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

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**FORM 10-Q**

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**Quarterly Report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the quarterly period ended: **September 30, 2012**

**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: **0-19672**

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**American Superconductor Corporation**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**04-2959321**  
(I.R.S. Employer  
Identification No.)

**64 Jackson Road, Devens, Massachusetts**  
(Address of principal executive offices)

**01434**  
(Zip Code)

**(978) 842-3000**  
(Registrant's telephone number, including area code)

**N/A**  
(Former name, former address and former fiscal year, if changed since last report)

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company	<input type="checkbox"/>

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

Shares outstanding of the Registrant's common stock:

Common Stock, par value \$0.01 per share  
Class

54,519,496  
Outstanding as of October 31, 2012

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AMERICAN SUPERCONDUCTOR CORPORATION

INDEX

	<u>Page No.</u>
<b><u>PART I—FINANCIAL INFORMATION</u></b>	
Item 1. <a href="#">Financial Statements</a>	3
Item 2. <a href="#">Management’s Discussion and Analysis of Financial Condition and Results of Operations</a>	24
Item 3. <a href="#">Quantitative and Qualitative Disclosures About Market Risk</a>	35
Item 4. <a href="#">Controls and Procedures</a>	36
<b><u>PART II—OTHER INFORMATION</u></b>	
Item 1. <a href="#">Legal Proceedings</a>	37
Item 1A. <a href="#">Risk Factors</a>	39
Item 2. <a href="#">Unregistered Sales of Equity Securities and Use of Proceeds</a>	40
Item 3. <a href="#">Defaults Upon Senior Securities</a>	40
Item 4. <a href="#">Mine Safety Disclosure</a>	40
Item 5. <a href="#">Other Information</a>	40
Item 6. <a href="#">Exhibits</a>	40
<a href="#">Signature</a>	41

## AMERICAN SUPERCONDUCTOR CORPORATION

## PART I—FINANCIAL INFORMATION

## ITEM 1. FINANCIAL STATEMENTS

## UNAUDITED CONDENSED CONSOLIDATED BALANCE SHEETS

(In thousands)

	September 30, 2012	March 31, 2012
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 49,136	\$ 46,279
Marketable securities	5,220	5,304
Accounts receivable, net	15,224	18,999
Inventory	29,674	29,256
Prepaid expenses and other current assets	22,564	31,444
Restricted cash	13,620	12,086
Deferred tax assets	203	203
Total current assets	<u>135,641</u>	<u>143,571</u>
Property, plant and equipment, net	85,462	90,828
Intangibles, net	3,251	3,772
Restricted cash	5,142	2,540
Deferred tax assets	3,129	3,129
Other assets	9,688	11,216
Total assets	<u>\$ 242,313</u>	<u>\$ 255,056</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable and accrued expenses	\$ 26,595	\$ 37,582
Note payable, current portion, net of discount of \$647 as of September 30, 2012	3,584	—
Current portion of convertible note, net of discount of \$6,060 as of September 30, 2012	5,978	—
Derivative liability	10,280	—
Adverse purchase commitments	12,080	25,894
Deferred revenue	17,328	19,718
Deferred tax liabilities	3,129	3,129
Total current liabilities	<u>78,974</u>	<u>86,323</u>
Note Payable, net of discount of \$276 as of September 30, 2012	5,493	—
Convertible note net of discount of \$2,357 as of September 30, 2012	9,681	—
Deferred revenue	1,521	1,558
Deferred tax liabilities	203	203
Other liabilities	1,658	2,093
Total liabilities	<u>97,530</u>	<u>90,177</u>
Commitments and contingencies (Note 13)		
Stockholders' equity:		
Common stock	531	520
Additional paid-in capital	903,485	896,603
Treasury stock	(307)	(271)
Accumulated other comprehensive income	1,298	2,027
Accumulated deficit	(760,224)	(734,000)
Total stockholders' equity	<u>144,783</u>	<u>164,879</u>
Total liabilities and stockholders' equity	<u>\$ 242,313</u>	<u>\$ 255,056</u>

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

**AMERICAN SUPERCONDUCTOR CORPORATION**  
**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
**(In thousands, except per share data)**

	Three months ended September 30,		Six months ended September 30,	
	2012	2011	2012	2011
Revenues	\$ 20,867	\$ 20,800	\$ 49,583	\$ 29,858
Cost and operating expenses:				
Cost of revenues	20,384	21,937	37,310	38,892
Research and development	3,621	7,276	7,532	15,411
Selling, general and administrative	11,736	17,560	25,535	39,550
Restructuring and impairments	16	4,301	143	4,301
Write-off of advance payment	—	20,551	—	20,551
Amortization of acquisition related intangibles	80	300	161	604
Total cost and operating expenses	<u>35,837</u>	<u>71,925</u>	<u>70,681</u>	<u>119,309</u>
Operating loss	(14,970)	(51,125)	(21,098)	(89,451)
Change in fair value of derivatives and warrants	3,285	—	897	—
Interest (expense) income, net	(2,919)	2	(5,637)	243
Other (expense) income, net	<u>(1,266)</u>	<u>355</u>	<u>(1,143)</u>	<u>920</u>
Loss before income tax expense	(15,870)	(50,768)	(26,981)	(88,288)
Income tax (benefit) expense	<u>79</u>	<u>941</u>	<u>(757)</u>	<u>1,100</u>
Net loss	<u>\$ (15,949)</u>	<u>\$ (51,709)</u>	<u>\$ (26,224)</u>	<u>\$ (89,388)</u>
Net loss per common share				
Basic	<u>\$ (0.31)</u>	<u>\$ (1.02)</u>	<u>\$ (0.51)</u>	<u>\$ (1.76)</u>
Diluted	<u>\$ (0.31)</u>	<u>\$ (1.02)</u>	<u>\$ (0.51)</u>	<u>\$ (1.76)</u>
Weighted average number of common shares outstanding				
Basic	<u>51,907</u>	<u>50,876</u>	<u>51,551</u>	<u>50,716</u>
Diluted	<u>51,907</u>	<u>50,876</u>	<u>51,551</u>	<u>50,716</u>

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

**AMERICAN SUPERCONDUCTOR CORPORATION**  
**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE (LOSS) INCOME**  
**(In thousands)**

	<u>Three months ended</u> <u>September 30,</u>		<u>Six months ended</u> <u>September 30,</u>	
	<u>2012</u>	<u>2011</u>	<u>2012</u>	<u>2011</u>
Net loss	\$(15,949)	\$(51,709)	\$(26,224)	\$(89,388)
Other comprehensive (loss) income, net of tax:				
Foreign currency translation (losses) gains	439	(2,242)	(729)	(1,107)
Unrealized gains on investments	(5)	(20)	(1)	(11)
Total other comprehensive income (loss), net of tax	<u>434</u>	<u>(2,262)</u>	<u>(730)</u>	<u>(1,118)</u>
Comprehensive loss	<u><u>\$(15,515)</u></u>	<u><u>\$(53,971)</u></u>	<u><u>\$(26,954)</u></u>	<u><u>\$(90,506)</u></u>

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

**AMERICAN SUPERCONDUCTOR CORPORATION**  
**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In thousands)

	Six months ended September 30,	
	2012	2011
<b>Cash flows from operating activities:</b>		
Net loss	\$(26,224)	\$ (89,388)
Adjustments to reconcile net (loss) to net cash (used in) operations:		
Depreciation and amortization	6,628	6,670
Stock-based compensation expense	4,039	5,579
Write-off of advanced payment to The Switch	—	20,551
Restructuring charges, net of payments	(49)	2,174
Impairment of long-lived and intangible assets	—	918
Provision for excess and obsolete inventory	421	1,503
Adverse purchase commitment losses (recoveries), net	(8,309)	167
Loss on minority interest investments	1,490	1,351
Change in fair value of derivatives and warrants	897	—
Non-cash interest expense	4,443	—
Other non-cash items	350	441
Changes in operating asset and liability accounts:		
Accounts receivable	2,856	(3,709)
Inventory	(971)	(6,800)
Prepaid expenses and other current assets	8,394	(12,529)
Accounts payable and accrued expenses	(14,900)	(37,633)
Deferred revenue	(2,236)	3,809
Net cash (used in) operating activities	<u>(23,171)</u>	<u>(106,896)</u>
<b>Cash flows from investing activities:</b>		
Purchase of property, plant and equipment	(903)	(7,303)
Proceeds from the maturity of marketable securities	84	111,070
Change in restricted cash	(4,116)	(3,781)
Purchase of intangible assets	—	(768)
Purchase of minority investments	—	(1,800)
Advanced payment for planned acquisition	—	(20,551)
Change in other assets	—	(639)
Net cash (used in) provided by investing activities	<u>(4,935)</u>	<u>76,228</u>
<b>Cash flows from financing activities:</b>		
Employee taxes paid related to net settlement of equity awards	(36)	(271)
Repayment of debt	—	(4,641)
Proceeds from the issuance of debt, net of expenses	31,101	4,641
Proceeds from exercise of employee stock options and ESPP	178	150
Net cash provided by (used in) financing activities	<u>31,243</u>	<u>(121)</u>
Effect of exchange rate changes on cash and cash equivalents	<u>(280)</u>	<u>517</u>
Net increase (decrease) in cash and cash equivalents	2,857	(30,272)
Cash and cash equivalents at beginning of period	46,279	123,783
Cash and cash equivalents at end of period	<u>\$ 49,136</u>	<u>\$ 93,511</u>
<b>Supplemental schedule of cash flow information:</b>		
Cash paid for income taxes, net of refunds	\$ (752)	\$ 18,147
Issuance of common stock to settle liabilities	2,676	421
Cash paid for interest expense	269	—

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

**AMERICAN SUPERCONDUCTOR CORPORATION**  
**NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

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

American Superconductor Corporation (the “Company” or “AMSC”) was founded on April 9, 1987. The Company is a leading provider of megawatt-scale solutions that lower the cost of wind power and enhance the performance of the power grid. In the wind power market, the Company enables manufacturers to field highly competitive wind turbines through its advanced power electronics products, engineering and support services. In the power grid market, the Company enables electric utilities and renewable energy project developers to connect, transmit and distribute power through its transmission planning services and power electronics and superconductor-based products. The Company’s wind and power grid products and services provide exceptional reliability, security, efficiency and affordability to its customers.

