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

FORM 10-Q

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE QUARTERLY PERIOD ENDED MARCH 31, 2007**

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 0-23599

MERCURY COMPUTER SYSTEMS, INC.
(Exact name of registrant as specified in its charter)

MASSACHUSETTS (State or other jurisdiction of incorporation or organization)	**04-2741391** (I.R.S. Employer Identification No.)
199 RIVERNECK ROAD CHELMSFORD, MA (Address of principal executive offices)	**01824** (Zip Code)

978-256-1300
(Registrant's telephone number, including area code)

SECURITIES REGISTERED PURSUANT TO SECTION 12 (b) OF THE SECURITIES EXCHANGE ACT OF 1934:
Common Stock, Par Value $.01 Per Share
Preferred Stock Purchase Rights

SECURITIES REGISTERED PURSUANT TO SECTION 12 (g) OF THE SECURITIES EXCHANGE ACT OF 1934:
None

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 is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act (check one):

Large accelerated filer ☐ Accelerated filer ☒ Non-accelerated filer ☐

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

Shares of Common Stock outstanding as of April 30, 2007: 22,218,292 shares

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PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

MERCURY COMPUTER SYSTEMS, INC.

CONSOLIDATED BALANCE SHEETS
(IN THOUSANDS, EXCEPT PER SHARE DATA)
(unaudited)

	March 31, 2007	June 30, 2006
Assets		
Current assets:		
Cash and cash equivalents	$ 27,752	$ 22,983
Marketable securities	63,275	113,057
Accounts receivable, net of allowance of $713 and $584 at March 31, 2007 and June 30, 2006, respectively	43,827	34,518
Inventory	26,089	19,870
Deferred tax assets, net	6,496	6,495
Prepaid expenses and other current assets	9,575	4,226
Total current assets	177,014	201,149
Marketable securities	37,011	26,162
Property and equipment, net	30,226	32,091
Goodwill	94,287	91,850
Acquired intangible assets, net	18,167	22,876
Deferred tax assets, net	10,956	7,535
Other non-current assets	4,252	4,783
Total assets	$ 371,913	$ 386,446
Liabilities and Shareholders' Equity		
Current liabilities:		
Accounts payable	$ 14,936	$ 14,196
Accrued expenses	8,270	5,635
Accrued compensation	11,159	9,146
Accrued warranty expenses	2,285	2,601
Notes payable and current portion of capital lease obligation	149	10,067
Income taxes payable	342	3,247
Deferred revenues and customer advances	14,002	12,844
Total current liabilities	51,143	57,736
Notes payable and non-current portion of capital lease obligation	125,112	125,627
Accrued compensation	1,767	1,564
Deferred tax liabilities, net	7,414	8,732
Other long-term liabilities	919	798
Total liabilities	186,355	194,457
Commitments and contingencies (Note J)		
Shareholders' equity:		
Preferred stock, $.01 par value; 1,000 shares authorized; no shares issued or outstanding	—	—
Common stock, $.01 par value; 85,000 shares authorized; 21,295 and 21,053 shares issued and outstanding at March 31, 2007 and June 30, 2006 respectively	213	210
Additional paid-in capital	86,822	77,999
Retained earnings	95,706	113,808
Accumulated other comprehensive income (loss)	2,817	(28)
Total shareholders' equity	185,558	191,989
Total liabilities and shareholders' equity	$ 371,913	$ 386,446

The accompanying notes are an integral part of the consolidated financial statements.

MERCURY COMPUTER SYSTEMS, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS

(IN THOUSANDS, EXCEPT PER SHARE DATA)

(unaudited)

	Three months ended March 31,		Nine months ended March 31,	
	2007	2006	2007	2006
Net revenues	$57,347	$ 44,478	$164,214	$173,879
Cost of revenues	25,794	26,607	72,990	74,825
Gross profit	31,553	17,871	91,224	99,054
Operating expenses:				
Selling, general and administrative	22,192	22,286	65,815	63,660
Research and development	15,973	15,614	45,557	46,322
Amortization of acquired intangible assets	1,876	2,179	5,425	6,220
In-process research and development	—	—	3,060	548
Restructuring	43	1,873	1,020	1,873
Impairment of long-lived assets	—	—	79	—
Total operating expenses	40,084	41,952	120,956	118,623
Loss from operations	(8,531)	(24,081)	(29,732)	(19,569)
Interest income	1,542	1,656	4,941	4,708
Interest expense	(846)	(1,010)	(3,394)	(3,096)
Other income (expense), net	(228)	56	2,395	27
Loss before income taxes	(8,063)	(23,379)	(25,790)	(17,930)
Income tax benefit	(2,649)	(9,247)	(7,688)	(8,103)
Net loss	$ (5,414)	$(14,132)	$ (18,102)	$ (9,827)
Net loss earnings per share:				
Basic	$ (0.25)	$ (0.67)	$ (0.85)	$ (0.47)
Diluted	$ (0.25)	$ (0.67)	$ (0.85)	$ (0.47)
Weighted-average shares outstanding:				
Basic	21,255	20,961	21,185	20,974
Diluted	21,255	20,961	21,185	20,974

The accompanying notes are an integral part of the consolidated financial statements.

MERCURY COMPUTER SYSTEMS, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS

(IN THOUSANDS)

(unaudited)

	Nine Months Ended March 31,	
	2007	2006
Cash flows from operating activities:		
Net loss	$ (18,102)	$ (9,827)
Adjustments to reconcile net loss to net cash (used in) provided by operating activities:		
Depreciation and amortization	13,667	13,403
Stock-based compensation	8,020	7,289
Tax benefit from stock options	63	673
Changes in deferred income taxes	(4,886)	(5,131)
Non-cash interest	634	628
Impairment of long-lived assets	79	—
In-process research and development	3,060	550
Loss on disposal of property and equipment	20	—
Gross tax windfall from stock-based compensation	(63)	(303)
Changes in operating assets and liabilities, net of effects of businesses acquired:		
Accounts receivable	(9,017)	13,332
Inventory	(6,106)	(668)
Prepaid expenses and other current assets	(5,306)	(2,313)
Other non-current assets	(81)	(382)
Accounts payable and accrued expenses	2,366	3,514
Deferred revenues and customer advances	931	6,948
Income taxes payable	(2,954)	(3,114)
Other long term liabilities	317	1,114
Net cash (used in) provided by operating activities	(17,358)	25,713
Cash flows from investing activities:		
Purchases of marketable securities	(78,849)	(102,678)
Sales and maturities of marketable securities	118,419	149,783
Acquisition of businesses and assets, net of cash acquired	(1,513)	(67,506)
Purchases of property and equipment	(6,297)	(8,369)
Acquisition of intangible assets	(99)	(2,000)
Net cash provided by (used in) investing activities	31,661	(30,770)
Cash flows from financing activities:		
Proceeds from employee stock plans	1,083	5,111
Proceeds from capital lease, net of repayments	233	—
Gross tax windfall from stock-based compensation	63	303
Repurchases of common stock	(340)	(12,284)
Payments of principal under notes payable	(10,711)	(653)
Net cash used in financing activities	(9,672)	(7,523)
Effect of exchange rate changes on cash and cash equivalents	138	(66)
Net increase (decrease) in cash and cash equivalents	4,769	(12,646)
Cash and cash equivalents at beginning of period	22,983	43,143
Cash and cash equivalents at end of period	$ 27,752	$ 30,497
Cash paid during the period for:		
Interest	$ 5,471	$ 3,620
Income taxes, net	3,332	4,297
Early debt retirement fee	772	—
Supplemental disclosures—non-cash activities:		
Issuance of restricted stock awards to employees	$ 1,120	$ 6,832
Issuance of common stock related to acquisitions	—	(5,173)

The accompanying notes are an integral part of the consolidated financial statements.

MERCURY COMPUTER SYSTEMS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(AMOUNTS IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

A. Description of Business

Mercury Computer Systems, Inc. (the "Company" or "Mercury") designs, manufactures and markets high-performance embedded computer systems and software for embedded and other specialized computing markets. Our primary market segments are aerospace and defense—which includes systems for radar, signals intelligence, sonar, smart weapons, and imagery applications; life sciences—which includes systems for medical diagnostic imaging & visualization and picture archiving and communication systems (PACS); semiconductor—which includes systems for semiconductor wafer inspection, reticle inspection and mask writing; geosciences—which includes software for oil and gas exploration; and telecommunications applications.

B. Basis of Presentation

The accompanying consolidated financial statements have been prepared by the Company in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP") for interim financial information and with the instructions to the Form 10-Q and Article 10 of Regulation S-X. Certain information and footnote disclosures, normally included in annual consolidated financial statements have been condensed or omitted pursuant to those rules and regulations; however, in the opinion of management the financial information reflects all adjustments, consisting of adjustments of a normal recurring nature, necessary for fair presentation. These consolidated financial statements should be read in conjunction with the audited financial statements and related notes for the year ended June 30, 2006 which are contained in the Company's Annual Report on Form 10-K filed with the Securities and Exchange Commission ("SEC"). The results for the three and nine months ended March 31, 2007 are not necessarily indicative of the results to be expected for the full fiscal year. Certain prior year amounts in the consolidated financial statements have been reclassified to conform to the current year presentation.

In the fourth quarter of fiscal 2006, the Company reclassified its presentation of unpaid deferred revenue to deferred revenues to conform with current year presentation. Previously, all unpaid deferred revenue was classified as a contra-accounts receivable balance. Accordingly, the Company has revised the classification in the accompanying statements of cash flows which resulted in a change in cash provided by certain operating assets and liabilities, but did not impact the total cash provided by operating activities. This change in classification does not affect the previously reported consolidated statement of operations.

C. Stock-Based Compensation

STOCK OPTION PLANS

The number of shares authorized for issuance under the Company's 2005 Stock Incentive Plan (the "2005 Plan") is 1,942,264 shares as of the adoption of the 2005 Plan and will be increased by any future cancellations, forfeitures or terminations (other than by exercise) under the Company's 1997 Stock Option Plan. The 2005 Plan provides for the grant of non-qualified and incentive stock options, nonvested restricted stock, stock appreciation rights and deferred stock awards to employees and non-employees. All stock options are granted with an exercise price of not less than 100% of the fair value of the Company's common stock at the date of grant. The options have a maximum term of 10 years and are exercisable at such times, in installments or otherwise, as the Board of Directors or a committee of the Board may determine. All nonvested restricted stock are granted with a time-based restriction period of no less than three years, provided however, that the time-based restriction may become vested incrementally over the three-year period. There were 1,950,619 shares available for future grant under the 2005 Plan at March 31, 2007.

The number of shares authorized for issuance under the Company ‘s 1997 Stock Option Plan (the “1997 Plan”) was 8,650,000 shares, of which 100,000 shares could be issued pursuant to nonvested restricted stock grants. The 1997 Plan provided for the grant of non-qualified and incentive stock options and nonvested restricted stock to employees and non-employees. All stock options were granted with an exercise price of not less than 100% of the fair value of the Company’s common stock at the date of grant. Following shareholder approval of the 2005 Plan on November 14, 2005, the Company’s Board of Directors directed that no further grants of stock options or other awards would be made under the 1997 Plan. The foregoing action does not affect any outstanding awards under the 1997 Plan, which remain in full force and effect in accordance with their terms.

The following table summarizes activity of the Company’s stock option plans since June 30, 2006:

	Options Outstanding		
	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (Years)
Outstanding at June 30, 2006	**4,836,595**	**$ 24.70**	**6.38**
Grants	253,000	12.75	
Exercises	(125,346)	4.39	
Cancellations (1)	(2,139,886)	30.59	
Outstanding at March 31, 2007	**2,824,363**	**$ 20.07**	**6.24**

(1) Options modified as part of the Company’s shareholder-approved option exchange program, totaling 1,889,886 options, are included in the cancellations figure.

Information related to the stock options outstanding as of March 31, 2007 is as follows:

Range of Exercise Prices	Number of Shares	Weighted-Average Remaining Contractual Life (years)	Weighted-Average Exercise Price	Exercisable Number of Shares	Exercisable Weighted-Average Exercise Price	Exercisable Weighted Average Remaining Contractual Life (years)
$ 4.00 – $11.69	247,227	1.50	$ 9.06	247,227	$ 9.06	
$11.70 – $16.45	728,547	8.58	$ 14.92	146,547	$ 14.06	
$16.46 – $22.10	834,667	6.06	$ 18.92	735,692	$ 18.83	
$22.11 – $29.80	818,370	6.19	$ 25.03	624,975	$ 25.22	
$29.81 – $48.00	195,552	4.43	$ 37.33	195,552	$ 37.33	
$ 4.00 – $48.00	2,824,363	6.24	$ 20.07	1,949,993	$ 21.14	5.20

Options for the purchase of 3,336,670 shares were exercisable at June 30, 2006 with a weighted-average exercise price of $26.18.

The aggregate intrinsic value of the Company’s “in-the-money” outstanding and exercisable options as of March 31, 2007 and June 30, 2006 was $1,279 and $3,047, respectively. The intrinsic value of the options exercised during the three months ended March 31, 2007 and 2006 was $9 and $330, respectively. The intrinsic value of the options exercised during the nine months ended March 31, 2007 and 2006 was $159 and $1,667, respectively. Nonvested common stock options are subject to the risk of forfeiture until the fulfillment of specified conditions. As of March 31, 2007, there was $8,001 of total unrecognized compensation cost related to nonvested options granted under the Company’s stock plans. That cost is expected to be recognized over a weighted-average period of 1.9 years from March 31, 2007. As of June 30, 2006, there was $16,623 of total unrecognized compensation cost related to nonvested options granted under the Company’s stock plans.

The following table summarizes the status of the Company's nonvested common stock awards ("restricted stock") since June 30, 2006:

	Restricted Stock Awards	
	Number of Shares	Weighted Average Grant Date Fair Value
Outstanding at June 30, 2006	**592,596**	**$ 18.16**
Granted (1)	558,485	10.03
Vested	(94,599)	17.78
Forfeited	(73,413)	16.06
Outstanding at March 31, 2007	**983,069**	**$ 13.73**

(1) Awards issued as a result of the Company's shareholder-approved option exchange program totaling 472,485 awards, at a weighted-average fair value of $9.48, are included in the granted figure.

Restricted stock awards are subject to the risk of forfeiture until the fulfillment of specified conditions. As of March 31, 2007, there was $11,736 of total unrecognized compensation cost related to restricted stock awards granted under the Company's stock plans. That cost is expected to be recognized over a weighted-average period of 2.2 years from March 31, 2007. As of June 30, 2006, there was $9,931 of total unrecognized compensation cost related to restricted stock awards granted under the Company's stock plans.

EMPLOYEE STOCK PURCHASE PLAN

During 1997, the Company adopted the 1997 Employee Stock Purchase Plan (ESPP) and authorized 500,000 shares for future issuance. In November 2006, the Company's shareholders approved an increase in the number of authorized shares under the 1997 Employee Stock Purchase Plan to 800,000 shares. Under the plan, rights are granted to purchase shares of common stock at 85% of the lesser of the market value of such shares at either the beginning or the end of each six-month offering period. The plan permits employees to purchase common stock through payroll deductions, which may not exceed 10% of an employee's compensation as defined in the plan. There were no shares issued under the ESPP during the three months ended March 31, 2007 and 2006. There were 46,876 and 37,767 shares issued under the ESPP during the nine months ended March 31, 2007 and 2006, respectively. Shares available for future purchase under the ESPP totaled 288,705 at March 31, 2007.

STOCK-BASED COMPENSATION

The Company has several stock-based employee compensation plans. On July 1, 2005, the Company adopted Statement of Financial Accounting Standards No. 123R (SFAS 123R), *Share-Based Payment*, using the modified prospective method, which results in the provisions of SFAS 123R only being applied to the consolidated financial statements on a going-forward basis (that is, the prior period results were not restated). Under the fair value recognition provisions of SFAS 123R, stock-based compensation cost is measured at the grant date based on the value of the award and is recognized as expense over the service period.

The Company recognized the full impact of its share-based payment plans in the consolidated statements of operations for the three and nine months ended March 31, 2007 and 2006 under SFAS 123R and did not capitalize any such costs on the consolidated balance sheets, as such costs that qualified for capitalization were not material. The following table presents share-based compensation expenses included in the Company's consolidated statement of operations:

	Three Months Ended March 31,		Nine Months Ended March 31,	
	2007	2006	2007	2006
Cost of revenues	$ 164	$ 364	$ 215	$ 532
Selling, general and administrative	1,992	2,273	6,127	5,249
Research and development	550	573	1,678	1,508
Share-based compensation expense before tax	2,706	3,210	8,020	7,289
Income tax benefit	(1,413)	(993)	(3,331)	(2,213)
Net compensation expense	$ 1,293	$ 2,217	$ 4,689	$ 5,076

The weighted-average grant-date fair values of options granted during the three months ended March 31, 2007 and 2006 were $6.40 and $9.94, respectively, per option. The weighted-average grant-date fair values of options granted during the nine months ended March 31, 2007 and 2006 were $6.81 and $12.43, respectively, per option. The fair value of options at date of grant was estimated using the Black-Scholes option-pricing model with the following weighted-average assumptions:

	Three Months Ended March 31,		Nine Months Ended March 31,	
	2007	2006	2007	2006
Option life (1)	6 years	6 years	6 years	6 years
Risk-free interest rate (2)	4.7%	4.5%	4.7%	4.3%
Stock volatility (3)	49%	55%	50%	51%
Dividend rate	0%	0%	0%	0%

(1) Prior to January 1, 2007 the option life was determined using the simplified method for estimating expected option life, as all options qualify as "plain-vanilla" options. After January 1, 2007 the option life was determined based upon historical option activity.

(2) The risk-free interest rate for each grant is equal to the U.S. Treasury yield curve in effect at the time of grant for instruments with a similar expected life.

(3) The stock volatility for each grant is measured using a weighted average of historical daily price changes of the Company's common stock over the most recent period equal to the expected option life of the grant, the historical short-term trend of the option and other factors, such as expected changes in volatility arising from planned changes in the Company's business operations.

The weighted-average fair value of stock purchase rights granted as part of the Company's ESPP during three months ended March 31, 2007 and 2006 was $3.29 and $4.21, respectively per right. The weighted-average fair value of stock purchase rights granted as part of the Company's ESPP during the nine months ended March 31, 2007 and 2006 was $3.55 and $7.40, respectively per right. The fair value of the employees' stock purchase rights were estimated using the Black-Scholes option-pricing model with the following assumptions:

	Three Months Ended March 31,		Nine Months Ended December 31,	
	2007	2006	2007	2006
Option life	6 months	6 months	6 months	6 months
Risk-free interest rate	5.1%	4.6%	5.0%	4.4%
Stock volatility	31%	28%	30%	50%
Dividend rate	0%	0%	0%	0%

During the three months ended March 31, 2007 and 2006, the Company granted 25,550 and 303,090 shares, respectively, of restricted stock to certain employees and officers as permitted under the 2005 Stock Plan. During the nine months ended March 31, 2007 and 2006, the Company granted 86,000 and 366,156 shares, respectively, of restricted stock to certain employees and officers as permitted under the 1997 and 2005 Stock Plans. These restricted stock grants vest ratably in annual tranches over three to four years or cliff vest after four years and are subject to forfeiture if employment terminates during the prescribed retention period. Compensation expense for the number of shares issued is recognized ratably over the service period and is recorded in the consolidated statement of operations as a component of cost of revenues, selling, general and administrative and research and development expense.

STOCK OPTION EXCHANGE

On August 11, 2006, the Company commenced a shareholder-approved stock option exchange program pursuant to which eligible employees were given the opportunity to exchange outstanding options with exercise prices greater than $23.00 per share for a lesser number of shares of restricted stock (and in certain cases, phantom stock units) in accordance with a fixed 4-to-1 exchange ratio. The Company's Board of Directors and its five most highly compensated executive officers (including its chief executive officer) were not eligible to participate in the exchange program.

The election period for the exchange program expired on September 8, 2006, and on September 11, 2006, the Company accepted for exchange and cancellation options to purchase an aggregate of 1,889,886 shares. The Company granted awards covering 472,485 shares, with an aggregate incremental value on the day of the exchange of approximately $500, in exchange for the cancelled options. The replacement awards were completely unvested at the time they were granted and will generally vest in three equal annual installments commencing on the first anniversary of the date of grant, with the exception of replacement awards granted to participating executive officers and to certain non-U.S. employees which will vest two-thirds on the second anniversary of the date of grant and one-third on the third anniversary of the date of grant.

D. Net Earnings (Loss) Per Share

The following table sets forth the computation of basic and diluted net (loss) earnings per share:

	Three Months Ended March 31,		Nine Months Ended March 31,	
	2007	2006	2007	2006
Net loss—basic	$ (5,414)	$ (14,132)	$ (18,102)	$ (9,827)
Interest and amortization of deferred financing costs, net of tax, related to convertible notes	—	—	—	—
Adjusted net loss—for calculation of diluted earnings per share	$ (5,414)	$ (14,132)	$ (18,102)	$ (9,827)
Shares used in computation of net loss per share—basic	21,255	20,961	21,185	20,974
Potential dilutive common shares:				
Shares issuable under Convertible Senior Notes	—	—	—	—
Stock option, restricted common stock and employee stock purchase plans	—	—	—	—
Shares used in computation of net loss per share—diluted	21,255	20,961	21,185	20,974
Net loss per share—basic	$ (0.25)	$ (0.67)	$ (0.85)	$ (0.47)
Net loss per share—diluted	$ (0.25)	$ (0.67)	$ (0.85)	$ (0.47)

Equity instruments to purchase 3,853,392 and 4,466,250 shares of common stock were not included in the calculation of diluted net loss per share for the three and nine months ended March 31, 2007, respectively because the equity instruments were antidilutive. Equity instruments to purchase 4,635,738 and 4,635,738 shares

of common stock were not included in the calculation of diluted net loss per share for the three and nine months ended March 31, 2006, respectively, because the equity instruments were antidilutive. Additionally, the 4,135,000 shares which represent the securities contingently issuable under the Company's outstanding Convertible Senior Notes were not included in the dilutive net (loss) earnings per share for the three and nine months ended March 31, 2007 and 2006 because the equity instruments were antidilutive.

E. Recent Accounting Pronouncements

In February 2007, the Financial Accounting Standards Board (FASB) issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities—Including an Amendment of FASB Statement No. 115*. SFAS No. 159 permits entities to choose to measure eligible items at fair value at specified election dates and report unrealized gains and losses on items for which the fair value option has been elected in earnings at each subsequent reporting date. SFAS No. 159 is effective for fiscal years beginning after November 15, 2007. The Company is currently evaluating the impact of adopting this SFAS No 159; however, the adoption is not expected to have a material an effect on the Company's financial condition or results of operations.

In September 2006, the FASB issued SFAS No. 157, *Fair Value Measurements*, which defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles and expands disclosures about fair value measurements. This Statement is effective for financial statements issued for fiscal years beginning after November 15, 2007 and interim periods within those fiscal years. Earlier application is encouraged provided that the reporting entity has not yet issued financial statements for that fiscal year including financial statements for an interim period within that fiscal year. The Company is assessing SFAS No. 157 and has not yet determined the impact that the adoption of SFAS No. 157 will have on the Company's financial condition or results of operations.

In September 2006, FASB issued SFAS No. 158, *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans—an amendment of FASB Statements No. 87, 88, 106, and 132(R)*, which requires employers to: (a) recognize in its statement of financial position an asset for a plan's overfunded status or a liability for a plan's underfunded status; (b) measure a plan's assets and its obligations that determine its funded status as of the end of the employer's fiscal year; and (c) recognize changes in the funded status of a defined benefit postretirement plan in the year in which the changes occur. Those changes will be reported in comprehensive income of a business entity. The requirement to recognize the funded status of a benefit plan and the disclosure requirements are effective as of the end of the fiscal year ending after December 15, 2006, for entities with publicly traded equity securities. The requirement to measure plan assets and benefit obligations as of the date of the employer's fiscal year-end statement of financial position is effective for fiscal years ending after December 15, 2008. The Company does not expect the adoption of SFAS No. 158 to have a material impact on the Company's financial condition or results of operations.

In September 2006, the SEC issued Staff Accounting Bulletin No. 108, *"Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements" (SAB 108).* SAB 108 provides guidance on how prior year misstatements should be taken into consideration when quantifying misstatements in current year financial statements for purposes of determining whether the current year's financial statements are materially misstated. SAB 108 permits registrants to record the cumulative effect of initial adoption by recording the necessary "correcting" adjustments to the carrying values of assets and liabilities as of the beginning of that year with the offsetting adjustment recorded to the opening balance of retained earnings only if material under the dual method. SAB 108 is effective for fiscal years ending on or after November 15, 2006 and the Company plans to adopt SAB 108 in the fourth quarter of fiscal year 2007. The Company does not expect the adoption of SAB 108 to have a material impact on the Company's financial condition or results of operations.

In June 2006, the FASB issued FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*. The Interpretation clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial

statements in accordance with FASB Statement 109, *Accounting for Income Taxes*. This Interpretation presents a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. The Interpretation is effective for fiscal years beginning after December 15, 2006. While additional efforts will be necessary to measure and disclose this information, the Company does not expect the adoption of Interpretation No. 48 to have a material impact on the Company's financial condition or results of operations.

In June 2006, the FASB reached consensus on Emerging Issues Task Force (EITF) No. 06-3, *How Taxes Collected from Customers and Remitted to Governmental Authorities Should be Presented in the Income Statement* (EITF 06-3). The scope of EITF 06-3 includes any tax assessed by a governmental authority that is directly imposed on a revenue-producing transaction between a seller and a customer and may include, but is not limited to, sales, use, value added, and excise taxes. The Task Force affirmed its conclusion that entities should present these taxes in the income statement on either a gross or a net basis, based on their accounting policy, which should be disclosed pursuant to Accounting Principles Board Opinion (APB) No. 22, *Disclosure of Accounting Policies.* If those taxes are significant, and are presented on a gross basis, the amounts of those taxes should be disclosed. The consensus on EITF 06-3 will be effective for interim and annual reporting periods beginning after December 15, 2006. The Company adopted EITF 06-3 in the third quarter of fiscal year 2007. The adoption of EITF 06-3 did not have a material impact on the Company's financial condition or results of operations, as the Company has historically reported such taxes on a net basis.

F. Comprehensive (Loss) Income

Total comprehensive loss was as follows:

	Three Months Ended March 31,		Nine Months Ended March 31,	
	2007	2006	2007	2006
Net loss	$(5,414)	$(14,132)	$(18,102)	$ (9,827)
Other comprehensive (loss) income:				
Foreign currency translation adjustments	154	415	637	(214)
Change in unrealized gain (loss) on marketable securities	449	9	2,208	(345)
Other comprehensive income (loss)	603	424	2,845	(559)
Total comprehensive (loss) income	$(4,811)	$(13,708)	$(15,257)	$(10,386)

G. Inventory

Inventory is stated at the lower of cost (first-in, first-out) or market value, and consist of materials, labor and overhead. There are no amounts in inventory relating to contracts having production cycles longer than one year. On a quarterly basis, the Company uses consistent methodologies to evaluate inventory for net realizable value. The Company records a provision for excess and obsolete inventory, consisting of on-hand and non-cancelable on-order inventory in excess of estimated usage. Inventory was comprised of the following at March 31, 2007 and June 30, 2006:

	March 31, 2007	June 30, 2006
Raw materials	$ 9,810	$ 6,032
Work in process	12,767	9,666
Finished goods	3,512	4,172
Total	$ 26,089	$ 19,870

H. Operating Segment, Significant Customers and Geographic Information

Operating segments are defined as components of an enterprise evaluated regularly by the Company's senior management in deciding how to allocate resources and assess performance. The Company has five operating and reportable segments which were determined based upon the nature of the products offered to customers, the market characteristics of each operating segment and the Company's management structure:

- Defense Business Unit (Defense)—This segment provides high-performance embedded computer systems as standard products to the defense markets by using commercial off-the-shelf (COTS) and selected rugged components. This segment also provides simulation software (commercial and defense) and customized design services to meet the specified requirements of a military application. On August 25, 2005, the Company acquired Echotek Corporation and their results are reported in this operating segment since the acquisition date. On September 5, 2006, the Company acquired Nav3D Corporation and their results are reported in this operating segment since the acquisition date. Beginning July 1, 2006, the VistaNav product line has been transferred from the CIV business unit to the Defense business unit, and the prior year tables below have been restated to conform to the current period presentation.
- Commercial Imaging and Visualization Business Unit (CIV)—This segment provides high-performance embedded computer systems and two-dimensional (2D) and three-dimensional (3D) image processing and visualization software to the imaging and visualization market including life sciences (medical imaging and biotechnology) and geoscience (earth sciences including oil and gas exploration). On July 1, 2005, the Company acquired SoHard AG and their results are reported in this operating segment since the acquisition date. Beginning July 1, 2006, the VistaNav product line has been transferred from the CIV business unit to the Defense business unit, and the prior year tables below have been restated to conform to the current period presentation.
- Advanced Solutions Business Unit (Advanced Solutions)—This segment provides a host of high-performance I/O bandwidth computer systems, services and licenses of intellectual property for the semiconductor (photomask generation, reticle inspection and wafer inspection), telecommunication, military and aerospace markets.
- Modular Products and Services Business Unit (MPS)—This segment provides quick turn-around design for application-specific processor and high-performance I/O boards for the telecommunications, military and aerospace markets.
- Other—This segment is comprised of the Company's biotech venture, which works with pharmaceutical and biotechnology researchers to generate and optimize drug candidates by use of the biotech venture's computational fragment-based drug design technology.

The accounting policies of the reportable segments are the same as those described in "Note B: Summary of Significant Accounting Policies" in the Company's Annual Report filed on Form 10-K for the fiscal year ended June 30, 2006. The profitability measure employed by the Company and its chief operating decision maker for making decisions about allocating resources to segments and assessing segment performance is income (loss) from operations prior to stock compensation expense. As such, stock compensation expense has been excluded from each operating segments' income (loss) from operations below and reported separately to reconcile the reported segment income (loss) from operations to the consolidated operating income (loss) reported in the consolidated statements of operations. Additionally, asset information by reportable segment is not reported because the Company does not produce such information internally. The following is a summary of the performance of the Company's operations by reportable segment:

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	Defense	Commercial Imaging and Visualization	Advanced Solutions	Modular Products and Services	Other	Stock Compensation Expense	Eliminations	Total
THREE MONTHS ENDED MARCH 31, 2007								
Net revenues to unaffiliated customers	$ 29,551	$ 9,817	$13,125	$ 4,854	$ —	$ —	$ —	$ 57,347
Intersegment revenues	—	—	—	974	—	—	(974)	—
Net revenues	29,551	9,817	13,125	5,828	—	—	(974)	57,347
Loss from operations	(1,419)	(1,698)	(1,857)	(30)	(389)	(2,706)	(432)	(8,531)
Depreciation and amortization expense	3,023	950	570	172	11	—	—	4,726
THREE MONTHS ENDED MARCH 31, 2006								
Net revenues to unaffiliated customers	$ 18,547	$ 11,056	$11,576	$ 3,299	$ —	$ —	$ —	$ 44,478
Intersegment revenues	—	—	—	161	—	—	(161)	—
Net revenues	18,547	11,056	11,576	3,460	—	—	(161)	44,478
(Loss) income from operations	(18,185)	(2,503)	288	(403)	—	(3,210)	(68)	(24,081)
Depreciation and amortization expense	3,268	812	441	139	—	—	—	4,660
NINE MONTHS ENDED MARCH 31, 2007								
Net revenues to unaffiliated customers	$ 78,592	$ 31,323	$40,117	$ 14,182	$ —	$ —	$ —	$164,214
Intersegment revenues	—	—	—	1,319	—	—	(1,319)	—
Net revenues	78,592	31,323	40,117	15,501	—	—	(1,319)	164,214
(Loss) income from operations	(9,462)	(5,420)	(2,687)	504	(3,954)	(8,020)	(693)	(29,732)
Depreciation and amortization expense	8,881	2,725	1,540	500	21	—	—	13,667
NINE MONTHS ENDED MARCH 31, 2006								
Net revenues to unaffiliated customers	$ 93,451	$ 40,003	$31,627	$ 8,798	$ —	$ —	$ —	$173,879
Intersegment revenues	—	—	—	382	—	—	(382)	—
Net revenues	93,451	40,003	31,627	9,180	—	—	(382)	173,879
(Loss) income from operations	(11,981)	(430)	919	(640)	—	(7,289)	(148)	(19,569)
Depreciation and amortization expense	8,870	2,858	1,269	406	—	—	—	13,403

The geographic distribution of the Company's revenues and long-lived assets is summarized as follows:

	US	Europe	Asia Pacific	Eliminations	Total
THREE MONTHS ENDED MARCH 31, 2007					
Net revenues to unaffiliated customers	$ 49,185	$ 5,173	$ 2,989	$ —	$ 57,347
Inter-geographic revenues	4,308	147	18	(4,473)	—
Net revenues	53,493	5,320	3,007	(4,473)	57,347
Identifiable long-lived assets	109,154	37,403	375	—	146,932
THREE MONTHS ENDED MARCH 31, 2006					
Net revenues to unaffiliated customers	$ 35,486	$ 6,974	$ 2,018	$ —	$ 44,478
Inter-geographic revenues	4,276	14	4	(4,294)	—
Net revenues	39,762	6,988	2,022	(4,294)	44,478
Identifiable long-lived assets	115,231	35,646	295	—	151,172
NINE MONTHS ENDED MARCH 31, 2007					
Net revenues to unaffiliated customers	$140,509	$18,048	$ 5,657	$ —	$164,214
Inter-geographic revenues	8,522	230	32	(8,784)	—
Net revenues	149,031	18,278	5,689	(8,784)	164,214
Identifiable long-lived assets	109,154	37,403	375	—	146,932
NINE MONTHS ENDED MARCH 31, 2006					
Net revenues to unaffiliated customers	$149,534	$18,138	$ 6,207	$ —	$173,879
Inter-geographic revenues	11,840	272	5	(12,117)	—
Net revenues	161,374	18,410	6,212	(12,117)	173,879
Identifiable long-lived assets	115,231	35,646	295	—	151,172

Foreign revenue is based on the country in which the Company's legal subsidiary is domiciled. Identifiable long-lived assets exclude deferred tax accounts, marketable securities and investments in subsidiaries.

Customers comprising 10% or more of the Company's revenues are as follows:

	Three Months Ended March 31,		Nine Months Ended March 31,	
	2007	2006	2007	2006
Customer A (Advanced Solutions)	11%	16%	12%	11%
Customer B (Defense)	10%	*	*	*
Customer C (Defense)	*	*	*	14%
Customer D (Defense)	*	*	*	13%
Customer E (CIV)	*	*	*	10%
	21%	16%	12%	48%

* Indicates that the amount is less than 10% of the Company's revenues for the respective period.

I. Goodwill and Acquired Intangible Assets

Acquired intangible assets result from the purchase of certain licensed technologies and business acquisitions, and consist of identifiable intangible assets, including completed technology, licensing agreements, customer backlog and customer relationships. Acquired intangible assets are reported at cost, net of accumulated amortization and are amortized on a straight-line basis over their estimated useful lives of up to seven years. Goodwill is the amount by which the cost of the acquired net assets in a business acquisition exceeded the fair values of the identifiable assets on the date of purchase. In accordance with the requirements of SFAS No. 142, *Goodwill and Other Intangible Assets*, goodwill is not amortized; rather goodwill is tested for impairment at least annually, on a reporting unit basis, or more frequently when events and circumstances occur indicating that the

recorded goodwill may be impaired. If the book value of a reporting unit exceeds its fair value, the implied fair value of goodwill is compared with the carrying amount of goodwill. If the carrying amount of goodwill exceeds the implied fair value, an impairment loss is recorded in an amount equal to that excess.

The changes in the carrying amount of goodwill for the nine months ended March 31, 2007 and the year ended June 30, 2006 were as follows:

	Defense	Commercial Imaging and Visualization	Modular Products and Services	Total
JUNE 30, 2005 BALANCE	$ 9,848	$ 18,180	$ 9,052	$37,080
Goodwill recorded	36,451	17,157	—	53,608
Foreign currency translation	—	1,162	—	1,162
JUNE 30, 2006 BALANCE	$46,299	$ 36,499	$ 9,052	$91,850
Goodwill recorded	561	—	—	561
Foreign currency translation	—	1,876	—	1,876
MARCH 31, 2007 BALANCE	$46,860	$ 38,375	$ 9,052	$94,287

The increase in goodwill during the nine months ended March 31, 2007 consisted of an increase of $561 related to the acquisition by the Company of Nav3D Corporation (see Note M to the consolidated financial statements) and an increase of $1,876 related to foreign currency translation adjustments.

The increase in goodwill during fiscal year 2006 consisted of an increase of $17,157 related to the acquisition by the Company of SoHard AG (see Note M to the consolidated financial statements), an increase of $36,451 related to the acquisition of Echotek Corporation (see Note M to the consolidated financial statements) and an increase of $1,162 related to foreign currency translation adjustments.

Acquired intangible assets consisted of the following:

	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Average Useful Life
MARCH 31, 2007				
Completed technology	$17,596	$ (10,948)	$ 6,648	3.3 years
Customer relationships	12,774	(4,480)	8,294	5.4 years
Licensing agreements, trademarks and patents	3,804	(594)	3,210	5.0 years
Assembled Workforce	20	(5)	15	3.0 years
Backlog	1,774	(1,774)	—	0.4 years
Non-compete agreements	144	(144)	—	3.0 years
	$36,112	$ (17,945)	$18,167	
JUNE 30, 2006				
Completed technology	$17,330	$ (7,483)	$ 9,847	3.3 years
Customer relationships	12,206	(2,646)	9,560	5.4 years
Licensing agreements, trademarks and patents	3,689	(309)	3,380	5.0 years
Backlog	1,746	(1,746)	—	0.4 years
Non-compete agreements	135	(46)	89	3.0 years
	$35,106	$ (12,230)	$22,876	

The Company recorded an impairment charge of $0 and $79, respectively, during the three and nine months ended March 31, 2007 related to the non-compete agreement. Estimated future amortization expense for acquired intangible assets remaining at March 31, 2007 is $1,959 for fiscal 2007, $7,856 for fiscal 2008, $4,218 for fiscal 2009, $2,523 for fiscal 2010, and $1,611 thereafter.

J. Commitments and Contingencies

LEGAL CLAIMS

On December 20, 2006, the Internal Revenue Service ("IRS") concluded its audit of the Company's tax years ended June 30, 2005, 2004 and 2003. The contested issues addressed in the IRS audit report concerned the Company's tax position on what constitutes qualifying research and development costs for purposes of the research and development tax credit. The Company reached a settlement with the IRS in the amount of $1,574, including interest and penalties, which the Company paid in the third quarter of fiscal year 2007.

In October 2006, the Company and one of its German subsidiaries commenced a series of legal actions in the District Court of Nuremberg-Fuerth, Germany against the former general manager of the subsidiary and a third-party company related to the former general manager alleging, among other things, that the former general manager had breached his non-competition obligations to the Company and the subsidiary and had otherwise engaged in conduct detrimental to the subsidiary while still employed by the subsidiary. In November 2006, the parties settled all of these legal actions, and a related labor suit, through the payment to the Company of damages in the amount of $2,352 for breach of non-compete agreements, interference with the subsidiary's business and the assumption of certain non-medical professional service contracts by the third-party company. In connection with the settlement, the third-party company also agreed not to compete against the Company's German subsidiary in the field of image processing for medical and pharmaceutical applications within the European Union and Switzerland for a period ending on July 1, 2008. The settlement amount of $2,352 was included in other income (expense) in the consolidated statements of operations.

On January 31, 2006, the Company received a written notice and request for indemnification from Seismic Micro-Technology, Inc. ("SMT"), which had been named as a defendant in a patent infringement suit entitled *Landmark Graphics Corporation, et al. v. Paradigm Geophysical Corporation, et al.*, filed in the United States District Court for the Southern District of Texas. SMT based its request for indemnification on the terms of certain application developer agreements it entered into with the Company and certain of its subsidiaries. The complaint alleges infringement by SMT of U.S. patent number 6,765,570, and seeks injunctive relief, treble damages, costs and attorneys' fees. On February 22, 2006, SMT answered and filed counterclaims for declaratory judgment of non-infringement and invalidity. On February 28, 2006 the Company notified SMT that it would indemnify SMT from all costs and damages that may be awarded against SMT in the foregoing action, and would be responsible for attorneys' fees and expenses incurred by SMT in defense of the action, subject to certain conditions, including the Company's right to control and direct the defense of the action on behalf of SMT. The Company believes there are meritorious defenses to the complaint and the Company intends to contest it vigorously. However, an adverse resolution of this litigation could have an adverse effect on the Company's consolidated financial position, results of operations or cash flows in the period in which the litigation is resolved. No amounts have been accrued for this loss contingency.

