of holdover and then at a daily rate equal to one hundred fifty percent (150%) of the daily Base Rent in effect at the end of the Lease Term for any subsequent holdover. For purposes of this paragraph, the annual Base Rent paid during the last year prior to such holdover shall be divided by 365 for purposes of determining

the daily Base Rent and the payments made to Landlord hereunder shall not constitute a renewal or extension of the Lease, and shall be deemed a periodic tenancy, from month-to-month only. The provisions of this section do not waive Landlord's right of re-entry or right to regain possession by actions at law or in equity or any other rights hereunder, and any receipt of payment by Landlord shall not be deemed a consent by Landlord to Tenant's remaining in possession or be construed as creating or renewing any lease or right of tenancy between Landlord and Tenant.

**18. ESTOPPEL CERTIFICATE.** Each party agrees that, from time to time upon not less than ten (10) days' prior request by the other, such party shall execute and deliver to the requesting party, a written certificate certifying: (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, a description of such modifications and that this Lease as modified is in full force and effect); (ii) the dates to which Rent has been paid; (iii) that Tenant is in possession of the Premises, if that is the case; (iv) that, to the knowledge of the signing party, the other party is not in default under this Lease, or, if either party believes the other is in default, the nature thereof in detail; (v) that Tenant has no off-sets or defenses to the performance of its obligations under this Lease (or if Tenant believes there are any off-sets or defenses, a full and complete explanation thereof); (vi) that the Premises have been completed in accordance with the terms and provisions hereof, that Tenant has accepted the Premises and the condition thereof and of all improvements thereto and has no claims against Landlord or any other party with respect thereto; and (vii) such additional matters as may be requested by the requesting party, it being agreed that such certificate may be relied upon by any prospective purchaser, mortgagee, or other person having or acquiring an interest in the Building or by any assignee or subtenant of Tenant. If either party fails to execute and deliver any such certificate within ten (10) days after written request, such party shall be deemed to consented to the terms of such certificate as presented.

**19. SUBORDINATION.** This Lease is and shall be expressly subject and subordinate at all times to (i) any ground or underlying lease of the Building, now or hereafter existing, and all amendments, renewals and modifications to any such lease, and (ii) the lien of any mortgage or trust deed now or hereafter encumbering fee title to the Premises or the Building and/or the leasehold estate under any such lease, unless such ground lease or ground lessor, or mortgage or mortgagee, expressly provides or elects that the Lease shall be superior to such lease or mortgage. Landlord will use its commercially reasonable efforts to obtain a standard subordination non-disturbance and attornment agreement from its current and all future lenders which will, among other things, protect Tenant's tenancy provided that Tenant is not in default hereunder; provided, however, that the Landlord and Tenant agree to execute and deliver that certain Non-Disturbance Agreement, wherein Chase is the mortgagee, the form of which is attached hereto as Exhibit "E" (the "SNDA"). If any such mortgage or trust deed is foreclosed, or if any such lease is terminated, upon request of the mortgagee, holder or lessor, as the case may be, Tenant will attorn to the purchaser at the foreclosure sale or to the lessor under such lease, as the case may be as set forth in the SNDA. The foregoing provisions are declared to be self-operative and no further instruments shall be required to effect such subordination and/or attornment (including the SNDA); provided, however, that Tenant agrees upon request by any such mortgagee, holder, lessor or purchaser at foreclosure, to execute and deliver such subordination and/or attornment instruments as may be reasonably required by such person to confirm such subordination and/or attornment, or any other documents required to evidence

superiority of the ground lease or mortgage, should ground lessor or mortgage elect such superiority. Nothing contained herein shall allow the financial terms to be changed or increased or Tenant's rights hereunder to be changed or diminished hereunder.

**20. QUIET ENJOYMENT.** As long as no Default exists, Tenant shall peacefully and quietly have and enjoy the Premises for the Term and the Option Period, if applicable, free from interference by Landlord, subject, however, to the provisions of this Lease. The loss or reduction of Tenant's light, air or view will not be deemed a disturbance of Tenant's occupancy of the Premises nor will it affect Tenant's obligations under this Lease or create any liability of Landlord to Tenant.