These unaudited condensed consolidated financial statements of the Company have been prepared in accordance with the Securities and Exchange Commission’s (“SEC”) instructions to Form 10-Q. Certain information and footnote disclosures normally included in the financial statements prepared in accordance with accounting principles generally accepted in the United States (“GAAP”) have been condensed or omitted pursuant to those instructions. The year-end condensed balance sheet data was derived from audited financial statements but does not include all disclosures required by GAAP. The unaudited condensed consolidated financial statements, in the opinion of management, reflect all adjustments (consisting of normal recurring adjustments) necessary for a fair statement of the results for the interim periods ended September 30, 2012 and 2011 and the financial position at September 30, 2012.

At September 30, 2012, the Company had cash, cash equivalents, and marketable securities of \$54.4 million. The Company experienced a substantial decline in revenues, incurred a net loss of \$136.8 million and used \$141.0 million of cash for operations during the fiscal year ended March 31, 2012. As a result, the Company reduced its global workforce by approximately 50% and consolidated certain business operations in three locations to reduce facility costs. As of September 30, 2012, the Company had a global workforce of approximately 445 persons.

The Company used \$23.2 million in cash for operations during the six months ended September 30, 2012, compared to \$106.9 million during the six months ended September 30, 2011. The Company expects that its cost reduction efforts and anticipated revenue growth will result in a substantial reduction in cash used for operations during the year ending March 31, 2013. The Company plans to closely monitor its expenses and, if required, expects to further reduce operating costs and capital spending to enhance liquidity.

On April 4, 2012, the Company completed a private placement of \$25.0 million of 7% senior convertible notes (“Convertible Notes”). On June 5, 2012, the Company entered into a Loan and Security Agreement (“Term Loan”), under which the Company borrowed \$10.0 million. See Note 11, “Debt”, for further information regarding these debt arrangements, including the covenants, restrictions and events of default under the agreements. The Company is in compliance with the covenants and restrictions included in the Convertible Notes and Term Loan as of the date of this Quarterly Report on Form 10-Q.

The Company believes that its available cash, together with additional reductions in operating costs and capital expenditures that it expects to make if necessary, will be sufficient to fund its operations, capital expenditures and any scheduled cash payments under its debt obligations through September 30, 2013. The Company’s liquidity is highly dependent on its ability to profitably grow revenues, successfully manage adverse purchase commitments, fund and maintain compliance with the covenants and restrictions on its debt obligations, and raise additional capital, as required. The Company may seek additional financing; however, there can be no assurance that financing will be available on commercially acceptable terms or at all.

The results of operations for an interim period are not necessarily indicative of the results of operations to be expected for the fiscal year. These unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements for the fiscal year ended March 31, 2012 (fiscal 2011) which are contained in the Company’s Annual Report on Form 10-K/A.

## [Table of Contents](#)

### 2. Stock-Based Compensation

The Company accounts for its stock-based compensation at fair value. The following table summarizes stock-based compensation expense by financial statement line item for the three and six months ended September 30, 2012 and 2011 (in thousands):

	Three months ended September 30,		Six months ended September 30,	
	2012	2011	2012	2011
Cost of revenues	\$ 213	\$ 440	\$ 383	\$ 769
Research and development	591	665	1,154	1,325
Selling, general and administrative	1,240	1,008	2,502	3,485
Total	<u>\$2,044</u>	<u>\$ 2,113</u>	<u>\$4,039</u>	<u>\$5,579</u>

During the six months ended September 30, 2012, the Company granted approximately 852,000 stock options, and 287,000 restricted stock awards, as well as issued approximately 215,000 shares of common stock in-lieu of cash bonuses, which vested immediately, to employees under the 2007 Stock Incentive Plan. The Company recorded the issuance of stock in-lieu of cash bonuses as a non-cash issuance of stock to settle liabilities in the unaudited consolidated condensed statement of cash flows. The options granted vest upon the passage of time, generally 3 years. For awards that vest upon the passage of time, expense is being recorded over the vesting period.

The estimated fair value of the Company's stock-based awards, less expected annual forfeitures, is amortized over the awards' service period. The total unrecognized compensation cost for unvested outstanding stock options was \$6.1 million for the six months ended September 30, 2012. This expense will be recognized over a weighted average expense period of approximately 2.1 years. The total unrecognized compensation cost for unvested outstanding restricted stock was \$3.9 million for the six months ended September 30, 2012. This expense will be recognized over a weighted average expense period of approximately 1.2 years.

The weighted-average assumptions used in the Black-Scholes valuation model for stock options granted during the three and six months ended September 30, 2012 and 2011 are as follows:

	Three months ended September 30,		Six months ended September 30,	
	2012	2011	2012	2011
Expected volatility	71.9%	77.6%	71.9%	69.3%
Risk-free interest rate	0.8%	1.2%	0.9%	1.8%
Expected life (years)	5.9	5.9	5.9	5.9
Dividend yield	None	None	None	None

The expected volatility rate was estimated based on an equal weighting of the historical volatility of the Company's common stock and the implied volatility of the Company's traded options. The expected term was estimated based on an analysis of the Company's historical experience of exercise, cancellation, and expiration patterns. The risk-free interest rate is based on the average of the five and seven year United States Treasury rates.

### 3. Computation of Net (Loss) Income per Common Share

Basic net (loss) income per share ("EPS") is computed by dividing net (loss) income by the weighted-average number of common shares outstanding for the period. Where applicable, diluted EPS is computed by dividing the net (loss) income by the weighted-average number of common shares and dilutive common equivalent shares outstanding during the period, calculated using the treasury stock method. Common equivalent shares include the effect of restricted stock, exercise of stock options and warrants and contingently issuable shares. For both the three and six months ended September 30, 2012, 8.8 million shares, were not included in the calculation of diluted EPS as they were considered anti-dilutive, of which 3.0 million shares relate to unvested stock options, 3.2 million shares relate to the issuance of warrants, and 2.6 million shares relate to the convertible feature of the Company's Convertible Notes. For both the three and six months ended September 30, 2011, 2.6 million shares of unvested stock options were not included in the calculation of diluted EPS as they were considered anti-dilutive.



## [Table of Contents](#)

The following table reconciles the numerators and denominators of the earnings per share calculation for the three and six months ended September 30, 2012 and 2011 (in thousands, except per share data):

	Three months ended September 30,		Six months ended September 30,	
	2012	2011	2012	2011
<b>Numerator:</b>				
Net loss	<u>\$ (15,949)</u>	<u>\$ (51,709)</u>	<u>\$ (26,224)</u>	<u>\$ (89,388)</u>
<b>Denominator:</b>				
Weighted-average shares of common stock outstanding	52,606	51,232	52,202	51,090
Weighted-average shares subject to repurchase	<u>(699)</u>	<u>(356)</u>	<u>(651)</u>	<u>(374)</u>
Shares used in per-share calculation — basic	51,907	50,876	51,551	50,716
Shares used in per-share calculation — diluted	<u>51,907</u>	<u>50,876</u>	<u>51,551</u>	<u>50,716</u>
Net loss per share — basic	<u>\$ (0.31)</u>	<u>\$ (1.02)</u>	<u>\$ (0.51)</u>	<u>\$ (1.76)</u>
Net loss per share — diluted	<u>\$ (0.31)</u>	<u>\$ (1.02)</u>	<u>\$ (0.51)</u>	<u>\$ (1.76)</u>

#### 4. Fair Value Measurements

In January 2010, the Financial Accounting Standards Board (“FASB”) issued guidance related to disclosures of fair value measurements. The guidance requires gross presentation of activity within the Level 3 measurement roll-forward and details of transfers in and out of Level 1 and 2 measurements. It also clarifies two existing disclosure requirements on the level of disaggregation of fair value measurements and disclosures on inputs and valuation techniques. A change in the hierarchy of an investment from its current level will be reflected in the period during which the pricing methodology of such investment changes. Disclosure of the transfer of securities from Level 1 to Level 2 or Level 3 will be made in the event that the related security is significant to total cash and investments. The Company did not have any transfers of assets and liabilities between Level 1, Level 2 and Level 3 of the fair value measurement hierarchy during the three months ended September 30, 2012.

A valuation hierarchy for disclosure of the inputs to valuation used to measure fair value has been established. This hierarchy prioritizes the inputs into three broad levels as follows:

- Level 1** - Inputs are unadjusted quoted prices in active markets for identical assets or liabilities that the Company has the ability to access at the measurement date.
- Level 2** - Inputs include quoted prices for similar assets and liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active, inputs other than quoted prices that are observable for the asset or liability, and inputs that are derived principally from or corroborated by observable market data by correlation or other means (market corroborated inputs).
- Level 3** - Unobservable inputs that reflect the Company’s assumptions that market participants would use in pricing the asset or liability. The Company develops these inputs based on the best information available, including its own data.

A financial asset’s or liability’s classification within the hierarchy is determined based on the lowest level input that is significant to the fair value measurement.