The Company is also subject to other legal proceedings, claims and tax audits that arise in the ordinary course of business. The Company does not believe the outcome of these matters will have a material adverse effect on its financial position, results of operations or cash flows.

INDEMNIFICATION OBLIGATIONS

The Company's standard product sales and license agreements entered into in the ordinary course of business typically contain an indemnification provision pursuant to which the Company indemnifies, holds harmless, and agrees to reimburse the indemnified party for losses suffered or incurred by the indemnified party in connection with any patent, copyright or other intellectual property infringement claim by any third party with respect to the Company's products. Such provisions generally survive termination or expiration of the agreements. The potential amount of future payments the Company could be required to make under these indemnification provisions is, in some instances, unlimited.

K. Shareholders' Equity

In July 2005, the Company's Board of Directors authorized a share repurchase program for up to $20,000 of the Company's currently outstanding common stock. This program is intended to offset the potential dilutive impact of the issuance of shares in connection with the Company's employee stock option and purchase plans. Repurchases of the Company's common stock may be made from time to time at management's discretion on the open market at prevailing market prices or in privately negotiated transactions. During the three and nine months ended March 31, 2007, no shares of common stock were repurchased under this program. During the three and nine months ended March 31, 2006, 0 and 531,862 shares of common stock were repurchased under this program for a total cost of $0 and $12,284, respectively.

The Company may also reacquire shares outside of the program in connection with the surrender of shares to cover the minimum taxes on vesting of restricted stock. Approximately, 20,317 and 24,937 shares were reacquired in the transactions outside the program during the three and nine months ended March 31, 2007.

L. Product Warranty Liability

All of the Company's product sales generally include a 12 or 18-month standard hardware warranty, with the exception of select telecommunications products, which generally include a three-year standard hardware warranty. At the time of product shipment, the Company accrues the estimated cost to repair or replace potentially defective products. Estimated warranty costs are based upon prior actual warranty costs for substantially similar transactions. The following table presents the changes in the Company's product warranty liability for the nine months ended March 31, 2007 and 2006, respectively:

	2007	2006
Beginning balance at June 30,	$ 2,601	$ 1,620
Accruals for warranties issued during the period	2,551	4,765
Warranty liabilities assumed in acquisitions	—	101
Settlements made during the period	(2,867)	(3,567)
Ending balance at March 31,	$ 2,285	$ 2,919

The Company recorded $85 and $16, respectively, for the fair value of product warranty liabilities assumed in connection with the acquisitions of Echotek Corporation and SoHard AG during the nine months ended March 31, 2006.

M. Acquisitions

As part of a continuing growth strategy, the Company, from time to time, may acquire interests, either partially or wholly, in businesses the Company deems to be at favorable market prices. The Company generally attempts to make acquisitions from which it can expand its breadth of product offerings, increase its market share and/or realize sales and marketing synergies.

SoHard AG

On July 1, 2005, the Company acquired SoHard AG (SoHard) for a purchase price of $23,294 (including direct transaction costs of $1,003). SoHard is a market leader in the development of advanced software solutions for medical imaging systems, hardware and firmware for commercial embedded systems and software intelligence applications delivered via professional services. SoHard is headquartered in Furth, Germany. The results of SoHard's operations have been included in the Company's consolidated financial statements since July 1, 2005.

The acquisition of SoHard was accounted for in accordance with SFAS No. 141, *Business Combinations*. The purchase price of the acquisition was allocated to the assets acquired and liabilities assumed based on

estimates of their respective fair values at the date of acquisition. Fair values of intangible assets were determined by management using the assistance of independent third-party appraisals. The tangible long-lived assets were valued using the cost approach, while the intangible long-lived assets were valued using a discounted cash flow method. The excess of the purchase price over the estimated fair values of the tangible and intangible assets and liabilities was allocated to goodwill. Goodwill and intangible assets recognized in this transaction are not deductible for tax purposes. The Company believes that the high amount of goodwill relative to identifiable intangible assets relates to several factors including: (1) the Company's willingness to pay for potential buyer-specific synergies related to market opportunities for combined existing and future product offering; (2) the Company's ability to protect its existing competitive advantages within certain product lines of its Commercial Imaging and Visualization Business Unit; and (3) the potential to sell Mercury products to existing SoHard customers.

The purchase price as of July 1, 2005 was allocated based upon the fair value of the acquired assets and liabilities assumed as follows:

Cash	$ 888
Accounts receivable	1,180
Inventory	287
Prepaid expenses and other current assets	570
Property and equipment	418
Customer relationships	3,300
Other acquired intangible assets (customer backlog, non-compete and completed technology)	2,350
In-process research and development	450
Goodwill	17,157
Current liabilities	(1,916)
Current portion of long-term notes payable	(36)
Deferred tax liabilities, net	(751)
Long-term notes payable	(603)
	$23,294

The purchase price allocation was finalized in fiscal year 2006 upon completion of the fair-value appraisals of intangible assets and final assessment of the fair values of certain assumed assets and liabilities.

In-process research and development (IPR&D) consisted of one project under development at the acquisition date. Because the technological feasibility of this project had not been established and no future alternative uses existed, the purchased IPR&D was expensed at the acquisition date in the consolidated statement of operations. The value of the purchased IPR&D was determined using the residual income approach, which discounts expected future cash flows from projects under development to their net present value. Each project was analyzed to determine the technological innovations included; the utilization of core technology; the complexity, cost and time to complete development; any alternative future use or current technological feasibility; and the stage of completion.

The amortization periods for the acquired intangible assets subject to amortization are as follows:

Customer relationships	6 years
Other acquired intangible assets (customer backlog, non-compete and completed technology)	0.5 to 3 years

Echotek Corporation

On August 31, 2005, the Company purchased Echotek Corporation (Echotek) for a purchase price of $50,274 (including direct transaction costs of $368). The purchase price (excluding transaction costs) was paid in

a combination of cash totaling $44,734 and 177,132 shares of Mercury common stock. The 177,132 shares of common stock were valued at $5,172 based on the average closing price of the Company's common stock for the five-day period including two days before and after July 12, 2005, the date the Company executed the related merger agreement and announced the transaction. Based in Huntsville, Alabama, Echotek is a market leader in the development of data acquisition products. The results of Echotek's operations have been included in the Company's consolidated financial statements since September 1, 2005.

The acquisition of Echotek was accounted for in accordance with SFAS No. 141, *Business Combinations*. The purchase price of the acquisition was allocated to the assets acquired and liabilities assumed based on estimates of their respective fair values at the date of acquisition. Fair values of intangible assets were determined management using the assistance of independent third-party appraisals. The tangible long-lived assets were valued using the cost approach, while the intangible long-lived assets were valued using a discounted cash flow method. The excess of the purchase price over the estimated fair value of the tangible and intangible assets and liabilities was allocated to goodwill. Goodwill and intangible assets recognized in this transaction are not deductible for tax purposes. The Company believes that the high amount of goodwill relative to identifiable intangible assets relates to several factors including: (1) the Company's willingness to pay for potential buyer-specific synergies related to market opportunities for combined existing and future product offering; (2) the Company's intentions to utilize its financial stability and market presence to attract new customers that were not then customers of Echotek; and (3) the potential to continue developing next-generation technologies from the acquired workforce.

The purchase price as of August 31, 2005 was allocated based upon the fair value of the acquired assets and liabilities assumed as follows:

Accounts receivable	$ 2,397
Inventory	1,219
Prepaid expenses and other current assets	133
Property and equipment	431
Other assets	2
Goodwill	36,451
Completed technology	10,230
Customer relationships	5,300
Other acquired intangible assets (customer backlog and trademarks)	2,050
In-process research and development	100
Current liabilities	(989)
Deferred tax liabilities, net	(7,050)
	$50,274

The purchase price allocation was finalized in fiscal year 2006 upon completion of the fair-value appraisals of intangible assets and final assessment of the fair values of certain assumed assets and liabilities.

In-process research and development (IPR&D) consisted of eight projects under development at the acquisition date. Because the technological feasibility of these projects had not been established and no future alternative uses existed, the purchased IPR&D was expensed at the acquisition date and recorded in selling, general and administrative expense in the consolidated statement of operations. The value of the purchased IPR&D was determined using the residual income approach, which discounts expected future cash flows from projects under development to their net present value. Each project was analyzed to determine the technological innovations included; the utilization of core technology; the complexity, cost and time to complete development; any alternative future use or current technological feasibility; and the stage of completion.

The amortization period for the acquired intangible assets subject to amortization is as follows:

Completed technology	3 years
Customer relationships	5 years
Other acquired intangible assets (customer backlog and trademarks)	0.5 to 8 years

The following table presents the Company's unaudited pro forma results of operations for the nine months ended March 31, 2006, as if the Echotek acquisition had occurred at the beginning of the fiscal year. These pro forma results include adjustments related to the amortization of intangible assets with finite useful lives (totaling $771 during the first nine months of fiscal year 2006), adjustments to eliminate inter-company transactions (totaling $13 during the first nine months of fiscal year 2006), adjustments for non-recurring items (totaling $741 of bonuses paid directly related to the acquisition during the first nine months of fiscal year 2006) and adjustments for income tax effects (totaling $56 during the first nine months of fiscal year 2006). The table has been prepared for comparative purposes only and does not purport to be indicative of what would have occurred had the acquisition been made at the beginning of the period noted or of results that may occur in the future.

For the nine months ended March 31,	2006
Net revenues	$177,423
Net loss	(9,645)
Net earnings per share—basic	(0.46)
Net earnings per share—diluted	(0.46)

Biotech

On July 25, 2006, the Company purchased an 18% equity interest in a development stage biotech company (Biotech) and acquired related intellectual property (IP) along with rights to any new or derivative IP for $3,074 (including direct transaction costs of $124 and put option of $2,250). As part of this transaction, the other shareholders of Biotech were provided an option to put the remaining 82% equity interest to the Company for $2,250 subject to certain adjustments. This put option for $2,250 along with a deferred license payment of $150 was accrued for at acquisition and included in the above-described purchase price consideration. If Biotech fails to exercise this put option, Biotech is required on December 31, 2007 to pay $400 to the Company. Further, the Company is required to provide working capital financing to Biotech totaling $950 at various points through April 1, 2007, which must be utilized as directed by the Company. Through March 31, 2007, the Company has provided $750 of working capital cash to Biotech, of which $245 was not utilized at March 31, 2007 and was included as cash and cash equivalents in the Company's consolidated balance sheet. Biotech works with pharmaceutical and biotechnology researchers to generate and optimize drug candidates by use of their computational fragment-based drug design technology. Biotech is headquartered in Cambridge, Massachusetts. The results of Biotech's operations have been included in the Company's consolidated financial statements since the acquisition date.

The acquisition of Biotech was accounted for as an asset acquisition. The purchase price of the acquisition was allocated to the assets acquired and liabilities assumed based on estimates of their respective fair values at the date of acquisition. The intangible long-lived assets were valued using a discounted cash flow method. The excess of the purchase price over the estimated fair values of the tangible and intangible assets and liabilities was allocated to in-process research and development.

The purchase price as of July 25, 2006 was allocated based upon the fair value of the acquired assets and liabilities assumed as follows:

Cash and other current assets	$ 2
Acquired intangible assets (assembled workforce and completed technology)	30
In-process research and development	3,060
Other long term assets	18
Current liabilities	(36)
	$3,074

The purchase price allocation was finalized in fiscal year 2007 upon completion of the fair-value of intangible assets and assessment of the fair values of certain assumed assets and liabilities.

As of March 31, 2007, there was approximately $2,400 of unpaid purchase price related to the Biotech acquisition. This liability is accrued and recorded in the consolidated balance sheet in accrued expenses and is expected to be paid by August 31, 2007.

The amortization periods for the acquired intangible assets subject to amortization are as follows:

Completed technology	5 years
Assembled workforce	3 years

Nav3D

On September 5, 2006, the Company purchased Nav3D Corporation (Nav3D) for $850 in cash (including direct transaction costs of $109), subject to certain post-closing adjustments. Nav3D works with OEM and end-user partners to create products using a combination of GPS navigation and motion sensing with three dimensional graphics. Nav3D was headquartered in San Carlos, California prior to acquisition. The results of Nav3D's operations have been included in the Company's consolidated financial statements since the acquisition date.

The acquisition of Nav3D was accounted for in accordance with SFAS No. 141, *Business Combinations*. The purchase price of the acquisition was allocated to the assets acquired and liabilities assumed based on estimates of their respective fair values at the date of acquisition. The tangible long-lived assets were valued using the cost approach, while the intangible long-lived assets were valued using a discounted cash flow method. The excess of the purchase price over the estimated fair values of the tangible and intangible assets and liabilities was allocated to goodwill. Goodwill and intangible assets recognized in this transaction are not deductible for tax purposes. The Company believes that the high amount of goodwill relative to identifiable intangible assets relates to several factors including: (1) the Company's willingness to pay for potential buyer-specific synergies related to market opportunities for combined existing and future product offering; (2) the willingness to pay for expertise that the Company believes will increase the Company's market presence in fields such as synthetic vision systems as well as unmanned aerial vehicles; (3) and the potential to sell Mercury products to existing Nav3D customers.

The purchase price as of September 5, 2006 was allocated based upon the fair value of the acquired assets and liabilities assumed as follows:

Cash	$ 11
Accounts receivable	35
Prepaid expenses and other current assets	4
Property and equipment	30
Customer relationships	290
Completed technology	80
Goodwill	561
Current liabilities	(161)
	$ 850

The purchase price allocation was finalized in fiscal year 2007 upon completion of the fair-value of intangible assets and assessment of the fair values of certain assumed assets and liabilities.

The amortization periods for the acquired intangible assets subject to amortization are as follows:

Customer relationships	6 years
Completed technology	7 years

The pro forma statements reflecting the operating results of Nav3D as if Nav3D had been acquired as of July 1, 2005 would not differ materially from the operating results of the Company as reported.

N. Notes Payable

Notes payable consisted of the following:

	March 31, 2007	June 30, 2006
Convertible senior notes payable	$125,000	$125,000
Mortgage notes payable	—	9,997
Other notes payable and capital lease obligations	261	697
Less: current portion	(149)	(10,067)
Total non-current notes payable	$125,112	$125,627

The following summarizes the future cash payment obligations (excluding interest) as of March 31, 2007 (assuming the convertible senior notes are redeemed on the first optional redemption date):

Less than 1 year	$ 149
1 – 2 years	—
2 – 3 years	125,104
Thereafter	8
	$ 125,261

Convertible Senior Notes Payable

On April 29, 2004, the Company completed a private offering of $125,000 aggregate principal amount of Convertible Senior Notes (the Notes), which mature on May 1, 2024 and bear interest at 2% per year, payable semiannually in arrears in May and November. The Notes are unsecured, rank equally in right of payment to the Company's existing and future senior debt, and do not subject the Company to any financial covenants.

Under certain circumstances, the Notes will be convertible into common stock at a conversion rate of 33.0797 shares per $1,000 principal amount of the Notes, subject to adjustment in certain circumstances. The conversion rate is equal to an initial conversion price of approximately $30.23 per share. At the option of the holder, the Notes may be converted on the final maturity date if, on or prior to May 1, 2019, the closing price of Mercury's common stock exceeds $36.28 for at least 20 trading days in a specified 30-day period of each fiscal quarter or on any date after May 1, 2019, the closing price of Mercury's common stock exceeds $36.28. The Notes may also be converted at the option of the holder if prior to May 1, 2019, the average trading price for the convertible senior notes is less than 98% of the average conversion value for the convertible senior notes during any five consecutive trading-day period. The convertible notes mature on May 1, 2024 and bear interest at 2% per year, payable semiannually in arrears in May and November. The convertible notes are unsecured, rank equally in right of payment to our existing and future senior debt, and do not subject the Company to any financial covenants. The holders may require the Company to repurchase the notes, in whole or in part, (a) on May 1, 2009, 2014 or 2019, (b) upon a change in control, or (c) if the Company's common stock is neither listed nor approved for trading on specified markets. At the Company's option, they may redeem any of the convertible notes on or after May 1, 2009 at a price equal to 100% of the principal amount of the convertible notes to be redeemed plus accrued and unpaid interest. As of March 31, 2007, no circumstances existed and no events had occurred that made the Notes convertible.

Upon issuance of the Notes, the Company received net proceeds of $120,889 after offering expenses of $4,111, which were recorded as deferred financing costs in other long-term assets on the balance sheet and are being amortized over the five-year term to May 1, 2009, the first optional redemption date of the debt. For the three months ended March 31, 2007 and 2006, respectively, additional interest expense from the amortization of these deferred financing costs totaled $212 and $197, respectively. For the nine months ended March 31, 2007 and 2006, respectively, additional interest expense from the amortization of these deferred financing costs totaled $634 and $628, respectively. The unamortized balance of deferred financing costs totaled approximately $1,763 and $2,397 at March 31, 2007 and June 30, 2006, respectively.

Mortgage Notes Payable

In November 1999, the Company completed a lending agreement with a commercial financing company, issuing two 7.30% senior secured financing notes (the Mortgage Notes) due November 2014. The original principal amount of the Mortgage Notes totaled $14,500. The Mortgage Notes were collateralized by the Company's corporate headquarters, which consists of two buildings. The terms of the Mortgage Notes, as amended, contained certain covenants, which, included the maintenance of an interest coverage ratio, certain leverage ratios and a minimum consolidated net worth. The Mortgage Notes also included significant prepayment penalties.

Since March 31, 2006, the Company had not been in compliance with certain of the financial covenants, and the Company elected to prepay the Mortgage Notes in full on October 19, 2006 instead of renegotiating the financial covenants with the holders of the Mortgage Notes. The amount paid by the Company in connection with the prepayment of the Mortgage Notes equaled $10,463, which included the then outstanding principal amount of the Mortgage Notes plus a prepayment premium equal to $708, and a waiver fee equal to $15 in consideration of the noteholders' waiver through October 19, 2006 of the Company's non-compliance with the financial covenants. The Company included the prepayment premium and waiver fee in interest expense in the consolidated statements of operations.

Other Notes Payable

As of March 31, 2007 the Company had other debt consisting of $28 in notes payable for foreign subsidiaries (bearing an interest rate of 0%) and various capital lease obligations. As of March 31, 2007 the Company had $234 of lease obligations primarily related to office equipment leases.

On September 1, 2006, the Company repaid the debt acquired in the SoHard AG acquisition which resulted in a cash payment of $705, including $64 related to prepayment penalties.

O. Property and Equipment

Property and equipment consisted of the following at March 31, 2007 and June 30, 2006:

	March 31, 2007	June 30, 2006
Computer equipment and software	$ 60,284	$ 55,026
Buildings	15,823	15,823
Furniture and fixtures	7,065	6,932
Land	3,350	3,350
Building and leasehold improvements	3,611	3,357
Capital leases	433	—
Machinery and equipment	1,472	1,224
	92,038	85,712
Less: accumulated depreciation and amortization	(61,812)	(53,621)
	$ 30,226	$ 32,091

Depreciation and amortization expense related to property and equipment for the three months ended March 31, 2007 and 2006 was $2,850 and $2,533, respectively. Depreciation and amortization expense related to property and equipment for the nine months ended March 31, 2007 and 2006 was $8,240 and $7,183, respectively.

At March 31, 2007 and June 30, 2006 the Company had $0 and $5, respectively, in construction in process (CIP) related to the Company's implementation of Oracle's enterprise resource procurement (ERP) system, which is classified as computer software. In the nine months ended March 31, 2007, the Company capitalized $1,363 related to the ERP system and placed $1,368 in service. Project-to-date, the Company has capitalized $3,102 related to the ERP system and placed $3,102 in service. The Company does not depreciate CIP until it is placed into service.

P. Income Tax (Benefit) Provision

The Company recorded a 32.9% tax benefit of $2,649 during the three months ended March 31, 2007 on a loss before income taxes of $8,063 as compared to a 39.6% tax benefit of $9,247 on a loss before income taxes of $23,379 for the three months ended March 31, 2006.

The Company recorded a 29.8% tax benefit of $7,688 during the nine months ended March 31, 2007 on a loss before income taxes of $25,790 as compared to a 45.2% tax benefit of $8,103 on a loss before income taxes of $17,930 for the nine months ended March 31, 2006.

Q. Restructuring Provision

In response to lower than expected demand in certain sectors of the Company's business, as well as the need to maintain a competitive cost structure and integrate prior acquisitions, the Company incurred gross restructuring charges totaling $1,110 during the nine months ended March 31, 2007 as part of the Company's 2007 restructuring plans (the 2007 Plans). The 2007 Plans included $922 related to involuntary separation and retention costs for 20 employees, $157 related to the abandonment of two operating leases and $31 for other costs. These expenses were primarily related to the Defense Business Unit and are expected to be paid within the next six months.

In third and fourth quarters of fiscal year 2006, the Company also recorded a gross restructuring charge of $2,142 related to the Company's 2006 restructuring plan (the 2006 Plan). The 2006 Plan included $2,065 related to involuntary separation costs for 55 employees, $25 for a facility closure and $52 for other costs (primarily legal costs). All of these expenses were principally in the Defense and Commercial Imaging and Visualizations business units with a modest amount in the Advanced Solutions and Modular Products and Services business units. A gross incremental provision of $12 was recorded during the nine months ended March 31, 2007 to affect a slight adjustment to the severance estimate. The restructuring charges are classified as operating expenses in the consolidated statements of operations and are expected to be paid within the next three months.

The remaining restructuring liability is classified as accrued expenses in the consolidated balance sheets.

The following table presents the detail of expenses by operating segment for the 2006 Plan and 2007 Plan:

	Severance	Facilities	Other	Total
Restructuring liability at June 30, 2006	$ 433	$ —	$—	$ 433
Defense	$ 835	107	$ 27	$ 969
CIV	48	50	4	102
Advanced Solutions	51	—	—	51
MPS	—	—	—	—
Total provision	$ 934	$ 157	$ 31	$ 1,122
Cash paid	(1,086)	(124)	(31)	(1,241)
Reversals	(95)	(7)	—	(102)
Restructuring liability at March 31, 2007	$ 186	$ 26	$—	$ 212

R. Subsequent Events

On April 20, 2007, the Company entered into a sales agreement and a lease agreement in connection with a sale-leaseback of the Company's headquarters in Chelmsford, Massachusetts. Pursuant to the agreements, the Company sold all land, land improvements, buildings and building improvements related to the facilities and leased back these assets, with the exception of the vacant parcel of land adjacent to the headquarters. The term of the lease is ten years and includes two five year options to renew. The agreement also provides that the Company pay for certain improvements by the end of the lease term. As security for the lease, the buyer required a letter of credit in the amount of $3,000. The Company's net proceeds for the sale, after transaction and other related costs, were approximately $26,000 resulting in a gain of approximately $12,000. Under the provisions of sales-leaseback accounting, the gain realized on the real estate transaction referred to above is deferred and recognized in income over the initial lease term.

On May 1, 2007, the Company completed its analysis related to the Company's Defense, Advanced Solutions and MPS business units. In response to lower than expected demand in those sectors, as well as the need to maintain a competitive cost structure and integrate prior acquisitions a decision was made to eliminate approximately 80 positions across all departments of the Company. This reduction in force coincides with a reorganization of our business units and reporting structure that is expected to be completed and implemented in early fiscal year 2008. As a result of this plan, the Company estimates that it will record a gross restructuring charge of approximately $4,000.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

FORWARD-LOOKING STATEMENTS

From time to time, information provided, statements made by our employees or information included in our filings with the Securities and Exchange Commission may contain statements that are not historical facts but that are "forward-looking statements," which involve risks and uncertainties. The words "may," "will," "should," "plans," "expects," "anticipates," "continue," "estimate," "project," "intend," and similar expressions are intended to identify forward-looking statements regarding events, conditions and financials trends that may affect our future plans of operations, business strategy, results of operations and financial position. These forward-looking statements involve risks and uncertainties that could cause actual results to differ materially from those projected or anticipated. Such risks and uncertainties include, but are not limited to, general economic and business conditions, including unforeseen economic weakness in our markets, effects of continued geo-political unrest and regional conflicts, competition, changes in technology and methods of marketing, delays in completing various engineering and manufacturing programs, changes in customer order patterns, changes in product mix, continued success in technological advances and delivering technological innovations, continued funding of defense programs, timing of such funding, market acceptance of the our products, shortages in components, production delays due to performance quality issues with outsourced components, inability to fully realize the expected benefits from acquisitions or delays in realizing such benefits, challenges in integrating acquired businesses and achieving anticipated synergies, difficulties in retaining key employees and customers, and various other factors beyond our control. These risks and uncertainties also include such additional risk factors as set forth under Item 1A (Risk Factors) in our Annual Report on Form 10-K for the fiscal year ended June 30, 2006, and other important factors disclosed previously and from time to time in our other filings with the Securities and Exchange Commission. We caution readers not to place undue reliance upon any such forward-looking statements, which speak only as of the date made. We undertake no obligation to update any forward-looking statement to reflect events or circumstances after the date on which such statement is made.

OVERVIEW

We design, manufacture and market high-performance embedded, real-time digital signal and image processing solutions. Our solutions play a critical role in a wide range of applications, transforming sensor data to information for analysis and interpretation. In military reconnaissance and surveillance platforms our systems process real-time radar, sonar, and signals intelligence data. Our systems are also used in state-of-the-art medical diagnostic imaging devices including MRI, PET, and digital X-ray, and in semiconductor imaging applications including photomask generation and wafer inspection. We provide advanced three-dimensional (3D) image processing and visualization software and optimized systems to diverse end markets including life sciences, geosciences, and simulation. We also provide radio frequency (RF) products for enhanced communications capabilities in military and commercial applications.

We are an OEM supplier to our commercial markets and conduct business with our defense customers via commercial off-the-shelf (COTS) distribution, which means that product requests by customers are a primary driver of revenue fluctuations from quarter to quarter. Customers specify delivery date requirements that coincide with their need for our product. Because these customers may use our products in connection with a variety of defense programs or other projects with different sizes and durations, a customer's orders for one quarter generally do not indicate a trend for future orders by that customer. Additionally, order patterns of one customer do not necessarily correlate with the order patterns of another customer and, therefore, we generally cannot identify sequential quarterly trends, even within our business units.

During the nine months ended March 31, 2007, revenues decreased by $9.7 million compared to the same period in fiscal 2006, primarily as a result of a $14.9 million decrease in revenues from our Defense Business Unit (Defense) and an $8.7 million decrease in revenues from our Commercial Imaging and Visualization Business Unit (CIV), offset by an $8.5 million increase from our Advanced Solutions Business Unit (Advanced

Solutions) and a $5.4 million increase from our Modular Product and Services Business Unit (MPS). Gross margins as a percentage of revenues decreased from 57.0% during the nine months ended March 31, 2006 to 55.6% during the same period in fiscal 2007, primarily due to the spread of fixed costs over a lower revenue base in our Defense Business Unit, higher material costs and an unfavorable shift in customer and product mix. Operating expenses increased by $2.3 million during the nine months ended March 31, 2007 as compared to the same period in fiscal year 2006 primarily due to a $3.1 million in-process research and development charge incurred as a result of the Biotech acquisition.

In response to lower than expected demand in certain sectors of our business, as well as the need to maintain a competitive cost structure and integrate our previous acquisitions, we incurred a restructuring charge of $1.0 million during the nine months ended March 31, 2007. We believe the restructuring was necessary given the state of our markets, lower than anticipated adoption rate of some of products and the ability to absorb the capacity of certain facilities into our corporate headquarters. Further, given our continued profitability challenges, we are in the process of reorganizing ourselves for strategic growth with a lower cost structure. As part of this reorganization and cost reduction initiative and subsequent to quarter end, we completed a reduction in force which eliminated approximately 80 positions across many of our business units (see Note R to the consolidated financial statements). While we believe this reduction in force will provide significant cost savings, additional actions may be necessary to further consolidate or reorganize our operations as the reorganization plans are finalized. Our goal is to improve fiscal year 2008 operating results without a dependency on large revenue increases.

On July 1, 2005, we acquired SoHard AG for $23.3 million, consisting of cash payments of $22.3 million and transaction costs of $1.0 million directly related to the acquisition. SoHard is a market leader in the development of advanced software solutions for medical imaging systems, hardware and firmware for commercial embedded systems and software intelligence applications delivered via professional services. On August 31, 2005, we purchased Echotek Corporation for $50.3 million, consisting of cash payments of $44.7 million, 177,132 shares of Mercury common stock valued at $5.2 million and transaction costs of $0.4 million directly related to the acquisition. The results of SoHard's and Echotek's operations have been included in our consolidated financial statements since their respective acquisition dates.

On July 25, 2006, we purchased an 18% equity interest in a development stage biotech company (Biotech) and acquired related intellectual property (IP) along with rights to any new or derivative IP for $3.1 million (including direct transaction costs of $0.1 million and a put option of $2.3 million). As part of this transaction, the other shareholders of Biotech were provided an option to put the remaining 82% equity interest to us for $2.3 million subject to certain adjustments. This put option for $2.3 million along with a deferred license payment of $0.2 million was accrued for at acquisition and included in the above-described purchase price consideration. If Biotech fails to exercise this put option, Biotech is required on December 31, 2007 to pay $0.4 million to us. Further, we are required to provide working capital financing to Biotech totaling approximately $1.0 million at various points through April 16, 2007, which must be utilized as directed by us. Biotech works with pharmaceutical and biotechnology researchers to generate and optimize drug candidates by use of Biotech's computational fragment-based drug design technology. Biotech is currently headquartered in Cambridge, Massachusetts. The results of Biotech's operations have been included in our consolidated financial statements since the acquisition date.

On September 5, 2006 we purchased Nav3D Corporation (Nav3D) for $0.9 million in cash (including direct transaction costs of $0.1 million), subject to certain post-closing adjustments. Nav3D works with OEM and end-user partners to create products using a combination of GPS navigation and motion sensing with three dimensional graphics. Nav3D was headquartered in San Carlos, California prior to acquisition. The results of Nav3D's operations have been included in our consolidated financial statements since the acquisition date.

RESULTS OF OPERATIONS:

The following tables set forth, for the periods indicated, certain financial data as a percentage of total revenues:

	Three months ended March 31,		Nine months ended March 31,	
	2007	2006	2007	2006
Revenues	100.0%	100.0%	100.0%	100.0%
Cost of revenues	45.0	59.8	44.4	43.0
Gross profit	55.0	40.2	55.6	57.0
Operating expenses:				
Selling, general and administrative	38.7	50.1	40.1	36.6
Research and development	27.9	35.1	27.7	26.6
Amortization of acquired intangible assets	3.2	4.9	3.3	3.6
In-process research and development	—	—	1.9	0.3
Restructuring	—	4.2	0.6	1.1
Impairment of long-lived assets	—	—	0.1	—
Total operating expenses	69.8	94.3	73.7	68.2
Loss from operations	(14.8)	(54.1)	(18.1)	(11.2)
Interest and other income, net	0.8	1.5	2.4	0.9
Loss before income taxes	(14.0)	(52.6)	(15.7)	(10.3)
Benefit for income taxes	(4.6)	(20.8)	(4.7)	(4.6)
Net loss	(9.4)%	(31.8)%	(11.0)%	(5.7)%

REVENUES

(in thousands)	Three months ended March 31, 2007	As a % of Total Net Revenue	Three months ended March 31, 2006	As a % of Total Net Revenue	$ Change	% Change
Defense	$ 29,551	51.5%	$ 18,547	41.7%	$11,004	59.3%
CIV	9,817	17.1%	11,056	24.9%	(1,239)	(11.2)%
Advanced Solutions	13,125	22.9%	11,576	26.0%	1,549	13.4%
MPS	4,854	8.5%	3,299	7.4%	1,555	47.2%
Other	—	—	—	—	—	—
Total revenues	$ 57,347	100%	$ 44,478	100%	$12,869	28.9%

Total revenues increased $12.9 million or 28.9% to $57.3 million during the three months ended March 31, 2007. International revenues represented approximately 6.7% and 10.6% of total revenues during the three months ended March 31, 2007 and 2006, respectively.

Defense revenues increased $11.0 million or 59.3% during the three months ended March 31, 2007 compared to the same period in fiscal 2006. The increase was primarily related to a $7.9 million increase in signal intelligence applications, a $2.4 million increase in radar applications, and $2.0 million in sales related to the Cell Broadband Engine™ (BE) processor family of products. These increases were partially offset by a $0.7 million decrease in the Echotek family of products, a $0.5 million decrease in radio frequency products, and a $0.5 million decrease in defense technology and applications. The increase in defense revenues over the same period in fiscal year 2006 is primarily due to lower revenues during the three months ended March 31, 2006 caused by delays on several large defense programs. These delays were not as pronounced in the third quarter of fiscal year 2007, resulting in an increase in revenues across several of the defense market segments.

CIV revenues decreased $1.2 million or 11.2% during the three months ended March 31, 2007 compared to the same period in fiscal 2006. The decrease was primarily related to decreases in our legacy business lines, including a $1.4 million decrease in digital X-ray applications, a $0.8 million decrease in PET applications, and a $0.3 million decrease in MRI applications. This decrease was partially offset by $1.2 million in sales related to the Cell BE processor family of products. The quarter-to-quarter decrease is largely due to the continued and expected decline in our 2D businesses and little movement in sales of our 3D business.

Advanced Solutions revenues increased $1.5 million or 13.4% during the three months ended March 31, 2007 compared to the same period in fiscal 2006. The increase in revenues was primarily related to a $1.0 million increase in revenues related to a large development effort for a semiconductor customer, $0.5 million increase related to a large development effort for a telecommunications customer, and $2.4 million in sales related to the Cell BE processor family of products. This increase was partially offset by a $1.0 million decrease in semiconductor imaging boards. Shipments of semiconductor imaging boards represented 58.6% and 74.9% of Advanced Solutions revenues for the three months ended March 31, 2007 and 2006, respectively. Also impacting the results of the Advanced Solutions business unit were program development delays that resulted in delayed product shipments. We expect these issues to be resolved in the fourth quarter of fiscal 2007.

MPS revenues increased $1.6 million or 47.2% during the three months ended March 31, 2007 compared to the same period in fiscal 2006. The increase in revenue was primarily due to a $0.9 million increase in sales of custom processor boards to a large telecommunications customer.

The Other business unit was formed on July 25, 2006 as a result of the acquisition of Biotech (see Note M to the consolidated financial statements) and had no revenues during the three months ended March 31, 2007. Biotech's operations are currently in the development stage with no material revenues expected to be generated during fiscal year 2007.

(in thousands)	Nine months ended March 31, 2007	As a % of Total Net Revenue	Nine months ended March 31, 2006	As a % of Total Net Revenue	$ Change	% Change
Defense	$ 78,592	47.9%	$ 93,451	53.7%	$(14,859)	(15.9)%
CIV	31,323	19.1%	40,003	23.0%	(8,680)	(21.7)%
Advanced Solutions	40,117	24.4%	31,627	18.2%	8,490	26.8 %
MPS	14,182	8.6%	8,798	5.1%	5,384	61.2%
Other	—	—	—	—	—	—
Total revenues	$ 164,214	100%	$ 173,879	100%	$ (9,665)	(5.6)%

Total revenues decreased $9.7 million or 5.6% to $164.2 million during the nine months ended March 31, 2007. International revenues represented approximately 9.2% and 7.2% of total revenues during the nine months ended March 31, 2007 and 2006, respectively.

Defense revenues decreased $14.9 million or 15.9% during the nine months ended March 31, 2007 compared to the same period in fiscal 2006. The decrease was primarily related to an $8.1 million decrease in shipments serving radar applications, a $4.2 million decrease in signal intelligence applications, a $4.1 million decrease in defense technology and applications and a $2.7 million decrease in radio frequency products. Contributing to these decreases in radar applications and signal intelligence applications included a reprioritizing of funding by the federal government to more immediate and tactical requirements. The decrease in Defense revenues was partially offset by $3.3 million in sales related to the Cell BE processor family of products, and $0.5 million in sales related to the VistaNav family of products.

CIV revenues decreased $8.7 million or 21.7% during the nine months ended March 31, 2007 compared to the same period in fiscal 2006. The decrease was primarily related to decreases in our legacy business lines, including a $6.6 million decrease in MRI applications, a $4.7 million decrease in revenues related to our digital

X-ray applications and a $1.9 million decrease in PET applications. This decrease was partially offset by a $2.3 million increase in sales related to our 3D applications, and $1.8 million in sales related to the Cell BE processor family of products. We are expecting that our 2D business with GE Healthcare, Motorola GmbH and Philips Medical Systems will continue to decrease over the near term as these customers transition to new platforms and new component manufacturers. We have started to see growth in our portfolio of new 3D image processing and visualization software applications. We perceive significant customer interest in the medical and oil and gas discovery industries for these products; however, the adoption rate of 3D applications by the marketplace is not yet increasing quickly enough to offset the decline in our existing 2D programs.

Advanced Solutions revenues increased $8.5 million or 26.8% during the nine months ended March 31, 2007 compared to the same period in fiscal 2006. The increase in revenues was related to a $3.2 million increase related to a large development effort for a telecommunications customer and $4.8 million in sales related to the Cell BE processor family of products. Shipments of semiconductor imaging boards represented 65.1% and 79.6% of Advanced Solutions revenues for the nine months ended March 31, 2007 and 2006, respectively.

MPS revenues increased $5.4 million or 61.2% during the nine months ended March 31, 2007 compared to the same period in fiscal 2006. The increase in revenue was primarily due to a $5.8 million increase in sales of custom processor boards to two large telecommunications customers, which was partially offset by lower volumes to other customers.

The Other business unit was formed on July 25, 2006 as a result of the acquisition of Biotech (see Note M to the consolidated financial statements) and had no revenues during the nine months ended March 31, 2007. Biotech's operations are currently in the development stage with no material revenues expected to be generated during fiscal year 2007.

GROSS PROFIT

Gross profit was 55.0% for the three months ended March 31, 2007; an increase of 1,480 basis points from the 40.2% gross profit achieved in the three months ended March 31, 2006. The increase in gross profit was primarily due to two items: a) significantly higher comparative revenues in the third quarter of fiscal year 2007, resulting in the fixed costs being spread over a larger revenue base and b) a $5.4 million inventory reserve recorded in the third quarter of fiscal year 2006, which significantly lowered the gross profit percentage in the prior period.

Gross profit was 55.6% for the nine months ended March 31, 2007; a decrease of 140 basis points from the 57.0% gross profit achieved in the nine months ended March 31, 2006. The decrease in gross profit was primarily due to the spread of fixed costs over a lower revenue base in our Defense Business Unit, higher material costs and an unfavorable shift in customer and product mix.

SELLING, GENERAL AND ADMINISTRATIVE

Selling, general and administrative expenses decreased 0.4% or $0.1 million to $22.2 million for the three months ended March 31, 2007 compared to $22.3 million during same period in fiscal 2006. The decrease was primarily due to a $0.3 million decrease in stock compensation expense due in part to the general lower value of our stock and a $0.1 million decrease in salary expense due to a reduction in headcount of 19 employees that was attributable, in part, to our 2006 restructuring plan.

Selling, general and administrative expenses increased 3.3% or $2.1 million to $65.8 million for the nine months ended March 31, 2007 compared to $63.7 million during same period in fiscal 2006. The increase was primarily due to a $1.7 million increase in legal expense, a $0.9 million increase in stock compensation expense, and a $0.5 million increase in commission expense. These increases were partially offset by various items including a $0.6 million decrease in consultant expense as compared to the same period in fiscal year 2006. The

$1.7 million increase in legal expenses was primarily driven by certain patent litigation and legal actions associated with one of our German subsidiaries (see Note J to the Consolidated Financial Statements).

RESEARCH AND DEVELOPMENT

Research and development expenses increased 2.6% or $0.4 million to $16.0 million for the three months ended March 31, 2007 compared to $15.6 million during the same period in fiscal 2006. The increase was primarily the result of an increase in prototype and development expense of $1.0 million and an increase in our development effort of $0.2 million related to our Biotech business. This increase was partially offset by a decrease in compensation expense due a reduction in headcount of 19 employees that was attributable, in part, to our 2006 and 2007 restructuring plans. Research and development continues to be a focus of our business with approximately 27.9% and 35.1% of our revenues dedicated to research and development activities during the three months ended March 31, 2007 and 2006, respectively. One of the more significant research and development initiatives which began in fiscal year 2006 is our development efforts related to the Cell BE processor family of products which accounted for approximately $4.0 million and $1.3 million of the research and development expenses in the three months ended March 31, 2007 and 2006, respectively. We expect to continue to devote resources to the development of new products and the enhancement of existing products. We believe that research and development is critical to our strategic product development objectives and that to leverage our leading technology and meet the changing requirements of our customers, we will need to fund investments in several development projects in parallel.