**21. NOTICES.** All notices and demands to be given by one party to the other party under this Lease shall be given in writing, mailed or delivered to Landlord or Tenant, as the case may be, at the following address:

| | |
|---|---|
| If to Landlord: | ESSC INVESTMENTS, LLC<br>2647 Invitational Drive<br>Oakland, MI 48363<br>Attention: Lisa D. Rice |
| With a copy to: | HOWARD & HOWARD ATTORNEYS, PLLC<br>450 West Fourth Street<br>Royal Oak, MI 48067<br>Attention: Joseph J. DeVito, Esq. |
| If to Tenant: | ENERGY STEEL & SUPPLY CO.<br>c/o GRAHAM CORPORATION<br>20 Florence Avenue<br>Batavia, N.Y. 14020<br>Attention: James R. Lines, President and<br>Chief Executive Officer |
| With a copy to: | HARTER, SECREST & EMERY, LLP<br>1600 Bausch & Lomb Place<br>Rochester, N.Y. 14604-2701<br>Attention: Daniel Kinel, Esq. |

or at such other address as either party may hereafter designate. Notices shall be delivered by hand or by United States certified or registered mail, postage prepaid, return receipt requested, or by a nationally recognized overnight air courier service. Notices shall be considered to have been given upon the earlier to occur of actual receipt or two (2) business days after posting in the United States mail or one (1) business day after depositing with a nationally recognized overnight air courier service.

**22. ENVIRONMENTAL COVENANTS.** Tenant and Landlord, as applicable covenants and agree as follows:

**A.** Other than as disclosed to Tenant, or as set forth in that certain Phase I Environmental Site Assessment Final Report (August Mack Project Number JK1125.316) dated December 5, 2010 (the "Phase I"), to the best of Landlord's reasonable knowledge (which knowledge is qualified and limited to the information set forth in the Phase I), no Hazardous Materials are stored or exist in the Premises including the Building and there are no Environmental Enforcement Actions known to Landlord in connection with the Premises including the Building.

**B.** The Premises will be used and operated by Tenant and its permitted agents, invitees and guests ("Third Parties") in compliance with all applicable federal, state and local laws and regulations related to air quality, waste disposal or management, Hazardous Substances, and the protection of health and the environment.

**C.** No Hazardous Substances will be generated, stored, transported, utilized, disposed of, managed, released or located on, under or from the Premises (whether or not in reportable quantities), or in any manner introduced onto the Premises, including, without limitation, the septic, sewage or other waste disposal systems serving the Premises by Tenant and Third Parties, excepting only Hazardous Substances used by Tenant in ordinary course of its business provided that all such Hazardous Substances will be generated, stored, transported, utilized, disposed of, managed, released, located or introduced onto the Premises in full accordance with all applicable Environmental Laws, and the terms and conditions of this Lease.

**D.** There shall be no installation on the Premises of any (i) "underground storage tank," as that term is defined in the Hazardous Solid Waste Amendments of 1984 to the Resource Conservation and Recovery Act and/or equivalent state act; or (ii) above ground storage tank by Tenant and Third Parties.

**E.** Tenant shall promptly notify Landlord of its knowledge of any threat of release of any Hazardous Substances on, under or from the Premises.

**F.** Tenant shall promptly notify Landlord of any notice (written or oral) from the United States Environmental Protection Agency or any other Governmental Authority (as defined below) claiming that (i) the Premises or any use thereof violates any of the Environmental Laws, or (ii) Tenant or Third Parties have violated any of the Environmental Laws. Tenant shall not take any remedial action or enter into any agreements or settlements in response to the presence of any Hazardous Substances in, on, or about the Premises, without prior written consent of Landlord (which shall not be unreasonably withheld, conditioned or delayed), except in the case of an emergency.

**G.** Tenant shall promptly notify Landlord of any liability incurred by Tenant or Third Parties to the State of Michigan, the United States of America or any other Governmental Authority under any of the Environmental Laws.

**H.** Tenant shall promptly notify Landlord if there are any Environmental Enforcement Actions brought against Tenant or Third Parties, or to its information, knowledge and belief, threatened.