## Table of Contents

The following table provides the assets carried at fair value, measured as of September 30, 2012 and March 31, 2012 (in thousands):

	<u>Total Carrying Value</u>	<u>Quoted Prices in Active Markets (Level 1)</u>	<u>Significant Other Observable Inputs (Level 2)</u>	<u>Significant Unobservable Inputs (Level 3)</u>
<b>September 30, 2012:</b>				
Assets:				
Cash equivalents	\$30,400	\$ 30,400	\$ —	\$ —
Short-term commercial paper	5,220	—	5,220	—
Liabilities:				
Derivative liability	\$ 2,763	\$ —	\$ —	\$ 2,763
Warrants	7,517	—	—	7,517
<b>March 31, 2012:</b>				
Assets:				
Cash equivalents	\$23,485	\$ 23,485	\$ —	\$ —
Short-term commercial paper	5,304	—	5,304	—

The table below reflects the activity for the Company's major classes of liabilities measured at fair value for the period ended September 30, 2012 (in thousands):

	<u>Derivative Liability</u>	<u>Warrants</u>
April 1, 2012	\$ —	\$ —
Valuation of derivative liability	3,779	—
Warrant issuance with Senior Convertible Notes	—	7,018
Warrant issuance with Senior Secured Term Loan	—	380
Mark to market adjustment	(1,016)	119
Balance at September 30, 2012	<u>\$ 2,763</u>	<u>\$ 7,517</u>

### Valuation Techniques

#### Cash Equivalents

Cash equivalents consist of highly liquid instruments with maturities of three months or less that are regarded as high quality, low risk investments and are measured using such inputs as quoted prices, and are classified within Level 1 of the valuation hierarchy. Cash equivalents consist principally of certificates of deposits and money market accounts.

#### Marketable Securities

Marketable securities consist primarily of government-backed securities and commercial paper and are measured using such inputs as quoted prices for identical or similar assets in markets that are not active, inputs other than quoted prices that are observable for the asset (for example, interest rates and yield curves observable at commonly quoted intervals), and inputs that are derived principally from or corroborated by observable market data by correlation or other means, and are classified within Level 2 of the valuation hierarchy. The Company's marketable securities generally have maturities of greater than three months from original purchase date but less than twelve months from the date of the balance sheet. The Company determines the appropriate classification of its marketable securities at the time of purchase and re-evaluates such classification as of each balance sheet date. All marketable securities are considered available-for-sale and are carried at fair value. The Company periodically reviews the realizability of each short-term and long-term marketable security when impairment indicators exist with respect to the security. If an other-than-temporary impairment of value of the security exists, the carrying value of the security is written down to its estimated fair value.

## [Table of Contents](#)

### *Derivative Liability*

The Company has identified all of the derivatives (“Derivative Liability”) associated with the Convertible Notes which include holder change of control redemption rights, issuer optional redemption rights, sale redemption rights and a feature to convert the Convertible Notes into equity at the holder’s option. The Derivative Liability is subject to revaluation at each balance sheet date, and any change in fair value will be recorded as a change in fair value in other income (expense) until the earlier of its exercise or expiration. The Company relies on assumptions in a lattice model to determine the fair value of Derivative Liability. The Company has appropriately valued the Derivative Liability within Level 3 of the valuation hierarchy. See Note 11, “Debt”, for discussion on the Convertible Notes, Derivative Liability and valuation assumptions used.

### *Warrants*

Warrants were issued in conjunction with the Convertible Notes and the Term Loan. See Note 11, “Debt”, for additional information on warrants. These warrants are subject to revaluation at each balance sheet date, and any change in fair value will be recorded as a change in fair value in other income (expense) until the earlier of their exercise or expiration.

The Company relies on various assumptions to determine the fair value of warrants. The Company has appropriately valued the warrants within Level 3 of the valuation hierarchy. See Note 12, “Warrants and Derivative Liabilities”, for a discussion of the warrants and the valuation assumptions used.

## **5. Accounts Receivable**

Accounts receivable at September 30, 2012 and March 31, 2012 consisted of the following (in thousands):

	<b>September 30, 2012</b>	<b>March 31, 2012</b>
Accounts receivable (billed)	\$ 12,307	\$ 16,240
Accounts receivable (unbilled)	2,927	2,811
Less: Allowance for doubtful accounts	(10)	(52)
Accounts receivable, net	<u>\$ 15,224</u>	<u>\$ 18,999</u>

## **6. Inventory**

The components of inventory at September 30, 2012 and March 31, 2012 are as follows (in thousands):

	<b>September 30, 2012</b>	<b>March 31, 2012</b>
Raw materials	\$ 8,138	\$ 9,962
Work-in-process	4,263	2,390
Finished goods	15,374	14,438
Deferred program costs	1,899	2,466
Net inventory	<u>\$ 29,674</u>	<u>\$ 29,256</u>

For the three and six months ended September 30, 2012, the Company recorded an inventory write-down of approximately \$0.2 million and \$0.4 million respectively based on evaluating its ending inventory on hand for excess quantities and obsolescence.

Deferred program costs as of September 30, 2012 and March 31, 2012 primarily represent costs incurred on D-VAR turnkey projects and programs accounted for under contract accounting where the Company needs to complete development programs before revenue and costs will be recognized, respectively.

## [Table of Contents](#)

### 7. Prepaid and Other Current Assets

Prepaid and other current assets consisted of the following (in thousands):

	September 30, 2012	March 31, 2012
Non-Trade Receivables	\$ 983	3,922
Prepaid Expenses	3,094	4,707
Prepaid VAT and Other Taxes	16,784	18,273
Notes Receivable	1,674	4,526
Other Current Assets	29	16
Total	<u>\$ 22,564</u>	<u>\$ 31,444</u>

### 8. Accounts Payable and Accrued Expenses

Accounts payable and accrued expenses consisted of the following (in thousands):

	September 30, 2012	March 31, 2012
Accounts payable	\$ 3,390	\$ 8,191
Accrued inventories in-transit	2,954	3,330
Accrued miscellaneous expenses	8,806	9,708
Accrued subcontractor program costs	1,642	1,885
Accrued compensation	4,930	8,380
Income taxes payable	81	192
Accrued warranty	4,792	5,896
Total	<u>\$ 26,595</u>	<u>\$ 37,582</u>

#### *Product Warranty*

The Company generally provides a one to three year warranty on its products, commencing upon installation. A provision is recorded upon revenue recognition to cost of revenues for estimated warranty expense based on historical experience.

Product warranty activity was as follows (in thousands):

	Three months ended September 30,		Six months ended September 30,	
	2012	2011	2012	2011
Balance at beginning of period	\$ 5,500	\$ 7,334	\$ 5,896	\$ 7,907
Change in accruals for warranties during the period	(384)	(69)	(551)	(474)
Settlements during the period	(324)	(210)	(553)	(378)
Balance at end of period	<u>\$ 4,792</u>	<u>\$ 7,055</u>	<u>\$ 4,792</u>	<u>\$ 7,055</u>

### 9. Income Taxes

For the three and six months ended September 30, 2012, the Company recorded income tax expense of \$0.1 million and an income tax benefit of \$0.8 million, respectively. For the three and six months ended September 30, 2011, the Company recorded income tax expense of \$0.9 million and \$1.1 million, respectively. The income tax expense for the three months ended September 30, 2012, was primarily due to income taxes in foreign jurisdictions. The income tax benefit for the six months ended September 30, 2012 was primarily due to a refund of income taxes paid in China. The Company has provided a valuation allowance against all existing and newly created deferred tax assets as of September 30, 2012, as it is more likely than not that its deferred tax assets are not currently realizable due to the net operating losses incurred by the Company since its inception.

## 10. Restructuring

The Company accounts for charges resulting from operational restructuring actions in accordance with ASC Topic 420, *Exit or Disposal Cost Obligations* (“ASC 420”) and ASC Topic 712, *Compensation - Nonretirement Postemployment Benefits* (“ASC 712”). In accounting for these obligations, the Company is required to make assumptions related to the amounts of employee severance, benefits, and related costs and the time period over which leased facilities will remain vacant, sublease terms, sublease rates and discount rates. Estimates and assumptions are based on the best information available at the time the obligation arises. These estimates are reviewed and revised as facts and circumstances dictate; changes in these estimates could have a material effect on the amount accrued on the consolidated balance sheet.

During the year ended March 31, 2012, the Company initiated restructuring activities in order to reorganize its global operations, streamline various functions of the business, and reduce its global workforce to better reflect the demand for its products. These activities resulted in the reduction of its global workforce by approximately 50%. During the six months ended September 30, 2012, the Company incurred restructuring costs of \$0.1 million. These additional charges were paid as of September 30, 2012 and the remaining balance of accrued restructuring is expected to be paid through March 2013.

The following table presents restructuring charges and cash payments (in thousands):

	Severance pay and benefits	Facility exit costs	Total
Accrued restructuring balance at April 1, 2012	\$ 680	\$ 294	\$ 974
Charges to operations	182	(39)	143
Cash payments	(560)	(255)	(815)
Accrued restructuring balance at September 30, 2012	<u>\$ 302</u>	<u>\$ (0)</u>	<u>\$ 302</u>

All restructuring charges discussed above are included within restructuring and impairments in the Company’s unaudited condensed consolidated statements of operations. The Company includes accrued restructuring within accounts payable and accrued expenses in the unaudited condensed consolidated balance sheets.