Research and development expenses decreased 1.5% or $0.7 million to $45.6 million for the nine months ended March 31, 2007 compared to $46.3 million during the same period in fiscal 2006. The decrease was partially the result of a decrease in compensation expense due to a reduction in headcount of 19 employees that was attributable, in part, to our 2006 and 2007 restructuring plans. Research and development continues to be a focus of our business with approximately 27.7% and 26.6% of our revenues dedicated to research and development activities during the nine months ended March 31, 2007 and 2006, respectively. One of the more significant research and development initiatives which began in fiscal year 2006 is our development efforts related to the Cell BE processor family of products which accounted for approximately $10.8 million and $6.0 million of the research and development expenses in the nine months ended March 31, 2007 and 2006, respectively.

AMORTIZATION OF ACQUIRED INTANGIBLE ASSETS

Amortization of acquired intangible assets decreased 13.6% or $0.3 million to $1.9 million for the three months ended March 31, 2007 compared to $2.2 million during the same period in fiscal 2006. The decrease in amortization expenses for the three months ended March 31, 2007 was primarily due to several intangible assets becoming fully amortized prior to the start of fiscal year 2007.

Amortization of acquired intangible assets decreased 12.9% or $0.8 million to $5.4 million for the nine months ended March 31, 2007 compared to $6.2 million during the same period in fiscal 2006. The decrease in amortization expenses for the nine months ended March 31, 2007 was primarily due to several intangible assets becoming fully amortized prior to the start of fiscal year 2007.

RESTRUCTURING EXPENSE

Restructuring expense for the three months ended March 31, 2007 decreased $1.8 million as compared to the same period in fiscal year 2006. This decrease was primarily due to the large reduction in force incurred in the third quarter of fiscal 2006 as a result of the 2006 restructuring plan (2006 Plan).

Restructuring expense for the nine months ended March 31, 2007 decreased $0.9 million to $1.0 million as compared to the same period in fiscal year 2006. This decrease was primarily due to the size of each of the restructuring activities incurred in the respective periods. As a result of the 2006 Plan we eliminated 55 positions, while as part of the 2007 Plan we eliminated 20 positions.

Impairment of Long-lived Assets

During the nine months ended March 31, 2007, we incurred an impairment charge of $0.1 million related to a non-compete agreement we determined to be impaired based upon actions taken by a former employee who was bound by the non-compete agreement. No such charges were incurred during the three months ended March 31, 2007 or the three and nine months ended March 31, 2006.

Interest Income

Interest income for the three months ended March 31, 2007 decreased by $0.1 million to $1.5 million compared to the same period in fiscal year 2006. Interest income for the nine months ended March 31, 2007 increased by $0.2 million to $4.9 million compared to the same period in fiscal year 2006. The decrease in interest income for the three months ended March 31, 2007 was primarily related to lower levels of cash and cash equivalents as compared to the same period in fiscal year 2006. The increase in interest income for the nine months ended March 31, 2007 was primarily related to the increased rated of return on our marketable securities, partially offset by lower levels of cash and cash equivalents.

Interest Expense

Interest expense for the three months ended March 31, 2007 decreased by $0.2 million to $0.9 million compared to the same period in fiscal 2006. Interest expense for the nine months ended March 31, 2007 increased by $0.3 million to $3.4 million compared to the same period in fiscal 2006. The decrease for the three months ended March 31, 2007 was primarily related to a $10.4 million decrease in notes payable due to the prepayment of our mortgage notes on October 19, 2006 (see Note N to the consolidated financial statements). The increase for the nine month ended March 31, 2007 was primarily due to penalties totaling $0.7 million incurred related to the prepayment of our mortgage notes, offset by the aforementioned decrease in notes payable.

Other Income (Expense), Net

Other income (expense) for the three months ended March 31, 2007 decreased by $0.3 million to $0.2 million compared to the same period in fiscal year 2006. Other income (expense) for the nine months ended March 31, 2007 increased by $2.4 million to $2.4 million compared to the same period in fiscal year 2006. The increase for nine months ended March 31, 2007 was primarily due to cash received totaling $2.4 million as a result of the legal settlement with a former employee and a related company (see Note J to the consolidated financial statements). Also impacting other income (expense) were the realized gains and losses related to foreign currency transactions and the impact of our deferred compensation plan.

Income Tax (Benefit) Provision

We recorded a 32.9% tax benefit of $2.6 million during the three months ended March 31, 2007 on a loss before income taxes of $8.1 million as compared to a 39.6% tax benefit of $9.2 million on a loss before income taxes of $23.4 million for the three months ended March 31, 2006.

We recorded a 29.8% tax benefit of $7.7 million during the nine months ended March 31, 2007 on a loss before income taxes of $25.8 million as compared to a 45.2% tax benefit of $8.1 million on a loss before income taxes of $17.9 million for the nine months ended March 31, 2006.

The lower rate for the three months and nine months ended March 31, 2007 as compared to fiscal year 2006 was attributable to a decrease in the 2007 research and development tax credit, the extraterritorial income (ETI) benefit, and also a reserve for the research and development state tax credits.

We review our annual effective income tax rate on a quarterly basis and make changes as necessary. The estimated annual effective income tax rate may fluctuate due to changes in forecasted annual operating income; changes to the valuation allowance for net deferred tax assets; changes to actual or forecasted permanent book to tax differences; impacts from future tax settlements with state, federal or foreign tax authorities; or impacts from tax law changes. In addition, we identify items which are not normal and recurring in nature and treat these as discrete events. The tax effect of discrete items is booked entirely in the quarter in which the discrete event occurs.

SEGMENT OPERATING RESULTS

Results from operations of the Defense segment increased $16.8 million for the three months ended March 31, 2007 to an operating loss of $1.4 million as compared to an operating loss of $18.2 million for the same period in fiscal year 2006. The increase in operating results of the Defense segment was primarily related to the $11.0 million increase in revenues as compared to the same period in fiscal year 2006. The increase was also due to a decrease in operating expenses largely due to a $3.0 million decrease in research and development expenses and a $1.2 million decrease in restructuring expense.

Results from operations of the Defense segment increased $2.5 million for the nine months ended March 31, 2007 to an operating loss of $9.5 million as compared to an operating loss of $12.0 million for the same period in fiscal year 2006. The decrease in operating results of the Defense segment was primarily related to the decrease in revenues and a shift in product mix to lower-margin products. The decrease in operating results of the Defense segment was partially offset by a $7.9 million decrease in operating expenses largely due to a $5.0 million decrease in research and development expenses related to project timing, a $1.2 million decrease in selling expense and a $0.5 million decrease in amortization expense.

Results from operations of the CIV segment increased $0.8 million for the three months ended March 31, 2007 to an operating loss of $1.7 million as compared to an operating loss of $2.5 million for the same period in fiscal year 2006. The increase in operating results of the CIV segment was primarily related to higher gross margin driven by an increase in revenues derived from software sales which tend to yield a higher gross margin. The increase in operating results for the three months ended March 31, 2007 was also due to a decrease in operating expenses of $0.6 million as compared to the same period in fiscal year 2006. This decrease was primarily due to a reduction in selling and marketing expense of $1.5 million and a reduction in restructuring costs of $0.4 million. These decreases were partially offset by an increase in administrative expense of $1.4 million for the three months ended March 31, 2007 as compared to the same period in fiscal year 2006.

Results from operations of the CIV segment decreased $5.0 million for the nine months ended March 31, 2007 to an operating loss of $5.4 million as compared to an operating loss of $0.4 million for the same period in fiscal year 2006. The decrease in operating results of the CIV segment was primarily related to a decrease in revenues. The decrease in operating results for the CIV segment was also impacted by $3.9 million in increase in general and administrative expenses largely due to the defense of a patent infringement lawsuit and legal actions associated with one of our German subsidiaries (see Note J to the Consolidated Financial Statements), and a $0.8 million increase in research and development expenses primarily related to 3D Visage PACS products and the Cell BE processor based products. This increase was partially offset by a decrease in selling and marketing expenses of $3.4 million for the three months ended March 31, 2007 as compared to the same period in fiscal 2006.

Results from operations of the Advanced Solutions segment decreased $2.2 million for the three months ended March 31, 2007 to an operating loss of $1.9 million as compared to an operating profit of $0.3 million for the same period in fiscal year 2006. The decrease in results from operations was primarily driven by a change in margin due to customer mix and by an increase in research and development funding of approximately $1.3 million primarily related the Cell BE processor development program.

Results from operations of the Advanced Solutions segment decreased $3.6 million for the nine months ended March 31, 2007 to an operating loss of approximately $2.7 million as compared to income from operations

of $0.9 million for the same period in fiscal year 2006. The decrease in results from operations was primarily driven by a change in margin due to customer mix and by an increase in research and development funding of approximately $2.7 million primarily related the Cell BE processor development program.

Results from operations of the MPS segment increased by $0.4 million for the three months ended March 31, 2007 to an almost breakeven position as compared to an operating loss of $0.4 million for the same period in fiscal year 2006. The increase in results from operations was primarily driven by the increase in revenue driven by sales of custom processor boards to two large telecommunications customers partially offset by an increase in the excess and obsolescence inventory reserve.

Results from operations of the MPS segment increased $1.1 million for the nine months ended March 31, 2007 to operating income of $0.5 million as compared to an operating loss of $0.6 million for the same period in fiscal year 2006. The increase in results from operations was primarily due to an increase in revenue driven by sales of custom processor boards to two large telecommunications customers.

Losses from the operations of the Other segment were $0.4 million and $4.0 million for the three and nine months ended March 31, 2007, respectively. The Other segment was formed as a result of the Biotech acquisition on July 25, 2006. The operating loss in the nine months ended March 31, 2006 was primarily driven by a charge of $3.1 million for in-process research and development related to the Biotech acquisition.

See Note H to our consolidated financial statements included in this report for more information regarding our operating segments.

OFF-BALANCE SHEET ARRANGEMENTS

Other than lease commitments incurred in the normal course of business, certain guarantees made related to the acquisition of a development-stage biotech company during the first quarter of fiscal year 2007 (see Note M to the Consolidated Financial Statements) and certain indemnification provisions (see Note J to the Consolidated Financial Statements), we do not have any off-balance sheet financing arrangements or liabilities, guarantee contracts, retained or contingent interests in transferred assets, or any obligation arising out of a material variable interest in an unconsolidated entity. We do not have any majority-owned subsidiaries that are not included in the consolidated financial statements. Additionally, we do not have an interest in, or relationships with, any special purpose entities.

LIQUIDITY AND CAPITAL RESOURCES

(in thousands) **As of and for the nine months ended March 31,**	**2007**	**2006**
Net cash (used in) provided by operating activities	$(17,358)	$ 25,713
Net cash provided by (used in) investing activities	31,661	(30,770)
Net cash used in financing activities	(9,672)	(7,523)
Net increase (decrease) in cash and cash equivalents	4,769	(12,646)
Cash and cash equivalents at end of period	27,752	30,497

Cash and Cash Equivalents

Our cash and cash equivalents decreased by $2.7 million in the nine months ended March 31, 2007 as compared to the same period in fiscal 2006, primarily as the result of the repayment of our Mortgage Notes and certain foreign debt and normal operating activities.

During the nine months ended March 31, 2007, we used $17.4 million in cash from operations compared to $25.7 million generated from operations during the same period in fiscal year 2006. The $43.1 million decrease in the amount of cash generated from operations was largely driven by higher comparative net losses, a $22.3

million decrease in trade accounts receivable, a $5.4 million decrease in inventory and a $3.0 million decrease in prepaid expenses and other current assets. The net loss was offset by several non-cash expenses, including $8.0 million of stock-based compensation expense, $13.7 million in depreciation and amortization expense and a $3.1 million in in-process research and development expense due to the Biotech acquisition. Our ability to continue to generate cash from operations will depend in large part on profitability, the rate of collection of accounts receivable, our inventory turns and our ability to manage other areas of working capital.

During the nine months ended March 31, 2007, we generated $31.7 million of cash from investing activities compared with $30.8 million used in investing activities during the same period in fiscal year 2006. During the nine months ended March 31, 2007, our cash used in the acquisition of businesses was $1.5 million as compared to cash used in the acquisition of business $67.5 million for the same period in fiscal 2006. Further, cash used in the purchases of marketable securities decreased by $23.8 million as compared to the same period in fiscal 2006. These increases were partially offset by a decrease in sales and maturities of marketable securities of $31.4 million for the nine months ended March 31, 2007 as compared to the same period in fiscal 2006. Subsequent to quarter end, we completed the sale and leaseback of our corporate headquarters in Chelmsford, Massachusetts to generate positive cash flows from this capital asset, as we believe the cash generated from the sale of the buildings can earn a better return and be better utilized in another manner. The sale and leaseback of the buildings was completed on April 20, 2007 (see Note R to the consolidated financial statements).

During the nine months ended March 31, 2007, our financing activities used cash of $9.7 million, which primarily consisted of $9.7 million used to prepay in full our two mortgage notes payable and $0.6 million related to the repayment of foreign debt, offset by $1.1 million in proceeds from employee stock plans. During the same period in fiscal year 2006, financing activities used cash of $7.5 million, which primarily consisted of $12.3 million used for purchases of our common stock, offset by $5.1 million in proceeds from employee stock plans.

During the nine months ended March 31, 2007, our prime source of liquidity came from existing cash and marketable securities. Our near-term fixed commitments for cash expenditures consist primarily of payments under operating leases, an alliance purchase agreement, a supply agreement and inventory purchase commitments, as well as interest payments on our long-term debt. We do not currently have any material commitments for capital expenditures. If cash generated from operations is insufficient to satisfy working capital requirements, we may need to access funds through bank loans, sales of securities or other means. There can be no assurance that we will be able to raise any such capital on terms acceptable to us, on a timely basis or at all. If we are unable to secure additional financing, we may not be able to develop or enhance our products, take advantage of future opportunities, respond to competition or continue to effectively operate our business.

Based on our current plans and business conditions, we believe that existing cash, cash equivalents and marketable securities will be sufficient to satisfy our anticipated cash requirements for at least the next twelve months.

Debt

In November 1999, we completed a lending agreement with a commercial financing company, issuing two 7.30% senior secured financing notes (the Mortgage Notes) due November 2014. The original principal amount of the Mortgage Notes totaled $14.5 million. The Mortgage Notes were collateralized by our corporate headquarters, which consists of two buildings. The terms of the Mortgage Notes, as amended, contained certain covenants, which, included the maintenance of an interest coverage ratio, certain leverage ratios and a minimum consolidated net worth. The Mortgage Notes also included significant prepayment penalties.

Since March 31, 2006, we had not been in compliance with certain of the financial covenants, and we elected to prepay the Mortgage Notes in full on October 19, 2006 instead of renegotiating the financial covenants with the holders of the Mortgage Notes. The amount paid in connection with the prepayment of the Mortgage

Notes equaled $10.5 million, which included the then outstanding principal amount of the Mortgage Notes plus a prepayment premium equal to $0.7 million, and a minor waiver fee in consideration of the noteholders' waiver through October 19, 2006 of our non-compliance with the financial covenants.

The terms of our convertible senior notes contain certain contingent conversion provisions. Under certain circumstances, the notes will be convertible into our common stock at a conversion rate of 33.0797 shares per $1,000 principal amount of the notes, subject to adjustment in certain circumstances. The conversion rate is equal to an initial conversion price of approximately $30.23 per share. At the option of the holder, the convertible notes may be converted on the final maturity date if, on or prior to May 1, 2019, the closing price of our common stock exceeds $36.28 for at least 20 trading days in a specified 30-day period of each fiscal quarter or on any date after May 1, 2019, the closing price of our common stock exceeds $36.28. The Notes may also be converted at the option of the holder if prior to May 1, 2019, the average trading price for the convertible senior notes is less than 98% of the average conversion value for the convertible senior notes during any five consecutive trading-day period. The convertible notes mature on May 1, 2024 and bear interest at 2% per year, payable semiannually in arrears in May and November. The convertible notes are unsecured, rank equally in right of payment to our existing and future senior debt, and do not subject us to any financial covenants. The holders may require us to repurchase the notes, in whole or in part, (a) on May 1, 2009, 2014 or 2019, (b) upon a change in control, or (c) if our common stock is neither listed nor approved for trading on specified markets. At our option, we may redeem any of the convertible notes on or after May 1, 2009 at a price equal to 100% of the principal amount of the convertible notes to be redeemed plus accrued and unpaid interest.

Commitments and Contractual Obligations

The following is a schedule of our commitments and contractual obligations outstanding at March 31, 2007:

(in thousands)	Total	Less Than 1 Year	2-3 Years	4-5 Years	More Than 5 Years
Notes payable and capital lease obligations	$125,261	$ 149	$125,104	$ 8	$ —
Interest due on notes payable	6,058	2,511	3,547	—	—
Inventory purchase obligations	15,100	15,100	—	—	—
Supply agreement	2,258	—	—	—	2,258
Alliance agreement	70,216	3,465	30,751	36,000	—
ERP agreements	992	992	—	—	—
Operating leases	6,472	1,944	2,164	1,367	997
IP Agreement	1,000	—	1,000	—	—
Other long-term liabilities	100	—	100	—	—
	$227,457	$ 24,161	$162,666	$37,375	$ 3,255

Notes payable, capital lease obligations and interest due on notes payable consists of various domestic and foreign debt agreements and the interest due on such agreements. (See Note N to the consolidated financial statements for further financial information regarding these agreements). Our pension obligation and deferred compensation plan liabilities which are not included in the table above, are included in accrued expenses in our consolidated balance sheets. The put option for $2.3 million related to the acquisition of the development-stage biotech company, which is not included in the above table, is included in accrued expenses in our consolidated balance sheet. (See Note M to the consolidated financial statements for further information regarding this put option)

Inventory purchase obligations represent open non-cancelable purchase commitments for certain inventory components used in normal operations. The purchase commitments covered by these agreements are generally for less than one year and aggregated approximately $15.1 million at March 31, 2007.

In June 2005, we entered into an alliance agreement with a third party to purchase certain inventory components and services. This alliance agreement, as subsequently amended, is in effect until March 2011 and

contains penalties for volume commitments and a variable early termination penalty that generally decreases over time based upon purchases. As of March 31, 2007, the total fee to terminate the alliance agreement in full, including termination of the minimum purchase commitments, was $1.7 million. Aggregate minimum purchase commitments over the term of the agreement total approximately $69.1 million, however, if the annual minimum purchase commitments are not achieved, we are only liable for a per unit penalty fee of $50 for the difference between our actual purchases and the annual minimum volume commitment amount. Further, this agreement requires royalty payments based on future sales of the developed technologies and periodic payments totaling $8.8 million related to the development and licensing of certain technology. As of March 31, 2007, the total minimum commitment related to the alliance agreement is $70.2 million (portions of which are recorded as liabilities in the consolidated balance sheets as of March 31, 2007) assuming that we purchase the full minimum volume commitment and that we do not elect to terminate the agreement.

In July 2005, we began an ERP system upgrade to improve our ERP system capabilities and processes. In connection with the implementation of the ERP system upgrade, we entered into several agreements with a third-party relating to the initial phases of the implementation. As of March 31, 2007, there was $1.0 million of funds authorized that have not been expended related to the ERP effort.

In September 2006, we entered into a supply agreement with a third party vendor to purchase certain inventory parts that went “end of life.” This supply agreement, as subsequently amended, commits the vendor to acquiring and storing approximately $6.5 million of inventory until August 31, 2012 and allows the Company to place orders for the inventory four times a year. Upon the earlier of January 31, 2007 or completion of the wafer fabrication process, the Company is required to pay approximately $1.9 million of the $6.5 million. Further, upon expiration of the agreement on August 31, 2012, if the Company does not purchase the full $6.5 million in inventory, the Company may be required to pay a penalty equal to 35% of the remaining inventory balance. As of March 31, 2007, $1.9 million of the commitment was paid and no amounts were accrued for in the consolidated balance sheets related to this agreement.

In September 2006, we entered into a License Agreement (“IP Agreement”) with a third party to obtain an exclusive license to certain intellectual property (IP). This license required an initial upfront payment of $0.1 million and varying royalty payments to be based on future sales of product containing the IP. If the running royalty payments do not equal or exceed $1.0 million (the “Minimum Royalty”) by September 1, 2008, we must pay the shortfall between the two amounts unless certain events occur. Upon the occurrence of these events, which are largely within our control, the license may be rendered non-exclusive. If the license is rendered non-exclusive, the running royalty payment rate increases, the Minimum Royalty amount decreases to $0.1 million and we will become obligated to reimburse the third party for 50% of all patent costs incurred by the third party moving forward from the date the license was rendered non-exclusive.

Our standard product sales and license agreements entered into in the ordinary course of business typically contain an indemnification provision pursuant to which we indemnify, holds harmless, and agree to reimburse the indemnified party for losses suffered or incurred by the indemnified party in connection with any patent, copyright or other intellectual property infringement claim by any third party with respect to our products. Such provisions generally survive termination or expiration of the agreements. The potential amount of future payments we could be required to make under these indemnification provisions is, in some instances, unlimited.

RELATED PARTY TRANSACTIONS

We paid no life insurance premiums during the three and nine months ended March 31, 2007, respectively, for the benefit of David Bertelli, the brother of our Chief Executive Officer and a former company vice president. We paid approximately $0 and $2.0 thousand of life insurance premiums during the three and nine months ended March 31, 2006, respectively, for the benefit of David Bertelli.

We have an at-will agreement with Wellness Edge, a private company owned, in part, by the daughter of our Chief Executive Officer, to manage the employee fitness center. We paid Wellness Edge $1.8 thousand and $6.2

thousand during the three and nine months ended March 31, 2007, respectively, and did not owe anything under this agreement as of March 31, 2007. We paid Wellness Edge $10 thousand in relation to this agreement during fiscal year 2006 and owed no amounts under this agreement as of June 30, 2006.

RECENT ACCOUNTING PRONOUNCEMENTS

In February 2007, the Financial Accounting Standards Board (FASB) issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities—Including an Amendment of FASB Statement No. 115*. SFAS No. 159 permits entities to choose to measure eligible items at fair value at specified election dates and report unrealized gains and losses on items for which the fair value option has been elected in earnings at each subsequent reporting date. SFAS No. 159 is effective for fiscal years beginning after November 15, 2007. We are currently evaluating the impact of adopting this SFAS No 159; however, the adoption is not expected to have a material an effect on our financial condition or results of operations.

In September 2006, the FASB issued SFAS No. 157, *Fair Value Measurements*, which defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles and expands disclosures about fair value measurements. This Statement is effective for financial statements issued for fiscal years beginning after November 15, 2007 and interim periods within those fiscal years. Earlier application is encouraged provided that the reporting entity has not yet issued financial statements for that fiscal year including financial statements for an interim period within that fiscal year. We are assessing SFAS No. 157 and have not yet determined the impact that the adoption of SFAS No. 157 will have on our financial condition or results of operations.

In September 2006, FASB issued SFAS No. 158, *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans—an amendment of FASB Statements No. 87, 88, 106, and 132(R)*, which requires employers to: (a) recognize in its statement of financial position an asset for a plan's overfunded status or a liability for a plan's underfunded status; (b) measure a plan's assets and its obligations that determine its funded status as of the end of the employer's fiscal year; and (c) recognize changes in the funded status of a defined benefit postretirement plan in the year in which the changes occur. Those changes will be reported in comprehensive income of a business entity. The requirement to recognize the funded status of a benefit plan and the disclosure requirements are effective as of the end of the fiscal year ending after December 15, 2006, for entities with publicly traded equity securities. The requirement to measure plan assets and benefit obligations as of the date of the employer's fiscal year-end statement of financial position is effective for fiscal years ending after December 15, 2008. We do not expect the adoption of SFAS No. 158 to have a material impact on our financial condition or results of operations.

In September 2006, the SEC issued Staff Accounting Bulletin No. 108, *Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements* (SAB 108). SAB 108 provides guidance on how prior year misstatements should be taken into consideration when quantifying misstatements in current year financial statements for purposes of determining whether the current year's financial statements are materially misstated. SAB 108 permits registrants to record the cumulative effect of initial adoption by recording the necessary "correcting" adjustments to the carrying values of assets and liabilities as of the beginning of that year with the offsetting adjustment recorded to the opening balance of retained earnings only if material under the dual method. SAB 108 is effective for fiscal years ending on or after November 15, 2006 and we plan to adopt SAB 108 in the fourth quarter of fiscal year 2007. We do not expect the adoption of SAB 108 to have a material impact on our financial condition or results of operations.

In June 2006, the FASB issued FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*. The Interpretation clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with FASB Statement 109, *Accounting for Income Taxes*. This Interpretation presents a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. The Interpretation is effective for fiscal years beginning

after December 15, 2006. While additional efforts will be necessary to measure and disclose this information, we do not expect the adoption of Interpretation No. 48 to have a material impact on our financial condition or results of operations.

In June 2006, the FASB reached consensus on Emerging Issues Task Force (EITF) No. 06-3, *How Taxes Collected from Customers and Remitted to Governmental Authorities Should be Presented in the Income Statement* ("EITF 06-3"). The scope of EITF 06-3 includes any tax assessed by a governmental authority that is directly imposed on a revenue-producing transaction between a seller and a customer and may include, but is not limited to, sales, use, value added, and excise taxes. The Task Force affirmed its conclusion that entities should present these taxes in the income statement on either a gross or a net basis, based on their accounting policy, which should be disclosed pursuant to Accounting Principles Board Opinion (APB) No. 22, *Disclosure of Accounting Policies*. If those taxes are significant, and are presented on a gross basis, the amounts of those taxes should be disclosed. The consensus on EITF 06-3 will be effective for interim and annual reporting periods beginning after December 15, 2006. We adopted EITF 06-3 in the third quarter of fiscal year 2007. The adoption of EITF 06-3 did not have a material impact on our financial condition or results of operations, as we have historically reported such taxes on a net basis.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

There were no material changes in our exposure to market risk from June 30, 2006 to March 31, 2007.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures. Based on our management's evaluation (with the participation of our principal executive officer and principal financial officer), as of the end of the period covered by this report, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934) were effective. We continue to review our disclosure controls and procedures and may from time to time make changes aimed at enhancing their effectiveness and to ensure that our systems evolve with our company's business.

Changes in Internal Control over Financial Reporting. There was no change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934) that occurred during the quarter ended September 30, 2006 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

On December 20, 2006, the Internal Revenue Service ("IRS") concluded its audit of our tax years ended June 30, 2005, 2004 and 2003. The contested issues addressed in the IRS audit report concerned our tax position on what constitutes qualifying research and development costs for purposes of the research and development tax credit. We reached a settlement with the IRS in the amount of $1.6 million, including interest and penalties, which we paid in the third quarter of fiscal year 2007.

In October 2006, we commenced a series of legal actions in the District Court of Nuremberg-Fuerth, Germany against the former general manager of the subsidiary and a third-party company related to the former general manager alleging, among other things, that the former general manager had breached his non-competition obligations to us and the subsidiary and had otherwise engaged in conduct detrimental to the subsidiary while still employed by the subsidiary. In November 2006, the parties settled all of these legal actions, and a related labor suit, through the payment of damages in the amount of $2.4 million for breach of non-compete agreements, interference with the subsidiary's business and the assumption of certain non-medical professional service contracts by the third-party company. In connection with the settlement, the third-party company also agreed not to compete against our German subsidiary in the field of image processing for medical and pharmaceutical applications within the European Union and Switzerland for a period ending on July 1, 2008.

On January 31, 2006, we received a written notice and request for indemnification from Seismic Micro-Technology, Inc. ("SMT"), which had been named as a defendant in a patent infringement suit entitled *Landmark Graphics Corporation, et al. v. Paradigm Geophysical Corporation, et al.*, filed in the United States District Court for the Southern District of Texas. SMT based its request for indemnification on the terms of certain application developer agreements it entered into with us and certain of our subsidiaries. The complaint alleges infringement by SMT of U.S. patent number 6,765,570, and seeks injunctive relief, treble damages, costs and attorneys' fees. On February 22, 2006, SMT answered and filed counterclaims for declaratory judgment of non-infringement and invalidity. On February 28, 2006 we notified SMT that we would indemnify SMT from all costs and damages that may be awarded against SMT in the foregoing action, and would be responsible for attorneys' fees and expenses incurred by SMT in defense of the action, subject to certain conditions, including our right to control and direct the defense of the action on behalf of SMT. We believe there are meritorious defenses to the complaint and intend to contest it vigorously. However, an adverse resolution of this litigation could have an adverse effect on our consolidated financial position, results of operations or cash flows in the period in which the litigation is resolved. No amounts have been accrued for this loss contingency.

We are also subject to other legal proceedings, claims and tax audits that arise in the ordinary course of business and in the opinion of management the outcome of these matters will not have a material adverse effect on our financial position, results of operations or cash flows.

ITEM 1A. RISK FACTORS

You should carefully review and consider the information regarding certain factors that could materially affect our business, financial condition or future results set forth under Item 1A (Risk Factors) in our Annual Report on Form 10-K for the fiscal year ended June 30, 2006. There have been no material changes from the factors disclosed in our 2006 Annual Report on Form 10-K, although we may disclose changes to such factors or disclose additional factors from time to time in our future filings with the Securities and Exchange Commission.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

(a) The following table sets forth information about repurchases of our common stock for the three months ended March 31, 2007.

Period of Repurchase	Total Number of Shares Purchased	Average Price Paid Per Share	Total Number of Shares Purchased As Part of Publicly Announced Program
January 1-31, 2007	—	$ —	$ —
February 1-28, 2007	19,921	13.29	—
March 1-31, 2007	396	12.48	—
Total	20,317	$ 13.28	$ —

ITEM 6. EXHIBITS

The following Exhibits are filed or furnished, as applicable, herewith:

10.1	Purchase and Sale Agreement dated as of April 12, 2007 among 199 Riverneck, LLC, Riverneck Road, LLC, 191 Riverneck, LLC and BTI 199-201 Riverneck, L.P.
10.2	Lease dated April 20, 2007 between BTI 199-201 Riverneck, L.P. and the Company.
12.1	Ratio of Earnings to Fixed Charges.
31.1	Certification of the Chief Executive Officer pursuant to Rule 13a-14(a)/15(d)-14(a).
31.2	Certification of the Chief Financial Officer pursuant to Rule 13a-14(a)/15(d)-14(a).
32.1+	Certification of the Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

+ Furnished herewith. This certificate shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, or otherwise subject to the liability of that section, nor shall it be incorporated by reference into any filing under the Securities Act of 1933 or the Securities Exchange Act of 1934.

MERCURY COMPUTER SYSTEMS, INC.

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, in Chelmsford, Massachusetts, on May 9, 2007.

MERCURY COMPUTER SYSTEMS

By: /S/ ROBERT E. HULT

Robert E. Hult
Senior Vice President and
Chief Financial Officer

PURCHASE AND SALE AGREEMENT

BY AND BETWEEN

199 RIVERNECK, LLC, RIVERNECK ROAD, LLC AND 191 RIVERNECK, LLC

(COLLECTIVELY, THE "SELLER")

AND

BTI 199-201 RIVERNECK, L.P.

("BUYER")

Dated as of: April 12, 2007

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List of Exhibits

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("**Agreement**") is made this 12th day of April, 2007, by and between 199 Riverneck, LLC, a Delaware limited liability company, Riverneck Road, LLC, a Delaware limited liability company and 191 Riverneck, LLC, a Delaware limited liability company (collectively, the "**Seller**"), and BTI 199-201 Riverneck, L.P., a Delaware limited partnership (the "**Buyer**").

W I T N E S S E T H:

In consideration of the mutual covenants and agreements set forth herein, the parties hereto do hereby agree as follows:

ARTICLE 1
SALE OF PROPERTY

1.1 Description of Property. Seller agrees to sell, transfer and assign to Buyer and Buyer agrees to purchase and accept from Seller, subject to the terms and conditions stated herein, the following:

1.1.1 The Land. The land, as more particularly described in **Exhibit 1**, together with all of Seller's right, title and interest in and to any and all rights (including development rights), privileges, rights of way, reservations and easements appurtenant thereto and any other estates of Seller in and to such land, all of Seller's right, title and interest in and to the land lying in the bed of any street, road or highway (open or proposed) in front of, adjoining or servicing said land, all of Seller's right, title and interest in and to any strips or gores adjoining said land or any part thereof, and all of Seller's rights, privileges, rights of way, reservations and easements burdening said land (all of the foregoing, collectively, the "**Land**");

1.1.2 Improvements. The buildings (the "**Buildings**"), structures and other permanent improvements situated on the Land and any fixtures and building systems therein or thereon used for the generic use, operation, repair or maintenance thereof or of the Land (collectively, the "**Improvements**") (but excluding any fixtures and building systems used for Seller's business operations, and those items listed on **Exhibit 2** hereto) (collectively, the "**Excluded Property**"); (the Land and the Improvements are hereafter collectively referred to as the "**Real Property**");

1.1.3 Permit and Other Rights. All of Seller's right, title and interest, if any, and to the extent assignable, in and to (i) any certificates of occupancy, existing licenses, permits, variances, waivers and other written approvals, authorizations and renewals thereof, substitutions therefor and additions thereto with respect to the Real Property or any part thereof, (ii) any access, air, water, riparian, utility and solar rights affecting the Land or Improvements, (iii) all approvals for the development of additional improvements to or associated with the existing Improvements, if any, but excluding, however, the licenses, permits, variances, waivers and other written approvals and authorizations relating exclusively to Seller's business operations on or about the Real Property as distinguished from the use, operation, maintenance, repair and

ownership of the Land and the Improvements as a business in and of itself (collectively the "**Permit Rights**"); and

1.1.4 Plans, Warranties and Books and Records. All of Seller's right, title and interest, if any, and to the extent assignable, in: (i) all drawings, plans and specifications relating to the Real Property or any part thereof including without limitation construction drawings, blueprints, design schematics and shop drawings, and any studies, analyses, reports and other written materials pertaining to the condition of the Real Property (collectively, the "**Plans**"), (ii) books, records, reports and other files related solely to the Real Property and the Permit Rights (collectively, the "**Books and Records**"), and (iii) any guaranties, warranties, indemnifications, undertakings and other assurances relating to the Real Property or any part thereof, including without limitation, those more particularly set forth on **Schedule 1.1.4** hereto (collectively, the "**Warranties**").

The Permit Rights, the Plans, the Warranties and the Books and Records are hereafter collectively referred to as the "**Personal Property**". The Real Property and the Personal Property are hereinafter collectively referred to as the "**Property**." There is expressly excluded from the Property sold hereunder the Excluded Property, which, whether affixed to the Buildings or not, shall be excluded from the Property and shall remain the property of Seller.

ARTICLE 2
PURCHASE PRICE

2.1 Purchase Price. The total purchase price (the "**Purchase Price**") to be paid by Buyer for the purchase of the Property is $27,000,000.00. The Purchase Price shall be paid in the manner set forth in **Subsections 2.1.1** and **2.1.2**.

2.1.1 Purchase Price Deposit. Concurrently with the execution and delivery of this Agreement by both parties, Buyer has deposited in escrow with First American Title Insurance Company ("**Buyer's Title Company**") an earnest money deposit in the amount of Two Million Dollars ($2,000,000.00) (together with any interest that may be earned thereon, the "**Deposit**"). The Deposit shall be held by Buyer's Title Company in an interest bearing account pursuant to the terms of the Escrow Agreement attached hereto as **Exhibit 3** (the "**Escrow Agreement**"). If the purchase and sale of the Property is consummated as contemplated hereunder, the Deposit shall be paid to Seller and the entire Deposit shall be credited against the Purchase Price. Each party agrees to give written instructions to Buyer's Title Company with respect to the Deposit consistent with the terms and conditions of this Agreement.

2.1.2 Payment of Purchase Price. On the Closing Date, Buyer shall deliver to Seller the Purchase Price, less the Deposit, subject to the prorations and adjustments set forth in **Article 5** or as otherwise provided by this Agreement (collectively, "**Closing Adjustments**") in immediately available United States federal funds, by wire transfer as more particularly set forth in **Section 5.4** (such amount, the "**Balance of the Purchase Price**").

ARTICLE 3
CLOSING

3.1 Closing Date. The consummation (the "**Closing**") of the transaction contemplated by this Agreement (the "**Transaction**") shall take place on the "**Closing Date**," determined as hereinafter provided, unless this Agreement is earlier terminated as provided herein. The Closing Date shall be April 20, 2007 (or such earlier date as the parties may mutually agree in writing), unless the Closing Date is extended by mutual written agreement of the parties or by either party pursuant to a right to so extend as expressly provided in this Agreement, in which event the Closing Date shall be such extended date, or if the extended date is a Saturday, Sunday or a legal holiday, the Closing Date shall be the next Business Day thereafter. Closing shall be conducted through the use of an escrow with Buyer's Title Company, in which all Property conveyance documents and the Balance of the Purchase Price and other sums payable by Buyer hereunder shall be deposited. The parties shall give reasonable and customary closing instructions to close the escrow. All documents shall be deposited in escrow no later than 5:00 p.m. Eastern Time on the last business day prior to the Closing Date and funds shall be delivered on the Closing Date. The parties shall endeavor to conduct an escrow closing so that it will not be necessary for any party to attend Closing. Time is of the essence with respect to the Closing Date. Notwithstanding anything to the contrary contained in this Agreement, Seller shall have the right to terminate this Agreement at any time if the Balance of the Purchase Price is not timely received on the Closing Date.

3.2 Seller's Closing Deliveries. At the Closing, Seller shall deliver or cause to be delivered to Buyer or Buyer's Title Company, as applicable, the following:

(a) Deed. A statutory quitclaim deed in the form attached hereto as **Exhibit 4** conveying to Buyer fee simple title to the Real Property, subject only to the Permitted Exceptions, duly executed and acknowledged by Seller in a manner sufficient for recording and/or filing, as applicable (the "**Deed**").

(b) Lease. Lease of the Property in the form attached hereto as **Exhibit 6**, duly executed by Mercury Computer Systems, Inc. ("**Mercury**") (the "**Lease**").

(c) Notice of Lease. Notice of the Lease that satisfies the requirements of M.G.L. c.183 Section 4, in the form attached hereto as **Exhibit 6B**, duly executed and acknowledged by Mercury, in a manner sufficient for recording and/or filing, as applicable (the "**Notice of Lease**").

(d) Title Affidavit and Gap Indemnity. A parties in possession and mechanics' lien affidavit in the form attached hereto as **Exhibit 7A** sufficient for Buyer's Title Company to remove all standard exceptions for parties in possession except for Mercury Computer Systems, Inc. and mechanics' liens from Buyer's title policy, duly executed by Seller and a gap indemnity in the form of **Exhibit 7B**, duly executed by Seller.

(e) Non-Foreign Status. A non-foreign status affidavit as required by Section 1445 of the Internal Revenue Code in the form attached hereto as **Exhibit 11**, duly executed and acknowledged by Seller.

(f) Evidence of Authority. Documents to establish to Buyer's and Buyer's Title Company's reasonable satisfaction the due authorization of Seller's sale of the Property and Seller's execution and delivery and performance of this Agreement and Seller's and Mercury's, as the case may be, execution, delivery and performance of each of the documents to be delivered by it pursuant to this Agreement, and/or necessary to record and/or file any such documents, but a legal opinion shall not be required.

(g) Seller's Certificate. The Certificate of Seller in the form attached hereto as **Exhibit 8**, duly executed by Seller.

(h) Plans and Warranties. Complete copies of the Plans and originals or, if originals are not readily available, copies of the Books and Records and documents giving rise to the Permit Rights, the Warranties, and Books and Records in each case to the extent in the possession of Seller; provided; however, that Seller shall be entitled to retain one copy of the Plans if there is more than one such copy. To the extent the Plans, Permit Rights and Warranties are not in the possession of Seller, but in Seller's control, at Buyer's request, Seller shall instruct the holder to deliver the same to Buyer.

(i) Closing Statement. The Closing Statement, duly executed by Seller.

(j) Lease Estoppel Certificate and Subordination Agreement. An estoppel certificate in the form attached hereto as **Exhibit 12** and a subordination, non-disturbance and attornment agreement in the form attached hereto as **Exhibit 13**.

(k) Termination of Existing Leases. An agreement fully terminating the existing leases at the Property, executed by Seller and Mercury, in a form and substance reasonably acceptable to Buyer and Buyer's Title Company.

(l) Assignment of Permit Rights, Warranties, Books and Records. An assignment of the Plans, Permit Rights, Warranties and Books and Records ("**Assignment of Personal Property**") in the form of **Exhibit 5** assigning all of Seller's rights thereto, duly executed by Seller, and any additional, specific documentation required to transfer any Plans, Permit Rights, Warranties or Books and Records to Buyer.

(m) Additional Documents. Such other additional documents reasonably required to consummate the Transaction.