**I.** Tenant shall indemnify and defend the Landlord Parties against and hold the Landlord Parties harmless from all claims, demands, actions, judgments, liabilities, costs, expenses, losses, damages, penalties, fines and obligations of any nature, including, without limitation, Environmental Enforcement Actions (including reasonable attorneys' fees and disbursements incurred in the investigation, defense or settlement of claims) that the Landlord Parties may incur as a result of, or in connection with, claims arising from the presence, use, storage, transportation, treatment, disposal, release or other handling, on or about or beneath the Premises, of any Hazardous Substances introduced or permitted on or about or beneath the Premises by any act, error or omission of Tenant or its agents, officers, employees, contractors, invitees or licensees in violation of any Environmental Laws, or the terms of this Lease. Tenant shall take all actions necessary to restore the Premises to substantially the same condition as existing as of the Commencement Date. Tenant's obligations under this Section 22 shall survive the termination or expiration of this Lease.

The following definitions apply to this Lease:

(i) The term "Environmental Enforcement Actions" shall mean all actions or orders instituted, threatened, required or completed by any Governmental Authority and all claims made or threatened by any person against Tenant, Third Parties or the Premises, arising out of or in connection with any of the Environmental Laws or the assessment, monitoring, clean-up, containment, remediation or removal of, or damages caused or alleged to be caused by, any Hazardous Substances (i) located on or under the Premises, (ii) emanating from the Premises, or (iii) generated, stored, transported, utilized, disposed of, managed or released by Tenant or Third Parties (whether or not on, under or from the Premises).

(ii) The term "Environmental Laws" shall mean all federal, state and local laws, statutes, ordinances, rules, regulations, codes, orders, judgments, orders and the like applicable to (i) environmental conditions on, under or emanating from the Premises including, but not limited to, (a) laws of the State of Michigan; and the associated rules and regulations promulgated in connection with any of these laws, and (b) laws of the federal government commonly known as the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Resource Conservation and Recovery Act, as amended, the Toxic Substance Control Act, as amended, the Federal Water Pollution Control Act, as amended, and the Federal Clean Air Act; and the associated rules and regulations promulgated in connection with any of these laws; and (ii) the generation, storage, transportation, utilization, disposal, management or release (whether or not on, under or from the Premises) of Hazardous Substances by Tenant and Third Parties.

(iii) The term "Governmental Authority" shall mean all agencies, authorities, bodies, boards, commissions, courts, instrumentalities, legislatures and offices of any nature whatsoever for any government unit or political subdivision, whether federal, state, county, district, municipal, city or otherwise, and whether now or later in existence.

(iv) The term "Hazardous Substances" shall mean, collectively, (i) any "hazardous material," "hazardous substance," "hazardous waste," "oil," "regulated substance," "toxic substance," "restricted hazardous waste," "special waste" or words of similar import as defined under any of the Environmental Laws; (ii) asbestos in any form; (iii) urea formaldehyde foam insulation; (iv) polychlorinated biphenyls; (v) radon gas; (vi) flammable explosives; (vii) radioactive materials; (viii) any chemical, contaminant, solvent, material, pollutant or substance that may be dangerous or detrimental to the Premises, the environment, or the health and safety of occupants of the Premises or of the owners or occupants of any other real property nearby the Premises, and (ix) any substance, the generation, storage, transportation, utilization, disposal, management, release or location of which on, under or from the Premises is prohibited or otherwise regulated pursuant to any of the Environmental Laws.

(v) The term "Remediation Costs" shall mean, collectively, expenses, costs, losses, damages and liabilities incurred, including legal fees, environmental assessments and all costs of remediation, administrative penalties, fines and fees, arising from any violation of Environmental Laws.

**23. LANDLORD ENVIRONMENTAL COVENANT.** Landlord shall indemnify and hold Tenant harmless from all Remediation Costs arising from any violation of Environmental Laws by Landlord Parties occurring prior to the Commencement Date of this Lease.