## 11. Debt

### Senior Convertible Notes

On April 4, 2012, the Company entered into a Securities Purchase Agreement and completed a private placement of \$25.0 million of 7% senior convertible notes with Capital Ventures International (“CVI”), an affiliate of Heights Capital Management. After fees and expenses, the net proceeds were \$23.2 million. The Convertible Notes have an initial conversion price of \$4.85 per share, representing a premium of approximately 20% over AMSC’s closing price on April 3, 2012. The Convertible Notes are payable in monthly installments beginning four months from issuance and ending on October 4, 2014. Monthly payments are payable in cash or common stock at the option of the Company, subject to certain trading volume, stock price and other conditions. CVI can also elect to defer receipt of monthly installment payments at its option. Any deferred installment payments will continue to accrue interest. CVI elected to defer the installment payment due September 4, 2012 of \$1.1 million. The Company registered 10,262,311 shares of common stock which may be used as payment for principal and interest in lieu of cash for resale under the Securities Act as required under a Registration Rights Agreement with CVI.

The Company has accounted for the Convertible Notes as an instrument that has the characteristics of a debt host contract containing several embedded derivative features that would require bifurcation and separate accounting as a derivative instrument pursuant to the provisions of ASC 815. The Company elected not to use the fair value option for the payable of \$25.0 million and will record the liability at the stated value under the loan agreement on the date of issuance with no changes in fair value reported in subsequent periods.

The Company has identified the following derivatives associated with the Convertible Notes: holder change of control redemption rights; issuer optional redemption rights; sale redemption rights and a feature to convert the Convertible Note into equity at the holder’s option. The Company valued these derivatives at \$3.8 million upon issuance and recorded the value as a debt discount and a derivative liability. See Note 12, “Warrants and Derivative Liabilities”, for additional information regarding derivative liabilities.

## [Table of Contents](#)

In addition, CVI received a warrant to purchase approximately 3.1 million additional shares of common stock exercisable at a strike price of \$5.45 per share, subject to adjustment, until October 4, 2017. Due to certain adjustment provisions within the warrant, it qualified for liability accounting and had a fair value of \$7.0 million upon issuance. The Company recorded the value as a debt discount and a warrant liability. See Note 12, "Warrants and Derivative Liabilities", for additional information regarding the warrant.

The process of valuing financial and derivative instruments utilizes facts and circumstances as of the measurement date as well as certain inputs, assumptions, and judgments that may affect the estimated fair value of the instruments. Upon issuance of the Convertible Notes, the Company determined the initial carrying value of the Convertible Notes to be \$25.0 million. In addition, the Company also incurred \$1.8 million of legal and origination costs as of the six months ended September 30, 2012, which have been recorded as a discount on the Convertible Notes. The total debt discount, including the embedded derivatives, warrant and legal and origination costs of \$12.6 million is being amortized into interest expense over the term of the Convertible Notes using the effective interest method. Under this method, interest expense is recognized each period until the debt instruments reach maturity. If the maturity of the Convertible Notes is accelerated because of prepayment, then the amortization will be accelerated. During the three and six months ended September 30, 2012, the Company recorded non-cash interest expense for amortization of the debt discount related to the Convertible Notes of \$2.1 million and \$4.2 million, respectively.

The Convertible Notes contain certain covenants and restrictions, including, among others, that for so long as the Convertible Notes are outstanding, the Company will not incur any indebtedness (other than permitted indebtedness under the Convertible Notes), permit liens on its properties (other than permitted liens under the Convertible Notes), make payments on junior securities or declare dividends. The Convertible Notes also contain limitations on the transfer of certain assets. Events of default under the Convertible Notes include failure to pay principal or interest as due on the Convertible Notes, failure to deliver registered shares of common stock upon the holders request for conversion of part or all of the Convertible Notes, failure to maintain the Company's common stock eligible for trading on defined markets, cross defaults to other material indebtedness, receipt of uninsured judgments against the Company in excess of defined limits and other administrative covenants, as defined in the Convertible Notes and related documentation. Upon an event of default, the holders may require the Company to redeem all or any portion of the outstanding principal amount of the Convertible Notes in cash plus a penalty as specified in the agreement. Also, if the Company fails to maintain an effective registration statement covering common stock to be used in settling obligations under the Convertible Notes, the Company will be required to pay a penalty as specified in the agreement.

In addition, under the Convertible Notes agreements, on October 4, 2012, the Company had the right to issue an additional \$15 million aggregate principal amount of convertible notes and warrant to the same investor, subject to certain conditions. Because the Company did not meet these conditions, it no longer has the right to compel the investor to purchase additional Convertible Notes on the terms contained in the agreement.

### ***Senior Secured Term Loan***

On June 5, 2012, the Company entered into a Term Loan with Hercules Technology Growth Capital, Inc. ("Hercules"), under which the Company borrowed \$10.0 million (the "Term Loan"). After the closing fees and expenses, the net proceeds to the Company were \$9.7 million. The Term Loan bears an interest rate equal to 11% plus the percentage, if any, by which the prime rate as reported by The Wall Street Journal exceeds 3.75%. The Company made interest-only payments from July 1, 2012 through October 31, 2012, after which the Company will repay the loan in equal monthly installments ending on December 1, 2014. The Term Loan is secured by substantially all of the Company's existing and future assets, including a mortgage on real property owned by the Company's wholly-owned subsidiary, ASC Devens LLC, and located at 64 Jackson Road, Devens, Massachusetts. In addition, Hercules received a warrant to purchase 139,276 shares of common stock, exercisable at an initial strike price of \$3.59 per share, subject to adjustment, until December 5, 2017. Due to certain adjustment provisions within the warrant, it qualified for liability accounting and the fair value of \$0.4 million was recorded upon issuance, which the Company recorded as a debt discount and a warrant liability. See Note 12, "Warrants and Derivative Liabilities", for a discussion on warrants and the valuation assumptions used. The Company will pay an end of term fee of \$0.5 million upon the earlier of maturity or prepayment of the loan. The Company has accrued this as of the six months ended September 30, 2012 and recorded a corresponding amount into the debt discount. In addition, the Company incurred \$0.3 million of legal and origination costs in the six months ended September 30, 2012, which have been recorded as a debt discount. The total debt discount including the warrant, end of term fee and legal and origination costs of \$1.2 million is being amortized into interest expense over the term of the Term Loan using the effective interest method. Under this method, interest expense is recognized each period until the debt instrument reaches maturity. If the maturity of the Term Loan is accelerated because of prepayment, then the amortization will be accelerated. During the three and six months ended September 30, 2012, the Company recorded non-cash interest expense for amortization of the debt discount related to the Term Loan of \$0.2 million and \$0.3 million, respectively.

## [Table of Contents](#)

The Term Loan contains certain covenants that restrict the Company's ability to, among other things, incur or assume certain debt, merge or consolidate, materially change the nature of our business, make certain investments, acquire or dispose of certain assets, make guaranties or grant liens on its assets, make certain loans, advances or investments, declare dividends or make distributions or enter into transactions with affiliates. In addition, the Term Loan contains a covenant that requires the Company to maintain a minimum unrestricted cash balance in the United States of at least \$10.0 million at the inception of the Term Loan, which will decrease starting November 1, 2012 and monthly thereafter by the amount of principal paid. The events of default under the Term Loan include, but are not limited to, failure to pay amounts due, breaches of covenants, bankruptcy events, cross defaults under other material indebtedness and the occurrence of a material adverse effect and/or change in control. In the case of a continuing event of default, the Lender may, among other remedies, declare due all unpaid principal amounts outstanding and any accrued but unpaid interest and foreclose on all collateral granted to the Lender as security under the Term Loan.

Although the Company is in compliance with the covenants and restrictions under the Convertible Notes and Term Loan as of the date of this Quarterly Report on Form 10-Q, there can be no assurance that the Company will continue to be in compliance.

Interest expense on the Convertible Notes and Term Loan for the three and six months ended September 30, 2012 was \$3.0 million and \$5.7 million respectively, which included \$2.3 million and \$4.4 million of non-cash interest expense related to the amortization of the debt discount on the Convertible Notes and Term Loan, respectively.

### 12. Warrants and Derivative Liabilities

On April 4, 2012, the Company entered into a Securities Purchase Agreement as described in Note 11, which included a warrant to purchase 3.1 million shares of the Company's common stock. The warrant is exercisable at any time on or after the date that is six months after the issuance of the warrant and entitles CVI to purchase shares of the Company's common stock for a period of five years from the initial date the warrant becomes exercisable at a price equal to \$5.45 per share, subject to certain price-based and other anti-dilution adjustments. The warrant may not be exercised if, after giving effect to the conversion, CVI together with its affiliates would beneficially own in excess of 4.99% of the Company's common stock. This percentage may be raised to any other percentage not in excess of 9.99% at the option of CVI, upon at least 61-days' prior notice to the Company, or lowered to any other percentage, at the option of CVI, at any time.

The Company accounts for the warrant as a liability due to certain adjustment provisions within the warrant, which requires that it be recorded at fair value. The warrant is subject to revaluation at each balance sheet date and any change in fair value will be recorded as a change in fair value in other income (expense) until the earlier of expiration or its exercise at which time the warrant liability will be reclassified to equity. Following is a summary of the key assumptions used to calculate the fair value of the warrant:

	September 30, 2012	June 30, 2012	April 4, 2012
Risk-free interest rate	0.63%	0.77%	1.19%
Expected annual dividend yield	0.0%	0.0%	0.0%
Expected volatility	80.9%	80.8%	80.0%
Term	5.01 years	5.28 years	5.5 years
Fair Value	\$7.1 million	\$8.6 million	\$7.0 million

The Company recorded the change in the fair value of the CVI warrant of (\$1.5) million and \$0.1 million to change in fair value of derivatives and warrants in the three and six months ended September 30, 2012, respectively.