3.3 Buyer Closing Deliveries. At the Closing, Buyer shall deliver or cause to be delivered to Seller the following:

(a) The Balance. The Balance of the Purchase Price, as adjusted for apportionments and other adjustments required under this Agreement.

(b) Lease. The Lease, duly executed by Buyer.

(c) Notice of Lease. The Notice of Lease, duly executed and acknowledged by Buyer.

(d) Buyer's Certificate. The Certificate of Buyer in the form attached hereto as **Exhibit 9**, duly executed by Buyer.

(e) Evidence of Authority. Documentation to establish to Seller's reasonable satisfaction the due authorization of Buyer's acquisition of the Property and Buyer's execution and delivery and performance of this Agreement and each of the documents required to be delivered by Buyer pursuant to this Agreement, and/or necessary to record and/or file any such documents, but a legal opinion shall not be required.

(f) Closing Statement. The Closing Statement, duly executed by Buyer.

(g) Assignment of Personal Property. The Assignment of Personal Property, duly executed by Buyer.

(h) A subordination, non-disturbance and attornment agreement duly executed by Buyer and Buyer's lender(s) in the form attached hereto as **Exhibit 13**.

(i) Additional Documents. Such other additional documents reasonably required to consummate the Transaction.

ARTICLE 4
CONDITIONS TO CLOSING

4.1 Seller's Obligations. Seller's obligation to close the Transaction is conditioned on satisfaction of all of the following, any or all of which may be waived by Seller by an express written waiver, at its sole option:

(a) Representations True. All representations and warranties made by Buyer in this Agreement shall be true and correct in all material respects on and as of the Closing Date, as if made on and as of such date, except to the extent they expressly relate to an earlier date;

(b) Buyer's Deliveries Complete. Buyer shall have delivered the funds required hereunder and all of the documents to be executed by Buyer as set forth in **Section 3.3** and shall have performed all other covenants, undertakings and obligations set forth in this Agreement in all material respects, and complied

in all material respects with all conditions required by this Agreement to be performed or complied with by Buyer at or prior to the Closing; and

(c) Litigation. On the Closing Date, there will be no third party injunction, preliminary restraining order or any order of any nature issued or threatened by a court of competent jurisdiction affecting Buyer directing that the transaction contemplated by this Agreement not be consummated.

In the event any of the foregoing conditions in this **Section 4.1** are not satisfied at the time of Closing, Buyer shall be deemed to be in default of its obligations under this Agreement, and Seller may elect to exercise such remedies as may be permitted pursuant to the terms set forth in **Article 10**.

4.2 Buyer's Obligations. Buyer's obligation to close the Transaction is conditioned on satisfaction of all of the following, any or all of which may be expressly waived by Buyer in writing, at its sole option:

(a) Representations True. All representations and warranties made by Seller in this Agreement shall be true and correct in all material respects on and as of the Closing Date, as if made on and as of such date, except to the extent that they expressly relate to an earlier date;

(b) Title Conditions Satisfied. At the time of the Closing, title to the Real Property shall be as provided in **Article 7** of this Agreement and Buyer shall receive conveyance of good, clear, record and marketable title to the Real Property as will enable Buyer's Title Company to issue its title policy in the amount of the Purchase Price without exception as to matters of survey or any liens or other matters of any nature affecting the title, except for the Permitted Exceptions;

(c) Seller's Deliveries Complete. Seller shall have delivered all of the documents and other items required pursuant to **Section 3.2** and shall have performed all other covenants, undertakings and obligations set forth in this Agreement in all material respects, and complied in all material respects with all conditions required by this Agreement to be performed or complied with by Seller at or prior to the Closing;

(d) No Material Adverse Change. There shall have been no material adverse change in the title to, possession of or physical condition of the Property occurring after the end of the Due Diligence Period (including, without limitation, a Release of Hazardous Materials on the Property requiring remediation or response action under Environmental Laws), other than any change arising from casualty or condemnation, which shall be governed by **Article 11** below;

(e) Seller's and Mercury's Financial Condition. No petition shall have been filed by or against Seller or Mercury under the Federal Bankruptcy Code or any similar State laws, whether now or hereafter existing. There shall not have occurred and be continuing at Closing any material, adverse change in the

financial condition of Mercury, from the condition thereof as of the expiration of the Due Diligence Period. A material, adverse change in the financial condition of Mercury shall be deemed to include, but not be limited to, a downrating by either Standard & Poors or Moodys of the long term unsecured debt rating of Mercury from the rating of such party as of the expiration of the Due Diligence Period; and

(f) Litigation. On the Closing Date, there will be no third party injunction, preliminary restraining order or any order of any nature issued or threatened by a court of competent jurisdiction affecting Seller directing that the transaction contemplated by this Agreement not be consummated.

In the event any of the foregoing conditions are not satisfied in this **Section 4.2** at the time of Closing, Seller shall be deemed to be in default of its obligations under this Agreement, and Buyer may elect to exercise such remedies as may be permitted pursuant to the terms of **Article 10**.

4.3 Waiver of Failure of Conditions Precedent. At the Closing or any time or times on or before the date specified for the satisfaction of any condition, Seller or Buyer may elect in writing to waive the benefit of any condition in this Agreement expressly for the benefit of Seller or Buyer, respectively. Except with respect to **Subsection 4.2(a)**, by closing the Transaction, each party shall be conclusively deemed to have waived the benefit of any remaining unfulfilled condition herein for such party's benefit. To the extent, if any, that this **Section 4.3** is inconsistent with **Subsections 6.3.1** through **6.3.4** below, the provisions of said **Subsections 6.3.1** through **6.3.4** shall govern.

ARTICLE 5
ADJUSTMENTS AND PRORATIONS

5.1 Possession After Closing. At Closing, Seller shall deliver possession of the Property to Buyer, free of tenants and other occupants, except that Mercury shall retain possession of portions of the Real Property as tenant under the Lease pursuant to and subject to the terms of the Lease. Except to the extent that Mercury remains responsible therefor pursuant to the Lease, real estate and personal property taxes (exclusive of installments of any betterment assessments not yet due and payable), water and sewer charges, and other operating expenses shall be apportioned between the parties at the Closing as of the close of the Business Day prior to the Closing Date on the basis of the fiscal period for which assessed or billed. If the Closing shall occur before a new tax rate is fixed, the apportionment of taxes at the Closing shall be upon the basis of the old tax rate for the preceding period applied to the latest assessed valuation. Promptly after the new tax rate is fixed, the apportionment of taxes shall be recomputed. The terms of this **Section 5.1** shall survive Closing and not be merged therein for a period of one (1) year after Closing.

5.2 Closing Costs. Buyer shall pay all premiums and charges for Buyer's title policy (including endorsements), the cost of any survey obtained by Buyer (the "**Survey**"), all recording and filing charges in connection with the deeds and any other instruments by which Seller conveys the Property, one-half ($^{1}/_{2}$) of all escrow charges, and any other costs customarily paid

by a buyer of similar properties pursuant to local practice. Seller shall pay all deed excise stamp taxes and other transfer taxes, if any, applicable to the transfer of the Property to the Buyer, one half (1/2) of all escrow charges, the Seller's Broker's fee, and any other costs customarily paid by a seller of similar properties pursuant to local practice. Each party shall pay its own attorneys. The obligations of the parties to pay applicable closing costs shall survive the Closing or any termination of this Agreement.

5.3 Apportionment Credit. In the event the adjustments and apportionments to be made at the Closing result in a credit balance (i) to Buyer, such sum shall be paid at the Closing by giving Buyer a credit against the Purchase Price in the amount of such credit balance or (ii) to Seller, such sum shall be paid by Buyer to Seller at the Closing by wire transfer of immediately available federal funds to the account or accounts to be designated by Seller for the payment of the Balance of the Purchase Price.

5.4 Closing Statement. All adjustments and prorations shall be made in accordance with the provisions of this Agreement and otherwise in accordance with generally accepted accounting principles. Buyer and Seller will prepare, no later than two (2) Business Days prior to the Closing Date, a closing statement (the "**Closing Statement**"), which shall (a) contain the wiring instructions for the wire transfer of the Balance of the Purchase Price to Seller (the "**Wiring Instructions**"), (b) contain the amounts of the items requiring the prorations and adjustments in accordance with this Agreement, and (c) become the basis upon which the prorations and adjustments provided for herein shall be made at the Closing, except as Seller and Buyer shall otherwise agree prior to Closing. The Closing Statement shall be based on the Purchase Price and the adjustments and prorations described in this **Article 5**.

5.5 Delayed Adjustment. Any adjustments and prorations made based on an estimate shall be adjusted as soon after Closing as final information becomes available. If, following the Closing Date, the amount of an item referred to in any section of this **Article 5** shall prove to be incorrect, the party in whose favor the error was made shall be obligated to pay to the other party the sum necessary to correct such error within thirty (30) days after receipt of proof of such error, provided that such proof is delivered to the party from whom payment is requested on or before one (1) year after Closing. The provisions of this **Article 5** shall survive the Closing.

ARTICLE 6
REPRESENTATIONS AND WARRANTIES

6.1 Buyer's Representations. Buyer represents and warrants to Seller as follows, as of the date of this Agreement:

(a) Buyer is duly organized, validly existing and in good standing under the laws of Delaware and is authorized to consummate the Transaction and fulfill all of Buyer's obligations hereunder and under all documents contemplated hereunder to be executed by Buyer. Buyer has all necessary power to execute and deliver this Agreement and all documents contemplated hereunder to be executed by Buyer and to perform all of Buyer's obligations hereunder and thereunder. This Agreement, the Lease and all documents contemplated hereunder to be executed by Buyer have been duly authorized by all requisite action on the part of

Buyer, have been and will at Closing be duly executed by Buyer, and are the valid and legally binding obligation of Buyer enforceable against Buyer in accordance with their respective terms. Neither the execution and delivery of this Agreement, the Lease and all documents contemplated hereunder to be executed by Buyer, nor the performance of the obligations of Buyer hereunder or thereunder will result in the violation of any law or any provision of the Buyer's governing documents or will conflict with any order or decree of any court or governmental instrumentality or any other agreement of any nature by which Buyer is bound.

(b) Buyer has obtained or filed, as the case may be, all authorizations, consents, approvals, waivers, exemptions, licenses, qualifications, registrations, filings, declarations, exemptions or orders of any governmental or regulatory agency, authority, division or body, court or any third party which are required in connection with the execution, delivery, observance or performance by Buyer of the documents to be delivered by Buyer at Closing and the consummation of the Transaction contemplated hereby.

(c) At Closing Buyer will have available the funds necessary to purchase the Property.

(d) The execution, delivery and compliance with, and performance of the terms and provisions of, this Agreement, and the purchase of the Property, shall not (i) conflict with or result in any violation of Buyer's organizational documents, or (ii) violate any existing term or provision of any order, writ, judgment, injunction, decree, statute, law, rule or regulation applicable to Buyer or Buyer's assets or properties.

(e) There is no proceeding pending or threatened by or against Buyer under the United States Bankruptcy Code or any similar State laws.

(f) Buyer is not, and will not become, a person or entity with whom United States persons or entities are restricted or prohibited from doing business under regulations of the Office of Foreign Asset Control ("**OFAC**") of the Department of the Treasury (including those named on OFAC's specially designated and blocked persons list) or under any statute, executive order, including the September 24, 2001, Executive Order No. 13224 entitled "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism" (the "**Executive Order**") or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56, or other governmental action (collectively, the "**Anti-Money Laundering and Anti-Terrorism Laws**"), and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities;

(g) To the current actual knowledge of Joseph Bonner, neither the Buyer nor its affiliates, is in violation of Anti-Money Laundering and Anti-Terrorism Laws.

(h) To the current actual knowledge of Joseph Bonner, neither the Buyer nor its affiliates, is acting, directly or indirectly, on behalf of terrorists, terrorist organizations or narcotics traffickers, including those persons or entities that appear on the Annex to the Executive Order, or are included on any relevant lists maintained by the OFAC, the U.S. Department of State, or other U.S. government agencies, all as may be amended from time to time.

(i) To the current actual knowledge of Joseph Bonner, neither the Buyer nor its affiliates nor, without inquiry, any of its brokers or other agents, in any capacity in connection with the purchase of the Property (A) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any person included in the lists set forth in the preceding paragraph, (B) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (C) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Money Laundering and Anti-Terrorism Laws.

(j) The Buyer understands and acknowledges that the Seller may become subject to further anti-money laundering regulations, and agrees to execute instruments, provide information, or perform any other acts as may reasonably be requested by the Seller, for the purpose of: (A) carrying out due diligence as may be required by applicable law to establish the Buyer's identity and source of funds; (B) maintaining records of such identities and sources of funds, or verifications or certifications as to the same; and (C) taking any other actions as may be required to comply with and remain in compliance with anti-money laundering regulations applicable to the Buyer.

(k) "**Government List**" shall mean any of (i) the two lists maintained by the United States Department of Commerce (Denied Persons and Entities), (ii) the list maintained by the United States Department of Treasury (Specially Designated Nationals and Blocked Persons), and (iii) the two lists maintained by the United States Department of State (Terrorist Organizations and Debarred Parties). Neither the Buyer, nor any person controlling or controlled by the Buyer, is a country, territory, individual or entity named on a Government List, and the monies used in connection with this Agreement and amounts committed with respect thereto, were not and are not derived from any activities that contravene any applicable anti-money laundering or anti-bribery laws and regulations (including funds being derived from any person, entity, country or territory on a Government List or engaged in any unlawful activity defined under Title 18 of the United States Code, Section 1956(c)(7)).

6.2 Seller's Representations. Seller represents and warrants to Buyer as follows, as of the date of this Agreement:

6.2.1 Seller's Authorization.

(a) Seller is duly organized, validly existing and in good standing under the laws of the State of Delaware, is duly qualified to do business in the Commonwealth of Massachusetts and is authorized to consummate the Transaction and fulfill all of its obligations hereunder and under all documents contemplated hereunder to be executed by Seller. Seller has all necessary power to execute and deliver this Agreement and all documents contemplated hereunder to be executed by Seller and to perform all of Seller's obligations hereunder and thereunder. This Agreement and all documents contemplated hereunder to be executed by Seller have been duly authorized by all requisite corporate action on the part of Seller, have been and will at Closing be duly executed by Seller, and are the valid and legally binding obligations of Seller enforceable in accordance with their respective terms. Neither the execution and delivery of this Agreement and all documents contemplated hereunder to be executed by Seller, nor the performance of the obligations of the Seller hereunder or thereunder will result in the violation of any law or any provision of Seller's articles of incorporation or bylaws or will conflict with any order or decree of any court or governmental instrumentality or any other agreement of any nature by which Seller is bound.

(b) Seller has obtained or filed, as the case may be, all authorizations, consents, approvals, waivers, exemptions, licenses, qualifications, registrations, filings, declarations, exemptions or orders of any governmental or regulatory agency, authority, division or body, court or any third party which are required in connection with the execution, delivery, observance or performance by Seller of this Agreement, the documents to be delivered by Seller at Closing and the consummation of the Transaction contemplated hereby.

(c) Mercury is duly organized, validly existing and in good standing under the laws of the State of Massachusetts, is duly qualified to do business in the Commonwealth of Massachusetts and is authorized to enter into the Lease . Mercury has all necessary power to execute and deliver the Lease and to perform all of Mercury's obligations thereunder. The Lease will at Closing be duly authorized by all requisite corporate action on the part of Seller, will at Closing be duly executed by Mercury, and will be the valid and legally binding obligations of Mercury enforceable in accordance with its terms. Neither the execution and delivery of the Lease, nor the performance of the obligations of Mercury thereunder will result in the violation of any law or any provision of Mercury's articles of organization or bylaws or will conflict with any order or decree of any court or governmental instrumentality or any other agreement of any nature by which Mercury is bound.

(d) As of the Closing, Mercury will have obtained or filed, as the case may be, all authorizations, consents, approvals, waivers, exemptions, licenses, qualifications, registrations, filings, declarations, exemptions or orders of any governmental or regulatory agency, authority, division or body, court or any third party which are required in connection with the execution, delivery, observance or performance by Mercury of the obligations under the Lease.

6.2.2 Other Seller Representations.

(a) Neither Seller nor Mercury have received any written notice of any pending or threatened litigation, suit, claim, condemnation, proceeding or special assessment against Seller, Mercury or the Property which would, if determined adversely to Seller or Mercury, materially and adversely affect the Property or the operation thereof, or Seller's or Mercury's ability to perform all of the obligations hereunder or under the agreements to be executed and delivered by Seller and Mercury at Closing.

(b) Neither Seller nor Mercury has received written notice from any governmental agency of any violation of any laws, ordinances or regulations applicable to any of the Property that has not been corrected as of the date hereof;

(c) There is no proceeding pending or threatened by or against Seller or Mercury under the United States Bankruptcy Code or any similar State laws;

(d) As of the Closing, except for the Lease, there will be no leases, license agreements or other occupancy agreements under which any person occupies, leases or subleases or has the right to occupy, lease or sublease any portion of the Real Property,

(e) As of the Closing, except for the Lease, no person will have an option to purchase, occupy or lease all or any portion of the Property or any right of first offer, right of first refusal or similar right to purchase, lease or acquire interests in all or any portion of the Property other than Buyer pursuant to this Agreement;

(f) There are no pending real property tax reduction or abatement proceedings affecting the Real Property;

(g) To Seller's Knowledge, there are no underground storage tanks on the Real Property;

(h) The service, maintenance, supply or other contracts or agreements or equipment leases relating to the security, operation, repair or maintenance of the Property that remain in effect from and after the Closing and will continue to be the obligation of Mercury under the Lease and will not be binding on Buyer;

(i) The Evaluation Materials delivered or made available to Buyer prior to the expiration of the Due Diligence Period shall be true, accurate and complete copies of such Evaluation Materials in Seller's possession or control and constitute all books, records, and other writings in Seller's possession or control related in any material way to the use, ownership or operation of the Property. To Seller's Knowledge, except as disclosed to Buyer in the Evaluation Material or in the other Confidential Information, or as discovered by Buyer in connection with its due diligence review of the Property, there are no material adverse physical conditions affecting the Property.

(j) The Designated Employees are familiar with the Property and have managed the Property for at least three (3) years prior to Closing;

(k) To the knowledge of the Designated Employees, there are no pending or threatened condemnation proceedings which would affect the Property, or any part thereof, nor any pending or threatened planned public improvements, annexations, zoning or subdivision changes, or other claims or proceedings affecting the Property;

(l) Seller is not, and will not become, a person or entity with whom United States persons or entities are restricted or prohibited from doing business under regulations of the OFAC of the Department of the Treasury (including those named on OFAC's specially designated and blocked persons list) or under any Anti-Money Laundering and Anti-Terrorism Laws, and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities;

(m) To the current actual knowledge of Craig Barrows, General Counsel of Mercury, Seller and Seller's affiliates are not in violation of Anti-Money Laundering and Anti-Terrorism Laws.

(n) To the current actual knowledge of Craig Barrows, General Counsel of Mercury, Seller and Seller's affiliates are not acting, directly or indirectly, on behalf of terrorists, terrorist organizations or narcotics traffickers, including those persons or entities that appear on the Annex to the Executive Order, or are included on any relevant lists maintained by the OFAC, the U.S. Department of State, or other U.S. government agencies, all as may be amended from time to time.

(o) To the current actual knowledge of Craig Barrows, General Counsel of Mercury, Seller and Seller's affiliates nor, without inquiry, any of its brokers or other agents, in any capacity in connection with the purchase of the Property (A) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any person included in the lists set forth in the preceding paragraph, (B) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (C) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Money Laundering and Anti-Terrorism Laws.

(p) The Seller understands and acknowledges that the Buyer may become subject to further anti-money laundering regulations, and agrees to execute instruments, provide information, or perform any other acts as may reasonably be requested by the Buyer, for the purpose of: (A) carrying out due diligence as may be required by applicable law to establish the Seller's identity; (B) maintaining records of such identities, or verifications or certifications as to

the same; and (C) taking any other actions as may be required to comply with and remain in compliance with anti-money laundering regulations applicable to the Seller.

(q) Neither the Seller, nor any person controlling or controlled by the Seller, is a country, territory, individual or entity named on a Government List and, to the current actual knowledge of Craig Barrows, General Counsel of Mercury, the monies used by Seller to purchase the Property were not derived from any activities that contravene any applicable anti-money laundering or anti-bribery laws and regulations (including funds being derived from any person, entity, country or territory on a Government List or engaged in any unlawful activity defined under Title 18 of the United States Code, Section 1956(c)(7)).

(r) Seller represents and warrants to Buyer and The Prudential Insurance Company of America ("**Prudential**") that none of Seller's equity interests are held by (a) "employee benefit plans" as that term is defined in Section 3(3) of ERISA, which are subject to Title I of ERISA or plans subject to Section 4975 of the Internal Revenue Code of 1986, as amended (collectively, "**ERISA Plans**"), or (b) any entity whose underlying assets include "plan assets" by reason of any such ERISA Plan investment in such entity, or (c) a "governmental plan" within the meaning of Section 3(32) of ERISA and Seller and such interests are not owned by such a governmental plan or otherwise subject to state statutes regulating investments of and fiduciary obligations with respect to governmental plans. Notwithstanding any provision in this Agreement to the contrary, the representations set forth in this **Subsection 6.2.2(r)** are intended to inure to the benefit of both Buyer and Prudential and Prudential shall be entitled to rely hereon and enforce the provisions hereof;

(s) To the knowledge of the Designated Employees, no written notice of cancellation has been received by Seller or Mercury with respect to any insurance affecting the Property and all premiums therefor have been paid. No insurance company insuring the Buildings or the board of fire underwriters has delivered to Seller or Mercury written notice (i) that any insurance policy now in effect will not be renewed or (ii) that Seller or Mercury has failed to comply with insurance requirements or (iii) that material defects or inadequacies exist in the Property, or in any part thereof.

6.3 General Provisions.

6.3.1 No Liability for Known Facts. Neither party shall have any liability in connection with this Agreement by reason of an inaccuracy of a representation or warranty, if and to the extent that such inaccuracy is in fact actually known by the other party (for the purposes hereof, actual knowledge shall mean the knowledge of individuals involved in the Transaction) at the time of the Closing and such other party would be entitled not to close by virtue of such inaccuracy, but such other party elects, nevertheless, to consummate the Transaction.

6.3.2 Definition of "Seller's Knowledge". All references in this Agreement to "**Seller's Knowledge**" shall refer only to the actual knowledge of Steve Nigzus, Mercury's Chief Information Officer and Jesse Sawyer, Seller's Manager of Facilities (the "**Designated Employees**") and shall not be construed to refer to the knowledge of any other officer, agent or employee of Seller or any affiliate thereof or to impose or have imposed upon the Designated Employee any duty to investigate the matters to which such knowledge, or the absence thereof, pertains, including, but not limited to, the contents of the files, documents and materials made available to or disclosed to Buyer or the contents of files maintained by the Designated Employee. There shall be no personal liability on the part of said individual arising out of any representations or warranties made herein.

6.3.3 Survival of Representations, and Warranties. (a) The representations and warranties contained in **Article 6** as made herein and to be confirmed in the certificates to be delivered at Closing by each of Seller and Buyer pursuant to **clause (g)** of **Section 3.2** and **clause (d)** of **Section 3.3**, respectively, shall survive the Closing and delivery of the Deeds for a period of nine (9) months following the Closing Date (the "**Expiration Date**").

6.3.4 Limitation on Damages. The Buyer may not assert any claim against Seller for a breach of the representations and warranties contained in Article 6 unless (a) Buyer's damages are reasonably expected to exceed $50,000.00 in the aggregate, and in no event shall the aggregate of such damages exceed $500,000.00 and (b) Buyer gives Seller written notice containing a description of the specific nature of the breach within seven (7) days after the expiration of the nine (9) month period as noted in Section 6.3.3.

ARTICLE 7
TITLE MATTERS

7.1 Title to Real Property. Buyer has obtained, at its sole cost and expense, a title commitment (ALTA Commitment Number NCS-282591-CHI2) with an effective date of March 1, 2007 with respect to the Real Property (the "**Title Commitment**"). Except as provided in **Section 7.2**, and unless this Agreement is terminated as provided hereunder, at the Closing Seller shall transfer to Buyer fee simple title to the Real Property and Buyer shall accept the same, subject to the following matters:

(a) All laws, statutes, ordinances, codes, rules, regulations, requirements, or executive mandates, including, without limitation, all environmental, building and zoning restrictions, ordinances and regulations, insofar as applicable to the Property or the ownership, use or operation thereof adopted by the United States, the Commonwealth of Massachusetts, the town of Chelmsford, and any and every other agency, department, instrumentality and/or political subdivision of government of every kind whatsoever having jurisdiction thereof, and all amendments or additions thereto now in effect or which may be in force and effect on the Closing Date (collectively "**Laws**"); and

(b) Real estate taxes and assessments and water and sewer charges which are not yet due and payable but which may be a lien on all or a portion of the Real Property, subject to the Closing Adjustments;

(c) The exceptions to title shown on the Title Commitment, except for those matters or items which Seller has agreed to discharge, release or terminate as provided in Section 7.2, below;

(d) The Lease to Mercury; and

(e) Any matters deemed to constitute additional Permitted Exceptions under **Subsection 7.3** hereof.

The foregoing together with any liens or other matters created or caused by Buyer, its agents, contractors, employees or representatives, are hereinafter referred collectively to as the "**Permitted Exceptions.**"

7.2 Title Cure Obligations. Seller's title cure obligations ("Title Obligations") are set forth below in this Section 7.2.

7.2.1. Seller agrees to obtain certificates as to the proper release and recordation of discharges of the following matters:

(a) First Mortgage and Security Agreement from Riverneck Road LLC to Massachusetts Mutual Life Insurance Company and C.M. Life Insurance Company dated as of October 26, 1999 and recorded in Book 10502, Page 34 and filed as Document 186688.

(b) First Mortgage and Security Agreement from Riverneck Road LLC to Massachusetts Mutual Life Insurance Company and C.M. Life Insurance Company dated as of October 26, 1999 and recorded in Book 10502, Page 141.

(c) Lease Assignment and Agreement by and between Riverneck Road, LLC (Lessor), Mercury Computer Systems, Inc. (Lessee), Massachusetts Mutual Life Insurance Company (Mortgagee) and C.M. Life Insurance Company (Mortgagee)) dated as of October 26, 1999 and filed on November 3, 1999 as Document 186690 and recorded in Book 10502, Page 79.

(d) Lease Assignment and Agreement by and between 199 Riverneck Road, LLC (Lessor), Mercury Computer Systems, Inc. (Lessee), Massachusetts Mutual Life Insurance Company (Mortgagee) and C.M. Life Insurance Company (Mortgagee) dated as of October 26, 1999 in Book 10502, Page 185.

(e) Tenant Agreement by and between 199 Riverneck Road, LLC (Lessor), Mercury Computer Systems, Inc. (Lessee), Massachusetts Mutual Life Insurance Company (Mortgagee) and C.M. Life Insurance Company (Mortgagee) dated as of October 26, 1999 and recorded in Book 10502, Page 208.

(f) Tenant Agreement by and between Riverneck Road, LLC (Lessor), Mercury Computer Systems, Inc. (Lessee), Massachusetts Mutual Life Insurance Company (Mortgagee) and C.M. Life Insurance Company (Mortgagee) dated as

of October 26, 1999 and filed on November 3, 1999 as Document 186691 and recorded in Book 10502, Page 104.

(g) UCC Financing Statement in which 199 Riverneck LLC is the Debtor and C.M. Life Insurance Company (c/o Massachusetts Mutual Life Insurance Company) is the Secured Party, recorded in Book 10711, Page 159, as affected by Continuation Statement recorded in Book 18478, Page 62.

(h) UCC Financing Statement in which 199 Riverneck LLC is the Debtor and Massachusetts Mutual Life Insurance Company is the Secured Party, recorded in Book 10711, Page 163, as affected by Continuation Statement recorded in Book 18478, Page 61.

(i) Any mortgage, mechanics' or materialmen's lien (unless resulting from any act or omission of Buyer or any of its agents, representatives, contractors or employees) or other encumbrance securing payment of a liquidated monetary obligation of Seller or Mercury (a "**Monetary Encumbrance**").

7.2.2. Seller has provided evidence to Buyer's Title Company that the betterment assessment by the Town of Chelmsford dated June 15, 1988 recorded with said Deeds in Book 4567, Page 17 has been paid in full and Buyer's Title Company has agreed to remove this exception from the Title Commitment. Seller shall have no further obligations with respect to this exception.

7.2.3. Seller shall terminate the following Leases:

a. Lease by and between 199 Riverneck, LLC and Mercury Computer Systems, Inc., Tenant dated March 1, 1999.

b. Lease by and between Riverneck Road, LLC and Mercury Computer Systems, Inc., dated January 1, 1999.

7.2.4. Seller shall obtain and record and file as appropriate terminations of the following Notices of Lease:

(a) Notice of Lease dated November 2, 1999 by and between 199 Riverneck, LLC (the "Landlord") and Mercury Computer Systems, Inc. ("Tenant"), recorded on November 3, 1999, in the Middlesex North Registry of Deeds in Book 10502, Page 138.

(b) Notice of Lease dated October 26, 1999 by and between Riverneck Road, LLC (the "Landlord") and Mercury Computer Systems, Inc. ("Tenant"), filed on November 3, 1999, as Document No. 186687, in Transfer Certificate of Title No. 33300 in the Land Court Registry District of Northern Middlesex County in Land Registration Book 169 Page 199.

7.2.5. Seller shall remove any other title matters affecting title to the Real Property that Seller or Mercury voluntarily created or assumed after March 1, 2007 that were not consented to by Buyer ("**Involuntary Title Objection**").

7.2.6. Seller shall deliver to Buyer a parties in possession and mechanics' lien affidavit in the form attached hereto as **Exhibit 7A** sufficient for Buyer's Title Company to remove all standard exceptions for parties in possession except for Mercury Computer Systems, Inc. and mechanics' liens from Buyer's title policy, duly executed by Seller and a gap indemnity in the form of **Exhibit 7B**, duly executed by Seller, as provided in Section 3.2(d) above.

7.2.7. Seller shall have no obligations to cure any matters that are shown on the updated survey of the Property obtained by Buyer in connection with its due diligence investigations of the Property.

7.3 Extension to Cure Title. Seller shall be entitled, at Seller's election, by notice to Buyer, to extend the Closing Date for up to thirty (30) days in order to provide Seller additional time in which to satisfy its Title Obligations (or, if Buyer's financial arrangements for purchase of the Property will not remain in place for such thirty (30) day period, such shorter extension period as Buyer notifies Seller will result in Buyer's financing arrangements for the purchase of the Property being preserved). If Seller fails to satisfy its Title Obligations on or prior to the Closing, as the same may be extended as provided herein, such failure shall constitute a default under this Agreement and Buyer may elect to exercise its rights and remedies pursuant to this Agreement. Buyer shall be entitled to elect at Closing to effect cure of any Monetary Encumbrance not cured by Seller by payment from the proceeds otherwise constituting the Purchase Price of any amounts which may be required in order to effect satisfaction and cure of such Monetary Encumbrance.

7.3.1 Discharge of Title Objections. If on the Closing Date as the same may be extended pursuant to **Subsection 7.2.2** there are any title exceptions which Seller is able to remove or required to remove as provided herein, Seller shall remove the same at or prior to Closing. The term "remove" as used in this Agreement shall mean that Seller in its discretion shall either (a) cause the Buyer's Title Company, in a manner acceptable to Buyer in Buyer's sole discretion, (i) to remove the same as an exception to title in both Buyer's and its mortgagee's title policies, or (ii) to insure against the same without any additional cost to Buyer, whether such insurance is made available in consideration of payment, bonding, indemnity of Seller or otherwise.

7.3.2 Pre Closing "Gap" Defects. Buyer may at or prior to Closing notify Seller in writing of any defects in title arising between March 1, 2007 and the Closing Date. Seller's obligation to cure any such defects are set forth in Section 7.2.5 above.

ARTICLE 8
BUYER'S DUE DILIGENCE/CONDITION OF THE PROPERTY

8.1 Right to Enter. The provisions of this Section 8.1 are subject to the provisions of Sections 8.3 and 8.4 below, Seller hereby grants to Buyer permission to enter upon the Property, upon at least twenty-four (24) hours' prior notice (which may be verbal) to Steve Nigzus (Telephone No.: 978-967-1499), and at reasonable times convenient to Seller, without material

damage to all or any portion of the Property, to undertake investigation and testing on the Property of soil and site conditions, the building structure and mechanical systems, zoning, permitting, title and environmental matters and such other matters as Buyer deems relevant and material, all subject to the terms and conditions of this Agreement (any such investigation and testing, collectively, the "**Testing**"). Buyer shall permit Seller or Seller's representatives to be present during any Testing. The Testing may be performed by Buyer's or its lender's agents, employees, contractors, attorneys, engineers or other consultants (any such party, a "**Buyer Consultant**"). Copies of any reports, testing results, or other data or information produced by Buyer's investigation of the Property (collectively, "**Reports**") will promptly be provided to Seller.

8.1.1 Environmental Testing. Buyer agrees to provide to Seller for Seller's prior approval the scope of any proposed Testing with respect to Hazardous Materials (as hereinafter defined) (any such testing, the "**Environmental Testing**"). Seller's approval of the proposed scope of any Environmental Testing shall not be unreasonably withheld or delayed. If Buyer takes any samples from the Property in connection with any Environmental Testing, Seller shall be permitted to take split samples, and Buyer shall provide to Seller a portion of any sample being tested to allow Seller, if Seller so chooses, to perform its own testing. Notwithstanding the foregoing, Buyer shall not be required to seek approval or consent for a Phase I environmental report.

For purposes of this Agreement, "**Hazardous Materials**" shall mean and include those substances defined in 42 U.S.C. Sec. 9601(14) or any related or applicable federal, state or local statute, law, regulation, or ordinance, pollutants of contaminants (as defined in 42 U.S.C. Sec. 9601(33), petroleum (including crude oil or any fraction thereof), any form of natural or synthetic gas, sludge (as defined in 42 U.S.C. Sec. 6903(26A), radioactive substances, hazardous waste (as defined in 42 U.S.C. Sec. 6903(27)) and any other hazardous wastes, hazardous substances, contaminants or pollutants as defined or described in any of the Environmental Laws. As used in this Agreement, "**Environmental Laws**" means all federal, state and local environmental laws, and any rule or regulation promulgated thereunder and any order, standard, interim regulation, moratorium, policy or guideline of or pertaining to any federal, state or local government, department or agency, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("**CERCLA**"), the Superfund Amendments and Reauthorization Act of 1986 ("**SARA**"), the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, the Federal Insecticide, Fungicide and Rodenticide Act, the Marine Protection, Research, and Sanctuaries Act, the National Environmental Policy Act, the Noise Control Act, the Safe Drinking Water Act, the Resource Conservation and Recovery Act ("**RCRA**"), as amended, the Hazardous Material Transportation Act, the Refuse Act, the Uranium Mill Tailings Radiation Control Act and the Atomic Energy Act and regulations of the Nuclear Regulatory Agency, and all state and local counterparts or related statutes, laws, regulations, and order and treaties of the United States.

8.1.2 Governmental Notification. Buyer agrees that in the event Buyer's environmental engineer advises Buyer that it is necessary under applicable laws to notify any federal, state or local governmental authority of any event or condition on or about the Property as a result of any findings in any Testing, Buyer shall immediately notify Jesse Sawyer

(telephone no.: 978-967-1106) and Steve Nigzus, and, at Seller's sole election, Seller, not Buyer or any Buyer Consultant, shall give such notification as Seller deems appropriate. If Seller does not so notify such governmental authority in a timely manner after such notice, Buyer or a Buyer Consultant may do so, but only if required by law to make such disclosure.

8.1.3 Interference; Damage. The Testing shall be performed so as to minimize interference with the operation and use of the Property and so as not to cause any material damage to all or any portion of the Property. Buyer shall, in a timely manner, at its sole cost and expense, restore any damage to the Property caused by Buyer or any Buyer's Consultant, to substantially the same condition that existed immediately prior to the Testing, provided, however, that, notwithstanding the foregoing, Buyer shall not be obligated to remediate any discovery or release of Hazardous Material on the Property unless such release or the spread or migration of such release is caused by the negligence of Buyer or Buyer's Consultant.

Any Testing which involves roof, floors, or structural tests, or work that is either physically intrusive or requires subsurface investigations, will be subject to Seller's prior written approval, which approval shall not be unreasonably withheld, conditioned, or delayed. Such Testing shall be performed in accordance with any reasonable instructions, rules and regulations which Seller may impose or require.

8.1.4 Indemnity for Entry. Buyer assumes all risks associated with its entry, the Testing, and any other activity hereunder, and agrees to defend, indemnify and save Seller, its officers, directors, employees, agents, contractors, affiliates, invitees and guests, and Mercury Computer, Inc., its officers, directors, employees, agents, contractors, affiliates, invitees and guests, harmless from and against any and all debts, liens, losses, liabilities, costs, fines, penalties (including, without limitation, court costs, attorneys' fees and expert witness fees), expenses, damages, claims, demands, causes of action, cost recovery actions, administrative orders or notices and consent agreements (collectively, "**Liability**") caused by the entry or activities of Buyer or any of its agents, employees, contractors, consultants or other representatives on or at the Property. The indemnity provided for by this section shall not include the costs of reporting or any other matter caused solely by the mere discovery of Hazardous Materials on or about the Property by Buyer. The foregoing indemnity shall not be deemed to apply to any actual or alleged loss or damage to the value of any of the Property or any loss of the sale contemplated by this Agreement, to the extent due solely from (i) any test results, studies or evaluations made by Buyer (or any of Buyer's Consultants) being unfavorable or (ii) Buyer's decision not to proceed with the purchase of the Property, and shall exclude consequential damages or business losses. The provisions of this **Section 8** shall survive any termination of this Agreement.

8.2 Evaluation Material. To assist Buyer with its due diligence, prior to the date hereof Seller has provided, and from and after the date hereof, Seller shall provide Buyer with reasonable access to non-proprietary, non-privileged reports, documents, books and records to the extent in Seller's or Mercury's possession or under its control which pertain to the Property (all of the foregoing documents being herein collectively called the "**Evaluation Material**").

8.3 Expiration of Due Diligence Period;. Prior to the execution of this Agreement, the Buyer was given a period of time to undertake its due diligence review of the Property (the

"**Due Diligence Period")**. The Due Diligence Period expired at 6:00 p.m. Eastern Time on March 27, 2007. Except for certain title matters which Seller already is obligated to cure or to address as expressly set forth in Article 7 above, Buyer has accepted all other aspects of the condition of the Property and shall no longer have the right to terminate the P&S Agreement on account thereof. The Due Diligence Period as defined in this Section 8.3 has terminated. Notwithstanding the foregoing, Buyer shall have the right to continue to have access to the Property for further review and inspection pursuant to **Section 8.1**, but Buyer shall not be entitled to terminate this Agreement based upon such further inspection, except as expressly provided in clause (d) of **Section 4.2**.

8.4 Due Diligence Acknowledgment. Buyer acknowledges that:

(a) Buyer has conducted all such Testing as Buyer considers necessary or appropriate;

(b) Buyer has had such access to copies of the Evaluation Materials as Buyer has deemed necessary or appropriate;

(c) Buyer has reviewed, examined, evaluated and verified all Evaluation Material and the results of the Testing to the extent it deems necessary or appropriate with the assistance of such experts as Buyer deemed appropriate;

(d) Buyer has determined to its satisfaction the assignability of any Evaluation Material to be assigned hereunder; and

(e) Buyer (i) is familiar with the physical condition of all of the Property, (ii) has completed its Testing with respect to the Property and the Evaluation Material to its satisfaction, and (iii) shall acquire the Property based exclusively upon its own investigations of the Property and the Evaluation Material and the representations and warranties of Seller herein, subject to the limitations set forth herein.

The foregoing acknowledgments notwithstanding, nothing in this **Section 8.4** shall limit Buyer's rights with respect to Surviving Obligations (as hereinafter defined) or Excluded Claims (as hereinafter defined).