**24. OPTION AND RIGHT OF FIRST REFUSAL TO PURCHASE PREMISES.**

**A. Option Grant**. In further consideration of the promises and covenants contained herein, and the further consideration of **One Hundred Dollars ($100.00)** paid by Tenant, the receipt and sufficiency of which is hereby acknowledged, Landlord, as seller, does hereby grant to Tenant, as buyer, a non-exclusive option (the "Option to Purchase") to purchase the Premises. For the purposes of the Option to Purchase, the Premises are referred to herein as the "Option Property". The terms set forth herein, except as otherwise specifically set forth to the contrary, shall apply to the Option to Purchase. The term of the Option to Purchase shall run concurrently with the Term and in any event shall be exercised, if at all, on or before December 31, 2012 (the "Option Termination Date").

**B. Manner of Exercise of Option**. The Option to Purchase granted herein may be exercised at any time prior to the Option Termination Date, by Tenant giving at least sixty (60) days notice to Landlord prior to the date Tenant intends to close, at the address provided herein (the "Notification") of its intent to purchase the Option Property. If the Notification is given, the transaction shall proceed to Closing as to the Option Property on the

terms and conditions hereinafter expressed. The Notification shall set forth Tenant's unqualified commitment to purchase the Option Property, subject to no contingencies or conditions precedent of any kind (other than Landlord's duty to convey title in the manner set forth in the Purchase and Sale Agreement hereinafter defined).

**C. Terms of Purchase**. The purchase price for the Premises shall be Two Million Five Hundred Thousand and 00/00 ($2,500,000.00) Dollars (the "Purchase Price"). The Purchase Price of the Premises shall be payable (plus or minus all customary prorations, credits or other adjustments) by wire transfer or other immediately available funds on the Closing Date.

**D. Purchase Agreement**. Closing of sale of the Option Property (the "Closing") shall take place in accordance with the terms of and subject to the provisions of that certain Purchase and Sale Agreement attached hereto as Exhibit B and made a part hereof (the "Purchase and Sale Agreement"). Upon receipt of the Notification pursuant to the terms of this Section 24, Landlord, as Owner, and Tenant, as Purchaser shall be deemed to have executed such Purchase and Sale Agreement in the form attached hereto as Exhibit B and the sale of the Premises shall proceed to Closing pursuant to the terms of such Purchase and Sale Agreement (an original of which shall be signed by Landlord and Tenant prior to or at Closing). If the Notification is given less than sixty (60) days prior to the end of the Term of this Lease then the period between the end of the Term and the Closing Date shall be referred to as the "Interim Period". This Paragraph 24 is referred to herein as the "Option Provision" and all other sections of this Agreement are referred to herein as the "Non-Option Provisions." During the Interim Period, the Lease shall continue in effect and subject to all the provisions of the Non-Option Provisions of this Agreement.

**E. Right of First Refusal.** Throughout the Term of this Lease, Tenant shall have a continuing right of first refusal with respect to the sale by Landlord of the Premises to be exercised subject to and in accordance with the terms and conditions of this paragraph. If, at any time during the Term of this Lease, Landlord receives a bona fide offer to purchase the Premises from any third party, Landlord shall furnish to Tenant a copy of such offer together with a notice (an "Offering Notice") to Tenant, which notice shall state that Landlord intends to sell the Premises upon the terms set forth in the purchase offer. Within ten (10) days after Landlord's delivery of an Offering Notice to Tenant, Tenant shall either: (i) give Landlord written notice ("Acceptance Notice") that Tenant elects to purchase the Premises on the terms and conditions set forth in the purchase offer, or (ii) give Landlord written notice that Tenant elects not to purchase the Premises ("Refusal Notice"). If Tenant timely gives the Acceptance Notice as aforesaid, then Landlord and Tenant shall enter into a written purchase and sale agreement for the Premises upon the same terms and conditions set forth in the Purchase Agreement attached hereto as Exhibit B with such revisions as are memorialized in the purchase offer, within fifteen (15) days following Landlord's delivery to Tenant of such written purchase offer. In the event that (i) Tenant gives a Refusal Notice, or (ii) Tenant fails to give Landlord notice of Tenant's election within the ten (10) day period following receipt of the Offering Notice, then Landlord shall conclusively be deemed to have satisfied its obligations with respect to Tenant's right of first refusal for the Premises and such right of first refusal shall thereafter be null, void and of no further force and effect and Landlord shall be free to sell the Premises to such other purchaser.