The Company determined certain embedded derivatives issued with the Convertible Notes required accounting as a liability, which requires they be accounted for as a standalone liability subject to revaluation at each balance sheet date with changes in fair value recorded as change in fair value of derivatives and warrants until the earlier of exercise or expiration.

## [Table of Contents](#)

The Company calculated the fair value of the derivative liabilities bifurcated from the Convertible Notes (see Note 11, "Debt") utilizing an integrated lattice model. The lattice model is an option pricing model that involves the construction of a binomial tree to show the different paths that the underlying asset may take over the option's life. A lattice model can take into account expected changes in various parameters such as volatility over the life of the options, providing more accurate estimates of option prices than the Black-Scholes model. Following is a summary of the key assumptions used to value the Convertible Notes derivative feature:

	<u>September 30,</u> <u>2012</u>	<u>June 30,</u> <u>2012</u>	<u>April 4,</u> <u>2012</u>
Expected Volatility	70.0%	71.0%	75.0%
Risk Free Rate	0.23%	0.33%	0.44%
Bond Yield	15.0%	16.0%	15.0%
Recovery Rate	30.0%	30.0%	30.0%
Redeemable	yes	yes	yes
Total Time (years)	2.01	2.28	2.5
Dilution Effect	yes	yes	yes
Indicated Percent of Par	108.0%	121.0%	117.0%
Fair Value	\$2.8 million	\$4.5 million	\$3.8 million

The expected volatility rate was estimated based on an equal weighting of the historical volatility of the Company's common stock and the implied volatility of the Company's traded options. To determine the risk-free interest rate, an interpolated rate was used based on the two- and three-year United States Treasury rates. The bond yield was estimated using comparable corporate debt and yield information. The recovery rate of the Convertible Notes was estimated by reviewing historical corporate debt that went into default. The bond is redeemable by the Company at any point after the one-year anniversary of the grant date provided certain provisions within the note. The total time is based on the actual 30-month contractual terms. It was determined that there is a dilution effect based on the Company's ability to make payments in shares of common stock.

The Company recorded the change in the fair value of the derivative liabilities of (\$1.7) million and (\$1.0) million to changes in fair value of derivatives and warrants in the three and six months ended September 30, 2012, respectively.

On June 5, 2012, the Company entered into a Loan and Security Agreement with Hercules (see Note 11, "Debt", for additional information regarding the Loan and Security Agreement). In conjunction with this agreement, the Company issued a warrant to purchase 139,276 shares of the Company's common stock. The warrant is exercisable at any time after the issuance of the warrant and expires on December 5, 2017, at a price equal to \$3.59 per share subject to certain price-based and other anti-dilution adjustments.

The Company accounts for the warrant as a liability due to certain provisions within the warrant, which requires that it be recorded at fair value. The warrant is subject to revaluation at each balance sheet date and any change in fair value will be recorded as changes in fair value of derivatives and warrants until the earlier of expiration or its exercise at which time the warrant liability will be reclassified to equity. Following is a summary of the key assumptions used to calculate the fair value of the warrant:

	<u>September 30,</u> <u>2012</u>	<u>June 30,</u> <u>2012</u>	<u>June 5,</u> <u>2012</u>
Risk-free interest rate	0.64%	0.80%	0.77%
Expected annual dividend yield	0.0%	0.0%	0.0%
Expected volatility	81.18%	80.32%	79.90%
Term	5.18	5.44 years	5.5
Fair Value	\$0.4 million	\$0.5 million	\$0.4 million

The Company prepared its estimates for the assumptions used to determine the fair value of the warrants issued in conjunction with both the Convertible Note and Term Loan utilizing the respective terms of the warrants with similar inputs, as described above.



## [Table of Contents](#)

The Company recorded the change in the fair value of the Hercules warrant of (\$0.1) million during the three months ended September 30, 2012 and recorded no change in the fair value of the Hercules warrant during the six months ended September 30, 2012.

### **13. Commitments and Contingencies**

#### ***Commitments***

##### *Purchase Commitments*

The Company periodically enters into non-cancelable purchase contracts in order to ensure the availability of materials to support production of its products. Purchase commitments represent enforceable and legally binding agreements with suppliers to purchase goods or services. The Company periodically assesses the need to provide for impairment on these purchase contracts and record a loss on purchase commitments when required. As of September 30, 2012, the Company recorded a liability for adverse purchase commitments of \$12.1 million. During the three and six months ended September 30, 2012, the Company adjusted its accrual for adverse purchase commitments by \$1.0 million and \$8.3 million, respectively due to settlements with certain vendors.

During the fourth quarter of the year ended March 31, 2012, several vendors notified the Company that they had suffered losses as a result of procuring safety stock in anticipation of receiving future purchase orders or contracts from the Company. Subsequently three vendors filed lawsuits through the Chinese legal system seeking payment for inventories held to be delivered under purchase orders and safety stock. One of these lawsuits has been settled and dismissed. The Company has accrued outstanding adverse purchase commitments based on legally binding contracts and purchase orders that were placed with its vendors for parts with no future demand. The vendor claims for safety stock were not supported by valid purchase orders or valid executed contracts and are not considered part of the adverse purchase commitment liability. The claims for safety stock have not been accrued as of September 30, 2012. The Company has determined that, although it believes that there is no legally enforceable contract for safety stock and will continue to defend its legal position that it does not owe amounts for safety stock, it is reasonably possible that a case may be made against the Company under certain situations. As the loss is reasonably possible but not probable, the Company has not accounted for the loss. The Company has determined that the range for this potential loss is between \$0 and \$4 million.

#### ***Contingencies***

From time to time, the Company is involved in legal and administrative proceedings and claims of various types. The Company records a liability in its consolidated financial statements for these matters when a loss is known or considered probable and the amount can be reasonably estimated. The Company reviews these estimates each accounting period as additional information is known and adjusts the loss provision when appropriate. If a matter is both probable to result in liability and the amounts of loss can be reasonably estimated, the Company estimates and discloses the possible loss or range of loss. If the loss is not probable or cannot be reasonably estimated, a liability is not recorded in its consolidated financial statements.

Between April 6, 2011 and May 12, 2011, seven putative securities class action complaints were filed against the Company and two of its officers in the United States District Court for the District of Massachusetts; one complaint additionally asserted claims against the underwriters who participated in our November 12, 2010 securities offering. On June 7, 2011, the United States District Court for the District of Massachusetts consolidated these actions under the caption *Lenartz v. American Superconductor Corporation, et al.*, Docket No. 1:11-cv-10582-WGY. On August 31, 2011, Lead Plaintiff, the Plumbers and Pipefitters National Pension Fund, filed a consolidated amended complaint against the Company, its officers and directors, and the underwriters who participated in our November 12, 2010 securities offering, asserting claims under sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated under the Securities Exchange Act of 1934 (the "Exchange Act"), as well as under sections 11, 12(a)(2) and 15 of the Securities Act of 1933 (the "Securities Act"). The complaint alleges that during the relevant class period, the Company and its officers omitted to state material facts and made materially false and misleading statements relating to, among other things, its projected and recognized revenues and earnings, as well as its relationship with Sinovel Wind Group Co., Ltd. that artificially inflated the value of the Company's stock price. The complaint further alleges that the Company's November 12, 2010 securities offering contained untrue statements of material facts and omitted to state material facts required to be stated therein. The plaintiffs seek unspecified damages, rescindment of the Company's November 12, 2010 securities offering, and an award of costs and expenses, including attorney's fees. All defendants moved to dismiss the consolidated amended complaint. On December 16, 2011, the district court issued a summary order declining to dismiss the Securities Act claims against the Company and its officers, and taking under

## [Table of Contents](#)

advisement the motion to dismiss the Exchange Act claims against the Company and its officers and the motion to dismiss the Securities Act claims made against the underwriters. On July 26, 2012, the district court dismissed the Exchange Act claims against the Company and its officers and denied the motion to dismiss the Securities Act claims made against the underwriters.

Between May 4, 2011 and June 17, 2011, four putative shareholder derivative complaints were filed against the Company (as a nominal defendant) and certain of its directors in the United States District Court for the District of Massachusetts. On July 5, 2011, the District Court consolidated three of these actions, and that matter is now captioned *In re American Superconductor Corporation Derivative Litigation*, Docket No. 1:11-cv-10784-WGY. On June 1, 2011, the plaintiff in the fourth action, *Marlborough Family Revocable Trust v. Yurek, et al.*, moved to voluntarily dismiss its complaint and refiled its complaint in Superior Court for the Commonwealth of Massachusetts, Middlesex County. On September 7, 2011, the *Marlborough* action and another putative shareholder derivative complaint filed in Superior Court for the Commonwealth of Massachusetts were consolidated. That consolidated matter is captioned *Marlborough Family Revocable Trust v. Yurek, et al.*, Docket No. 11-1961. On January 12, 2012, an additional shareholder derivative complaint was filed in the Court of Chancery for the State of Delaware. That matter is captioned *Krasnoff v. Budhraj, et al.*, Docket No. 7171. The allegations of the derivative complaints mirror the allegations made in the putative class action complaints described above. The plaintiffs purport to assert claims against the director defendants for breach of fiduciary duty, abuse of control, gross mismanagement, unjust enrichment and corporate waste. The plaintiffs seek unspecified damages on behalf of the Company, as well as an award of costs and expenses, including attorney's fees.

With respect to the above referenced litigation matters, an estimate of loss or range of loss cannot be made. There are numerous factors that make it difficult to meaningfully estimate possible loss or range of loss at this stage of these litigation matters, including that: the proceedings are in relatively early stages, there are significant factual and legal issues to be resolved, information obtained or rulings made during the lawsuits could affect the methodology for calculation of rescission and the related statutory interest rate. In addition, with respect to claims where damages are the requested relief, no amount of loss or damages has been specified. Therefore, the Company is unable at this time to estimate possible losses. The Company believes that these litigations are without merit, and it intends to defend these actions vigorously. Therefore no adjustment has been made to the financial statements to reflect the outcome of these uncertainties.