8.5 Final Sale.

8.5.1 "**As Is**" Sale. Buyer acknowledges and agrees that, except for (a) the representations and warranties of Seller under **Section 6.2** (as limited by the provisions of **Section 6.3** of this Agreement), (b) any other representations, covenants or agreements of Seller which, under the express provisions of this Agreement survive the Closing and the consummation of the Transaction, (c) any representations, warranties, agreements or covenants of Seller or Mercury contained in the documents executed and delivered by Seller or Mercury at the Closing ((a), (b) and (c), collectively, the "**Surviving Obligations**"), and (d) Excluded Claims (as hereinafter defined): (i) the Property is being sold, and Buyer shall accept possession of the Property on the Closing Date, "as is, where is, with all faults," with no right of setoff or reduction in the Purchase Price (except as reflected on the Closing Statement or the Purchase Agreement); and (ii) except for the Surviving Obligations, neither Seller, nor Mercury, nor any

parent, subsidiary, partner, officer, director, shareholder, contractor, employee, agent or attorney of Seller, Mercury, or Broker or their respective counsel, consultants, advisors or agents, nor any other party related in any way to any of the foregoing (all of which parties are herein collectively called the "**Seller Parties**") have or shall be deemed to have made any verbal or written representations, warranties, promises or guarantees (whether express, implied, statutory or otherwise) to Buyer with respect to the Property, any matter set forth, contained or addressed in the Evaluation Material (including, but not limited to the accuracy and completeness thereof) or with respect to the results of the Testing.

8.5.2 No Seller Warranty or Representation. Buyer specifically acknowledges that, except for the representations and warranties included among the Surviving Obligations, Buyer is not relying on (and Seller and each of the Seller Parties does hereby disclaim and renounce) any representations or warranties of any kind or nature whatsoever, whether oral or written, express, implied, statutory or otherwise, from Seller or any Seller Parties, including, but not limited to, any representations and warranties as to: (a) the operation of the Property or the income potential thereof; (b) the physical condition of the Property or the condition or safety of the Property, including, but not limited to, the presence or absence, location or scope of any Hazardous Materials in, at, or under the Property; (c) the accuracy of any statements, calculations or conditions stated or set forth in Seller's books and records, concerning the Property or set forth in any of Seller's offering materials with respect to the Property or any of the Evaluation Material; or (d) the ability of Buyer to obtain any and all necessary governmental approvals or permits for Buyer's intended use and development of the Property; provided, however, the foregoing is not intended and shall not be construed as affecting or impairing any rights that Buyer may have with respect to Excluded Claims.

8.5.3 Survival. The provisions of this **Section 8.5** shall survive Closing.

8.6 Waiver.

8.6.1 General. Buyer, for Buyer and Buyer's successors and assigns, hereby waives and releases Seller and Seller Parties from any claims, demands, liabilities, penalties, fines, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, existing and future, contingent or otherwise (collectively "**Claims**") against Seller or Seller Parties for or attributable to, the following:

(a) any and all statements or opinions made prior to Closing, or information furnished, by Seller or Seller Parties to Buyer or its agents or representatives; and

(b) any structural or physical condition at the Property or title thereto, including, but not limited to, the presence of any asbestos or asbestos containing material on the Property, whether or not friable or encapsulated;

provided, however, that Buyer does not hereby waive or release (i) any Claim that arises or accrues as a result of the acts or omissions after the Closing of any of the Seller Parties; or (ii) any Claim for fraud, or (iii) any Third Party Claims for wrongful death or personal injury or property damage (other than damage to the Property itself), where the death or injury to the

person or property damage occurred on the Property during the period of Seller's ownership of the Property; or (iv) any Claim for breach or default of any of the Surviving Obligations (collectively, the "**Excluded Claims**"), which Excluded Claims shall survive Closing as provided by applicable law as limited by this Agreement. The foregoing waiver and release of claims shall not be deemed to be a waiver or release of possible claims against Mercury that may arise under the Lease. For purposes hereof, "**Third Party Claims**" shall mean Claims brought by a party other than any governmental authority, Buyer or any party affiliated with Buyer, or any party claiming by, under or through Buyer, including, but not limited to, any tenant or other occupant of the Property after Closing (other than Seller or Mercury).

8.6.2 Environmental. Buyer, for Buyer and Buyer's successors and assigns, hereby waives and releases Seller and Seller Parties from any and all Claims (including any action or proceeding, brought or threatened, or ordered by governmental authorities) incurred by Buyer or any third party or entity relating to any of the following (hereinafter collectively called the "**Hazardous Materials Matters**"): (i) presence, misuse, use, disposal, release or threatened release of any Hazardous Materials on or about the Property prior to Closing; (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to Hazardous Materials on or about the Property prior to Closing; (iii) any work performed in connection with or disturbance of Hazardous Materials on or about the Property prior to Closing; (iv) any violation of laws, orders, regulations, requirements or demands of governmental authorities which are based upon or in any way related to disturbance or existence of any Hazardous Materials on or about the Property prior to Closing; and (v) all claims or causes of actions based upon any Environmental Law in connection with Hazardous Materials or other contamination or environmental condition at, in or under the Property prior to Closing; provided, however, that this waiver and release shall not extend to any Excluded Claims.

8.6.3 Survival. The provisions of this **Section 8.6** shall survive Closing.

8.7 Confidentiality. The Evaluation Material, Testing and Reports (collectively the "**Confidential Information**") will be used by Buyer and Buyer's Consultants solely for the purpose of evaluating a possible purchase and financing of the Property and not in any way directly or indirectly detrimental to the Seller or its representatives and, unless and until Buyer has completed the acquisition of the Property from Seller pursuant to this Agreement, Buyer agrees that all Confidential Information will be kept confidential by the Buyer, except that Buyer may disclose the Confidential Information or portions thereof (a) to those of Buyer's Consultants who need to know such information for the purpose of evaluating Buyer's possible acquisition or financing of the Property, and (b) as any governmental agency may require in order to comply with applicable laws or a court order. Buyer shall take reasonable steps to inform persons or firms that receive Confidential Information of the obligation to keep such information confidential.

8.7.1 Use. The Confidential Information will be used solely for the purpose of evaluating the Property. The Confidential Information will be kept confidential by Buyer; provided, however, that Buyer may disclose the Confidential Information or portions thereof (i) to those Buyer Consultants and prospective lenders or partners of Buyer, together with their attorneys and consultants (collectively, "**Investors**") who need to know such information for the purpose of evaluating the Property (it being understood that prior to such disclosure those Buyer

Consultants will be informed of the confidential nature of the Confidential Information and shall use reasonable efforts to cause each of Buyer's Consultants to comply with the terms of this Agreement) and to governmental or regulatory officials or authorities who need to know such information for the purpose of evaluating Buyer's proposed redevelopment plans for the Property, (ii) as any governmental agency or stock exchange may require in order to comply with applicable laws or regulations (including securities laws applicable to Buyer), (iii) as may be required for Buyer to conduct any arbitration or litigation proceedings with Seller or (iv) as otherwise required by law or applicable legal process; provided, however, that nothing herein shall be deemed to authorize Buyer to disclose confidential information beyond the minimum extent required for the purposes described in clauses (i) through (iv) above. Information that is available publicly and obtained independently by Buyer from third parties other than Seller, or any officer, employee, agent, or representative of Seller, or from the Testing, shall not be deemed to constitute "confidential information" for purposes of this **Subsection 8.7.1**. Buyer will not, and will direct Buyer's Consultants not to, disclose to any person the Confidential Information without prior written consent of Seller, except as otherwise expressly provided herein. Buyer agrees to use diligent efforts to cause Buyer's Consultants to comply with the terms of this Agreement.

8.7.2 Accuracy and Completeness of Evaluation Material, Testing, and Reports. Except as may be provided to the contrary herein, Buyer understands and acknowledges that the Seller Parties have not made and shall not make any representations or warranties, express or implied, as to the accuracy or completeness of any Evaluation Material, Testing and Reports. Except as may be provided to the contrary herein, the Seller Parties shall have no liability to Buyer or any of Buyer's Consultants or any other persons resulting from the use of the Evaluation Material, Testing and Reports.

8.7.3 Legal Requirements. In the event that Buyer or any of Buyer's Consultants or Investors receives a request to disclose all or any part of the Confidential Information under the terms of a subpoena, order, civil investigative demand or similar process issued by a court of competent jurisdiction or by a governmental body or regulatory authority, Buyer or such Buyer's Consultant or Investor shall: (i) notify Seller promptly in writing of the existence, terms and circumstances surrounding such a request known to Buyer or Buyer's Consultant or Investor, as the case may be, (ii) use reasonable efforts to consult with Seller as to the advisability of taking legally available steps to resist or narrow such request, (iii) if disclosure of such information is required, furnish only that portion of the Confidential Information which Buyer or Buyer's Consultant or Investor is legally compelled to disclose, and (iv) use reasonable efforts to cooperate with any action by Seller to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information. Seller will reimburse Buyer or Buyer's Consultant or Investor, as the case may be, for Buyer's and Buyer's Consultant's or Investor's reasonable out-of-pocket expenses incurred in complying with clauses (ii-iv) above. No disclosure of Confidential Information pursuant to subpoena or other legal process or otherwise pursuant to any other law, regulation or rule shall constitute a breach of this Agreement, so long as Buyer or Buyer's Consultant or Investor, as the case may be, has reasonably complied with the requirements of this **Subsection 8.7.3**. In addition, the Confidential Information may be submitted as evidence in any legal proceeding between Seller and Buyer.

8.7.4 Disposition. The limited and sole purpose of the transmission of the Evaluation Material and all other Confidential Information is exclusively for the purpose of Buyer evaluating the Property. If the transaction contemplated under this Agreement is not consummated by Buyer, Buyer and Buyer's Consultants shall promptly return to Seller all hard copies of the Evaluation Material and other Confidential Information provided to Buyer by Seller. Notwithstanding the return of the Evaluation Material and other Confidential Information, Buyer and Buyer's Consultants shall continue to be bound by Buyer's confidentiality obligations hereunder if the transaction contemplated by this Agreement is not consummated by Buyer.

8.7.5 Survival. Without limiting the generality of **Section 12.3**, the confidentiality requirements of this Article 8 shall survive the termination of this Agreement for a period of five (5) years.

ARTICLE 9
COVENANTS

9.1 Approvals Not a Condition to Buyer's Performance. Buyer acknowledges and agrees that, except as expressly set forth in this Agreement, its obligation to perform under this Agreement is not contingent upon Buyer's ability to obtain any (a) governmental or quasi-governmental approval of changes or modifications in use or zoning, or (b) modification of any existing land use restriction, or (c) approval of any governmental or quasi governmental body to the Transaction.

9.2 Seller's Covenants.

9.2.1 Leases, Service Contracts. Without Buyer's prior written consent, which consent shall not be unreasonably withheld, neither Seller nor Mercury shall enter into, extend, renew, replace, modify or amend any service or other Property related contract with respect to the Property that would be binding on Buyer. Except for the Lease, Seller shall not enter into, extend, renew, replace, modify or amend any license, easement, lease or occupancy agreement of all or any part of to the Property without Buyer's prior written consent. Seller and Mercury agree to terminate any service or other Property related contracts that would be binding on Buyer as owner of the Property effective as of the Closing Date without cost to Buyer.

9.2.2 Operations. Between the date hereof and the Closing Date:

(a) Seller shall continue to operate the Property in a manner consistent with its current operations and continue to maintain the Improvements in substantially the condition they now are, reasonable wear and tear and damage by casualty and condemnation excepted; provided, however, that Seller shall not be required to make any capital improvements or replacements to the Property.

(b) Deliver to Buyer promptly (a) any notice (including without limitation any notice of default) sent or received with respect to any contracts which affect the Property (b) copies of any tax bills, notice or statement of value from any taxing authority (including without limitation notices or correspondence related to any tax proceedings undertaken by Seller or Mercury), notice from any

governmental authority regarding the Property or any portion thereof, including without limitation notices regarding condemnation or threats thereof, and (c) any notice sent or received with respect to any pending or threatened litigation affecting Seller, Mercury, or any portion of the Property.

(c) Neither Seller nor Mercury shall make or permit to be made any material alterations to or upon the Property.

(d) Neither Seller nor Mercury shall make any commitments or representations to any governmental authorities, any adjoining or surrounding property owners, civic association, any utility or other person or entity that would be binding upon Buyer or the Property.

9.2.3 No New Exceptions. From and after the date hereof, Seller shall not execute any deed, easement, restriction, covenant or other matter affecting title to the Property unless Buyer has received a copy thereof and has approved the same in writing. If Buyer fails to object in writing to any such proposed instrument within five (5) Business Days after receipt of the aforementioned notice, Buyer shall be deemed to have approved the proposed instrument. Buyer's consent shall not be unreasonably withheld, conditioned or delayed with respect to any such instrument that is proposed prior to the expiration of the Due Diligence Period. Buyer, in its sole and absolute discretion, shall be entitled to grant or withhold its consent with respect to any such instrument that is proposed between the expiration of the Due Diligence Period and the Closing.

9.2.4 Representations and Warranties. Seller shall notify Buyer promptly in writing if prior to the Closing Date, to the knowledge of the Designated Employees, any fact, transaction, event or occurrence would make any of the representations and warranties of Seller under this Agreement not true and correct in any material respect. Seller hereby agrees to indemnify Buyer and to hold Buyer harmless from all claims, demands, causes of action, loss, damage, liability, cost and expense (including without limitation reasonable attorneys fees) incurred by Buyer resulting from (a) torts that occurred on the Real Property during Seller's period of ownership thereof and not caused by Buyer or Buyer's agents, representatives contractors or employees; and (b) contracts or leases entered into by Seller or Mercury prior to the Closing pertaining to the Property. The provisions of the preceding sentence of this Section 9.2.4 shall survive the Closing.

9.2.5 Lease Negotiations. On behalf of Mercury, Seller agrees to cooperate with the reasonable requests of Buyer's lender with respect to changes to the Lease prior to Closing, provided that such requests (a) do not affect the financial or other business terms of the Lease and (b) do not increase Mercury's costs or liabilities under the Lease. Any such changes to the Lease requested by Buyer's Lender shall be subject to Seller's consent, which consent shall not be unreasonably withheld. Any changes which, in Seller's reasonable business judgment, would affect the financial or other business terms of the Lease or increase Mercury's costs or liabilities thereunder shall be subject to Seller's approval which may be granted or withheld in Seller's sole discretion.

9.3 Mutual Covenants.

9.3.1 Publicity. Seller and Buyer each hereby covenant that prior to Closing neither Seller nor Buyer shall issue any press release or public statement (a "**Press Release**") with respect to the transactions contemplated hereby without the prior consent of the other, such consent not to be unreasonably withheld or delayed, except to the extent required by law or, in the good faith judgment of the party subject to such requirements, to the extent required by the Securities Exchange Commission or any stock exchange on which the stock of Seller or Buyer or any affiliate thereof is traded. If either Seller or Buyer is required by law to issue a Press Release, such party shall, at least two (2) Business Days prior to the issuance of the same, deliver a copy of the proposed Press Release to the other party for its review. The provisions of this **Subsection 9.3.1** shall survive the Closing or earlier termination of this Agreement.

9.3.2 Broker. Seller and Buyer expressly acknowledge that Richard, Barry Joyce & Partners ("**Seller's Broker**") has acted as the exclusive broker with respect to the Transaction and with respect to this Agreement. Seller shall pay any brokerage commission due to Seller's Broker in accordance with the separate agreement between Seller and Seller's Broker if and when the Closing occurs, and not otherwise. Seller and Buyer each represents and warrants to the other that it has not dealt with any other broker in this transaction, and each agrees to hold harmless the other and indemnify the other from and against any and all damages, costs or expenses (including, but not limited to, reasonable attorneys' fees and disbursements) suffered by the indemnified party as a result of acts of the indemnifying party that would constitute a breach of its covenant or representation and warranty in this **Subsection**. The provisions of this **Subsection 9.3.2** shall survive the Closing or earlier termination of this Agreement.

ARTICLE 10
FAILURE OF PERFORMANCE

10.1 Seller's Remedies. If, on the Closing Date, (i) any Buyer's material representations or warranties are untrue in any material respect, or (ii) Buyer defaults in its obligation to purchase the Property in accordance with the terms of this Agreement or other material obligations (and Buyer's breach or default is not excused by any failure or default or inability to perform of Seller), and any such circumstance described in either **clauses (i)** or **(ii)** continues for five (5) Business Days after written notice from Seller to Buyer, which written notice shall detail such default, untruth or failure, as applicable, then, unless otherwise expressly provided in this Agreement, Seller may elect, as its sole remedy therefor, to (x) terminate this Agreement by written notice to Buyer, or (y) waive such default or condition and proceed to close the Transaction in accordance with the terms of this Agreement. If Seller so elects to terminate this Agreement, then Seller shall be immediately entitled to the Deposit, together with all interest accrued thereon, as liquidated damages, and thereafter neither party to this Agreement shall have any further rights or obligations hereunder, other than any arising under any provision herein which expressly provides that it survives the termination of this Agreement. Without limiting the generality of the foregoing, in such event Seller shall not have any right to commence or pursue any action or proceeding against Buyer for specific performance or damages in excess of the Deposit. The amount of liquidated damages set forth in this **Section 10.1** shall be for all loss, damage and expense suffered by Seller as a result of such

default, including, without limitation, the loss of its bargain, it being agreed that Seller's damages are difficult if not impossible to ascertain.

10.2 Buyer's Remedies. If, on the Closing Date (i) any of Seller's material representations or warranties are untrue in any material respect, or (ii) Seller defaults in its obligation to sell the Property in accordance with the terms of this Agreement or Seller or Mercury defaults in any other material obligation (and Seller's breach or default is not excused by any failure or default or inability to perform of Buyer), and any such circumstance described in either of **clauses (i)** or **(ii)** continues for five (5) Business Days after written notice from Buyer to Seller, which written notice shall detail such default, untruth or failure, as applicable, then, unless otherwise expressly provided in this Agreement, Buyer may elect, as its sole remedy, to (x) terminate this Agreement by written notice to Seller, promptly after which the Deposit shall be returned to Buyer, (y) waive such default or condition and proceed to close the Transaction in accordance with the terms of this Agreement, without any reduction of or credit against the Purchase Price, or (z) seek specific performance of this Agreement. In the event that this Agreement is terminated as provided in (x), after the Deposit is returned, neither party to this Agreement shall have any further rights or obligations hereunder, other than any arising under any provision herein which expressly provides that it survives the termination of this Agreement. Without limiting the generality of the foregoing, in such event Buyer shall not have any right to commence or pursue any action or proceedings against Seller for damages. Nothing herein shall prevent Buyer from bringing any claim for fraud.

ARTICLE 11
CONDEMNATION/CASUALTY

11.1 Condemnation.

11.1.1 Right to Terminate. If, prior to the Closing Date, all or any significant portion (as hereinafter defined) of the Property is taken by eminent domain (or is the subject of a pending or threatened taking which has not yet been consummated), Seller shall notify Buyer of such fact promptly after obtaining knowledge thereof, and Buyer shall have the right to terminate this Agreement by giving notice to Seller not later than ten (10) days after the giving of Seller's notice (and Closing will be delayed). For purposes hereof, a "significant portion" of the Property shall mean a portion (a) that has a value in excess of Five Hundred Thousand Dollars ($500,000), or (b) the loss of which will have a material adverse effect on the operation of the Property, access to or parking at the Property, or the Lease to Mercury. If Buyer elects to terminate this Agreement as aforesaid, the provisions of **Section 11.4** shall apply.

11.1.2 Assignment of Proceeds. If (i) Buyer does not elect to terminate this Agreement as aforesaid in the event all or any significant portion of the Property is taken, or if (ii) a portion of the Property having a value not in excess of Five Hundred Thousand Dollars ($500,000) and not causing a material adverse effect on access to or the operation of the Real Property or Buyer's proposed redevelopment thereof is taken by eminent domain or becomes subject to a pending taking, there shall be no abatement of the Purchase Price; provided, however, that, at the Closing, Seller shall pay to Buyer the amount of any award for or other proceeds on account of such taking which may have been paid to Seller prior to the Closing Date as a result of such taking, and Seller shall assign to Buyer at the Closing (without recourse to

Seller) the rights of Seller to all awards for the taking of the Property or such portion thereof and Buyer shall be entitled to receive and keep the same. Seller shall cooperate with Buyer, at no out-of-pocket expense to Seller, in the processing of the claim for such award. Seller shall not accept or make any settlement with respect to any award for any such taking without Buyer's prior written consent.

11.1.3 Termination of the Lease. Notwithstanding any terms of **Section 11.1** to the contrary, if any condemnation of the property would permit Mercury to terminate the Lease or materially reduce rental payments and Mercury fails to waive such rights in writing prior to Closing, Buyer shall have the right to terminate this Agreement by giving written notice of such election to Seller. Closing shall be reasonably delayed to permit the parties to ascertain the extent of damage to any portion of the Property.

11.2 Destruction or Damage.

11.2.1 Insured Casualty: Less than $500,000. In the event the Property is damaged or destroyed prior to the Closing Date and such damage or destruction (a) is caused by an insured casualty and (b) would cost less than Five Hundred Thousand Dollars ($500,000) to repair or restore, then this Agreement shall remain in full force and effect, and Buyer shall acquire the Property upon the terms and conditions set forth herein. In such event, Buyer shall receive a credit against the Purchase Price equal to the deductible amount applicable under Seller's casualty insurance policy (less all reasonable costs and expenses, including reasonable attorneys' fees and costs, payable to third parties and incurred by Seller prior to the Closing Date in connection with the negotiation and settlement of the casualty claim ("**Realization Costs**")), and Seller shall assign to Buyer all of Seller's right, title and interest in and to all proceeds of insurance on account of such damage or destruction; provided, if processing of the claim by Seller is necessary to maximize the recovery from the insurance carrier, Seller will process the claim and in all events cooperate with Buyer in the processing thereof at no out-of-pocket expense to Seller. Further, in such event Seller shall keep Buyer informed about and permit Buyer to participate in negotiation and settlement of the claim.

11.2.2 Insured Casualty: $500,000 or More. In the event the Property is damaged or destroyed prior to the Closing Date by insured casualty and the cost of repair or restoration would equal or exceed Five Hundred Thousand Dollars ($500,000), then, notwithstanding anything to the contrary set forth above in this section, Buyer shall have the right, at its election, either (i) to terminate this Agreement or (ii) proceed to close the Transaction in accordance with the terms of this Agreement. Buyer shall have fifteen (15) days after Seller notifies Buyer that a casualty has occurred to make such election by delivery to Seller of a written election notice (the "**Election Notice**"). The failure by Buyer to deliver the Election Notice within such fifteen (15) day period shall be deemed an election not to terminate this Agreement. In the event Buyer does not elect to terminate this Agreement as set forth above, this Agreement shall remain in full force and effect and at the Closing Seller shall assign to Buyer all of Seller's right, title and interest in and to all proceeds of insurance on account of such damage or destruction, and Buyer shall receive a credit against the Purchase Price equal to the deductible amount under Seller's casualty insurance policy.

11.2.3 Uninsured Casualty. In the event the Property is damaged or destroyed prior to the Closing Date and such damage or destruction (a) is caused by an uninsured casualty and (b) would cost less than Five Hundred Thousand Dollars ($500,000) to repair or restore, then this Agreement shall remain in full force and effect and Buyer shall acquire the Property upon the terms and conditions set forth herein. In such event, Buyer shall receive a credit against the Purchase Price equal to the amount required to repair such damage or destruction. In the event the Property is damaged or destroyed prior to the Closing Date by uninsured casualty and the cost of repair or restoration would equal or exceed Five Hundred Thousand Dollars ($500.000), then, notwithstanding anything to the contrary set forth above in this section, Buyer shall have the right, at its election, either (i) to terminate this Agreement or (ii) proceed to close the Transaction in accordance with the terms of this Agreement. Buyer shall have thirty (30) days after Seller's notice to Buyer of the casualty to make such election by delivery to Seller of a written election notice (the "**Notice of Election**"). The failure by Buyer to deliver the Notice of Election Notice within such thirty (30) day period shall be deemed an election not to terminate this Agreement. In the event Buyer does not elect to terminate this Agreement as set forth above, this Agreement shall remain in full force and effect and at the Closing Buyer shall receive a credit against the Purchase Price equal to the amount required to repair such damage or destruction but in no event shall such credit exceed Three Million Dollars ($3,000,000).

11.2.4 Termination of Lease. Notwithstanding any terms of **Section 11.2** to the contrary, if any damage or destruction of the Property or any portion thereof would permit Mercury to terminate the Lease or materially reduce rental payments, and Mercury fails to waive such rights in writing prior to Closing, Buyer shall have the right to terminate this Agreement by giving written notice of such election to Seller. Closing shall be reasonably delayed to permit the parties to ascertain the extent of damage to any portion of the Property.

11.3 Insurance. Seller shall maintain the property insurance coverage currently in effect for the Property through the Closing Date, which is described in **Exhibit 10** attached hereto. Seller shall not be obligated to assign to Buyer any insurance policies in connection with the Property at the Closing.

11.4 Effect of Termination. If this Agreement is terminated pursuant to **Section 11.1** or **Section 11.2**, the Buyer's Title Company shall promptly return the entire Deposit to Buyer. Upon such return, this Agreement shall terminate and neither party to this Agreement shall have any further rights or obligations hereunder other than any arising under any provision herein which expressly provides that it shall survive the termination of this Agreement.

11.5 Waiver. The provisions of this **Article 11** supersede the provisions of any applicable statutory or decisional law with respect to the subject matter of this **Article 11**.

ARTICLE 12
MISCELLANEOUS

12.1 Buyer's Assignment. Buyer shall not assign this Agreement or its rights hereunder to any individual or entity without the prior written consent of Seller, which consent shall not be unreasonably withheld, conditioned or delayed, and any such assignment undertaken without such consent shall be null and void. No assignment, whether consented to by Seller or

not, shall relieve the original Buyer of its obligations under this Agreement and after any such permitted assignment, the original Buyer and the permitted assignee shall remain jointly liable hereunder.

12.2 Designation Agreement. Section 6045(e) of the United States Internal Revenue Code and the regulations promulgated thereunder (collectively, the "**Reporting Requirements**") require an information return to be made to the United States Internal Revenue Service, and a statement to be furnished to Seller, in connection with the Transaction. Buyer's Title Company is either (i) the person responsible for closing the transaction (as described in the Reporting Requirements) or (ii) the disbursing title or escrow company that is most significant in terms of gross proceeds disbursed in connection with the transaction (as described in the Reporting Requirements). Accordingly:

(a) Buyer's Title Company is hereby designated as the "**Reporting Person**" (as defined in the Reporting Requirements) for the transaction. Buyer's Title Company shall perform all duties that are required by the Reporting Requirements to be performed by the Reporting Person for the transaction.

(b) Seller and Buyer shall furnish to Buyer's Title Company, in a timely manner, any information requested by Buyer's Title Company and necessary for Buyer's Title Company to perform its duties as Reporting Person for the transaction.

(c) Buyer's Title Company hereby requests Seller to furnish to Buyer's Title Company Seller's correct taxpayer identification number. Seller acknowledges that any failure by Seller to provide Buyer's Title Company with Seller's correct taxpayer identification number may subject Seller to civil or criminal penalties imposed by law. Accordingly, Seller hereby certifies to Buyer's Title Company, under penalties of perjury, that Seller's correct taxpayer identification numbers are: (i) 199 Riverneck, LLC—Taxpayer ID # 04-3772599; (ii) Riverneck Road, LLC—Taxpayer ID # 04-3392458; and (iii) 191 Riverneck, LLC—Taxpayer ID # 04-3511604.

(d) Each of the parties hereto shall retain this Agreement for a period of four (4) years following the calendar year during which Closing occurs.

12.3 Survival; Merger. None of the terms of this Agreement shall survive the Closing, except for the provisions of this Agreement which expressly state that they are to survive the Closing. The delivery of the Deeds and any other documents and instruments by Seller and the acceptance thereof by Buyer shall effect a merger, and be deemed the full performance and discharge of every obligation on the part of Buyer and Seller to be performed hereunder, except for the obligations on the part of Buyer and Seller under the provisions of this Agreement which expressly state that they are to survive the Closing.

12.4 Integration; Waiver. This Agreement, together with the Exhibits hereto, embodies and constitutes the entire understanding between the parties with respect to the transactions contemplated herein, and all prior agreements (including, without limitation, any

letters of intent), understandings, representations and statements, oral or written, are merged into this Agreement. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument signed by the party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument. No waiver by either party hereto of any failure or refusal by the other party to comply with its obligations hereunder shall be deemed a waiver of any other or subsequent failure or refusal to so comply.

12.5 Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the Commonwealth of Massachusetts, without regard to conflict of laws principles.

12.6 Captions Not Binding; Exhibits. The captions in this Agreement are inserted for reference only and in no way define, describe or limit the scope or intent of this Agreement or of any of the provisions hereof. All Exhibits and Schedules attached hereto are incorporated by reference as if set out herein in full.

12.7 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, subject to Section 12.1.

12.8 Severability. If any term or provision of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

12.9 Notices. All notices given under this Agreement shall be in writing and shall be addressed to parties at the addresses indicated below:

Notice to Buyer shall be addressed to:

BTI 199-201 Riverneck, L.P.
c/o Prudential Real Estate Investors
8 Campus Circle Drive, 4th Floor
Parsippany, New Jersey 07054-4493
Attention: Joseph Bonner
Telephone: (973) 683-1613
Facsimile: (973) 734-1411
E-mail: joseph.bonner@prudential.com

and with a copy to:

Prudential Real Estate Investors
8 Campus Circle Drive, 4th Floor
Parsippany, New Jersey 07054-4493

Attention: Joan Hayden, Esq.
Telephone: (973) 683-1772
Facsimile: (973) 683-1788
E-mail: joan.hayden@prudential.com

Sonnenschein Nath & Rosenthal LLP
7800 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606-6404
Attention: Robert F. Messerly, Esq.
Telephone: (312) 876-8117
Facsimile: (312) 876-7934
E-mail: rmesserly@sonnenschein.com

Notices to Seller shall be addressed to:

199 Riverneck, LLC
Riverneck Road, LLC
191 Riverneck, LLC
c/o Mercury Computer Systems, Inc.
199 Riverneck Road
Chelmsford, MA 01824
Attention: General Counsel
Telephone: (978) 256-1300
Facsimile: (978) 256-7379
E-mail: cbarrows@mc.com

and with a copy to:

Goodwin Procter LLP
Exchange Place
Boston, MA 02109
Attention: Martin R. Healy, Esq.
Telephone: 617-570-1371
Facsimile: 617-523-1231
E-mail: mhealy@goodwinprocter.com

Any notice may be mailed, delivered by hand or messenger (including overnight courier) or transmitted by facsimile or e-mail and shall be deemed to have been delivered if and when received at the office of the addressee, except that any notice sent by facsimile and received on a day other than a Business Day shall be deemed received on the next Business Day. Any party may, by giving written notice to the other party, change the addresses to which notices shall be given to such party. A notice delivered on behalf of a party by its counsel shall be an effective notice of such party hereunder. A certified or registered mail receipt or receipt from a generally recognized commercial delivery service evidencing receipt by the addressee or refusal at the

address of the addressee stated above or as changed pursuant to this section shall be deemed conclusive evidence of receipt.

12.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which counterparts taken together shall constitute one and the same agreement.

12.11 No Recordation. Seller and Buyer each agrees that neither this Agreement nor any memorandum or notice hereof shall be recorded.

12.12 Attorneys' Fees. If any action is brought by either party against the other party under this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action. For purposes of this Agreement, the term "attorneys' fees" or "attorneys' fees, costs and expenses" shall mean the fees and expenses of counsel to the parties hereto, which may include printing, photostating, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals and other persons not admitted to the bar but performing services under the supervision of an attorney, and the costs and fees incurred in connection with the enforcement or collection of any judgment obtained in any such proceeding. The provisions of this paragraph shall survive the entry of any judgment, and shall not merge, or be deemed to have merged, into any judgment.

12.13 Time of Essence. Time is of the essence with respect to this Agreement.

12.14 Facsimile Signatures. Signatures to this Agreement transmitted by telecopy or by e-mail transmittal of pdf files or similar electronic means shall be valid and effective to bind the party so signing. Each party agrees to promptly deliver an execution original to this Agreement with its actual signature to the other party, but a failure to do so shall not affect the enforceability of this Agreement, it being expressly agreed that each party to this Agreement shall be bound by its own telecopied or e-mailed signature and shall accept the telecopied or e-mailed signature of the other party to this Agreement.

12.15 Joint and Several Liability. The obligations of the Seller under this Agreement and with all respects to the Transaction shall be joint and several.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be duly executed on its behalf on the day and year first above written.

SELLER:

199 RIVERNECK, LLC

By: /s/ James R. Bertelli
Name: James R. Bertelli
Title: Authorized Signatory

RIVERNECK ROAD, LLC

By: /s/ James R. Bertelli
Name: James R. Bertelli
Title: Authorized Signatory

191 RIVERNECK, LLC

By: /s/ James R. Bertelli
Name: James R. Bertelli
Title: Authorized Signatory

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be duly executed on its behalf on the day and year first above written.

BUYER:

BTI 199-201 RIVERNECK, L.P., a
Delaware limited partnership

By: 199-201 Riverneck LLC, a Delaware limited liability company, its general partner

By: /s/ Gregory Killeen
Name: Gregory Killen
Title: Vice President

By: /s/ Valerie Thompson
Name: Valerie Thompson
Title: Vice President

JOINDER

The undersigned hereby joins in this Agreement solely for the purpose of guarantying the Surviving Obligations of the Seller Parties, provided that (a) the Closing occurs and (b) the Seller Parties expressly have liability to Buyer under this Agreement after the Closing. From and after the Closing, the obligations of the undersigned and Seller under this Agreement shall be joint and several. Notwithstanding the foregoing, to the extent that Seller's liability is limited pursuant to **Section 6.3.4** or any other provision of this Agreement or the Closing Documents, the same limitations shall be applicable to the aggregate liability of Seller and the undersigned pursuant to this Joinder.

In witness whereof, the undersigned has executed this Joinder as of April 12, 2007.

MERCURY COMPUTER SYSTEMS, INC., a Massachusetts corporation

By: /s/ James R. Bertelli
Name: James R. Bertelli
Title: President

INDEX OF DEFINITIONS

“Agreement”	-	as defined on first page
“Assignment of Personal Property”	-	as defined in Subsection 3.2(k).
“Anti-Money Laundering and Anti-Terrorism Law “	-	as defined in Subsection 6.1(f)
“Balance of the Purchase Price”	-	as defined in Subsection 2.1.2.
“Books and Records”	-	as defined in Subsection 1.1.4.
“Buildings”	-	as defined in Subsection 1.1.2.
“Business Days”	-	Any day other than a Saturday, a Sunday, or a weekday on which banks in the Commonwealth of Massachusetts are not open for business.
“Buyer”	-	as defined in first page
“Buyer Consultant”	-	as defined in Section 8.1.
“Buyer’s Title Company”	-	as defined in Subsection 2.1.1.
“CERCLA”	-	as defined in Subsection 8.1.1.
“Claims”	-	as defined in Subsection 8.6.1.
“Closing”	-	as defined in Section 3.1.
“Closing Adjustments”	-	as defined in Subsection 2.1.2.
“Closing Date”	-	as defined in Section 3.1.
“Closing Statement”	-	as defined in Section 5.4.
“Confidential Information”	-	as defined in Section 8.7.
“Deed”	-	as defined in Subsection 3.2(a).
“Deposit”	-	as defined in Subsection 2.1.1.
“Designated Employees”	-	as defined in Subsection 6.3.2.

“Due Diligence Period”	-	as defined in Section 8.3.
“Election Notice”	-	as defined in Subsection 11.2.2.
“Environmental Laws”	-	as defined in Subsection 8.1.1.
“Environmental Testing”	-	as defined in Subsection 8.1.1.
“ERISA Plans”	-	as defined in Subsection 6.2.2(r).
“Escrow Agreement”	-	as defined in Subsection 2.1.1.
“Evaluation Material”	-	as defined in Section 8.2.
“Excluded Claims”	-	as defined in Subsection 8.6.1.
“Excluded Property”	-	as defined in Subsection 1.1.2.
“Expiration Date”	-	as defined in Subsection 6.3.3.
“Executive Order”	-	as defined in Subsection 6.1(f).
“Government List”	-	as defined in Subsection 6.1(k)
“Hazardous Materials”	-	as defined in Subsection 8.1.1.
“Hazardous Materials Matters”	-	as defined in Subsection 8.6.2.
“Improvements”	-	as defined in Subsection 1.1.2.
“Investors”	-	as defined in Subsection 8.7.1.
“Involuntary Title Objection”	-	as defined Subsection 7.2.5.
“Land”	-	as defined in Subsection 1.1.1.
“Laws”	-	as defined in Subsection 7.1(a).
“Lease”	-	as defined in Subsection 3.2(b).
“Liability”	-	as defined in Subsection 8.1.4.
“Mercury”	-	as defined in Subsection 3.2(b).
“Monetary Encumbrance”	-	as defined in Subsection 7.2.1(i)
“Notice of Election”	-	as defined in Subsection 11.2.3.
“Notice of Lease”	-	as defined in Subsection 3.2(c).

“OFAC”	-	as defined in Subsection 6.1.(f).
“Permit Rights”	-	as defined in Subsection 1.1.3.
“Permitted Exceptions”	-	as defined in Section 7.1.
“Personal Property”	-	as defined in Section 1.1.4.
“Plans”	-	as defined in Subsection 1.1.4.
“Press Release”	-	as defined in Subsection 9.3.1.
“Property”	-	as defined in Section 1.1.4.
“Purchase Price”	-	as defined in Subsection 2.1.
“Prudential”	-	as defined in Subsection 6.2.2(r).
“RCRA”	-	as defined in Subsection 8.1.1.
“Realization Costs”	-	as defined in Subsection 11.2.1.
“Real Property”	-	as defined in Subsection 1.1.2.
“Reporting Person”	-	as defined in Subsection 12.2(a).
“Reporting Requirements”	-	as defined in Section 12.2.
“Reports”	-	as defined in Subsection 8.1.
“SARA”	-	as defined in Subsection 8.1.1.
“Seller”	-	as defined in first page
“Seller Parties”	-	as defined in Subsection 8.5.1.
“Seller’s Broker”	-	as defined in Subsection 9.3.2.
“Seller’s Knowledge”	-	as defined in Subsection 6.3.2.
“Survey”	-	as defined in Section 5.2.
“Surviving Obligations”	-	as defined in Subsection 8.5.1.
“Testing”	-	as defined in Section 8.1.
“Third Party Claims”	-	as defined in Section 8.6.1.
“Title Commitment	-	as defined in Section 7.1.

“Transaction”	-	as defined in Section 3.1.
“Warranties”	-	as defined in Subsection 1.1.4.
“Wiring Instructions”	-	as defined in Section 5.4

Exhibit 10.2

LEASE

by and between

BTI 199-201 RIVERNECK, L.P.,

a Delaware limited partnership

as Landlord

and

MERCURY COMPUTER SYSTEMS INC.,

as Tenant

With respect to property

located at 199 and 201 Riverneck Road,

Chelmsford, Massachusetts

April 20, 2007

TABLE OF CONTENTS

LEASE

Article I REFERENCE DATA

1.1 Subjects Referred To.

Each reference in this Lease to any of the following subjects shall be construed to incorporate the following data.

DATE:	April 20, 2007
LANDLORD:	BTI 199-201 RIVERNECK, L.P., a Delaware limited liability company
TENANT:	Mercury Computer Systems Inc., a Massachusetts corporation
LAND:	Those certain parcels of land in Chelmsford, Middlesex County, Massachusetts, as more particularly described in **Exhibit A** attached hereto and made a part hereof, commonly known as and numbered 199 and 201 Riverneck Road, together with any rights appurtenant thereto.
BUILDINGS:	The existing buildings together with all fixtures and building systems located on or in the buildings not owned by Tenant located on the Land.
PREMISES:	The Land, the Buildings and the other improvements now or hereafter located thereon.
RENTABLE AREA OF BUILDINGS:	Agreed to be 185,327 square feet
COMMENCEMENT DATE:	April 20, 2007
TERM:	Commencing on the Commencement Date and expiring at the close of the day on April 30, 2017, as it may be extended as provided herein
BASE RENT:	Annual Base Rent for the Premises shall be $1,945,933.50 per annum, $162,161.13 per month ($10.50 per square foot of Rentable Area) for Lease Years one through five and $2,140,526.85 per annum, $178,377.24 per month ($11.55 per square foot of Rentable Area) for Lease Years six through ten.

DEPOSIT	Three Million Dollars ($3,000,000.00) in the form of a letter of credit as provided in **Article 12**
LEASE YEAR:	Means each period of one year during the Term commencing on the Commencement Date or on any anniversary thereof, or, if the Commencement Date does not fall on the first day of a calendar month, the first Lease Year shall consist of the partial calendar month following the Commencement Date and the succeeding twelve full calendar months, and each succeeding Lease Year shall consist of a one-year period commencing on the first day of the calendar month following the calendar month in which the Commencement Date fell (provided, however, that the last Lease Year of the Lease Term hereof shall end on the date on which the Lease Term ends)
PERMITTED USES	See **Section 4.1.**

1.2 Exhibits. The exhibits listed below are attached hereto and incorporated in this Lease by reference and are to be construed as a part of this Lease:

Exhibit A:	**Legal Description**
Exhibit B:	**Repair Items**
Exhibit C:	**Tenant's Insurance Certificates**
Exhibit D:	**Landlord's Insurance Certificates**
Exhibit E:	**Form of Subordination, Nondisturbance and Attornment Agreement**
Exhibit F:	**Form of Notice of Lease**

Article II PREMISES AND TERM

2.1 Premises and Term. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, subject to and with the benefit of the terms, covenants, conditions and provisions of this Lease, the Premises hereunder for the Term, unless sooner terminated as provided herein.