At any time thereafter, Tenant agrees to execute a written statement evidencing the waiver or deemed waiver of Tenant's right of first refusal for the benefit of Landlord following any of the circumstances described herein, however the lack of any such written waiver shall not be determinative as to the waiver or deemed waiver of any such rights of Tenant hereunder.

**25. MISCELLANEOUS.**

**A. Successors and Assigns.** Subject to Paragraph 14 of this Lease, each provision of this Lease shall extend to, bind and inure to the benefit of Landlord and Tenant and their respective permitted legal representatives, successors and assigns, and all references herein to Landlord and Tenant shall be deemed to include all such parties.

**B. Entire Agreement.** This Lease and the Exhibits, attached hereto which are hereby made a part of this Lease, represent the complete agreement between Landlord and Tenant, and Landlord has made no representations or warranties except as expressly set forth in this Lease. No modification or amendment of or waiver under this Lease shall be binding upon Landlord or Tenant unless in writing signed by Landlord and Tenant.

**C. Time of Essence.** Time is of the essence of this Lease and each and all of its provisions.

**D. Execution and Delivery.** Submission of this Lease for examination or signature by Tenant does not constitute a reservation of space or an option for lease, and it is not effective until execution and delivery by both Landlord and Tenant. Execution and delivery of this Lease by Tenant to Landlord shall constitute an irrevocable offer by Tenant to lease the Premises on the terms and conditions set forth herein, which offer may not be revoked for fifteen (15) days after such delivery.

**E. Severability.** The invalidity or unenforceability of any provision of this Lease shall not affect or impair any other provisions.

**F. Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Michigan.

**G. Joint and Several Liability.** If Tenant is comprised of more than one party, each such party shall be jointly and severally liable for Tenant's obligations under this Lease.

**H. Force Majeure.** Neither party shall be in default hereunder and each party shall be excused from performing any of its obligations hereunder if it is prevented from performing any of its obligations hereunder due to any accident, breakage, strike, shortage of materials, acts of God or other causes beyond such party's reasonable control. Nothing contained herein shall excuse the prompt payment of any sums of money due hereunder by either party.

**I. Captions.** The headings and titles in this Lease are for convenience only and shall have no effect upon the construction or interpretation of this Lease.

**J. No Waiver.** No receipt of money by Landlord from Tenant after termination of this Lease or after the service of any notice or after the commencing of any suit or after final judgment for possession of the Premises shall renew, reinstate, continue or extend the Term or affect any such notice or suit. No waiver of any default of Tenant shall be implied from any omission by Landlord to take any action on account of such default if such default persists or be repeated, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated.

**K. Accord and Satisfaction.** No payment by Tenant of a lesser amount than the monthly Rent, or any other charge or fee stipulated, shall be deemed to be other than on account of the earliest stipulated Rent, or other charge or fee, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed as creating an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent, or other charge or fee or pursue any other remedy provided in this Lease.

**L. Recording.** Tenant and Landlord shall not record this Lease.

**M. Memorandum of Lease, Option to Purchase and Right of First Refusal; and Termination.** Landlord and Tenant agree to cause the execution and recordation of that certain Memorandum of Lease, attached hereto as Exhibit C and made a part hereof (the "Memorandum"). Upon termination of this Lease, or the Option to Purchase or the Right of First Refusal, as the case may be, Landlord may cause the execution and recordation of that certain Termination of Memorandum attached hereto as Exhibit D with respect to that specific interest which is being terminated (the "Termination"). The recordation of the Memorandum shall be at the expense of Tenant and Landlord shall cooperate as reasonably necessary to assist in same. The recordation of the Termination shall be at the expense of Landlord and Tenant shall cooperate as reasonably necessary to assist in same.

**N. Attorney's Fees.** If there is any legal action or proceeding between Landlord and Tenant to enforce this Lease or to protect or establish any right or remedy under this Lease, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorneys' fees and disbursements, incurred by such prevailing party in such action or proceeding and in any appeal in connection therewith. If such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorneys' fees and disbursements shall be included in and as a part of such judgment.