On September 13, 2011, the Company commenced a series of legal actions in China against Sinovel Wind Group Co. Ltd. ("Sinovel"). The Company's Chinese subsidiary, Suzhou AMSC Superconductor Co. Ltd., filed a claim for arbitration with the Beijing Arbitration Commission in accordance with the terms of the Company's supply contracts with Sinovel. The case is captioned (2011) *Jin Zhong An Zi No. 0963*. On March 31, 2011, Sinovel refused to accept contracted shipments of 1.5 megawatt (MW) and 3 MW wind turbine core electrical components and spare parts that the Company was prepared to deliver. The Company alleges that these actions constitute material breaches of its contracts because Sinovel did not give it notice that it intended to delay deliveries as required under the contracts. Moreover, the Company alleges that Sinovel has refused to pay past due amounts for prior shipments of core electrical components and spare parts. The Company is seeking compensation for past product shipments and retention (including interest) in the amount of approximately RMB 485 million (\$76 million) due to Sinovel's breaches of its contracts. The Company is also seeking specific performance of our existing contracts as well as reimbursement of all costs and reasonable expenses with respect to the arbitration. The value of the undelivered components under the existing contracts, including the deliveries refused by Sinovel in March 2011, amounts to approximately RMB 4.6 billion (\$720 million).

On October 8, 2011, Sinovel filed with the Beijing Arbitration Commission an application under the caption (2011) *Jing Zhong An Zi No. 0963*, for a counterclaim against the Company for breach of the same contracts under which the Company filed its original arbitration claim. Sinovel claimed, among other things, that the goods supplied by the Company do not conform to the standards specified in the contracts and claimed damages in the amount of approximately RMB 370 million (\$58 million). On October 17, 2011, Sinovel filed with the Beijing Arbitration Commission a request for change of counterclaim to increase its damage claim to approximately RMB 1 billion (\$157 million). On December 22, 2011, Sinovel filed with the Beijing Arbitration Commission an additional request for change of counterclaim to increase its damages claim to approximately RMB 1.2 billion (\$190 million). On February 27, 2012, Sinovel filed with the Beijing Arbitration Commission an application under the caption (2012) *Jing Zhong An Zi No. 0157*, against the Company for breach of the same contracts under which the Company filed its original arbitration claim. Sinovel claimed, among other things, that the goods supplied by the Company do not conform to the standards specified in the contracts and claimed damages in the amount of approximately RMB 105 million (\$17 million). The Company believes that Sinovel's claims are without merit and it intends to defend these actions vigorously. Since the proceedings in this matter are in relatively early stages, the Company cannot reasonably estimate possible losses or range of losses at this time.

## [Table of Contents](#)

The Company also submitted a civil action application to the Beijing No. 1 Intermediate People's Court under the caption *(2011) Yi Zhong Min Chu Zi No. 15524*, against Sinovel for software copyright infringement on September 13, 2011. The application alleges Sinovel's unauthorized use of portions of the Company's wind turbine control software source code developed for Sinovel's 1.5MW wind turbines and the binary code, or upper layer, of the Company's software for the PM3000 power converters in 1.5MW wind turbines. In July 2011, a former employee of the Company's Austrian subsidiary was arrested in Austria on charges of economic espionage and fraudulent manipulation of data. In September 2011, the former employee pled guilty to the charges, and was imprisoned. As a result of the Company's internal investigation and a criminal investigation conducted by Austrian authorities, the Company believes that this former employee was contracted by Sinovel through an intermediary while employed by the Company and improperly obtained and transferred to Sinovel portions of its wind turbine control software source code developed for Sinovel's 1.5MW wind turbines. Moreover, the Company believes the former employee illegally used source code to develop for Sinovel a software modification to circumvent the encryption and remove technical protection measures on the Company's PM3000 power converters in 1.5MW wind turbines in the field. The Company is seeking a cease and desist order with respect to the unauthorized copying, installation and use of its software, monetary damages of approximately RMB 38 million (\$6 million) for our economic losses and reimbursement of all costs and reasonable expenses. The No. 1 Intermediate People's Court accepted the case, which was necessary in order for the case to proceed. In November 2011, Sinovel filed a motion to remove this case from the Beijing No. 1 Intermediate People's Court and transfer the matter to the Beijing Arbitration Commission. On February 14, 2012, the court denied Sinovel's motion to remove the case. On February 21, 2012, Sinovel filed an appeal of the Beijing No. 1 Intermediate People's Court decision to the Beijing Higher People's Court. On April 25, 2012, the Beijing Higher People's Court issued a final Civil Ruling which supports the Beijing No.1 Intermediate People's Court's civil ruling and rejected Sinovel's appeal. Sinovel filed an appeal of the Beijing Higher People's Court's decision with China's Supreme People's Court. A hearing regarding this appeal was held at the Chinese Supreme People's Court on October 26, 2012. The Court's decision will follow.

Sinovel filed a new motion on June 18, 2012, to remove this case from the Beijing No. 1 Intermediate People's Court to the court located in Gansu Province. On October 19, 2012, the Court disallowed Sinovel's motion due to its late filing.

The Company submitted a civil action application to the Beijing Higher People's Court against Sinovel and certain of its employees for trade secret infringement on September 13, 2011 under the caption *(2011) Gao Min Chu Zi No. 4193*. The application alleges the defendants' unauthorized use of portions of the Company's wind turbine control software source code developed for Sinovel's 1.5MW wind turbines as described above with respect to the Copyright Action. The Company is seeking monetary damages of RMB 2.9 billion (\$453 million) for the trade secret infringement as well as reimbursement of all costs and reasonable expenses. The Beijing Higher People's Court accepted the case, which was necessary in order for the case to proceed. On December 22, 2011, the Beijing Higher People's Court transferred this case to the Beijing No. 1 Intermediate People's Court under the caption *(2011) Gao Min Chu Zi No. 4193*. On June 7, 2012, the Company received an Acceptance Notice from the Beijing No.1 Intermediate People's Court under the caption *(2012) Yi Zhong Min Chu Zi No.6833*. The Company is currently awaiting notice from the Beijing No. 1 Intermediate People's Court regarding the first hearing date. In August 2012, Sinovel filed a motion to remove this case from the Beijing No. 1 Intermediate People's Court and transfer the matter to the Beijing Arbitration Commission.

On September 16, 2011, the Company filed a civil copyright infringement complaint in the Hainan Province No. 1 Intermediate People's Court against Dalian Guotong Electric Co. Ltd. ("Guotong"), a supplier of power converter products to Sinovel, and Huaneng Hainan Power, Inc. ("Huaneng"), a wind farm operator that has purchased Sinovel wind turbines containing Guotong power converter products. The case is captioned *(2011) Hainan Yi Zhong Min Chu Zi No. 62*. The application alleges that the Company's PM1000 converters in certain Sinovel wind turbines have been replaced by converters produced by Guotong. Because the Guotong converters are being used in wind turbines containing the Company's wind turbine control software, the Company believes that its copyrighted software is being infringed. The Company is seeking a cease and desist order with respect to the unauthorized use of its software, monetary damages of RMB 1.2 million (\$0.2 million) for its economic losses (with respect to Guotong only) and reimbursement of all costs and reasonable expenses. The court has accepted the case, which was necessary in order for the case to proceed. In addition, upon the request of the defendant Huaneng, Sinovel has been added by the court to this case as a defendant and Huaneng has been released from this case. In December 2011, Sinovel filed a jurisdiction opposition motion requesting dismissal by the Hainan Province No. 1 Intermediate People's Court, saying the case should be governed by the Beijing Arbitration Commission. On February 3, 2012, the Company received the Civil Ruling from the court, which granted Sinovel's motion, and dismissed the entire

## [Table of Contents](#)

case. The Company appealed the court's ruling to the Hainan Higher Court, which on April 5, 2012 upheld the decision of the Hainan Province No. 1 Intermediate People's Court. On April 9, 2012, the Company filed an appeal of the Hainan Higher Court's decision with China's Supreme People's Court. The Supreme Court accepted the appeal on May 23, 2012. The case is captioned, (2012) Min Shen Zi No. 630.

Ghodawat Energy Pvt Ltd ("Ghodawat"), a company registered in India carrying on the business of wind power development, lodged a Request for Arbitration with the Secretariat of the ICC International Court of Arbitration on May 12, 2011 and named AMSC Windtec GmbH ("AMSC Austria") as the Respondent. Under the Request for Arbitration, Ghodawat alleges that AMSC Austria breached an agreement dated March 19, 2008 pursuant to which AMSC Austria granted a license to Ghodawat to manufacture, use, sell, market, erect, commission and maintain certain wind turbines using its technical information and wind turbine design (the "License Agreement"). Under the Request for Arbitration, Ghodawat's claims in this arbitration amount to approximately €18 million (\$24 million). AMSC Austria filed an Answer to Request for Arbitration and Counterclaim ("Answer and Counterclaim"), in which AMSC Austria denied Ghodawat's claims in their entirety. AMSC Austria has also submitted counterclaims under the License Agreement against Ghodawat in the amount of approximately €6 million (\$9 million). Ghodawat has filed a Reply to Answer to Request for Arbitration and Counterclaim in which it denies AMSC Austria's counterclaims. The arbitration proceedings are currently ongoing. The Company has recorded a loss contingency based on its assessment of probable losses on this claim; however this amount is immaterial to its consolidated financial statements.