2.2 Acceptance of Premises. Tenant and Landlord acknowledge: that Landlord has acquired the fee interest in the Premises from two (2) wholly-owned subsidiaries of Tenant as of the date hereof; that prior to the date hereof, Tenant was and that Tenant currently remains in

possession of the Premises; that Tenant and Landlord have examined the Premises and are familiar with the physical condition of the Premises; that Tenant is leasing the same in "as is" condition; that the Premises were in satisfactory condition on the Commencement Date with the exception of the items (the "Repair Items") listed on **Exhibit B** attached hereto and made a part hereof; that Tenant shall complete the Repair Items in a commercially reasonable manner at its sole cost and expense within the time period specified in Exhibit B; that no promise has been made by Landlord or by Tenant to alter, remodel or improve the Premises and no representation respecting the condition of the Premises has been made by Landlord or by Tenant. Notwithstanding the foregoing, nothing herein is intended to limit Tenant's obligation to comply with all Legal Requirements applicable to Tenant's use, operation, or occupancy of the Premises as specified in Section 4.4.1 below. Without in any way limiting the generality of the foregoing, in entering into this Lease and leasing the Premises, Tenant and Landlord hereby acknowledge that the parties have not made, do not hereby make and will not hereafter make any representations or warranties or guarantees, whether express or implied, with respect to the Premises or the physical condition thereof as of the Commencement Date, including, without limitation:

(a) the quality, nature, adequacy and physical condition of the Premises; or

(b) the quality, nature, adequacy and physical condition of soils, geology and groundwater; or

(c) the existence, quality, nature, adequacy and physical condition of utilities servicing the Premises; or

(d) the development potential of the Premises, and the Premises' use, habitability, merchantability, fitness, suitability, value or adequacy for any particular purpose; or

(e) the zoning or other legal status of the Premises or any other public or private restrictions on the use of the Premises; or

(f) the compliance of the Premises or its operation with any applicable codes and laws or with the restrictions of any governmental or quasi governmental entity or of any other person or entity; or

(g) the presence of Hazardous Materials (as hereinafter defined) on, under, in or about the Premises or the adjoining or neighboring property or the existence of any underground tanks, containers or conduits in, on or about the Premises. For the purposes of this Lease, "**Hazardous Materials**" shall mean and include those substances defined in 42 U.S.C. Sec. 9601(14) or any related or applicable federal, state or local statute, law, regulation, or ordinance, pollutants of contaminants (as defined in 42 U.S.C. Sec. 9601(33), petroleum (including crude oil or any fraction thereof), any form of natural or synthetic gas, sludge (as defined in 42 U.S.C. Sec. 6903(26A), radioactive substances, hazardous waste (as

defined in 42 U.S.C. Sec. 6903(27)) and any other hazardous wastes, hazardous substances, contaminants or pollutants as defined or described in any of the Environmental Laws. As used in this Lease, "**Environmental Laws**" means all federal, state and local environmental laws, and any rule or regulation promulgated thereunder and any order, standard, interim regulation, moratorium, policy or guideline of or pertaining to any federal, state or local government, department or agency, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("**CERCLA**"), the Superfund Amendments and Reauthorization Act of 1986 ("**SARA**"), the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, the Federal Insecticide, Fungicide and Rodenticide Act, the Marine Protection, Research, and Sanctuaries Act, the National Environmental Policy Act, the Noise Control Act, the Safe Drinking Water Act, the Resource Conservation and Recovery Act ("**RCRA**"), as amended, the Hazardous Material Transportation Act, the Refuse Act, the Uranium Mill Tailings Radiation Control Act and the Atomic Energy Act and regulations of the Nuclear Regulatory Agency, and all state and local counterparts or related statutes, laws, regulations, and order and treaties of the United States; or

(h) the condition of title of the Premises; or

(i) access rights to and from the Premises; or

(j) the economics of the operation of the Premises; or

(k) the quality of any labor and materials used in any improvements on the Premises.

2.3 Options to Extend.

(a) Provided that, at the time of each such exercise, (i) this Lease is in full force and effect, and (ii) no Event of Default shall have occurred and be continuing (either at the time of exercise or at the commencement of an Extended Term) (any of which conditions described in clauses (i) and (ii) may be waived by Landlord at any time), Tenant shall have the right and option to extend the Term of this Lease for two (2) extended terms (each, an "**Extended Term**") of five (5) years each by giving written notice (the "Extension Notice") to Landlord not later than fifteen (15) months prior to the expiration date of the initial Term or the first Extended Term, as applicable. The effective giving of an Extension Notice shall automatically extend the Term of this Lease for the applicable Extended Term (provided no Event of Default shall have occurred and be continuing either on the date of the Extension Notice or at the commencement of an Extended Term), and no instrument of renewal or extension need be executed. Upon determination of Fair Market Rental Value (as hereinafter defined), Landlord and Tenant shall enter into an agreement setting forth the Extended Term, new Termination Date, new Base Rent rate and any such other terms agreed to by Landlord and Tenant. In the event that Tenant fails timely to give an Extension Notice to Landlord, this Lease shall automatically terminate at the end of the Term, and Tenant shall have no further option to extend the Term of this Lease. Each

Extended Term shall commence on the day immediately succeeding the expiration date of the Term or first Extended Term, as the case may be, and shall end on the day immediately preceding the fifth (5th) anniversary of the first day of such Extended Term. The Extended Terms shall be on all the terms and conditions of this Lease, and all references in this Lease to the Term shall be deemed to include each Extended Term, except: (i) during the second Extended Term, Tenant shall have no further option to extend the Term, and (ii) the Base Rent for each Extended Term shall be equal to the Fair Market Rental Value of the Premises as of the commencement of such Extended Term, taking into account all relevant factors, determined pursuant to paragraph (b) below.

(b) Within thirty (30) days after receiving an Extension Notice extending the Term of this Lease pursuant to paragraph (a) above, Landlord shall provide written notice to Tenant (the "Rent Notice") setting forth Landlord's good faith estimate of the Fair Market Rental Value of the Premises for the upcoming Extended Term based upon rents being paid by tenants entering into leases for space similar in size, build-out and condition, amenities, build-out allowance (or lack thereof), and term in the Interstate 495-north suburban area (Acton, Andover, Boxborough, Carlisle, Chelmsford, Dracut, Lawrence, Littleton, Lowell, Methuen, North Andover, Tewksbury, Tyngsborough, and Westford) (the "I-495 North Market Area"). If Tenant disputes Landlord's estimate of the Fair Market Rental Value as set forth in the Rent Notice, and the parties are unable to reach agreement thereon within thirty (30) days after the delivery of the Rent Notice to Tenant (the "Negotiation Period"), then Tenant may elect to rescind its election to extend the Term by written notice (the "Rescission Notice") within ten (10) Business Days after the expiration of the Negotiation Period (the "Rescission Period"). In the event Tenant fails to provide Landlord with a Rescission Notice, the Fair Market Rental Value of the Premises shall be determined by arbitration as specified below. Within fifteen (15) Business Days after the expiration of the Rescission Period, both parties shall (i) appoint its own arbitrator by notifying the other party of its arbitrator, and (ii) Landlord and Tenant shall each simultaneously submit to the other in a sealed envelope its good faith estimate of the Fair Market Rental Value. If the higher of such estimates is not more than one hundred five percent (105%) of the lower of such estimates, then the Fair Market Rental Value shall be the average of the two estimates. If either party shall fail to identify an arbitrator or submit its sealed estimate within such fifteen (15) Business Day period after the expiration of the Rescission Period, and such failure shall continue for an additional ten (10) Business Days after written notice from the other party, the Fair Market Rental Value of the Premises shall be determined by the arbitrator appointed by the non-defaulting party. If both arbitrators shall have been so appointed, the two arbitrators thus appointed shall, within fifteen (15) Business Days after the date both arbitrators have been selected, appoint a third arbitrator. If the two initial arbitrators are unable timely to agree on the third arbitrator, then either party or its arbitrator may, on behalf of both parties, request such appointment by the Boston office of The American Arbitration Association, or its successor, or, on its failure, refusal or inability to act, by a court of competent jurisdiction. Within fifteen (15) days after the appointment of the third arbitrator, the three arbitrators shall determine the Fair Market Rental Value of the Premises and give notice thereof to the parties hereto, and the arbitrators' determination shall be binding upon the parties; provided, however, that in determining the Fair Market Rental Value, the arbitrators shall be required to select either Landlord's determination of Fair Market Rental Value or Tenant's determination of Fair Market

Rental Value, and in no event shall the arbitrators have the right (i) to average the final determination of Fair Market Rental Value of Landlord and Tenant, or (ii) to choose another number. All arbitrators shall be appraisers or other qualified real estate professionals who are independent from the parties who have had at least ten (10) years commercial real estate experience in the I-495 North Market Area. Each party shall pay the fees of its own arbitrator, and the fees of the third arbitrator shall be shared equally by the parties.

(c) Landlord shall have no obligation to make any improvements, decorations or alterations to the Premises, other than Landlord's existing obligations under this Lease, and Tenant shall accept the Premises in their then current "as-is" condition as of the commencement of each Extended Term.

(d) Any termination, cancellation or surrender of this Lease shall terminate the extension options with respect to the portion of the Premises for which this Lease is terminated, canceled or surrendered.

(e) Time shall be of the essence with respect to the exercise by Tenant of its rights under the extension options granted in this **Section 2.3**.

Article III RENT; CERTAIN OPERATING COSTS; REPAIR AND MAINTENANCE

3.1 Base Rent; Additional Rent. Base Rent at the rates set forth in **Section 1.1** shall be payable in advance on the first day of each calendar month during the Term to Landlord without setoff or deduction (except as otherwise expressly provided herein) at the address set forth herein for notices or such other address as Landlord may thereafter specify by notice to Tenant. Base Rent for any partial month at the beginning or end of the Term shall be pro rated. Base Rent payable for any partial month at the beginning of the Term shall be paid on the Commencement Date. All amounts payable by Tenant to Landlord under this Lease other than Base Rent shall constitute "**Additional Rent**" and shall be paid without setoff or deduction (except as otherwise expressly provided herein). "**Rent**" shall mean Base Rent and Additional Rent. It is the intention of the parties that, to the full extent permitted by law, Tenant's covenant to pay Rent shall be independent of all other covenants contained in this Lease.

3.2 Late Payments.

3.2.1 Interest. If Tenant fails to make any payment of Rent within five (5) Business Days following the date due more than once in any twelve (12) month period, then at Landlord's option, in addition to all other rights and remedies of Landlord, Tenant shall pay upon demand to Landlord as Additional Rent interest thereon at an annual rate equal to the so-called "Prime Rate" in effect at Bank of America (or its successor) from time to time plus two percent (2%) (the "**Default Rate**").

3.2.2 Late Charge. In addition to any interest due on overdue Rent pursuant to **Subsection 3.2.1**, if any payment of Base Rent or regularly scheduled payment of Additional Rent is not paid within five (5) Business Days after the date due more than once in any twelve (12) month period, such late payment shall be subject to a charge equal to two percent (2%) of such late payment.

3.3 Real Estate Taxes.

3.3.1 Tax Year and Taxes. "**Tax Year**" shall mean a twelve-month period commencing on July 1 and falling wholly or partially within the Term, and "**Taxes**" shall mean all ad valorem real estate taxes, assessments (special or otherwise), levies, fees and all other government levies, exactions and charges of every kind and nature, general and special, ordinary and extraordinary, foreseen and unforeseen, which are, at any time prior to or during the Term, imposed or levied upon or assessed against the Premises as it may be constituted from time to time or any portion thereof, including any penalties and interest charged as a result of Tenant's failure to pay Taxes on a timely basis, but the amount of special taxes or special assessments included in Taxes shall be limited to the amount of the installment (plus any interest, other than penalty interest, payable thereon) of such special tax or special assessment required to be paid during the year in respect of which such Taxes are being determined (Landlord hereby agreeing to elect to pay any such assessments over the maximum period of time allowed by law). There shall be excluded from Taxes all income, estate, succession, exercise, inheritance and transfer taxes of Landlord; provided, however, that if at any time during the Term the present system of ad valorem taxation of real property shall be changed so that a capital levy, franchise, income, profits, sales, rental, use and occupancy, or other tax or charge shall (a) in whole or in part be substituted for such ad valorem tax or (b) be imposed solely on or with respect to real property or the income generated thereby, and, in either case, be levied against, or be payable by, Landlord with respect to the Premises or any portion thereof, such tax or charge shall be included in the term "**Taxes**" for the purposes of this Article. Tenant shall pay directly to the authority charged with collection thereof all Taxes prior to the date such Taxes would become delinquent. Landlord agrees to endeavor to deliver copies of all tax bills to Tenant as soon as possible upon receipt, and shall deliver such copies to Tenant within ten (10) days of Landlord's receipt of such tax bills.

3.3.2 Failure to Pay. In the event Tenant fails to pay Taxes on a timely basis more than once during the Term of this Lease, and except to the extent that any such failure to timely pay Taxes arises due to Landlord's failure to timely forward any tax bills to Tenant, or if Tenant fails to make any payment of overdue Taxes within ten (10) days after having received written notice from Landlord that such Taxes are overdue, Landlord may thereafter elect, in its sole discretion, to collect from Tenant on a monthly basis any amounts due for Taxes and pay such amounts. Upon notice from Landlord thereof, and on the first day of each month of the Term thereafter, Tenant covenants and agrees to deposit with Landlord's managing agent (or such other party as Landlord may hereafter designate in writing from time to time) ("**Escrow Agent**") at the same place it pays Rent a sum equal to one-twelfth of the total Taxes for the last ascertainable year (which amount so deposited shall change as the amount of Taxes for the last ascertainable year changes) on the Premises unless said taxes are based upon assessments which exclude the improvements or any part thereof, in which event the amount of such deposits shall be based upon Landlord's reasonable estimate as to the amount of Taxes to be levied and assessed. Such deposits are to be held by Escrow Agent without any allowance of interest and are to be used for the payment of Taxes on the Premises which accrue during the Term when

they become due. If the funds so deposited are insufficient to pay any such Taxes for any year (including all or a portion of the last Lease Year of the Term) when the same shall become due and payable, Tenant shall, within ten (10) days after receipt of demand therefor from Landlord, deposit with Escrow Agent such additional funds as may be necessary to pay such Taxes in full. Without limitation of any other obligations of Tenant which survive the end of the Term, the obligation of Tenant to pay Taxes as stated aforesaid shall survive the expiration of the Term. If the funds so deposited exceed the amount required to pay such Taxes for any year, the excess shall be applied toward a subsequent deposit or deposits due from Tenant or at the end of the Term refunded to Tenant after payment of all Taxes which accrued during the Term have been paid.

3.3.3 Evidence of Payment. In the event Tenant is not required to make deposits with Managing Agent in accordance with **Subsection 3.3.2** hereinabove, Tenant shall provide Landlord evidence that such Taxes have been paid on or before thirty (30) days after the same are due and payable.

3.3.4 Abatement. If Tenant shall deem itself aggrieved by any such tax or charge and shall elect to contest the payment thereof, Tenant, at its sole cost and expense, shall be entitled to seek an abatement from time to time of such Taxes and Landlord shall, upon Tenant's written request, reasonably cooperate with Tenant in connection therewith, provided that Tenant shall reimburse Landlord for its out of pocket costs therefor. If Tenant files an abatement application, Tenant shall (i) promptly provide a copy thereof to Landlord, (ii) diligently pursue such application, (iii) keep Landlord informed of the status thereof in writing, (iv) with respect to claims relating to a Tax Year which falls entirely or partially within the last three (3) Lease Years of the Term, not settle any such claim thereof without the prior, written approval of Landlord (which may be withheld in Landlord's sole but reasonable discretion, provided that Landlord shall not withhold consent if the settlement does not establish the amount of Taxes for any period of time subsequent to the expiration of the Term of the Lease), and (v) not dismiss such claim (other than in connection with a settlement which must first be approved by Landlord where required under the preceding clause) without first giving Landlord at least thirty (30) days' prior written notice and opportunity to assume the prosecution of such claim. Landlord shall have the right at its own cost and expense to file an application for abatement of Taxes only if either (a) at least thirty (30) days prior to the last day for filing an application for abatement of real estate or personal property taxes for any year, Landlord shall give Tenant notice that it desires to file an application for abatement and at least ten (10) days prior to the last day for filing such application Tenant has not given Landlord notice that it shall file such application, or (b) the abatement relates to a Tax Year that falls entirely or partially within or after the one (1) year period immediately preceding the expiration of the Term of the Lease and Tenant has not furnished a timely and effective Extension Notice. Both Landlord and Tenant shall reasonably cooperate with the moving party in prosecuting any abatement. Any Taxes that are refunded, reimbursed or abated for any Tax Year shall belong to Tenant, provided that in no event shall Tenant be entitled to receive more than the payments made by Tenant on account of Taxes for such Tax Year. If Landlord receives any refund, reimbursement or abatement of Taxes or sum in lieu thereof with respect to any Tax Year, then Landlord shall pay all such funds to Tenant after deducting from the balance thereof Landlord's reasonable out-of-pocket fees for

consultants and attorneys and all other reasonable out-of-pocket costs incurred by Landlord in obtaining such refund, reimbursement or abatement.

3.4 Landlord's Operating Costs. "**Landlord's Operating Costs**" shall mean the costs and expenses incurred by Landlord in accordance with sound management practice in connection with the management, maintenance, repair, replacement and operation of the Premises, including, without limitation, amounts paid or incurred for:

(1) Maintaining, repairing and or replacing the roof and structural elements of the Buildings and otherwise performing obligations under **Subsections 3.8.1 or 3.8.2**;

(2) Premiums for insurance required or permitted to be carried by Landlord hereunder (including, without limitation, all-risk commercial property, rental value, and liability insurance), and permitted deductible amounts thereunder, but subject to the limitations specified in **Subsection 3.6.2**;

(3) a management fee to a property manager ("**Manager**") not in excess of three percent (3%) of gross income from the Premises, it being agreed that management may be provided by Landlord, or an affiliate thereof; provided, however, that any fees paid to Landlord or its affiliate who is engaged as the Manager do not exceed commercially reasonable amounts charged for management of comparable facilities; and

(4) payments under service contracts for any of the foregoing.

If Landlord installs a new or replacement capital item (i) in order to comply with a legal requirement or interpretation thereof first arising after the date of this Lease, or (ii) for the purposes of reducing Landlord's Operating Costs, or (iii) in compliance with Landlord's obligations under Section 3.8, the cost thereof as reasonably amortized by Landlord over the useful life of the item (provided that the cost of any replacement of the Trane unit on the roof of building #199 within the first five (5) Lease Years shall be amortized over the balance of the remaining portion of the Term) together with interest at the rate of interest actually charged to Landlord for borrowing funds to finance such item, (or the prevailing market interest rate Landlord reasonably determines would have been charged if Landlord does not finance such item) on the unamortized amount, shall be included in Landlord's Operating Costs, except that the amortized amount of any capital expense for the purpose of reducing Landlord's Operating Costs shall be limited by the amount of actual savings achieved each year. If Landlord leases any items of capital equipment which is intended to reduce expenses which would otherwise be included in Landlord's Operating Costs, or is for the purpose of complying with a legal requirement or interpretation thereof first arising after the date of this Lease, then the rentals and other costs paid pursuant to such leasing shall be included in Landlord's Operating Costs for the year in which they were incurred, except that the rentals and other costs incurred for the purpose of reducing Landlord's Operating Costs shall be limited by the amount of actual savings achieved each year.

Landlord's Operating Costs shall exclude the following:

(1) Taxes;

(2) the interest and amortization on mortgages for the Buildings and the Landlord or leasehold interests therein;

(3) ground rent; depreciation on the Buildings or equipment or systems therein;

(4) costs in connection with leasing, releasing, or subleasing space at the Buildings (including but not limited to legal fees and brokerage commissions);

(5) costs incurred in connection with the sale, financing or refinancing of the Buildings and/or the Land;

(6) the cost of repairs or other work to the extent Landlord has the right to be reimbursed by insurance or condemnation proceeds or by any other third party or any tenant (including Tenant);

(7) costs incurred in enforcing leases against other tenants;

(8) the cost of special services rendered to tenants (including Tenant) for which a special charge is made.

(9) Salaries or benefits for Landlord's executives and employees above the level of building manager;

(10) Capital expenditures except as expressly provided above;

(11) Advertising and promotional expenditures;

(12) Bad debt loss, rent loss, or reserves of any kind;

(13) Costs of fines or penalties incurred by Landlord due to violations of or non-compliance with any applicable legal requirements, unless such violation or non-compliance was caused by Tenant;

(14) Costs incurred in the removal, abatement or other treatment of underground storage tanks or Hazardous Materials present in the Buildings or on the Premises;

(15) Costs associated with the operation of the business of the entity which constitutes Landlord as the same are distinguished from the costs of operation of the Buildings, including, without limitation, accounting and legal expenses, costs of selling, syndicating, financing, mortgaging or hypothecating Landlord's interest in the Buildings, costs of any disputes between Landlord and its employees, or building managers;

(16) Landlord's general overhead and administrative expenses; and

(17) Expenses for any item or service which Tenant pays in full directly to a third party or separately pays in full to Landlord.

3.5 Payment of Landlord's Operating Costs. Tenant shall pay to Landlord, as Additional Rent, all of Landlord's Operating Costs attributable to the Term of this Lease, as set forth herein. With respect to each calendar year or fraction thereof during the Term, Tenant shall pay, as Additional Rent, on the first day of each month of such calendar year and each ensuing calendar year thereafter, estimated monthly payments (hereafter, "**Estimated Monthly Expense Payments**") of Landlord's Operating Costs for which Tenant will be liable, equal to 1/12th of Landlord's estimate of Landlord's Operating Costs for the respective calendar year. The Estimated Monthly Expense Payment during the first calendar year of the Lease Term shall be equal to $4,578.70, with the first Estimated Monthly Expense Payment due on the Commencement Date. Within one hundred twenty (120) days after the end of each calendar year ending during the Term and after Lease termination, Landlord shall render a statement ("**Landlord's Statement**") in reasonable detail in accordance with generally accepted accounting practices and in form reasonably acceptable to Tenant, showing for the preceding calendar year or fraction thereof, as the case may be, Landlord's Operating Costs. The calculation of Landlord's Operating Costs reflected in the Landlord's Statement shall be binding upon Landlord. Tenant shall pay an appropriate additional payment (or credit by Landlord against Tenant's future payments of Landlord's Operating Costs or, if at expiration of the Term, promptly refunded to Tenant) reconciling the Estimated Monthly Expense Payments collected during the preceding calendar year with the actual outlay of Landlord's Operating Costs within thirty (30) days after Landlord's Statement is delivered to Tenant. Landlord may reasonably adjust the Estimated Monthly Expense Payments from time to time and at any time during a calendar year, and Tenant shall pay, as Additional Rent, on the first day of each month following receipt of Landlord's written notice thereof (provided it receives at least thirty (30) days' advance notice), the adjusted Estimated Monthly Expense Payment.

Landlord agrees to make its books and records relating to Landlord's Operating Costs available for examination during normal business hours upon reasonable notice by Tenant and its representatives; provided that any such examination shall be at Tenant's sole cost and expense and shall be conducted with respect to any particular fiscal year pursuant to a notice sent by Tenant not later than sixty (60) days following delivery of Landlord's Statement with respect to such fiscal year; provided further, that if the examination discloses an overcharge to Tenant, Landlord shall promptly rebate the same to Tenant, and, if the overcharge exceeds five percent (5%), with interest at the Default Rate. If Tenant fails to notify Landlord of its desire to conduct such an examination within such sixty (60) day period or after such notice, fails to commence an audit within an additional period of sixty (60) days, then the calculation of Landlord's Operating Costs reflected in the Landlord's Statement shall be final and conclusive for all purposes and Tenant shall be deemed to have waived any rights under this Lease, at law or in equity, to contest the same. Tenant agrees to use commercially reasonable efforts to complete any audit within ninety (90) days after having commenced the audit, and in any event will complete the same within one hundred twenty (120) days after commencement provided that Tenant shall have been given reasonable access to Landlord's books and records during such time period. Also, if the examination discloses a discrepancy which the parties agree (or a court of competent jurisdiction determines) involves an

overcharge to Tenant of more than five (5%) percent, Landlord shall pay the reasonable expenses incurred by Tenant for such audit. Tenant's audit shall be conducted by a Certified Public Accountant whose compensation is not contingent upon the results of Tenant's audit or the amount of any refund received by Tenant, and who is not affiliated with Tenant, except to the extent that such accountant has been engaged by Tenant to conduct Tenant's audit or is an employee of Tenant. A complete copy of any report delivered to Tenant by the auditor concerning the results of Tenant's audit shall be delivered to Landlord within thirty (30) days after Tenant's receipt of such report.

3.6 Insurance.

3.6.1 Tenant's Insurance. Tenant shall maintain in full force from the Commencement Date and thereafter throughout the Term the following types of insurance:

(a) Commercial general liability insurance under which Tenant is the named insured and Landlord and any Mortgagee (as defined in **Section 8.1** below) (provided that Landlord has identified such Mortgagee by notice to Tenant) are named as additional insureds with respect to their vicarious liability for covered claims arising from Tenant's use or occupancy of the Premises, and under which the insurer provides a contractual liability endorsement, and such coverage shall be written on an occurrence basis, with a minimum combined single limit of liability (alone or in combination with excess or umbrella liability coverage) of not less than Five Million Dollars ($5,000,000.00);

(b) Commercial property insurance, including sprinkler leakages, vandalism, and malicious mischief and plate glass damage covering all the items specified as Tenant's property and all other property of every description including stock-in-trade, furniture, fittings, installations, alterations and additions, partitions and fixtures or anything in the nature of a leasehold improvement made or installed by or on behalf of the Tenant (but only to the extent said alterations, additions, partitions, fixtures or leasehold improvements are required to be removed by Tenant at the expiration or sooner termination of this Lease in accordance with the provisions herein) in an amount of not less than one hundred percent (100%) of the full replacement cost thereof as shall from time to time be determined by Tenant in form satisfactory to Landlord in its reasonable discretion;

(c) Worker's compensation and occupational disease insurance with statutory limits, provided that Tenant may self-insure for such purposes to the extent permitted by Legal Requirements; and

(d) Loss of use insurance which shall insure the Landlord against loss of use of the Premises due to fire or other hazards, however caused; and

(e) any other form or forms of insurance as Landlord may reasonably require from time to time (other than insurance that Landlord is required to maintain) in amounts and for insurable risks (on commercially reasonable terms)

against which a prudent tenant would protect itself to the extent landlords of comparable buildings in the I-495 North Market Area require their tenants to carry such other form(s) of insurance.

In addition, during the performance of any construction by Tenant on the Premises, in addition to the above coverage required to be maintained by Tenant, Tenant shall cause the general contractor performing the work under any contract costing in excess of One Hundred Thousand Dollars ($100,000.00) to carry: (a) Workers' compensation and occupational disease insurance in statutory amounts; (b) employer's liability insurance with a limit of not less than One Million Dollars ($1,000,000.00); (c) commercial general liability insurance, including personal injury and property damage, on an occurrence basis in the amount of a combined single limit of not less than One Million Dollars ($1,000,000.00) for each occurrence; and (d) all risk installation floater insurance (on the complete value/full coverage form) to protect Landlord's interest and that of Tenant, contractors and subcontractors during the course of the construction, with limits of not less than the total replacement cost of the completed improvements under construction. Such contractor insurance policies shall be endorsed to include Landlord and any Mortgagee (provided that Landlord has identified such Mortgagee by notice to Tenant) as additional insureds.

Each policy of insurance required under this **Subsection 3.6.1** shall be issued by companies acceptable to Landlord in the Landlord's reasonable discretion and licensed to do business in the Commonwealth of Massachusetts, and shall be noncancellable with respect to Landlord and any Mortgagee (provided that Landlord has identified such Mortgagee by notice to Tenant), without thirty (30) days' prior notice to Landlord and such Mortgagee. Tenant shall, following Landlord's written request therefor, deliver to Landlord and any Mortgagee (provided that Landlord has identified such Mortgagee by notice to Tenant) certificate(s) of insurance evidencing the coverage required hereunder. Landlord acknowledges and agrees that the insurance coverages reflected in the Tenant's Certificates of Insurance attached hereto as **Exhibit C** are in compliance with the requirements of this Lease as of the Commencement Date. Notwithstanding anything to the contrary hereinabove contained, Tenant may, at its option, include any of the insurance coverage hereinabove set forth in general or blanket policies of insurance, and the coverage afforded may be effected by any combination of basic, excess or umbrella coverage; provided that as to property insurance, any blanket policy shall include an agreed amount clause or its equivalent. Any insurance policy which Tenant is required to maintain under this Lease may have a maximum deductible of no more than $100,000.00. Tenant will be responsible to bear the deductible portion of any claims or losses.

3.6.2 Landlord's Insurance. Landlord shall purchase, as part of Landlord's Operating Costs, and keep in force during the Term, the following insurance with insurance companies licensed or authorized to do business in the State of Massachusetts:

(a) An insurance policy or policies of Special Form (all risk) coverage, covering loss or damage to 100% of the replacement cost of the Buildings (which

is agreed to be $34,099,248 as of the Commencement Date), not including any of Tenant's property or the contents of the Buildings for which Landlord has no responsibility, with a deductible not in excess of $100,000 and with no penalty for unintentional underinsuring (no co-insurance or margin clause), which policy shall include an agreed upon value endorsement and coverages for contingent liability from the operation of building laws, demolition costs and increased costs of construction;

(b) Commercial General Liability Insurance pertaining to the Premises, and bodily injuries, death and property damage arising or occurring therein on an occurrence form including premises, operations, products/completed operations, hazards and contractual coverage with limits of no less than $5,000,000 per occurrence, $10,000,000 General Aggregate and $10,000,000 Completed Operations Aggregate and with a deductible not in excess of $100,000;

(c) Boiler and machinery insurance and equipment breakdown insurance covering the Building systems;

(d) Such other insurance in such amounts and with such policy provisions as may be reasonably required by Landlord's institutional lender from time to time; and

(e) Such other insurance in such amount, and with such policy provisions as may be reasonably required of a prudent owner of the Premises.

Notwithstanding anything to the contrary in this Lease, including without limitation **Section 3.4**, **Subsection 3.6.1** or this **Subsection 3.6.2**, Landlord acknowledges and agrees that (i) Tenant shall not be required to carry environmental pollution liability insurance, nor shall Tenant be required to pay the premiums of such insurance coverage as part of Landlord's Operating Costs if such coverage is maintained by Landlord, (ii) Tenant shall not be required to carry (or pay the premiums as part of Landlord's Operating Costs for) loss of "rental value" insurance for any amount in excess of the aggregate sum of Base Rent and Additional Rent due under the Lease for a period of twelve (12) months, and (iii) Tenant shall not be required to maintain any other property insurance coverage against any risk that is adequately covered by insurance that is maintained by Landlord at Tenant's expense as part of Landlord's Operating Costs.

As of the Commencement Date, all insurance coverages being carried by Landlord pursuant to the requirements of this **Subsection 3.6.2** are evidenced by the Certificates of Insurance attached hereto as **Exhibit D**. With respect to any insurance policy the premium of which is being paid for by Tenant as part of Landlord's Operating Costs, upon Tenant's written request Landlord shall deliver a Certificate of Insurance to Tenant.

For purposes of Tenant's payment of Additional Rent, to the extent Landlord pays insurance premiums less frequently than monthly, the cost of the same shall be calculated separately from the other Landlord's Operating Costs, and Tenant shall have the option to either (i) pay the portion of Landlord's Operating Costs attributable to such insurance premiums as part of the Estimated Monthly Expense Payments in accordance with **Section 3.5** or (ii) pay the portion of Landlord's Operating Costs attributable to such insurance premiums on the later of five (5) Business Days after receipt of an invoice from Landlord or fifteen (15) Business Days prior to the date Landlord is obligated to pay the same to the insurance company as specified in a notice from Landlord to Tenant.

3.6.3 Waiver of Subrogation. All insurance which is carried by either party with respect to the Premises, whether or not required, shall include provisions which deny to the insurer acquisition by subrogation of rights of recovery against the other party to the extent such rights have been waived by the insured party prior to the occurrence of loss or injury, insofar as, and to the extent that such provisions may be effective without making it impossible to obtain insurance coverage from responsible companies qualified to do business in the Commonwealth of Massachusetts (but if extra premium results therefrom, the other party shall reimburse the insuring party therefor, on demand). Each party shall be entitled to have certificates of any policies containing such provisions. Each party hereby waives all rights of recovery against the other for loss or injury against which the waiving party is protected by insurance containing said provisions, reserving, however, any rights with respect to any excess of loss or injury over the amount recovered by such insurance.

3.7 Utilities and Other Services. Tenant shall pay or cause to be paid directly to the proper authorities charged with the collection thereof all charges for any utilities or services separately metered to Tenant used or consumed on the Premises. Tenant shall install separate meters to measure Tenant's use and consumption of any utility (including electricity) furnished to each Building but which is not separately metered to such Building by the applicable utility as of the Commencement Date, at Tenant's sole cost and expense. At Landlord's request, Tenant shall provide evidence of payment of utility services. Landlord shall have the right to pay such utility costs if Tenant fails to pay such charges and Landlord shall have the right to recover from Tenant as Additional Rent any amounts paid therefor.

3.8 Repair and Maintenance.

3.8.1 Tenant Repairs and Maintenance. Subject to Landlord's obligations in **Subsection 3.8.2** below, Tenant shall throughout the Term, in compliance with all laws, keep and maintain the Premises, including, without limitation, (i) the building systems, including HVAC, back-up generators and roof-top units, elevators, boilers, the plumbing, sprinkler, electrical and mechanical lines and equipment associated therewith, each to the extent located within or attached to the Buildings; (ii) utility and trunk lines, tanks and transformers, each to the extent located within, attached to, or on the roof of the Buildings; (iii) improvements to the Land outside of the Buildings, including detention basins, ditches, shrubbery, landscaping and fencing; (iv) the parking areas and the access drive; (v) HVAC systems, trash compactors, and the two emergency generators and the associated oil fuel tank, and all connecting piping, electrical conduits, controls, and other related equipment located outside of the Buildings; (vi) the

underground conduits connecting the Buildings and containing telephone, communications and control wiring, security and other computer wiring; and (viii) the existing mechanical screen support frame and metal screen panels on the Building at 199 Riverneck Road, in at least as good order, condition and repair as they are in on the Commencement Date or as improved during the Term, excepting only (x) reasonable wear and tear, (y) damage by fire or other casualty or taking by condemnation or eminent domain, and (z) damage caused by Landlord or its agents, contractors or employees. Tenant shall contract for regular maintenance of the HVAC with a professional service provider reasonably acceptable to Landlord and shall keep records of the performance of all scheduled maintenance of the HVAC systems and shall provide copies thereof to Landlord from time to time upon request by Landlord. Landlord agrees to make available to Tenant the benefit of any warranties and guaranties in favor of Landlord of any part of the Premises that Tenant is responsible to repair. In the event that a capital replacement of any portion of any of the Building Systems is reasonably necessary as determined by Landlord and Tenant, notwithstanding anything to the contrary anywhere in this Lease, including without limitation the foregoing provisions of this **Subsection 3.8.1** or **Subsection 3.8.2**, Landlord and not Tenant shall cause such replacement to be performed, and the amortized costs incurred by Landlord with respect to such capital replacement shall constitute a Landlord's Operating Cost and shall be reimbursed by Tenant in accordance with the provisions of **Sections 3.4 and 3.5** above. Landlord shall have the right upon reasonable prior notice to review any repair and maintenance reports maintained by Tenant concerning any repair, replacement and maintenance activities performed at the Premises by Tenant. Tenant agrees to furnish to Landlord repair and maintenance reports, in reasonable detail, indicating the material items of repair, replacement (other than Landlord capital replacements) and maintenance performed at the Premises on a semi-annual basis (on or before August 15 with respect to activities performed during the preceding period from January 1 through June 30 and on or before February 15 with respect to activities performed during the preceding period from July 1- December 31).

3.8.2 Landlord Repairs and Maintenance. Subject to Tenant's obligations set forth in **Subsection 3.8.1** above, Landlord shall maintain, repair and replace, as necessary, and keep in at least as good order, condition and repair as they are in on the Commencement Date or as improved during the Term, the bearing walls, roof, exterior walls, exterior glass, support beams and columns, foundation, window frames and floor slabs of the Buildings (collectively, the "**Structure**") as well as any portion of the following systems, to the extent located outside of the Buildings but on the Premises: plumbing, sprinkler, electrical and mechanical lines and equipment associated therewith and utility and trunk lines, provided that Landlord shall not be obligated to maintain or repair any tanks, transformers, HVAC units, back-up generators or roof-top building systems units and any equipment installed by Tenant for the purpose of supporting Tenant's light manufacturing operations, as opposed to the functioning of the Buildings for other Permitted Uses. Landlord shall in no event be responsible to Tenant for the repair of any condition on the Premises caused by any act or neglect of Tenant.

3.8.3 Tenant's Right to Self-Help. If Tenant shall have given written notice to Landlord, and any ground lessor or mortgagee of whose identity Tenant shall have been given notice, of Landlord's obligation to perform maintenance, repairs or replacements for which Landlord is responsible under this Lease, and Landlord shall have failed to commence

performance of the same within thirty (30) days following Tenant's notice as aforesaid, or such shorter period as may be necessary in case of emergency, Tenant may (but shall not be obligated to) perform such maintenance, repairs or replacements, and Landlord shall reimburse the Tenant for the reasonable cost thereof no later than thirty (30) days after receipt of Tenant's invoice therefor (if not paid by Landlord within said thirty days, together with interest at the Default Rate, from the expiration of such thirty (30) day period until paid). If Landlord has timely commenced the performance of such maintenance, repairs, or replacements but fails to continue diligently to complete the same, except to the extent caused by External Causes (as defined herein), Tenant shall have the aforesaid right to self-help if Landlord does not cure its failure within such time. As used in this Lease, "**External Causes**" means any of the following: Acts of God, war, civil commotion, fire, flood or other casualty, strikes or other extraordinary labor difficulties, shortages of labor or materials or equipment in the ordinary course of trade, government order or regulations or other cause not reasonably within the control of the party in question, and not due to the fault or neglect of such party, excluding, however, inability to pay obligations as they become due.

Article IV TENANT'S ADDITIONAL COVENANTS

4.1 Permitted Use. Tenant agrees to use the Premises only for general office use, for light manufacturing and assembly, product storage and distribution as an accessory use in connection with general office use, and light manufacturing and assembly, and all other lawful uses accessory to the foregoing primary uses, including without limitation a cafeteria serving Tenant's employees, guests and invitees (the "**Permitted Uses**"). Tenant shall have the right to use the Premises for storage trailers and movable containers (provided that such trailers and containers (i) do not impermissibly encroach, either entirely or partially, on land that is adjacent to the Premises, (ii) are not visible from the main entrance of either of the Buildings and (iii) are not located in such a manner as to cause the number of parking spaces at the Premises to fall below the minimum number of parking spaces that are required to be provided at the Premises in order to comply with any applicable Legal Requirements) and to install other equipment and perform improvements on and to the Premises from time to time in compliance with all applicable laws and the terms and conditions of this Lease. Tenant shall not use or occupy the Premises for any other purpose without the prior written consent of the Landlord, which shall not be unreasonably withheld or delayed.

4.2 Prohibited Uses. Tenant shall not use the Premises or allow the Premises to be used (a) for any illegal or immoral purpose; (b) so as to create waste, or constitute a private or public nuisance; (c) in violation of any restrictions of record as of the date hereof; (d) in violation of any Legal Requirements; (e) for offices of any agency or bureau of the United States or any State or political subdivision thereof, provided that Tenant shall be permitted to allow governmental officials to use desk space at the Premises from time to time in Tenant's usual course of business; (f) for offices or agencies of any foreign government or political subdivision thereof; (g) for offices of any health care professionals; (h) for school facilities which are not ancillary to corporate, executive or professional office use; (i) for retail or restaurant uses other than a cafeteria serving Tenant's employees, guests and invitees; and (j) for radio and/or television stations. Tenant shall not place any loads upon the floors, walls, or ceiling which

endanger the structure, or place any harmful fluids or other materials in the drainage system of the Buildings, or overload existing electrical or other mechanical systems. No waste materials or refuse shall be dumped upon or permitted to remain outside of the Premises except in trash containers placed inside exterior enclosures designated by Landlord for that purpose.