**O. No Construction Against Drafting Party.** Landlord and Tenant acknowledge that each of them and their legal counsel have had an opportunity to review, comment and negotiate this Lease and that this Lease will not be construed against Landlord merely because Landlord has prepared it.

**P. Limitation on Recourse.** It is expressly understood and agreed by Tenant that none of Landlord's covenants, undertaking or agreements continued in this Lease are made or intended as personal covenants, undertaking or agreements by Landlord. Tenant specifically agrees to look solely to Landlord's right, title and interest in the Premises and sale proceeds

therefrom for the recovery of any judgments or any other damages hereunder from Landlord. It is agreed by Tenant that Landlord (and its members, managers, shareholders, venturers, partners, officers, directors, and employees) shall not be personally liable for any such judgments or any other damages hereunder. If, however, by virtue of the foregoing limitation, Tenant is prohibited from fully recovering any judgment obtained against Landlord, Tenant shall thereafter have the right to offset the amount of such unrecovered judgment against installments of Rent thereafter becoming due, if any.

**Q. No Merger.** The voluntary or other surrender of this Lease by Tenant or the cancellation of this Lease by mutual agreement of Tenant and Landlord or the termination of this Lease on account of Tenant's default shall not work as a merger, and shall, at Landlord's option, (a) terminate all or any subleases and subtenancies, if any, or (b) operate as an assignment to Landlord of all or any subleases or subtenancies, if any. Landlord's option under this Section 25(Q) shall be exercised by written notice to Tenant and all known sublessees or subtenants in the Premises or any part of the Premises.

**R. Brokers.** Each party represents and warrants to the other that it has not engaged any broker, finder, or other person entitled to any commission or fees with respect to the negotiation, execution or delivery of this Lease, and each party shall indemnify and hold the other harmless from and against any loss, cost, liability or expense, including, but not limited to, reasonable attorneys' fees, incurred by such party as a result of any claim asserted by any such broker, finder, or other person on the basis of any arrangements or agreements made or alleged to have been made by or on behalf of the representing party.

**S. Tax Credits.** Landlord is entitled to claim all tax credits and depreciation attributable to the Premises; provided, however, only to the extent permitted or allowed by Chase, or under the Bond Documents, that Tenant shall be entitled to any tax credits and depreciation for all items for which Tenant has paid with funds not provided or reimbursed by Landlord.

**T. Landlord's Fees.** Whenever Tenant requests Landlord to take any action or give any consent required or permitted under this Lease, Tenant shall reimburse Landlord for all of Landlord's reasonable costs incurred in reviewing the proposed action or consent, including without limitation, reasonable attorneys' engineers' or architects' fees, within ten (10) days after Landlord's delivery to Tenant of a statement of such costs, provided such costs are reasonably incurred and or the subject of a good faith and reasonable estimate provided by Landlord in connection therewith. Tenant shall be obligated to make such reimbursement without regard to whether Landlord consents to any such proposed action.

**U. Confidentiality.** Tenant and Landlord each acknowledge that the terms and conditions of this Lease are to remain confidential for their mutual benefit, and shall not be disclosed by Landlord or Tenant to anyone, by any manner or means, directly or indirectly, without the other's prior written consent; provided, however, Tenant may disclose such terms or conditions to its potential lenders, investors, brokers, attorneys, accountants and advisors, provided such parties agree to abide by the terms of this Section 25 (U), and Landlord may disclose to its property manager, potential purchasers and lenders, prospective investors, brokers, attorneys, accountants and advisors and both parties may execute and allow the recordation of

the Memorandum of Lease and Option to Purchase provided herein. The consent by Landlord or Tenant to any disclosures shall not be deemed to be a waiver on the part of the other of any prohibition against any future disclosure.

**[SIGNATURES APPEAR ON NEXT PAGE]**

**IN WITNESS WHEREOF,** the parties hereto have executed this Lease in manner sufficient to bind them as of the day and year first above written. Each person executing this Lease represents and warrants that he or she is duly authorized to execute this Lease on behalf of the entity for which he or she is signing.