### **Other**

The Company enters into long-term construction contracts with customers that require the Company to obtain performance bonds. The Company is required to deposit an amount equivalent to some or all the face amount of the performance bonds into an escrow account until the termination of the bond. When the performance conditions are met, amounts deposited as collateral for the performance bonds are returned to the Company. In addition, the Company has various contractual arrangements in which minimum quantities of goods or services have been committed to be purchased on an annual basis.

At September 30, 2012, the Company had \$13.6 million of restricted cash included in current assets, and \$5.1 million of restricted cash included in long-term assets. These amounts included in restricted cash represent deposits to secure letters of credit for various supply contracts, and are held in interest bearing accounts. The Company is working with its inventory suppliers to delay cash settlements and to reduce the gross liability associated with its adverse purchase commitments, which is approximately \$12.1 million as of September 30, 2012. During the three and six months ended September 30, 2012, the Company agreed to settle adverse purchase commitments with certain of its vendors. In conjunction with certain of these settlements, the Company agreed to provide letters of credit and bank guarantees in the amount of approximately \$9.0 million with expirations through January 31, 2013. The letters of credit and bank guarantees were secured with cash collateral of \$8.5 million. Settlements of adverse purchase commitments with certain vendors have resulted in a reduction of its adverse purchase commitments liability of \$1.0 million and \$8.3 million, during the three and six months ended September 30, 2012, respectively.

As of September 30, 2012, the Company had three performance bonds in support of customer contracts. The total value of the outstanding performance bonds is \$3.5 million with expiration dates through March 2014. In the event that the payment is made in accordance with the requirements of any of these performance bonds, the Company would record the payment as an offset to revenue.

## **14. Equity Investments**

### ***Investment in Tres Amigas***

On October 9, 2009, the Company made an investment in Tres Amigas LLC, a Delaware limited liability company ("Tres Amigas"), focused on providing the first common interconnection of America's three power grids to help the country achieve its renewable energy goals and facilitate the smooth, reliable and efficient transfer of green power from region to region, for \$1.8 million, consisting of \$0.8 million in cash and \$1.0 million in AMSC common stock. On January 6, 2011 and May 20, 2011, the Company increased its minority position in Tres Amigas by investing an additional \$1.8 million in cash on each date. As of September 30, 2012, the Company holds a 26% ownership interest in Tres Amigas.

The Company's investment in Tres Amigas is included in other assets on the unaudited condensed consolidated balance sheet and the equity in undistributed losses of Tres Amigas is included in other income, net, on the unaudited condensed consolidated statements of operations.

## [Table of Contents](#)

The net investment activity for the six months ended September 30, 2012 is as follows (in thousands):

Balance at April 1, 2012	\$ 3,859
Minority interest in net losses	(476)
Balance at September 30, 2012	<u>\$ 3,383</u>

### *Investment in Blade Dynamics Ltd.*

On August 12, 2010, the Company acquired (through its Austrian subsidiary), a minority ownership position in Blade Dynamics Ltd. ("Blade Dynamics"), a designer and manufacturer of advanced wind turbine blades based on proprietary materials and structural technologies, for \$8.0 million in cash. As of September 30, 2012, the Company holds a 24% ownership interest in Blade Dynamics.

The Company has determined that Blade Dynamics is a variable interest entity ("VIE") and that the Company is not the primary beneficiary of the VIE. Therefore, the Company has not consolidated Blade Dynamics as of September 30, 2012. The investment is carried at the acquisition cost, plus the Company's equity in undistributed earnings or losses. The Company's maximum exposure to loss is limited to the Company's recorded investment in this VIE. The Company's investment in Blade Dynamics is included in other assets on the unaudited condensed consolidated balance sheet and the equity in undistributed losses of Blade Dynamics is included in other income, net, on the unaudited condensed consolidated statements of operations.

The net investment activity for the six months ended September 30, 2012 is as follows (in thousands):

Balance at April 1, 2012	\$ 6,083
Minority interest in net losses	(1,018)
Net foreign exchange rate impact	(232)
Balance at September 30, 2012	<u>\$ 4,833</u>

## 15. Business Segments

The Company reported its financial results in two reportable business segments: Wind and Grid.

Through its Windtec Solutions, the Wind business segment enables manufacturers to field wind turbines with exceptional power output, reliability and affordability. The Company supplies advanced power electronics and control systems, licenses its highly engineered wind turbine designs, and provides extensive customer support services to wind turbine manufactures. Its design portfolio includes a broad range of drive trains and power ratings up to 10 megawatts. It provides a broad range of power electronics and software based control systems that are highly integrated and redesigned for optimized performance, efficiency, and grid compatibility.

Through its Gridtec Solutions, the Grid business segment enables electric utilities and renewable energy project developers to connect, transmit and distribute power with exceptional efficiency, reliability and affordability. The Company provides transmission planning services that allow it to identify power grid congestion, poor power quality and other risks, which help the Company determine how its solutions can improve network performance. These services often lead to sales of grid interconnection solutions for wind farms and solar power plants, power quality systems and transmission and distribution cable systems.

The operating results for the two business segments are as follows (in thousands):

	Three months ended September 30,		Six months ended September 30,	
	2012	2011	2012	2011
<b>Revenues:</b>				
Wind	\$12,002	\$13,449	\$28,513	\$17,712
Grid	8,865	7,351	21,070	12,146
Total	<u>\$20,867</u>	<u>\$20,800</u>	<u>\$49,583</u>	<u>\$29,858</u>

## Table of Contents

	Three months ended September 30,		Six months ended September 30,	
	2012	2011	2012	2011
<b>Operating (loss) income:</b>				
Wind	\$ (6,449)	\$ (16,336)	\$ (5,148)	\$ (40,705)
Grid	(6,572)	(7,645)	(11,915)	(18,197)
Unallocated corporate expenses	(1,949)	(27,144)	(4,035)	(30,549)
<b>Total</b>	<b><u>\$(14,970)</u></b>	<b><u>\$(51,125)</u></b>	<b><u>\$(21,098)</u></b>	<b><u>\$(89,451)</u></b>

The accounting policies of the business segments are the same as those for the consolidated Company. The Company's business segments have been determined in accordance with the Company's internal management structure, which is organized based on operating activities. The Company evaluates performance based upon several factors, of which the primary financial measures are segment revenues and segment operating (loss) income. The disaggregated financial results of the segments reflect allocation of certain functional expense categories consistent with the basis and manner in which Company management internally disaggregates financial information for the purpose of assisting in making internal operating decisions. In addition, certain corporate expenses which the Company does not believe are specifically attributable or allocable to either of the two business segments have been excluded from the segment operating income.

Unallocated corporate expenses primarily consist of stock-based compensation expense of \$2.0 million and \$4.0 million for the three and six months ended September 30, 2012, respectively. Unallocated corporate expenses primarily consist of the write-off of an advance payment to The Switch Engineering Oy of \$20.6 million, which constituted a break-up fee resulting from the termination of the planned acquisition of The Switch due to adverse market conditions, and restructuring and impairment charges of \$4.3 million for the three and six months ended September 30, 2011 and stock-based compensation expense of \$2.1 million and \$5.6 million for the three and six months ended September 30, 2011, respectively.

Total assets for the two business segments are as follows (in thousands):

	September 30, 2012	March 31, 2012
Wind	\$ 60,065	\$ 70,054
Grid	80,826	89,091
Corporate assets	101,422	95,911
<b>Total</b>	<b><u>\$ 242,313</u></b>	<b><u>\$ 255,056</u></b>

The following table sets forth customers who represented 10% or more of the Company's total revenues for the three and six months ended September 30, 2012 and 2011:

	Three months ended September 30,		Six months ended September 30,	
	2012	2011	2012	2011
Beijing JINGCHENG New Energy Co., Ltd.	26%	<10%	22%	<10%
INOX Wind Limited	19%	24%	17%	17%
Karara Mining Ltd.	<10%	— %	13%	— %
Doosan Heavy Industries & Construction Co Ltd.	<10%	17%	<10%	16%

## 16. Recent Accounting Pronouncements

In June 2011, the FASB issued Accounting Standards Update (ASU) No. 2011-05, *Comprehensive Income (Topic 220): Presentation of Comprehensive Income*. ASU 2011-05 requires entities to present net income and other comprehensive income in either a single continuous statement or in two separate, but consecutive, statements of net income and other comprehensive income. ASU 2011-05 is effective for fiscal years and interim periods beginning after December 15, 2011. The Company early adopted ASU 2011-05 and it did not have a material impact on the Company's consolidated results of operations, financial condition, or cash flows.

## [Table of Contents](#)

In September 2011, the FASB issued Accounting Standards Update No. 2011-08, *Intangibles - Goodwill and Other (Topic 350)*. ASU 2011-08 allows entities to first assess qualitatively whether it is necessary to perform the two-step goodwill impairment test. If an entity believes, as a result of its qualitative assessment, that it is more likely than not that the fair value of a reporting unit is less than its carrying amount, the quantitative two-step goodwill impairment test is required. An entity has the unconditional option to bypass the qualitative assessment and proceed directly to performing the first step of the goodwill impairment test. ASU 2011-08 is effective for our first quarter of fiscal 2013 but is eligible for early adoption. The Company does not believe adoption of this standard will have an impact on its consolidated results of operations, financial condition, or cash flows.

In December 2011, the FASB issued Accounting Standards Update No. 2011-11, *Balance Sheet (Topic 210)-Disclosures about Offsetting Assets and Liabilities* (ASU 2011-11). The update requires entities to disclose information about offsetting and related arrangements of financial instruments and derivative instruments. ASU 2011-11 is effective for our first quarter of fiscal 2014. The Company is currently evaluating the impact of adopting ASU 2011-11, but currently does not believe there will be a significant impact on its consolidated results of operations, financial condition, or cash flows.