4.3 Hazardous Materials.

4.3.1 Hazardous Materials. Tenant agrees not to generate, store or use any Hazardous Materials on or about the Premises, except those used by Tenant in connection with the Permitted Uses and janitorial services, in both cases limited to such Hazardous Materials in such amounts as are customarily used in connection with the Permitted Uses and for janitorial service provided to the Permitted Uses, in all cases in compliance with any and all applicable Environmental Laws (also as hereinafter defined); provided, however, that no Hazardous Materials shall be used in connection with light manufacturing that are not also customarily used in connection with the Permitted Uses other than light manufacturing. Tenant agrees not to dispose of Hazardous Materials (a) on the Premises or (b) from the Premises to any other location except a properly approved disposal facility and then only in compliance with any and all Environmental Laws regulating such activity, nor permit any occupant of the Premises to do so. In accordance with **Section 4.5** below, Tenant shall indemnify, defend, and hold harmless Landlord, and the holder of any mortgage on the Premises or any larger parcel of land of which the Premises may be a part, from and against any claim, cost, expense, liability, obligation or damage, including, without limitation, attorney's fees and the cost of litigation, arising from or relating to the use of Hazardous Materials or breach by Tenant or anyone claiming by, through or under Tenant of the provisions of this **Subsection 4.3.1**, and shall immediately discharge or cause to be discharged any lien imposed upon the Premises or any larger parcel of land of which the Premises may be a part in connection with any such claim. The provisions of this **Subsection 4.3.1** shall survive the expiration or earlier termination of this Lease.

4.3.2 Tenant's Obligation to Remediate. In compliance with applicable Environmental Laws, Tenant shall investigate, assess, monitor and remediate, at Tenant's sole cost and expense, any release of Hazardous Materials requiring Response Action (as defined in 310 CMR 40.0000) under any Environmental Law, which arises out of Tenant's use, operation, or occupancy of the Premises during the Term (a "**Tenant's Release**"). Tenant shall make available to Landlord copies of drafts of any submittals to governmental authorities in connection with any remediation of a Tenant's Release for Landlord's approval at least ten (10) Business Days prior to such submittal. Tenant shall be solely responsible for and sign any manifests or other documents as the waste generator for any Hazardous Materials it disposes of or sends off site or otherwise arising from a Tenant's Release. The remediation of any Tenant's Release shall be carried out in accordance with the applicable provisions of the Massachusetts Contingency Plan (310 CMR 40.0000) and any other Environmental Laws governing such remediation activity. This indemnity shall survive the Term and shall be subject to the provisions of **Section 4.5**.

4.3.3 Landlord's Indemnity. Landlord shall indemnify, defend upon demand with counsel reasonably acceptable to Tenant, and hold Tenant harmless from and against, any

liabilities, losses, claims, damages, interest, penalties, fines, attorneys' fees, experts' fees, court costs, remediation costs, and other expenses which result from any the use, storage, handling, treatment, transportation, release or disposal of Hazardous Materials in, on or about the Premises by Landlord Responsible Parties, as well as any violation of the Environmental Laws by Landlord Responsible Parties.

4.4 Compliance with Legal and Insurance Requirements.

4.4.1 Compliance with Legal Requirements. Tenant, at Tenant's cost and expense, agrees to comply with all Legal Requirements applicable to Tenant's use, operation, or occupancy of the Premises or any Alterations made by or on behalf of Tenant, and to provide Landlord with a copy of any notice alleging violation of any such Legal Requirement given to Tenant by any governmental authority or third party; except that Tenant may defer compliance so long as the validity of any such Legal Requirement shall be contested by Tenant in good faith and by appropriate legal proceedings, if such contest would not subject Landlord to any possible civil or criminal penalties and such contest would not place Landlord in default under any Mortgage applicable to the Premises, and if Tenant first gives Landlord appropriate assurance in Landlord's reasonable judgment against any damage, loss, cost or expense on account thereof. If any present or future Legal Requirement requires any licenses or permits for Tenant's particular use, operation, and occupancy of the Premises, including without limitation any required licenses or permits for the storage of inflammables and/or the presence of storage trailers and/or movable containers at the Premises, Tenant will obtain and maintain such licenses and permits at Tenant's own expense, and, upon Landlord's request, will promptly provide copies to Landlord of all such licenses and permits. If any Legal Requirement requires any Alterations to the Premises for Tenant's particular use or operation of the Premises that would not generally be required for the Permitted Uses, Tenant shall make all such Alterations at its sole cost and expense and in compliance with the terms hereof. If any Legal Requirement requires any Alterations to the Premises that would generally be required for the Permitted Uses, such Alterations shall be the responsibility of Landlord to perform (with the costs thereof being included as Landlord's Operating Costs and passed through to the Tenant to the extent provided for in **Section 3.4**). Notwithstanding anything to the contrary anywhere in this Lease, and except for any Repair Items, Tenant shall not be obligated to undertake any Alterations, or to pay the amortized portion of the costs thereof as part of Landlord's Operating Costs to the extent provided for in **Section 3.4**, that are required or alleged to be required due to the violation of a Legal Requirement in effect and applicable to the Premises prior to or as of the Commencement Date in the absence of an order or citation requiring said Alterations issued by a governmental official or judicial body having jurisdiction to require such Alterations; provided that Tenant may defer compliance with said order or citation so long as the validity of any such order or citation shall be contested by Tenant in good faith and by appropriate legal proceedings, if such contest would not subject Landlord to any possible civil or criminal penalties and such contest would not place Landlord in default under any Mortgage applicable to the Premises, and if Tenant first gives Landlord appropriate assurance in Landlord's reasonable judgment against any damage, loss, cost or expense on account thereof.

4.4.2 Insurance Requirements. Tenant shall not do anything, or permit anything to be done, in or about the Premises that would: (i) invalidate any fire or other insurance policies covering the Buildings or any property located therein, (ii) result in a refusal by fire insurance companies of good standing to insure the Buildings or any such property in amounts reasonably satisfactory to Landlord (which amounts shall be comparable to the amounts required by comparable landlords of comparable buildings, or (iii) result in the cancellation of any policy of insurance maintained by or for the benefit of Landlord. Tenant, at Tenant's expense, shall comply with all rules, orders, regulations or requirements of the American Insurance Association (formerly the National Board of Fire Underwriters) and with any similar body that shall hereafter perform the function of such Association.

4.5 Indemnity.

4.5.1 Tenant. To the maximum extent this agreement may be made effective according to law, and except as otherwise expressly provided in this Lease, Tenant agrees to indemnify and save harmless Landlord, Landlord Responsible Parties (as hereinafter defined) and any Mortgagee providing financing with respect to any portion of the Premises from and against all costs, expenses, liabilities, claims, loss, or damage of whatever nature to the extent:

(i) arising from the use, occupancy, operation, maintenance or management of the Premises by Tenant or Tenant's contractors, subtenants, licensees, invitees, agents, servants or employees or others for whom Tenant is legally responsible, but in no event any Landlord Responsible Parties (collectively, with Tenant, "**Tenant Responsible Parties**") during the Term;

(ii) arising from any accident, physical injury or physical damage occurring on any portion of the Premises during the Term applicable to that portion of the Premises and any further period during which Tenant retains occupancy of that portion of the Premises;

(iii) arising from Tenant's or Tenant Responsible Parties' use of Hazardous Materials during the Term or violation of or failure to comply with the provisions of **Section 4.3** above with regard to Hazardous Materials during the Term;

(iv) arising from any litigation or proceeding not commenced by Landlord relating to or arising out of Tenant's use, occupancy, operation, maintenance or management of the Premises to which Landlord or its employees or agents are made a party without fault on its part, whether commenced by or against Tenant; or

(v) arising out of a risk which is required to be insured by Tenant or its contractors pursuant to **Subsection 3.6.1** hereof, and is not so insured, but only to the extent of the insurance limits specified in **Subsection 3.6.1** hereof;

provided, however, that (x) the foregoing indemnity shall not include any cost or damage to the extent arising from any negligent act or omission or willful misconduct of Landlord or

Landlord's contractors, licensees, invitees, agents, servants or employees or others for whom the Landlord is legally responsible (collectively, with Landlord, "**Landlord Responsible Parties**") and (y) in no event shall Tenant be liable under this indemnity for indirect or consequential damages (except that nothing in this **Subsection 4.5.1** shall have any impact on the Landlord's rights specified in Article VII below in the event of a holdover by Tenant). This indemnity and hold harmless agreement shall include indemnity against reasonable attorneys' fees and all other costs, expenses and liabilities incurred or in connection with any such claim or proceeding brought thereon, and the defense thereof.

4.5.2 Landlord. To the maximum extent this agreement may be made effective according to law, and except as otherwise expressly provided in this Lease, Landlord agrees to indemnify and save harmless Tenant from and against all claims, loss, or damage of whatever nature to the extent arising from any negligent act or omission or willful misconduct of Landlord or Landlord Responsible Parties on or about the Premises during the Term; provided, however, that (x) the foregoing indemnity shall not include any cost or damage to the extent arising from any negligent act or omission or willful misconduct of Tenant or any Tenant Responsible Parties and (y) in no event shall Landlord be liable under this indemnity for indirect or consequential damages. This indemnity and hold harmless agreement shall include indemnity against reasonable attorneys' fees and all other costs, expenses and liabilities incurred or in connection with any such claim or proceeding brought thereon, and the defense thereof.

4.5.3 General Provisions Regarding Indemnity. If a party (the **"Indemnified Party"**) becomes aware of a claim, action or proceeding or any other event which could result in an obligation to indemnify the Indemnified Party by the other party (the **"Obligated Party"**) under this Lease, the Indemnified Party shall notify the Obligated Party thereof in writing within sixty (60) days after it becomes so aware, giving a reasonably detailed description of the claim, action, proceeding or other event to the extent then known, and providing a copy of any written demand, notice, summons or other paper received by the Indemnified Party. If the Indemnified Party fails to so notify the Obligated Party, and as a result of such failure to notify, the obligation to indemnify is increased, then to the extent of such increase, the Obligated Party's obligation to indemnify under this Lease shall thereupon cease unless the Obligated Party already knows of the claim, action, proceeding or other event. In any action or proceeding that is subject to an indemnity obligation of an Obligated Party under this Lease, the Obligated Party shall have the exclusive right and obligation to defend the Indemnified Party at the Obligated Party's expense with legal counsel chosen by the Obligated Party and reasonably acceptable to the Indemnified Party. The Indemnified Party shall have the right to retain its own legal counsel, at its sole cost, to advise the Indemnified Party in such action or proceeding and the Obligated Party and its legal counsel shall cooperate with such counsel of the Indemnified Party. If at any time, the Indemnified Party in its reasonable discretion determines that the Obligated Party is not diligently and adequately pursuing such defense, the Indemnified Party may immediately assume control of its defense by so notifying the Obligated Party and may appoint substitute counsel chosen by the Indemnified Party. All expenses incurred by the Indemnified Party in connection with such substitute defense including, without limitation, reasonable attorneys' fees and expenses, shall be payable by the Obligated Party on demand. Each party, as an Indemnified Party, agrees to cooperate with the Obligated Party in the defense of any claim, and the failure to

cooperate shall release the Obligated Party from its obligation to defend and indemnify. An Obligated Party shall not settle any claim, action or proceeding against an Indemnified Party without the Indemnified Party's prior written consent, which consent shall not be unreasonably withheld or delayed.

4.5.4 Survival. The covenants and agreements contained in this **Section 4.5** shall survive the expiration or earlier termination of this Lease with respect to any matters arising or accruing prior thereto.

4.6 Landlord's Right to Enter. Tenant agrees to permit Landlord and purchasers and Mortgagees and their authorized representatives and, during the last eighteen (18) months of the Term with respect to any portion of the Premises, any prospective tenants, to enter the Premises (or, as to prospective tenants, the applicable portion of the Premises) to inspect the same or to exercise any of Landlord's rights under this Lease (i) after at least 24 hours prior notice to Tenant's representative at all reasonable times during usual business hours; provided, however, that any such entry shall be made so as to minimize interference with the operation and use of the Premises by Tenant and without damage to the Premises or any portion thereof and Tenant shall have the right for Tenant's representative to accompany any person so inspecting or entering the Premises; and (ii) at any time and without notice in the event of emergency.

4.7 Personal Property at Tenant's Risk. Tenant agrees that all of the furnishings, fixtures, equipment, effects and property of every kind, nature and description of Tenant and of all persons claiming by, through or under Tenant which may be on any part of the Premises during the continuance of the Term applicable to that portion of the Premises or any occupancy of that portion of the Premises by Tenant or anyone claiming under Tenant, shall be at the sole risk and hazard of Tenant, and if the whole or any part thereof shall be destroyed or damaged by fire, water or otherwise, or by the leakage or bursting of water pipes, by theft or from any other cause, no part of said loss or damage is to be charged to or to be borne by Landlord, except that Landlord shall in no event be exonerated from any liability to Tenant or to any other person, for any injury, loss, damage or liability to the extent prohibited by law.

4.8 Yield Up. Tenant agrees, at the expiration of the Term or earlier termination of this Lease: to surrender all keys to the Premises, to remove all of Tenant's personal property and trade fixtures from the Premises, and to yield up the Premises, broom clean, in the same condition in which Tenant is obliged to keep and maintain the Premises by the provisions of this Lease, reasonable use and wear and tear and damage by fire or other casualty or condemnation excepted. Tenant shall have the right to remove its trade fixtures from the Premises at any time. Tenant shall remove the four existing antenna installations on the Building located at 201 Riverneck Road, and all connecting electrical conduits, controls and other equipment related to said antenna installations, from the Premises at the expiration of the Term or earlier termination of this Lease. Tenant shall repair any damage to the Premises caused by removal of any of Tenant's trade fixtures or personal property or Alterations. Tenant shall terminate, without cost, expense or liability to Landlord, any and all contracts and agreements entered into by or on behalf of Tenant (including, without limitation, any employment or collective bargaining agreements and any management contracts) with respect to the management, maintenance or

repair of the Premises or that otherwise would be binding upon the Premises or Landlord. In no event shall Tenant be required to surrender the Premises in any better condition than they were in on the Commencement Date. If Tenant fails to perform its removal obligations hereunder, without limiting any other right or remedy, Landlord may, on five (5) Business Days prior written notice to Tenant perform such obligations at Tenant's expense, and Tenant shall promptly reimburse Landlord upon demand for all out-of-pocket costs and expenses incurred by Landlord in connection with such work. Tenant's obligations under this Section shall survive the termination of this Lease. Any items of Tenant's personal property or trade fixtures which remain in the Premises after the expiration date of the Term may, on five (5) Business Days prior written notice to Tenant, at the option of Landlord, be deemed abandoned and in such case may either be retained by Landlord as its property or be disposed of, without accountability, at Tenant's expense in such manner as Landlord may see fit. The foregoing terms of this Section 4.8 shall survive the expiration or earlier termination of this Lease.

4.9 Personal Property Taxes. Tenant agrees to pay, on or before the due date thereof, all taxes charged, assessed or imposed upon the personal property (including, without limitation, fixtures and equipment) of Tenant in or upon the Premises.

4.10 Assignment, Subletting, etc.

4.10.1 Consent Required. Except as otherwise expressly provided herein, Tenant shall not sell, assign, encumber, pledge or otherwise transfer or hypothecate all or any part of its interest in or rights with respect to the Premises or its leasehold estate (collectively, "**Assignment**"), or permit all or any portion of the Premises to be occupied by anyone other than itself or sublet all or any portion of the Premises (collectively, "**Sublease**") in either case without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Landlord agrees that the offer and sale by Tenant (or any stockholder or member of Tenant) of any stock or other membership interests pursuant to an effective registration statement filed pursuant to the Securities Act of 1933 or pursuant to and in accordance with the securities laws of the United States or any foreign country governing publicly-traded companies shall not constitute an assignment of this Lease, and shall not require the consent or approval of Landlord. In the event that the ownership interests of Tenant cease to be publicly-traded, the transfer of fifty percent (50%) or more of such ownership interests in Tenant to other than an Affiliate or Successor Entity after such time as the ownership interests of Tenant cease to be publicly-traded shall be deemed an Assignment. No Assignment shall relieve Tenant of Tenant's primary liability under this Lease. A consent to one Assignment or Sublease shall not constitute consent to any further Assignment or Sublease. If Landlord consents to any Assignment or Sublease, Tenant shall reimburse Landlord for the reasonable out-of-pocket attorneys' fees and expenses incurred by Landlord in consenting to such Assignment or Sublease. Tenant shall furnish Landlord with a copy of the Assignment or Sublease. In the case of any Assignment or Sublease as to which Landlord may consent (and expressly excluding any Assignment or Sublease permitted under **Subsection 4.10.2** hereof) Tenant agrees that fifty percent (50%) of the "Assignment/Sublease Profits" (hereinafter defined) actually received by Tenant, if any, shall be paid to Landlord. The "Assignment/Sublease Profits" shall be the excess, if any, of (a) the "Assignment/Sublease Net Revenues" as hereinafter defined over (b) the Base Rent and

Additional Rent and other charges provided in this Lease (provided, however, that for the purpose of calculating the Assignment/Sublease Profits in the case of a Sublease, appropriate pro-rations in the applicable Base Rent, Additional Rent and other charges under this Lease shall be made based on the percentage of the Premises subleased and on the terms of the Sublease). The "Assignment/Sublease Net Revenues" shall be the fixed rent, additional rent and all other charges and sums actually received by Tenant either initially or over the term of the Sublease or Assignment, exclusive of amounts paid to Tenant for the purchase or lease of property or equipment of Tenant and after deducting all reasonable and actual out-of-pocket expenses incurred by Tenant in procuring such Assignment or Sublease, including broker fees and legal fees (if any) paid by Tenant, any improvements which Tenant makes to the applicable portion of the Premises at Tenant's expense in connection with such Assignment or Sublease, any buy-out of the Assignee's or Sublessee's existing lease paid for by Tenant as a part of such transaction, the amount of any reasonable improvement allowance or moving expenses paid by Tenant to the proposed assignee or subtenant, costs of advertising the space for sublease or assignment, and any other costs reasonably paid in assigning this Lease or subletting the transferred space or in negotiating or effectuating the Assignment or Sublease. Landlord shall not be entitled to any sums due under this **Subsection 4.10.1** until Tenant has fully recovered or been credited its costs in connection therewith.

4.10.2 Permitted Transfers. Notwithstanding the foregoing, Tenant shall have the right to make an Assignment to an Affiliate or to a Successor Entity (hereinafter defined) without Landlord's consent, provided that upon consummation of the transaction resulting in the Assignment to the Successor Entity, the credit of the party or parties liable for Tenant's obligations under this Lease (including any assignor tenant that has not been released), taken as a whole, shall be at least as good (as determined by the major rating agencies if the credit of any such parity is rated at such time) as that of the assignor Tenant existing immediately prior to such consummation and a new Letter of Credit meeting the requirements of Article XII is delivered to Landlord if the existing Letter of Credit will be rendered invalid as a result of the Assignment to the Successor Entity. A **"Successor Entity",** as used in this Section shall mean a corporation or other business entity (i) into which or with which Tenant, its corporate or other successors or permitted assigns, is merged or consolidated, in accordance with applicable statutory provisions for the merger or consolidation of a corporation or other business entity, or (ii) which acquires control of Tenant in a *bona fide* transaction not entered into for the purpose of avoiding the restrictions on transfer set forth in this Lease, or (iii) which acquires in a *bona fide* arms-length transaction all or substantially all of the assets of Tenant or all or substantially all of the assets of any operating unit of Tenant; provided that: (a) in the case of a merger or consolidation, if Tenant will not survive such merger or consolidation, by operation of law or by effective provisions contained in the instruments of merger or consolidation or acquisition, the liabilities of Tenant under this Lease are assumed by the corporation or other business entity surviving such merger or consolidation; and (b) in the case of an asset sale, by operation of law or by effective provisions contained in the instruments of sale, the liabilities of Tenant under this Lease are assumed by the corporation or other business entity acquiring Tenant's assets. Tenant shall notify Landlord promptly upon consummation of any Assignment hereunder not requiring Landlord's consent, and, at Landlord's request, the assignee shall execute and deliver such written affirmation as Landlord reasonably may request of the assignee's assumption of Tenant's

obligations under this Lease from and after the date of such Assignment. In addition, Tenant may Sublease all or any portion of the Premises to any corporation, partnership, trust, association or other business organization directly or indirectly controlling or controlled by or under common control with Tenant (an "Affiliate", and any such Sublease, an "Affiliate Sublease"), so long as Tenant gives Landlord not less than a fifteen (15) days' prior written notice thereof. Tenant shall also have the right, without the consent of Landlord, to permit the use or occupancy of space in the Premises by employees of any Affiliate or by persons who have an ongoing contractual or other business relationship with Tenant and a reasonable need to work in proximity with Tenant.

4.10.3 Further Requirements. If this Lease be assigned, or if the Premises or any part thereof be sublet or occupied by anyone other than Tenant, whether or not in violation of the terms and conditions of the Lease, Landlord may, at any time and from time to time, collect rent and other charges from the assignee, subtenant or occupant, and apply the net amount collected to the rent and other charges herein reserved, but no such assignment, subletting, occupancy, collection or modification of any provisions of this Lease shall be deemed a waiver of this covenant, or the acceptance of the assignee, subtenant or occupant as a tenant or a release of Tenant from the further performance of covenants on the part of Tenant to be performed hereunder. Any consent by Landlord to a particular assignment, subletting or occupancy or other act for which Landlord's consent is required under this **Section 4.10** shall not in any way diminish the prohibition stated in this **Section 4.10** as to any further such assignment, subletting or occupancy or other act or the continuing liability of the original named Tenant. No assignment or subletting hereunder shall relieve Tenant from its obligations hereunder, and Tenant shall remain fully and primarily liable therefor. Tenant shall reimburse Landlord on demand, as Additional Rent, for any reasonable out-of-pocket costs (including reasonable attorneys' fees and expenses) incurred by Landlord in connection with any request for consent to any proposed Assignment or Sublease, whether or not consummated, including the costs of making investigations as to the acceptability of the proposed assignee or subtenant. Any Sublease to which Landlord gives its consent shall not be valid unless and until Tenant and the sublessee execute a consent agreement in form and substance satisfactory to Landlord in its reasonable discretion and a fully executed counterpart of such Sublease has been delivered to Landlord. Any Sublease shall provide that: (i) the term of the Sublease ends no later than one day before the last day of the Term of this Lease; (ii) such Sublease is subject and subordinate to this Lease; (iii) Landlord may enforce the provisions of the Sublease, including collection of rents; and (iv) in the event of termination of this Lease or reentry or repossession of the Premises by Landlord, Landlord may, at its sole discretion and option, take over all of the right, title and interest of Tenant, as sublessor, under such Sublease, and such subtenant shall, at Landlord's option, attorn to Landlord but nevertheless Landlord shall not (a) be liable for any previous act or omission of Tenant under such Sublease; (b) be subject to any defense or offset previously accrued in favor of the subtenant against Tenant; (c) be bound by any previous modification of such Sublease made without Landlord's written consent or by any previous prepayment of more than one month's rent or be liable for the return of any security deposit posted with Tenant (unless actually received by Landlord); or (d) be obligated to make any payment to or on behalf of such subtenant, or to perform any work in the area leased by the subtenant beyond Landlord's obligations under this Lease.

4.11 Installations, Alterations or Additions.

4.11.1 Alterations by Tenant. Tenant shall not make any improvements, alterations or additions (other than the Repair Items) in or to the Premises within the Term ("**Alterations**") without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed and which in any event shall not be withheld if such Alteration is required to eliminate or cure the violation of a Legal Requirement. Notwithstanding the foregoing, Tenant may place and replace its trade fixtures, tools, machinery and systems serving such trade fixtures, tools and machinery, as well as furniture, floor coverings, equipment and other tangible personal property in the Premises and may make Minor Alterations as it may desire at its own expense without Landlord's approval or consent, but with prior written notice to Landlord. Any such Minor Alterations shall be performed in compliance with all of the terms and conditions of this Lease. As used herein, "**Minor Alterations**" shall mean Alterations costing in the aggregate less than $250,000.00 annually which (i) shall not affect the exterior or the Structure of the Buildings; (ii) shall not adversely affect the proper functioning of any of the Building Systems (including, without limitation, the heating, ventilation, air conditioning, plumbing, electrical, fire, health and life safety, sprinkler or security systems serving the Buildings); (iii) shall not jeopardize health, safety or life safety; (iv) shall not require a change to the certificate of occupancy for the Buildings due to an intended change in use of all or any portion of the Premises; (v) shall not cause the Premises to be in violation of any Legal Requirements; and (vi) are not visible from the exterior of the Premises.

4.11.2 Additional Covenants Regarding Alterations.

(a) All Alterations shall be made (i) at Tenant's sole expense, (ii) according to plans and specifications approved in writing by Landlord (except for Minor Alterations), (iii) in compliance with all applicable Legal Requirements, (iv) by a licensed contractor, and (v) in a good and workmanlike manner using materials of good quality and at least equal to Building standards. Tenant shall pay, within thirty (30) days of being billed therefor, all of Landlord's reasonable out-of-pocket expenses in consenting to the plans and specifications for the Alterations.

(b) It is expressly covenanted and agreed by and between the parties hereto that nothing in this Lease shall authorize Tenant to do any act which shall in any way encumber the title of Landlord in and to the Premises, nor shall the interest or estate of Landlord in the Premises be in any way subject to any claim by way of lien or encumbrance, whether by operation of law or by virtue of any express or implied contract by Tenant, and any claim to or lien upon the Premises arising from any act or omission of Tenant shall accrue only against the leasehold estate of Tenant and shall in all respects be subject and subordinate to the paramount title and rights of Landlord in and to the Premises. Tenant shall keep the Premises and the Buildings free from any liens arising out of any work performed, materials ordered or obligations incurred by or on behalf of Tenant. Without limitation, Tenant shall be responsible for, and shall pay when due, all

costs associated with the preparation of plans and the performance of Alterations, and the same shall be performed in a lien-free, good and workmanlike manner, and in accordance with applicable codes and requirements, including the requirements of the Americans with Disabilities Act ("**ADA**"). In the event that a statutory and/or common law lien is asserted against the Premises or the applicable Buildings as a result of Tenant's acts or omissions, and Tenant shall fail, within twenty (20) days after notice of such assertion, to cause (by payment, posting of a proper bond, or otherwise) such lien to be released of record, Landlord shall have the right (but not the obligation), upon prior written notice to Tenant, at Tenant's expense, to cause such lien to be bonded over or released of record and any amounts advanced by Landlord for such purposes shall be Additional Rent due from Tenant to Landlord within ten (10) days after notice thereof to Tenant, with interest at the Default Rate until the repayment thereof by Tenant to Landlord (such interest commencing to accrue on the date of Landlord's payment if Landlord provides written notice informing Tenant that Landlord has made such payment within twenty (20) days after Landlord makes such payment; otherwise such interest shall commence to accrue on the date of Landlord's demand therefor). Tenant shall have the right to contest in good faith and with reasonable diligence the validity of any such lien or claimed lien if Tenant shall give to Landlord such reasonable security as may be demanded by Landlord to insure payment thereof and to prevent any sale, foreclosure or forfeiture of the Premises by reason of non-payment thereof. On final determination of the lien or claim for lien, Tenant will immediately and at its own expense cause the lien to be released of record. In case Tenant shall fail to prosecute any such contest, Landlord shall have the right (but not the obligation), upon notice to Tenant to cause such lien to be bonded over or released of record and any amounts advanced by Landlord for such purposes shall be Additional Rent due from Tenant to Landlord within ten (10) days after notice thereof to Tenant, with interest at the Default Rate until the repayment thereof by Tenant to Landlord (such interest commencing to accrue on the date of Landlord's payment if Landlord provides written notice informing Tenant that Landlord has made such payment within twenty (20) days after Landlord makes such payment; otherwise such interest shall commence to accrue on the date of Landlord's demand therefor).

(c) Tenant shall ensure that all contractors and subcontractors performing Alterations are insured in amounts required by law. If Landlord requests, certificates of such insurance shall be delivered to Landlord.

(d) Tenant agrees that Landlord will have the right to inspect any Alterations. In the performance of Alterations in accordance with this Lease, Tenant shall keep all construction areas clean and free of trash and debris.

(e) Tenant shall provide copies of any warranties for Alterations and the materials and equipment which are incorporated into the Buildings and

Premises in connection therewith, and either assign to Landlord, or enforce on Landlord's behalf, all such warranties to the extent repairs and/or maintenance on warranted items would be covered by such warranties and are otherwise Landlord's responsibility under this Lease.

(f) Tenant shall not place a load upon any floor of the Premises that exceeds the pounds per square foot "live load" design limit of such floor.

4.11.3 Removal of Alterations. Landlord shall notify Tenant in writing at the time of Landlord's approval of any Alterations, excluding any Minor Alterations, whether or not the proposed Alterations will be required to be removed by Tenant at the end of the Term. Provided Tenant has complied with the requirement below in this **Subsection 4.11.3** to include in its request for consent a request that Landlord notify Tenant whether or not the proposed Alteration will be required to be removed by Tenant at the end of the Term, any Alterations that Landlord has not so designated in writing for removal at the time of Landlord's approval, will be permitted to remain on the Premises in accordance with **Section 4.8**. Provided Tenant has complied with the requirement below in this **Subsection 4.11.3** to include in its notice a request that Landlord notify Tenant whether or not the proposed Minor Alteration will be required to be removed by Tenant at the end of the Term, any Minor Alteration shall be permitted to remain on the Premises in accordance with **Section 4.8** unless Landlord, within ten (10) days after receipt of notice from Tenant of its intent to undertake such Minor Alteration, furnishes notice to Tenant stating that Tenant shall be required to remove such Minor Alteration at the end of the Term. Tenant shall include in its request for consent to any Alteration, and in its notice of intent to undertake any Minor Alteration, a request that Landlord notify Tenant whether or not the proposed Alteration or Minor Alteration will be required to be removed by Tenant at the end of the Term. In no event shall Tenant be required to remove any Alteration or Minor Alteration undertaken to eliminate or cure the violation of a Legal Requirement.

4.12 Signage. Tenant may, from time to time during the Term, at its own cost and expense, install identification signage on the Premises. The character, location, design, size, materials, shape, form, graphics and lighting shall be subject to all Applicable Laws. Tenant shall be responsible for obtaining, at its sole cost and expense, all permits and approvals required by Applicable Laws. Tenant's installation work shall be subject to all of the applicable terms and conditions of this Lease regarding Alterations, and Tenant hereby covenants and agrees to maintain such exterior signage in good condition, consistent with the first class quality of the Buildings, and Tenant shall remove such signage from the Premises, and repair any damage caused thereby, upon the expiration or earlier termination of this Lease. Tenant's rights under this Section 4.12 shall not be assignable or transferable other than by the assignment of this Lease.

4.13 Roof Rights. Tenant shall have the right to use the roof of the Buildings and building structure required by Tenant from time to time for installation and use of equipment exclusively in connection with its operations in the Premises, including, without limitation, HVAC equipment, microwave dish or other communications radio antenna and associated equipment ("Roof Equipment") under the following conditions: (a) the Roof Equipment shall

comply with all Legal Requirements, (b) all installation, removal and maintenance of the Roof Equipment shall be performed by Tenant at Tenant's sole cost and expense, (c) the Roof Equipment shall be removed by Tenant at the expiration of the Term or earlier termination of this Lease in accordance with the requirements of Section 4.8, (d) the Roof Equipment shall be used solely for Tenant's internal operational benefit and Tenant shall not derive any benefit from the sale of use privileges of the Roof Equipment, (e) any new Roof Equipment that Tenant desires to install subsequent to the Commencement Date shall be placed in a location reasonably agreed to by Landlord and Tenant and (f) any new Roof Equipment that Tenant desires to install subsequent to the Commencement Date shall not exceed the pounds per square foot "live load" design limit of the roof. Tenant shall have no obligation to pay Base Rent for such right, but Tenant shall, at its sole cost and expense, maintain any Roof Equipment in good condition and repair, and comply with the terms and conditions set forth in this Lease with respect to the installation of the Roof Equipment, and the use of the roof and building structure. Any roof penetrations shall be subject to the approval of Landlord in its reasonable discretion. Any new Roof Equipment installed by Tenant after the Commencement Date shall be deemed a Minor Alteration unless such installation involves a roof penetration or adversely affects the proper functioning of the Building Systems. If the installation or use of any Roof Equipment shall invalidate any roof warranty, Tenant shall reimburse Landlord for the costs of any repairs to the roof which are not covered by such roof warranty solely due to the Tenant's installation of the Roof Equipment. Tenant hereby indemnifies and agrees to hold harmless Landlord, Landlord Responsible Parties and any Mortgagee providing financing with respect to any portion of the Premises from any claim, liability, loss, damage, expense, cause of action or proceeding arising from Tenant's use of the roofs of the Buildings. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

4.14 ERISA. Tenant covenants and agrees with Landlord that throughout the Term Tenant shall from time to time (but in no event more often than annually) execute all such reasonable documents and provide such reasonable information as Landlord may reasonably require to allow Landlord to determine that: (i) the transaction contemplated by this Lease is not a prohibited transaction under the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), (ii) the transaction contemplated by this Lease is otherwise in full compliance with ERISA, and (iii) Landlord is not in violation of ERISA by compliance with this Lease; provided that Tenant shall in no event be required to execute any document that in any way diminishes or has an adverse impact on any rights enjoyed by Tenant under the Lease, nor shall Tenant be required to execute any document that in any way increases any of the obligations that are imposed on Tenant under the Lease or that imposes any new or additional obligations, costs or liabilities on Tenant that are not imposed under the Lease. If there are actions that Tenant cannot take, or investments by the 401(k) plan established by Tenant that Tenant cannot make, without causing Landlord to violate ERISA, Landlord shall promptly advise Tenant about such matters. Thereafter, Tenant shall take reasonable and appropriate measures to prevent such actions or investments by Tenant.

4.15 Financial Statements. Upon Landlord's reasonable request, and subject to execution of a usual and customary confidentiality agreement, Tenant shall deliver to Landlord financial statements to the extent available and maintained by Tenant, provided that for so long

as Tenant's stock is publicly traded on a national exchange that requires its financial statements to be publicly disclosed, Tenant shall have no obligation to deliver any financial statements to Landlord.

Article V CASUALTY OR TAKING

5.1 Casualty.

5.1.1 Termination Option.

(a) If the Premises or any portion thereof are damaged by fire or other casualty ("Casualty"), such that (i) the Premises cannot be repaired under the laws and regulations of the federal, state and local governmental authorities having jurisdiction to substantially the same condition as they existed prior to the Casualty, or (ii) the damage cannot be repaired within twelve (12) months after the date of such damage, or (iii) repairs cannot be completed before the 180th day before the end of the applicable Term, then either party may elect to terminate this Lease by written notice to the other party given within thirty (30) days after the date of such damage. The determination of the time required to restore shall be made by a contractor selected by Landlord with Tenant's consent, which consent shall not be unreasonably withheld. Landlord shall deliver the estimate of such contractor within 30 days after the date of such casualty. Rent shall abate to the extent hereinafter provided as of the date of such casualty or taking. If such a notice to terminate is given, this Lease shall terminate as of the date of such notice.

(b) Notwithstanding the foregoing, in the event Landlord notifies Tenant of its election to terminate this Lease in accordance with this **Subsection 5.1.1**, Tenant shall have the right, by notice to Landlord given by Tenant within thirty (30) days of Landlord's notice of termination, to elect to negate Landlord's termination notice and continue this Lease, provided that:

(i) at least five (5) years would remain in the Term after the projected completion date for the repair; provided, however, the foregoing condition would be deemed to be satisfied notwithstanding the fact that less than five (5) years would remain in the existing Term after the expected completion date, if (A) Tenant has an extension option remaining pursuant to **Section 2.3** that has not commenced as of the date of the Casualty, and (B) Tenant notifies Landlord in writing that it irrevocably and unconditionally elects to exercise its option to extend and irrevocably and unconditionally waives the right to rescind its election for any reason (including, without limitation, pursuant to **Section 2.3(b))**; and

(ii) the Premises can be repaired under the laws and regulations of the federal, state and local governmental authorities having jurisdiction to substantially the same condition as they existed prior to the Casualty; and

(iii) Tenant, at its own expense, agrees to pay any deficiency in the costs that would be incurred to repair the damage as provided in **Subsection 5.1.2(b)**; and

(iv) no Event of Default shall have occurred and be continuing either on the date of such notice by Tenant or on the date that construction shall be commenced.

5.1.2 Repair Obligation.

(a) If neither Landlord nor Tenant is entitled or elects to terminate this Lease as provided in **Subsection 5.1.1**, then Landlord promptly shall repair the same, but the repairs to be made by Landlord under this Article shall not include, and Landlord shall not be required to repair, any Casualty damage to Tenant's personal property or trade fixtures or Alterations that are the responsibility of Tenant to insure. Landlord shall commence such repair promptly and diligently prosecute the repair to completion. Tenant shall be responsible at its own expense for the repair and replacement of Tenant's personal property, trade fixtures and Alterations which Tenant is required to insure and elects to repair or replace.

(b) Landlord shall not be obligated to expend for any such repair and restoration any amount in excess of the insurance proceeds payable on account of such Casualty. If such insurance proceeds are insufficient for the restoration of the Premises, and if Landlord does not otherwise elect to spend the additional funds necessary to fully restore the Premises, then Landlord shall give notice ("Landlord's Proceeds Notice") to Tenant that Landlord does not elect to fund the amount of deficiency and stating the expected deficiency amount (the "Deficiency"). If Landlord sends the Landlord's Proceeds Notice, Tenant may elect to fund the Deficiency by providing written notice of such election to Landlord within thirty (30) days after receipt of Landlord's Proceeds Notice (the "Deficiency Funding Notice"). If Tenant fails to timely send a Deficiency Funding Notice, then this Lease shall be terminated as of the end of such 30-day period. If Tenant furnishes a Deficiency Funding Notice, Tenant shall, within thirty (30) days after the date of the Deficiency Funding Notice, provide security reasonably satisfactory to Landlord and its Mortgagee for Tenant's obligation to so fund the Deficiency (it being agreed that Landlord shall not be obligated to commence restoration until such reasonably satisfactory security is furnished), and Tenant's failure to furnish such security within such time shall constitute an Event of Default (without any additional notice requirements or cure rights) under this Lease. Tenant's furnishing of a Letter of Credit in the amount of the Deficiency, and which otherwise meets the requirements of a Letter of Credit specified in Article XII below, shall in all events be deemed to be satisfactory security to both Landlord and its Mortgagee.

(c) If the Premises shall be damaged by Casualty as the result of a risk not covered by the forms of casualty insurance at the time maintained by Landlord and such Casualty cannot, in the ordinary course, reasonably be expected to be repaired within ninety (90) days from the time that repair work would commence, either party may, at its election, terminate the Lease by notice to the other party given within sixty (60) days after such loss; provided, however that Landlord may not terminate this Lease on account of an uninsured Casualty, and shall restore the Premises, if and to the extent such damage would have been covered by the insurance coverages required to be carried by Landlord under this Lease, subject to the terms of **Subsection 5.1.2(b)**.

5.1.3 Abatement. If all or any part of the Premises shall be rendered untenantable by reason of a Casualty, the Base Rent and the Additional Rent shall be abated in the proportion that the untenantable area of the Premises bears to the total area of the Premises,

for the period from the date of the Casualty to the date such portion of the Premises is restored to a tenantable condition. Each party hereby waives the provisions of any statute or law that may be in effect at the time of a casualty under which a lease is automatically terminated or a tenant is given the right to terminate a lease due to a casualty other than as provided in **Subsection 5.1.1**.

5.2 Eminent Domain.

5.2.1 Taking - Lease Ends. If at any time during the Term the whole of the Premises shall be taken for any public or quasi-public use, under any statute or by right of eminent domain, this Lease shall terminate on the date of such taking, except as provided in **Subsection 5.2.3**. If less than all of the Premises shall be so taken and in Tenant's reasonable opinion the remaining part is insufficient for the conduct of Tenant's business, then Tenant may, by notice to Landlord within sixty (60) days after the date Tenant is notified of such taking, terminate this Lease. If Tenant exercises its option, this Lease and the Term shall end on the date specified in Tenant's notice and the Base Rent and Additional Rent shall be apportioned and paid to the date specified in Tenant's notice.