**WITNESSES:**

**LANDLORD:**

**ESSC INVESTMENTS, LLC** a Michigan limited liability company

By: /s/ Lisa D. Rice
Lisa D. Rice
Its: Authorized Representative

**TENANTS:**

**ENERGY STEEL & SUPPLY CO.,** a Michigan corporation

By: /s/ James R. Lines
James R. Lines
Its: Chairman

And
:

**GRAHAM CORPORATION**, a Delaware corporation

By: /s/ James R. Lines
James R. Lines
Its: President and Chief Executive Officer

**EXHIBIT 10.4**

**EXHIBIT A**

**LEGAL DESCRIPTION**

Exhibit "A"

Part of the Northeast 1/4 of Section 12, Town 7 North, Range 9 East, City of Lapeer, Lapeer County, Michigan, being more particularly described as beginning at a point on the Southerly right-of-way line of John Conley Drive extended which is South 01 degrees 45 minutes 08 seconds East (recorded as South 01 degrees 45 minutes 11 seconds East) 267.01 feet along the East line of said Section 12 to said Southerly right-of-way line and along said Southerly right-of-way line by the following four courses: 1.) South 88 degrees 21 minutes 31 seconds West 200.02 feet, 2.) along a curve to the left 233.87 feet (radius of 531.60 feet, delta angle 25 degrees 12 minutes 24 seconds chord bearing and distance of South 75 degrees 45 minutes 19 seconds West 231.99 feet) 3.) South 63 degrees 09 minutes 07 seconds West 256.21 feet 4.) along a curve to the right 23.54 feet ( radius of 2363.30 feet, delta angle 00 degrees 34 minutes 14 seconds, chord bearing and distance of South 63 degrees 26 minutes 14 seconds West 23.54 feet) from the Northeast corner of said Section 12; thence continuing along said Southerly right-of-way by the following two courses: 1.) along a curve to the right 490.73 feet (radius of 2363.30 feet, delta angle 11 degrees 53 minutes 50 seconds, chord bearing and distance of South 69 degrees 40 minutes 16 seconds West 489.85 feet) 2.) along a curve to the left 43.11 feet (radius of 232.00 feet, delta angle 10 degrees 38 minutes 48 seconds, chord bearing and distance of South 70 degrees 17 minutes 47 seconds West 43.05 feet); thence South 25 degrees 00 minutes 04 seconds East 710.10 feet to a point on the right-of-way line of John Conley drive South Cul-De-Sac; thence along said Cul-De-Sac right of-way, 30.00 feet along the arc of a non-tangent curve to the right (radius of 80.00 feet, delta angle 21 degrees 29 minutes 22 seconds, chord bearing and distance of North 89 degrees 18 minutes 53 seconds East 29.83 feet); thence North 56 degrees 22 minutes 50 seconds East 509.66 feet; thence North 25 degrees 00 minutes 04 seconds West 602.13 feet to the point of beginning.

Tax Parcel No.: 20-83-367-040-00

Commonly Known As: 3123 John Conley Drive, Lapeer, Michigan 48446

**EXHIBIT 31.1**

CERTIFICATION OF
PRINCIPAL EXECUTIVE OFFICER

I, James R. Lines, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Graham Corporation;

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.

Date: February 8, 2011

/s/ James R. Lines
James R. Lines
President and Chief Executive Officer

**EXHIBIT 31.2**

CERTIFICATION OF
PRINCIPAL FINANCIAL OFFICER

I, Jeffrey Glajch, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Graham Corporation;

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.

Date: February 8, 2011

/s/ Jeffrey Glajch
Jeffrey Glajch
Vice President - Finance & Administration and Chief Financial Officer

**EXHIBIT 32.1**

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

In connection with the Quarterly Report of Graham Corporation (the "Company") on Form 10-Q for the period ending December 31, 2010 as filed with the Securities and Exchange Commission (the "Report"), each of the undersigned certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 that:

1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ James R. Lines
James R. Lines
President and Chief Executive Officer
(Principal Executive Officer)
Date: February 8, 2011

/s/ Jeffrey Glajch
Jeffrey Glajch
Vice President — Finance & Administration and
Chief Financial Officer
(Principal Financial Officer)
Date: February 8, 2011

A signed original of this written statement required by Section 906 has been provided to Graham Corporation and will be retained by Graham Corporation and furnished to the Securities and Exchange Commission or its staff upon request.