5.2.2 Taking - Lease Continues. If less than all of the Premises shall be taken and Tenant does not elect to terminate this Lease as provided in **Subsection 5.2.1**, this Lease shall remain unaffected, except that Tenant shall be entitled to a pro rata abatement of Base Rent and Additional Rent based upon the nature of the space taken (office space, storage, parking area) and upon the proportion which the area of the Premises or parking area, as case may be, so taken bears to the area of the Premises or parking area, as case may be, immediately prior to such taking.

5.2.3 Temporary Taking. If the use and occupancy of the whole or any part of the Premises is temporarily taken for a public or quasi-public use for a period less than the balance of the Term, then this Lease and the Term shall continue in full force and effect and Tenant shall be entitled to a pro rata abatement of Base Rent and Additional Rent in the manner and to the extent provided in **Subsection 5.2.2** or, at its option, receive that portion of the award for such taking which represents compensation for the value of Tenant's leasehold estate and the Term demised hereunder, in which case Tenant shall continue to pay the Base Rent and Additional Rent in full when due.

5.2.4 Landlord's Award. Landlord shall be entitled to receive the entire award or awards in any condemnation proceeding without deduction therefrom for any estate vested in Tenant and Tenant shall receive no part of such award or awards from Landlord or in the proceedings, except as otherwise expressly provided in this **Section 5.2**. Subject to the foregoing, Tenant hereby assigns to Landlord any and all of Tenant's right, title and interest in or to such award or awards or any part thereof.

5.2.5 Tenant's Award. If there is a taking of all or any portion of the Premises, then Tenant shall, if allowed by Applicable Laws, be entitled to appear, claim, prove and receive in the condemnation proceeding (a) the unamortized value over the Term of the Alterations and Improvements, provided the same shall have been paid for by Tenant; (b) the value of Tenant's personal property that is damaged, destroyed or taken hereunder; (c) the cost of relocation; and

(d) special awards or allowances paid to tenants when their rental space is taken by eminent domain.

5.2.6 Restoration By Landlord. If there is a taking of all or any portion of the Premises and this Lease is continued, then Landlord shall, to the extent of the available takings award, proceed with reasonable diligence to repair, replace and restore the Premises as a complete architectural unit of substantially the same proportionate usefulness, design and construction existing immediately prior to the date of taking.

5.2.7 Definitions. Taking by condemnation or eminent domain hereunder shall include the exercise of any similar governmental power and any sale, transfer or other disposition of the Premises in lieu or under threat of condemnation.

Article VI DEFAULTS

6.1 Default. The occurrence of any of the following shall constitute an "**Event of Default**" by Tenant under this Lease:

(a) if Tenant shall fail to pay any Rent when due; provided, however, that any such failure to pay any Rent shall not constitute a default under this Lease so long as such failure shall not continue for more than five (5) Business Days after written notice from Landlord to Tenant, except that if Landlord shall have sent to Tenant two (2) notices of default during the same calendar year due to Tenant's failure to make payments of Rent and Tenant thereafter shall default in any obligation to pay Rent during the same calendar year, the same shall be deemed to be an Event of Default upon Landlord giving Tenant written notice thereof without the five (5) Business Day grace period set forth above; or

(b) if Tenant shall violate or fail to perform any term, condition, covenant or agreement to be performed or observed by Tenant under this Lease other than those provided for in paragraph (a) above and such violation or failure shall continue for more than thirty (30) days after written notice thereof from Landlord plus such additional time, if any, as is reasonably necessary to cure the default if it is of such a nature that Tenant determines in its reasonable discretion that it is curable but cannot reasonably be cured in thirty (30) days, provided Tenant commences such cure within such thirty (30) days and thereafter diligently proceeds to cure such default; or

(c) if Tenant shall admit in writing its inability to pay its debts generally as they become due, commence any case, proceeding or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of Tenant or any of its debts under any law relating to bankruptcy, insolvency, reorganization, liquidation or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for Tenant or for all or any substantial part of the Premises;

(d) if any case, proceeding or other action against Tenant shall be commenced seeking to have an order for relief entered against Tenant as debtor, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of Tenant or any of its debts under any law relating to bankruptcy, insolvency, reorganization, liquidation or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for Tenant or for all or any substantial part of its property, and such case, proceeding or other action (i) results in the entry of an order for relief against Tenant or (ii) remains undismissed for a period of sixty (60) days;

(e) if Tenant shall admit in writing that it is insolvent or if Tenant shall make an assignment for the benefit of creditors;

(f) if a lien is filed against the Premises, or Landlord's estate therein, by reason of any work, labor, services or materials performed or furnished, or alleged to have been performed or furnished, to Tenant or anyone holding the Premises by, through or under Tenant, and Tenant fails to cause the same to be vacated and canceled of record, or bonded off, in accordance with the provisions of, and within the time period specified in, **Section 4.11** hereof, and such failure shall continue for more than five (5) Business Days after written notice thereof from Landlord to Tenant;

(g) if Tenant shall fail to return to Landlord a properly executed statement in accordance with the provisions of, and within the time period specified in, **Section 10.4** hereof, and such failure shall continue for more than ten (10) Business Days after written notice thereof from Landlord to Tenant; or

(h) if following an Event of Default any portion of the Deposit is applied in accordance with **Article XII** of this Lease and Tenant thereafter fails to replenish the Deposit as required and within the time period specified in said **Article XII,** and such failure shall continue for more than ten (10) Business Days after written notice thereof from Landlord to Tenant.

6.2 Landlord's Right to Terminate. Upon the occurrence of an Event of Default, Landlord and the agents and servants of Landlord may, in addition to and not in derogation of any remedies for any preceding breach of covenant, immediately or at any time thereafter and without demand or notice, at Landlord's election, do any one or more of the following: (i) give Tenant notice stating that this Lease is terminated, effective upon the giving of such notice or upon a date stated in such notice, as Landlord may elect, in which event this Lease shall be irrevocably extinguished and terminated as stated in such notice without any further action, or (ii) with or without process of law, in a lawful manner enter and repossess the Premises as of Landlord's former estate, and expel Tenant and those claiming through or under Tenant, and remove its and their effects, without being guilty of trespass, in which event this Lease shall be irrevocably extinguished and terminated at the time of such entry, or (iii) pursue any other rights or remedies permitted by law or equity. Any such termination of this Lease shall be without

prejudice to any remedies which might otherwise be used for arrears of rent or prior breach of covenant, and in the event of such termination Tenant shall remain liable under this Lease as hereinafter provided. Landlord, without notice to Tenant, may store Tenant's effects and those of any person claiming through or under Tenant, at the expense and risk of Tenant.

6.3 Remedies. In the event that this Lease is terminated under any of the provisions contained in **Section 6.2** or shall be otherwise terminated for breach of any obligation of Tenant, Tenant shall pay the Base Rent, Additional Rent and other sums payable hereunder up to the time of such termination, and thereafter Tenant, until the end of what would have been the Term of this Lease in the absence of such termination, and whether or not the Premises shall have been re-let, shall be liable to Landlord for, and shall pay to Landlord, as liquidated current damages the Base Rent, Additional Rent and other sums that would be payable hereunder if such termination had not occurred, less the net proceeds, if any, of any re-letting of the Premises, after deducting all expenses in connection with such re-letting, including, without limitation, all repossession costs, brokerage commissions, legal expenses, attorneys' fees, advertising, expenses of employees, alteration costs and expenses of preparation for such re-letting. Tenant shall pay such current damages to Landlord monthly on the days which the Base Rent would have been payable hereunder if this Lease had not been terminated.

At any time after such termination, whether or not Landlord shall have collected any such current damages, as liquidated final damages and in lieu of all such current damages beyond the date of such demand, at Landlord's election Tenant shall pay to Landlord an amount equal to the excess, if any, of the Base Rent, Additional Rent and other sums as hereinbefore provided which would be payable hereunder from the date of such demand (assuming that, for the purposes of this paragraph, Taxes would be increased by five percent (5%) per annum over Taxes for the immediately preceding Tax Year for what would be the then unexpired Term of this Lease if the same remained in effect), over the then fair net rental value of the Premises for the same period, in each case as discounted to present value, using as a discount rate the then-current yield on US Treasury Bonds with a ten year maturity, plus 300 basis points.

In case of any default by Tenant, re-entry, expiration and dispossession by summary proceedings or otherwise, Landlord may (i) re-let the applicable portion of the Premises or any part or parts thereof, either in the name of Landlord or otherwise, for a term or terms which may at Landlord's option be equal to or less than or exceed the period which would otherwise have constituted the balance of the applicable Term of this Lease and may grant concessions or free rent to the extent that Landlord considers advisable and necessary to re-let the same and (ii) may make such reasonable alterations, repairs and decorations in the applicable portion of the Premises as Landlord considers advisable and necessary for the purpose of re-letting the applicable portion of the Premises. No action of Landlord in accordance with the foregoing shall operate or be construed to release or reduce Tenant's liability hereunder as aforesaid. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed, or in the event of Landlord obtaining possession of the Premises, by reason of the violation by Tenant of any of the covenants and conditions of this Lease. Nothing contained in this Lease shall, however, limit or prejudice the right of Landlord to prove for and obtain in proceedings for bankruptcy or

insolvency by reason of the termination of this Lease, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, the damages are to be proved, whether or not the amount be greater than, equal to, or less than the amount of the loss or damages referred to above.

6.4 Effect of Waivers of Default. Any consent or permission by either party to any act or omission which otherwise would be a breach of any covenant or condition herein, or any waiver by either party of the breach of any covenant or condition herein, shall not in any way be held or construed (unless expressly so declared) to operate so as to impair the continuing obligation of any covenant or condition herein, or otherwise, except as to the specific instance, operate to permit similar acts or omissions.

The failure of either party to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Lease shall not be deemed a waiver of such violation nor prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. The receipt by Landlord of rent with knowledge of the breach of any covenant of this Lease shall not be deemed to have been a waiver of such breach by Landlord. No consent or waiver, express or implied, by either party to or of any breach of any agreement of duty shall be construed as a waiver or consent to or of any other breach of the same or any other agreement or duty.

6.5 No Accord and Satisfaction. No acceptance by Landlord of a lesser sum than the Base Rent, Additional Rent or any other charge then due shall be deemed to be other than on account of the earliest installment of such rent or charge due, unless Landlord elects by notice to Tenant to credit such sum against the most recent installment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent or other charge be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or pursue any other remedy in this Lease provided.

6.6 Cumulative Remedies. All rights and remedies of Landlord and Tenant set forth herein are in addition to all other rights and remedies available at law or in equity. All rights and remedies available hereunder or at law or in equity are expressly declared to be cumulative. The exercise by Landlord or Tenant of any such right or remedy shall not prevent the concurrent exercise of any other right or remedy hereunder or subsequent exercise of the same or any other right or remedy. No delay in the enforcement or exercise of any such right or remedy shall constitute a waiver of any default hereunder or of any of Landlord's or Tenant's rights or remedies in connection therewith. Landlord or Tenant shall not be deemed to have waived any default hereunder unless such waiver is set forth in a written instrument. If Landlord or Tenant waives in writing any default, such waiver shall not be construed as a waiver of any covenant, condition or agreement set forth in this Lease except as to the specific circumstances described in such written waiver.

6.7 Landlord's Right to Self-Help. If Tenant defaults in the making of any payment or in the doing of any act herein required to be made or done by Tenant, then, unless Tenant shall

have cured such default within the period set forth in **Section 6.1** or such shorter period set forth in Section **4.11.2(b)** (or such shorter period as may be necessary in the event of an emergency), Landlord may, but shall not be required to, make such payment or do such act. If Landlord elects to make such payment or do such act, all costs and expenses incurred by Landlord, plus interest thereon at the Default Rate, from the date paid by Landlord to the date of payment thereof by Tenant, shall be immediately paid by Tenant to Landlord as Additional Rent; provided however, that nothing contained herein shall be construed as permitting Landlord to charge or receive interest in excess of the maximum legal rate then allowed by law.

Article VII HOLDING OVER

In the event that Tenant shall not immediately surrender the applicable portion of the Premises on the date of the expiration of the applicable portion of the Term or the sooner termination of the Term, Landlord may forthwith re-enter and take possession of the Premises. Until Tenant shall have been evicted from or quit the Premises, Tenant shall be a tenant-at-sufferance, subject to all the terms, conditions, covenants and agreements of this Lease, except that (i) Tenant's Rent obligation shall be One Hundred Fifty Percent (150%) of the Base Rent and Additional Rent for the Premises immediately prior to the expiration of the Term with respect thereto, and (ii) any right to renew this Lease or to expand the Premises or any right to additional services shall be of no force or effect during such tenancy-at-sufferance. Tenant shall also be liable to Landlord for all damage Landlord suffers because of any holding over by Tenant that prevents Landlord from delivering possession of the Premises to a prospective tenant, and Tenant shall indemnify Landlord against all claims made by any such other prospective tenant against Landlord resulting from delay by Landlord, caused by Tenant's holdover, in delivering possession of any portion of the Premises to such prospective tenant.

Article VIII RIGHTS OF MORTGAGEE

8.1 Definition of Mortgage. The term "**Mortgage"** shall mean any one or more mortgages, deeds of trust or ground leases which may now or hereafter exist on Landlord's interest in the Premises (or the interest of any ground lessor in the Premises) and all renewals, extensions, supplements, amendments, modifications, consolidations, and replacements thereof or thereto, substitutions therefor, and advances made thereunder. The term "**Mortgagee**" shall mean the holder of or landlord under any Mortgage.

8.2 Lease Subordinate. This Lease shall be subject and subordinate to any Mortgage now or hereafter encumbering the Premises or any portion thereof and to all advances thereunder, provided the Tenant and the Mortgagee shall have entered into a subordination, nondisturbance and attornment agreement in such form and containing such terms and conditions reasonably acceptable to Tenant, pursuant to which a Mortgagee agrees to recognize Tenant's rights under this Lease and that Tenant shall not be disturbed in its possession of the Premises upon exercise of any rights under the Mortgage (including, but not limited to, foreclosure or conveyance by a deed in lieu of foreclosure), provided no Event of Default is then outstanding. In the event that the Mortgagee or any purchaser at a foreclosure sale or otherwise (a "**Successor**") shall succeed to the interest of Landlord, then Tenant shall and does hereby agree

to attorn to such Successor and to recognize such Successor as its Landlord. Landlord shall obtain and deliver to Tenant on the Commencement Date, as a condition to the effectiveness of the subordination of this Lease, a duly executed, acknowledged and recordable subordination, nondisturbance and attornment agreement from Landlord's mortgagee in the form attached hereto as **Exhibit E**.

Notwithstanding the foregoing, a Mortgagee may at its election subordinate its Mortgage to this Lease without the consent or approval of Tenant. Any such Mortgage to which this Lease shall be subordinate may contain such terms, provisions and conditions as the Mortgagee reasonably deems usual or customary.

8.3 Tenant Claims. If any act or omission by Landlord would give Tenant the right to sue for damages from Landlord or to claim any rights with respect to this Lease, Tenant will not sue for such damages or exercise any such rights until (i) it shall have given written notice of the act or omission to Landlord and to the Mortgagee, if the name and address of such holder(s) have been furnished to Tenant, and (ii) the period of time allowed under this Lease for Landlord to remedy the act or omission (plus an additional ten (10) Business Days with respect to Mortgagee's cure rights) has elapsed following the giving of the notice, during which time Landlord and the Mortgagee, or either of them, their agents or employees, will be entitled, subject to Section 4.6, to enter upon the Premises and do therein whatever may be necessary to remedy the act or omission.

Article IX LIMITATIONS OF LANDLORD'S LIABILITY

9.1 Limitation. Landlord shall not be responsible or liable to Tenant for and Tenant hereby releases Landlord from, waives all claims against Landlord arising out of and assumes the risk of, any injury, loss or damage to any person or property in or about the Premises by or from any cause whatsoever, including, without limitation, (a) acts or omissions of persons occupying adjoining premises, (b) theft or vandalism, (c) burst, stopped or leaking water, gas, sewer or steam pipes, (d) loss of utility service, (e) accident, fire or casualty, (f) nuisance, and (g) work done by Landlord in or on the Premises; except, in any case, any such injury, loss or damage arising from the gross negligence or willful misconduct of Landlord or any Landlord Responsible Parties. Notwithstanding the foregoing, Landlord shall remain liable for compliance with its express obligations hereunder.

9.2 Sale of Property. It is agreed that Landlord may at any time sell, assign or transfer its interest in and to the Premises and sell, assign or transfer its interest as landlord in and to this Lease to the purchaser, assignee or transferee in connection with any such sale, assignment or transfer. In the event of any transfer of Landlord's interest in the Premises, the transferor shall be automatically relieved of any and all of Landlord's obligations and liabilities accruing from and after the date of such transfer; provided that the transferee assumes all of Landlord's obligations under this Lease from and after the date of such assignment. Tenant hereby agrees to attorn to Landlord's assignee, transferee, or purchaser from and after the date of notice to Tenant of such assignment, transfer or sale, in the same manner and with the same force and effect as though this Lease were made in the first instance by and between Tenant and the assignee, transferee or purchaser.

9.3 No Personal Liability. In the event of any default by Landlord hereunder, Tenant shall look only to Landlord's interest in the Premises and rents therefrom and any available insurance proceeds for the satisfaction of Tenant's remedies, and no other property or assets of Landlord or any trustee, partner, member, officer or director thereof, disclosed or undisclosed, shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this Lease.

9.4 Limitation on Damages. In no event shall Tenant have the right to seek or recover from Landlord any indirect or consequential damages on account of any claim or matter arising out of or relating to this Lease of the Premises, and Tenant hereby irrevocably waives any right which it might otherwise have to seek or receive any such indirect or consequential damages. In no event shall Landlord have the right to seek or recover from Tenant any indirect or consequential damages on account of any claim or matter arising out of or relating to this Lease of the Premises, and Landlord hereby irrevocably waives any right which it might otherwise have to seek or receive any such indirect or consequential damages.

Article X GENERAL PROVISIONS

10.1 Landlord's Covenant of Quiet Enjoyment; Title. Landlord covenants that Tenant, upon paying the Base Rent and Additional Rent provided for hereunder and performing and observing all of the other covenants and provisions hereof, may peaceably and quietly hold and enjoy the Premises for the applicable Term as aforesaid, free from any party claiming by, under or through Landlord, subject, however, to all of the terms and provisions of this Lease.

10.2 No Partnership or Joint Venture. Nothing contained in this Lease shall be construed as creating a partnership or joint venture of or between Landlord and Tenant, or to create any other relationship between the parties hereto other than that of landlord and tenant.

10.3 Brokerage. Landlord and Tenant each represents and warrants to the other that it has not dealt with any broker in connection with this transaction other than Richards Barry Joyce & Partners, and each agrees to hold harmless the other and indemnify the other from and against any and all damages, costs or expenses (including, but not limited to, reasonable attorneys' fees and disbursements) suffered by the indemnified party as a result of acts of the indemnifying party that would constitute a breach of its covenant or representation and warranty in this **Section 10.3.**

10.4 Estoppel Certificate. Tenant shall, at any time and from time to time, upon not less than ten (10) Business Days' prior written notice from Landlord, execute and deliver to Landlord an estoppel certificate in a form generally consistent with the requirements of institutional lenders and prudent purchasers containing such statements of fact as Landlord may reasonably request including, but not limited to, the following: (a) that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect); (b) the date to which the Base Rent and other charges are paid in advance and the amounts then payable; (c) that there are not, to

Tenant's knowledge, any uncured defaults or unfulfilled obligations on the part of Landlord, or specifying such defaults or unfulfilled obligations, if any are claimed; and (d) that Tenant has taken possession of the Premises. Any such certificate may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises.

Landlord shall, at any time and from time to time, upon not less than ten (10) Business Days' prior written notice from Tenant, execute and deliver to Tenant an estoppel certificate containing such statements of fact as Tenant may reasonably request including, but not limited to, the following: (a) that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect); (b) the date to which the Base Rent and other charges are paid in advance and the amounts then payable; and (c) that there are not, to Landlord's knowledge, any uncured defaults or unfulfilled obligations on the part of Tenant, or specifying such defaults or unfulfilled obligations, if any are claimed. Any such certificate may be conclusively relied upon by any prospective assignee or any purchaser or encumbrancer of Tenant or its assets.

10.5 Prevailing Party. Landlord and Tenant each shall pay all reasonable costs and counsel and other fees incurred by the other party in connection with the successful enforcement by other party from time to time of any obligation under this Lease.

10.6 Notice. Except as otherwise expressly provided herein, all notices given under this Lease shall be in writing and shall be addressed to parties at the addresses indicated below:

Notices to Landlord shall be addressed to:

BTI 199-201 Riverneck, L.P.
c/o Prudential Real Estate Investors
Two Ravinia Drive, Suite 400
Atlanta, Georgia 30346
Attention: Director Asset Management

With a copy to:

Prudential Real Estate Investors
8 Campus Circle Drive, 4th Floor
Parsippany, New Jersey 07054-4493
Attention: Legal Department
Facsimile: (973) 683-1788

Sonnenschein Nath & Rosenthal LLP
7800 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606-6404
Attention: Robert F. Messerly, Esq.
Facsimile: (312) 876-7934

Notices to Tenant shall be addressed to:

Mercury Computer Systems, Inc.
199 Riverneck Road
Chelmsford, MA 01824
Attn: Craig Barrows, General Counsel
Facsimile: 978-967-3302

Any notice may be mailed, delivered by hand or messenger or transmitted by facsimile and shall be deemed to have been delivered if and when received by the addressee, except that any notice given by facsimile, if not given on a Business Day, shall not be deemed to have been delivered until the next Business Day. Any party may, by giving written notice to the other party, change the addresses to which notices shall be given to such party. A certified or registered mail receipt or receipt from a generally recognized commercial delivery service evidencing receipt by the addressee or refusal at the address of the addressee stated above or as changed pursuant to this Section shall be deemed conclusive evidence of receipt. Counsel designated for a party under this Lease may give notice on behalf of such party in the manner provided herein, and any such notice shall be effective as if given by the party.

10.7 Recording. Neither party shall record this Lease. Landlord and Tenant shall each execute and deliver the Notice of Lease in the form attached hereto as **Exhibit F** simultaneously with the execution of this Lease.

10.8 Partial Invalidity. If any provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

10.9 Gender. Feminine or neuter pronouns shall be substituted for those of the masculine form, and the plural shall be substituted for the singular number, in any place or places herein in which the context may require such substitution.

10.10 Bind and Inure. The provisions of this Lease shall be binding upon, and shall inure to the benefit of, the parties hereto and each of their respective successors and assigns, subject to the provisions hereof restricting assignment or subletting by Tenant.

10.11 Entire Agreement. This Lease contains and embodies the entire agreement of the parties hereto with respect to Tenant's leasehold estate hereunder and supersedes all prior agreements, negotiations and discussions between the parties hereto with respect thereto. Any representation, inducement or agreement with respect thereto that is not contained in this Lease shall not be of any force or effect. This Lease may not be modified or changed in whole or in part in any manner other than by an instrument in writing duly signed by both parties hereto.

10.12 Applicable Law. This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

10.13 Headings. Headings are used herein for the convenience of reference and shall not be considered when construing or interpreting this Lease.

10.14 Not An Offer. The submission of an unsigned copy of this document to Tenant for Tenant's consideration does not constitute an offer to lease the Premises or an option to or for the Premises. This document shall become effective and binding only upon the execution and delivery of this Lease by both Landlord and Tenant.

10.15 Time Is of the Essence. Time is of the essence of each provision of this Lease.

10.16 Multiple Counterparts. This Lease may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.

10.17 Waiver of Jury Trial. Landlord and Tenant hereby each waive trial by jury in any action, proceeding or counterclaim brought by either against the other, on or in respect of any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant or Tenant's use or occupancy of the Premises under this Lease.

10.18 Bankruptcy. Notwithstanding anything in this Lease to the contrary, all amounts payable by Tenant, to or on behalf of Landlord under this Lease, whether or not expressly

denominated as rent, will constitute rent for the purposes of Section 502(b)(6) of the Bankruptcy Code.

10.19 Authority. Tenant represents and warrants that each individual executing this Lease on behalf of Tenant is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with the bylaws and resolutions of said corporation, and that this Lease is binding upon said corporation. Landlord represents and warrants that each individual executing this Lease on behalf of Landlord is duly authorized to execute and deliver this Lease on behalf of the entity, and that this Lease is binding on the entity. Each of Landlord and Tenant agrees to furnish to the other, contemporaneously upon the execution and delivery of this Lease, a corporate resolution, proof of authorization by partners or members or other appropriate documentation evidencing the due authorization of the individual executing this Lease to enter into this Lease on behalf of such party.

10.20 No Easement for Light, Air or View. Any elimination or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Buildings shall in no way affect this Lease and Landlord shall have no liability to Tenant with respect thereto.

10.21 Obligations Joint and Several. If there is more than one Tenant, the obligations imposed upon Tenant under this Lease shall be joint and several. The duties and obligations of Tenant shall run and extend not only to the benefit of Landlord, as named herein, but to the following, at the option of the following or any of them: (a) any person by, through or under which Landlord derives the right to lease the Premises; (b) the owner of the Premises; and (c) any Mortgagee or the holder of any rent assignment interests in the Premises, as their respective interests may appear; provided, however, nothing contained herein shall be construed to obligate Tenant to pay Rent to any person other than Landlord until such time as Tenant has been given written notice of either an exercise of a rent assignment or the succession of some other party to the interest of Landlord.

Article XI DEVELOPMENT PARCEL PROVISIONS

11.1 Right of First Offer.

11.1.1 Offer Notice. Subject to the terms and conditions contained herein, from and after the Commencement Date hereof until the expiration or earlier termination of this Lease, in the event that Landlord intends to develop the adjacent parcel of land commonly known as 191 Riverneck Road (the "**Development Parcel**") for lease to commercial tenants, before Landlord enters into a letter of intent for or a lease of any such new space, Landlord will first offer such space to Tenant for lease for the Permitted Uses hereunder by written notice to Tenant (the "**Offer Notice**") specifying the basic business and financial terms of the proposed lease as set forth in Subsection 11.1.2 below. As used herein "**Available Space**" shall mean and refer to space in the building to be constructed on the Development Parcel.

11.1.2 Offered Business Terms. The Offer Notice shall specify the proposed business and financial terms for a lease of the Available Space ("**Offered Business Terms**") which shall include the location and rentable area of the Available Space, the base rent for the

Available Space (which shall be equal to the fair market rental value for the Available Space as of the proposed commencement date of the lease of such Available Space) and any additional rent, the initial term (which shall be coterminous with the remaining Term of this Lease), and any extension or renewal options, the amount of tenant improvement and other allowances (if any), and the other material terms and conditions on which Landlord is prepared to lease the Available Space. Tenant will notify Landlord, within thirty (30) days after receipt of the first Offer Notice given to Tenant pursuant to this **Section 11.1** that (i) Tenant accepts the offer to lease the Available Space on the Offered Business Terms, or (ii) Tenant accepts the offer to lease the Available Space, but rejects Landlord's estimate of the fair market rental value for the Available Space, or (iii) Tenant rejects the offer to lease the Available Space (the failure by Tenant to timely respond being deemed Tenant's rejection of Landlord's offer). In the event that the Offer Notice includes the entire rentable area of the building on the Development Parcel, Tenant's acceptance shall specify the amount of square feet which it desires to lease, which shall be contiguous space and not less than one full floor. If Tenant accepts the offer to lease the Available Space but rejects Landlord's estimate of the fair market rental value for the Available Space, the parties shall negotiate in good faith to resolve such disagreement within thirty (30) days after the date of Tenant's notice, failing which, such disagreement shall be resolved pursuant to the provisions of **Section 2.3(b)** of this Lease. If Tenant accepts the offer to lease the Available Space, then in confirmation thereof, Landlord and Tenant shall enter into a new lease on the Offered Business Terms, the agreed upon rental amounts and otherwise on such other terms and conditions as are substantially equivalent to those set forth in this Lease or are acceptable to the parties. In the event that the Tenant rejects such offer to lease Available Space, then Landlord shall thereafter be entitled to enter into a lease for the Available Space and Landlord shall be under no obligation to offer the same Available Space on the Development Parcel to Tenant.

11.1.3 Conditions. Notwithstanding any contrary provision contained herein, Landlord's obligation to offer any Available Space is conditioned upon (i) this Lease being then in full force and effect, (ii) no Event of Default having occurred under this Lease that is then continuing at the time of exercise and (iii) Tenant shall not have subleased or assigned more than fifty percent (50%) of the Rentable Area of the Premises other than pursuant to an assignment or sublease permitted in accordance with **Subsection 4.10.2** (any of which conditions shall be deemed waived by Landlord unless Landlord shall give Tenant written notice thereof within thirty (30) days after Tenant's exercise).

11.1.4 Transferee Bound. Landlord hereby agrees that in the event that it intends to sell, assign, lease, convey or otherwise transfer all or any portion of the Development Parcel, such conveyance shall be made subject to and conditioned upon such successor agreeing with Tenant, in form reasonably acceptable to Tenant, to be bound by and recognize Tenant's rights under this **Section 11.1**.

11.2 Development Parcel Restrictions. Landlord agrees that during the Term of this Lease, Landlord shall not develop or permit the development or use of the Development Parcel for any use other than commercial general office and/or research and development use. Landlord further agrees Landlord shall not develop or permit the development or use of the Development

Parcel in any manner that would (a) reduce the parking spaces available on the Premises, (b) adversely affect Tenant's access to or use of the Premises, or (c) increase Tenant's costs and expenses under this Lease, including, without limitation, the Landlord's Operating Costs or Taxes.

Article XII DEPOSIT

Tenant has upon execution of this Lease deposited with Landlord a Letter of Credit (hereinafter defined) in the amount set forth in **Section 1.1** (the "**Deposit**"), which Letter of Credit may be drawn upon in whole or in part and applied by Landlord for the purpose of curing any Event of Default by Tenant under this Lease that remains outstanding. If any portion of the Deposit is applied to cure an Event of Default by Tenant, Tenant shall, within five (5) Business Days after written demand therefor, either deposit funds with Landlord equal to the amount applied (in which case such funds shall be held by Landlord hereunder as part of the Deposit) or reinstate the Letter of Credit in an amount sufficient to restore the Deposit to its original amount, and Tenant's failure to do so shall be a breach of this Lease. The unapplied balance of the Deposit, including the Letter of Credit with its remaining unapplied balance, shall be returned to Tenant within thirty (30) days after the expiration of the Term or sooner termination hereof, and after Tenant has vacated and delivered the Premises as required hereunder. Landlord may retain for sixty (60) days following the expiration of the Term or sooner termination of this Lease an amount reasonably calculated to be sufficient to pay any final amount of Taxes or Operating Expenses for the year in which the Term ends. The Deposit is not an advance payment of Rent or an account of Rent, or any part or settlement thereof, or a measure of Landlord's damages. The use or application of the Deposit or any portion thereof shall not prevent Landlord from exercising any other right or remedy provided hereunder or under any Legal Requirements and shall not be construed as liquidated damages. In the event Landlord transfers all or any part of its interest in the Buildings or this Lease, Landlord shall transfer the Deposit to the transferee. Upon such transfer, Landlord shall thereby be released by Tenant from all liability or obligation for the return of the Deposit. The term "**Letter of Credit**" as used herein shall mean an irrevocable, unconditional letter of credit, in the amount of the Deposit (or such lesser amount if part of the Deposit is cash) (i) issued by and drawn on a bank reasonably approved by Landlord (Landlord hereby approving Silicon Valley Bank) and at a minimum having a corporate credit rating from Standard and Poor's Professional Rating Service of BBB- or a comparable minimum rating from Moody's Professional Rating Service, (ii) in form and substance reasonably acceptable to Landlord and meeting the other requirements specified herein, (iii) permitting one or more draws thereunder to be made upon presentation, in one or more locations that include one or the other of New York, New York or Boston, Massachusetts, accompanied only by certification by Landlord or Landlord's managing agent that pursuant to the terms of this Lease, Landlord is entitled to draw upon such Letter of Credit, (iv) permitting transfers at any time without charge, and (v) providing that any notices to Landlord be sent to the notice address specified for Landlord in this Lease or such other address as designated by Landlord from time to time. If the credit rating for the issuer of such Letter of Credit falls below the standard set forth in (i) above, Landlord shall have the right to require that Tenant provide a substitute letter of credit that complies in all respects with the requirements of this Article, and Tenant's failure to provide the same within thirty (30) days following

Landlord's written demand therefor shall entitle Landlord to immediately draw upon the Letter of Credit and hold the proceeds as the Deposit under this Lease. The Letter of Credit shall be for a term of one (1) year and shall provide for automatic one (1) year renewals through the date which is sixty (60) days subsequent to the scheduled expiration of this Lease (as the same may be extended) or if the issuer will not grant automatic renewals, the Letter of Credit shall be renewed by Tenant each year and each such renewal shall be delivered to and received by Landlord not later than thirty (30) days before the expiration of the then current Letter of Credit (herein called a "Renewal Presentation Date"). In the event of a failure to so deliver any such renewal Letter of Credit on or before the applicable Renewal Presentation Date, Landlord shall be entitled to present the then existing Letter of Credit for payment and to receive the proceeds thereof, which proceeds shall be held as the Deposit subject to the terms of this Article XII. Landlord shall also be entitled to draw upon the Letter of Credit, and to hold the proceeds of such drawing as the Deposit subject to the terms of this Article XII, in the event that after such time as Landlord shall have rightfully given Tenant two (2) notices of default during a consecutive 12-month period due to Tenant's failure to make payments of Rent when due, Tenant shall again fail to pay any Rent when due within the same consecutive 12-month period. As a courtesy to Tenant, Landlord agrees to furnish contemporaneous notice to Tenant of any drawing on the Letter of Credit; provided that the failure to furnish such notice shall not give rise to any rights or remedies exercisable by Tenant.

[signatures on next page]

EXECUTED under seal as of the date first above written.

LANDLORD:

BTI 199-201 RIVERNECK, L.P., a Delaware limited partnership

By: 199-201 Riverneck LLC, a Delaware limited liability company, its general partner

By: /s/ Gregory M. Killeen
Name: Gregory Killeen
Title: Vice President

By: /s/ Valerie Tomlinson
Name: Valerie Tomlinson
Title: Vice President

[Signatures continue on following page]

TENANT:

MERCURY COMPUTER SYSTEMS INC.

By: /s/ Robert E. Hult

Name: Robert E. Hult

Title: Senior Vice President, Chief Financial Officer and Treasurer

DEFINITIONS

As used in this Lease, the following terms shall have the following meanings, applicable, as appropriate, to both the singular and plural form of the terms defined below:

"***ADA***" is defined in **Section 4.11.2**.

"***Additional Rent***" is defined in **Section 3.1**.

"***Affiliate Sublease***" is defined in **Section 4.10.2**.

"***Alterations***" is defined in **Section 4.11**.

"***Assignment***" is defined in **Section 4.10**.

"***Bankruptcy Code***" means Title 11 of the United States Code, as amended.

"***Base Rent***" means the amount stated in Article 1, to be adjusted and payable in accordance with **Article 3**.

"***Building Systems***" shall mean the mechanical, electrical, heating, ventilating, air conditioning, elevator, plumbing, sanitary, life-safety and related communications apparatus, lighting and other utility and service systems of the Buildings and all components thereof, as the same shall exist from time to time, and all alterations, renewals and replacements thereof, additions thereto and substitutions therefor.

"***Buildings***" is defined in **Article 1**.

"***Business Days***" means Monday through Friday, excluding Saturdays, Sundays and federal or state legal holidays.

"***Casualty***" is defined in **Section 5.1**.

"***CERCLA***" is defined in **Subsection 4.3.1.**

"***Commencement Date***" means the date specified in **Article 1**.

"***Default Rate***" is defined in **Section 3.2.**

"***Environmental Laws***" is defined in **Section 4.3**.

"***Event of Default***" is defined in **Section 6.1**.

"***Hazardous Materials***" is defined in **Section 4.3**.

"***Indemnified Party***" is defined in **Section 4.5**.

"***Land***" is defined in **Article 1**.

"***Landlord***" is defined in **Article 1**.

"***Landlord Responsible Parties***" is defined in **Section 4.5**.

"***Legal Requirements***" means applicable laws, statutes, codes, ordinances, orders, rules, regulations, conditions of approval, and requirements, of all federal, state, county, municipal and other governmental authorities and the departments, commissions, boards, bureaus, instrumentalities, and officers thereof, and all administrative or judicial orders or decrees and all permits, licenses, approvals, and other entitlements issued by governmental entities, and rules of common law, relating to or affecting the Buildings or the use, operation or occupancy of the Premises, whether now existing or hereafter enacted.

"***Lien***" means any lien, mortgage, deed of trust, encumbrance, chattel mortgage, security agreement, or order for the payment of money filed against the Premises.

"***Mortgage***" is defined in **Section 8.1**.

"***Mortgagee***" is defined in **Section 8.1**.

"***Obligated Party***" is defined in **Section 4.5**.

"***Permitted Uses***" is defined in **Section 4.1**.

"***Premises***" is defined in **Article 1**.

"***RCRA***" is defined in **Subsection 4.3.1**.

"***Remedial Work Plan***" is defined in **Subsection 4.3.3**.

"***Rent***" is defined in **Article 3**.

"Sublease" is defined in **Section 4.10**.

"Successor" is defined in **Section 8.2**.

"Successor Entity" is defined in **Section 4.10**.

"***Tax Parcel***" is defined in **Subsection 3.3.1**.

"***Tax Year***" is defined in **Subsection 3.3.1**.

"***Taxes***" is defined in **Subsection 3.3.1**.

"***Tenant***" is defined in **Article 1**.

"***Tenant Responsible Parties***" is defined in **Section 4.5**.

"***Tenant's Release***" is defined in **Subsection 4.3.3**.

"***Term***" is defined in **Article 1**.

"***Untenantable***" means that, in the reasonable judgment of Tenant, Tenant shall be unable to occupy, and shall not be occupying, the Premises or the applicable portion thereof for the ordinary conduct of Tenant's business.

EXHIBIT 12.1

MERCURY COMPUTER SYSTEMS, INC.

COMPUTATION OF RATIO OF EARNINGS TO FIXED CHARGES
(Dollars in thousands)

	Year Ended June 30, 2002	Year Ended June 30, 2003	Year Ended June 30, 2004	Year Ended June 30, 2005	Year Ended June 30, 2006	Nine Months Ended March 31, 2007
Income (loss) before income taxes	$ 21,983	$ 32,870	$ 32,233	$ 43,123	$ (17,110)	$ (18,102)
Fixed charges:						
Interest expense	987	923	1,441	4,166	4,102	3,394
Portion of rental expense representative of interest factor	203	310	366	593	805	650
Amortization of deferred financing fees	—	—	137	718	840	634
Total fixed charges	$ 1,190	$ 1,233	$ 1,944	$ 5,477	$ 5,747	$ 4,678
Income before income taxes plus fixed charges	$ 23,173	$ 34,103	$ 34,177	$ 48,600	$ (11,363)	$ (13,424)
Ratio of earnings to fixed charges (A)	19.5	27.7	17.6	8.9	(2.0)	(2.9)
Coverage deficiency	$ —	$ —	$ —	$ —	$ 17,110	$ 18,102

(A) The ratio of earnings to fixed charges is calculated by dividing (a) earnings before income taxes and fixed charges by (b) fixed charges. Fixed charges include interest expense (including an estimate of the interest within rental expense) and amortization of deferred financing fees.

EXHIBIT 31.1

CERTIFICATION

I, James R. Bertelli, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Mercury Computer Systems, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 9, 2007

/s/ JAMES R. BERTELLI

James R. Bertelli
PRESIDENT AND CHIEF EXECUTIVE OFFICER
[PRINCIPAL EXECUTIVE OFFICER]

EXHIBIT 31.2

CERTIFICATION

I, Robert E. Hult, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Mercury Computer Systems, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 9, 2007

/s/ ROBERT E. HULT

Robert E. Hult
SENIOR VICE PRESIDENT AND
CHIEF FINANCIAL OFFICER
[PRINCIPAL FINANCIAL OFFICER]

EXHIBIT 32.1

Mercury Computer Systems, Inc.

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 Mercury Computer Systems, Inc. (the "Company") on Form 10-Q for the period ended March 31, 2007 as filed with the Securities and Exchange Commission (the "Report"), we, James R. Bertelli, President and Chief Executive Officer of the Company, and Robert E. Hult, Senior Vice President and Chief Financial Officer of the Company, certify, pursuant to Section 1350 of Chapter 63 of Title 18, United States Code, that to our knowledge the Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended, and the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 9, 2007

/s/ JAMES R. BERTELLI
James R. Bertelli
PRESIDENT AND CHIEF EXECUTIVE OFFICER

/s/ ROBERT E. HULT
Robert E. Hult
SENIOR VICE PRESIDENT AND
CHIEF FINANCIAL OFFICER

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.