The Company does not believe that other recently issued accounting pronouncements will have a material impact on its financial statements.

### **17. Subsequent Events**

On May 16, 2012, the Company entered into an agreement with one of its vendors to settle certain of its adverse purchase commitments. The agreement was amended on November 6, 2012 (as amended, the "Settlement Agreement"). In conjunction with the Settlement Agreement, the Company agreed to pay the vendor approximately €2.2 million (the "Settlement Amount"). Under the Settlement Agreement, the Company has the option, at its sole discretion, to pay the settlement amount in cash, shares of the Company's common stock, or a combination of cash and common stock. Accordingly, the Company plans to issue 765,301 shares of common stock to the vendor and has agreed to file a registration statement on Form S-3 to register the vendor's resale of such shares of common stock. The net proceeds from the vendor's resale of the shares of common stock during a specified period plus any other cash payments made by the Company subsequent to the date of the Settlement Agreement will be less than the Settlement Amount, the Company agreed to make an additional payment equal to the shortfall in cash to the vendor no later than December 31, 2012. As security for the Company's obligations, the Company has provided the vendor with a letter of credit in the amount of approximately €2.2 million with an expiration of December 31, 2012. The letter of credit is secured with cash collateral of approximately \$3.0 million.

**AMERICAN SUPERCONDUCTOR CORPORATION  
MANAGEMENT'S DISCUSSION AND ANALYSIS OF  
FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

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

*This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). For this purpose, any statements contained herein that relate to future events or conditions, including without limitation, the statements in Part II, "Item 1A. Risk Factors" and in Part I under "Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations" and located elsewhere herein regarding industry prospects or our prospective results of operations or financial position, may be deemed to be forward-looking statements. Without limiting the foregoing, the words "believes," "anticipates," "plans," "expects," and similar expressions are intended to identify forward-looking statements. Such forward-looking statements represent management's current expectations and are inherently uncertain. There are a number of important factors that could materially impact the value of our common stock or cause actual results to differ materially from those indicated by such forward-looking statements. Such factors include: Our success in addressing the wind energy market is dependent on the manufacturers that license our designs; we may not realize all of the sales expected from our backlog of orders and contracts; our business and operations would be adversely impacted in the event of a failure or security breach of our information technology infrastructure; our success is dependent upon attracting and retaining qualified personnel and our inability to do so could significantly damage our business and prospects; we rely upon third-party suppliers for the components and subassemblies of many of our Wind and Grid products, making us vulnerable to supply shortages and price fluctuations, which could harm our business; many of our revenue opportunities are dependent upon subcontractors and other business collaborators; if we fail to implement our business strategy successfully, our financial performance could be harmed; problems with product quality or product performance may cause us to incur warranty expenses and may damage our market reputation and prevent us from achieving increased sales and market share; our contracts with the United States government are subject to audit, modification or termination by the United States government and include certain other provisions in favor of the government; the continued funding of such contracts remains subject to annual congressional appropriation which, if not approved, could reduce our revenue and lower or eliminate our profit; we may acquire additional complementary businesses or technologies, which may require us to incur substantial costs for which we may never realize the anticipated benefits; many of our customers outside of the United States are, either directly or indirectly, related to governmental entities, and we could be adversely affected by violations of the United States Foreign Corrupt Practices Act and similar worldwide anti-bribery laws outside the United States; we have limited experience in marketing and selling our superconductor products and system-level solutions, and our failure to effectively market and sell our products and solutions could lower our revenue and cash flow; we have a history of operating losses, and we may incur additional losses in the future; our operating results may fluctuate significantly from quarter to quarter and may fall below expectations in any particular fiscal quarter; we may require additional funding in the future and may be unable to raise capital when needed; our new debt obligations include certain covenants and other events of default. Should we not comply with the covenants or incur an event of default, we may be required to repay our debt obligations in cash, which could have an adverse effect on our liquidity; we have recorded a liability for adverse purchase commitments with certain of our vendors; should we be required to settle these liabilities in cash, our liquidity could be adversely affected; if we fail to maintain proper and effective internal controls over financial reporting, our ability to produce accurate and timely financial statements could be impaired and may lead investors and other users to lose confidence in our financial data; we may be required to issue performance bonds or provide letters of credit, which restricts our ability to access any cash used as collateral for the bonds or letters of credit; changes in exchange rates could adversely affect our results from operations; growth of the wind energy market depends largely on the availability and size of government subsidies and economic incentives; we depend on sales to customers in China, and global conditions could negatively affect our operating results or limit our ability to expand our operations outside of China; changes in China's political, social, regulatory and economic environment may affect our financial performance; our products face intense competition, which could limit our ability to acquire or retain customers; our international operations are subject to risks that we do not face in the United States, which could have an adverse effect on our operating results; adverse changes in domestic and global economic conditions could adversely affect our operating results; we may be unable to adequately prevent disclosure of trade secrets and other proprietary information; our patents may not provide meaningful protection for our technology, which could result in us losing some or all of our market position; the commercial uses of superconductor products are limited today, and a widespread commercial market for our products may not develop; there are a number of technological challenges that must be successfully addressed before our superconductor products can gain widespread commercial acceptance, and our inability to address such technological challenges could adversely affect our ability to acquire customers for our products; we have not manufactured our Amperium wire in commercial quantities, and a failure to manufacture our Amperium wire in commercial quantities at acceptable cost and quality levels would substantially limit our future revenue and profit potential; third parties have or may acquire patents that cover the materials, processes and technologies we use or may use in the future to manufacture our Amperium products, and our success depends on our ability to license such patents or other proprietary rights; our technology and products could infringe intellectual property rights of others, which may require costly litigation and, if we are not successful, could cause us to pay substantial damages and disrupt our business; we have filed a demand for arbitration and other lawsuits against our former largest customer, Sinovel, regarding amounts we contend are overdue. We cannot be certain as to the outcome of these proceedings; we have been named as a party to purported*



## [Table of Contents](#)

*stockholder class actions and stockholder derivative complaints, and we may be named in additional litigation, all of which will require significant management time and attention, result in significant legal expenses and may result in an unfavorable outcome, which could have a material adverse effect on our business, operating results and financial condition; our 7% convertible note contains warrants and provisions that could limit our ability to repay the note in shares of common stock and should the note be repaid in stock, shareholders could experience significant dilution; our common stock has experienced, and may continue to experience, significant market price and volume fluctuations, which may prevent our stockholders from selling our common stock at a profit and could lead to costly litigation against us that could divert our management's attention; and new regulations related to conflict-free minerals may force us to incur significant additional expenses. These and the important factors discussed under the caption "Risk Factors" in Part II, Item 1A and Part 1, Item 1A of our Form 10-K/A for the fiscal year ended March 31, 2012, among others, could cause actual results to differ materially from those indicated by forward-looking statements made herein and presented elsewhere by management from time to time. Any such forward-looking statements represent management's estimates as of the date of this Quarterly Report on Form 10-Q. While we may elect to update such forward-looking statements at some point in the future, we disclaim any obligation to do so, even if subsequent events cause our views to change. These forward-looking statements should not be relied upon as representing our views as of any date subsequent to the date of this Quarterly Report on Form 10-Q.*

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### **Executive Overview**

American Superconductor Corporation was founded on April 9, 1987. We are a leading provider of megawatt-scale solutions that lower the cost of wind power and enhance the performance of the power grid. In the wind power market, we enable manufacturers to field highly competitive wind turbines through our advanced power electronics products, engineering, and support services. In the power grid market, we enable electric utilities and renewable energy project developers to connect, transmit and distribute power through our transmission planning services and power electronics and superconductor-based products. Our wind and power grid products and services provide exceptional reliability, security, efficiency and affordability to our customers.

Our wind and power grid solutions help to improve energy efficiency, alleviate power grid capacity constraints and increase the adoption of renewable energy generation. Demand for our solutions is driven by the growing needs for renewable sources of electricity, such as wind and solar energy, and for modernized smart grids that improve power reliability and quality. Concerns about these factors have led to increased spending by corporations as well as supportive government regulations and initiatives on local, state, national and global levels, including renewable portfolio standards, tax incentives and international treaties.

We manufacture products using two proprietary core technologies: PowerModule™ programmable power electronic converters and our Amperium™ HTS (High Temperature Superconductor) wires. These technologies and our system-level solutions are protected by a broad and deep intellectual property portfolio consisting of hundreds of patents and licenses worldwide.

We operate our business under two market-facing business units: Wind and Grid. We believe this market-centric structure enables us to more effectively anticipate and meet the needs of wind turbine manufacturers, power generation project developers and electric utilities.

- *Wind.* Through our Windtec Solutions, our Wind business segment enables manufacturers to field wind turbines with exceptional power output, reliability and affordability. We supply advanced power electronics and control systems, license our highly engineered wind turbine designs, and provide extensive customer support services to wind turbine manufactures. Our design portfolio includes a broad range of drive trains and power ratings up to 10 megawatts. We provide a broad range of power electronics and software based control systems that are highly integrated and redesigned for optimized performance, efficiency, and grid compatibility.
- *Grid.* Through our Gridtec Solutions, our Grid business segment enables electric utilities and renewable energy project developers to connect, transmit and distribute power with exceptional efficiency, reliability and affordability. We provide transmission planning services that allow us to identify power grid congestion, poor power quality and other risks, which help us determine how our solutions can improve network performance. These services often lead to sales of grid interconnection solutions for wind farms and solar power plants, power quality systems and transmission and distribution cable systems.

## [Table of Contents](#)

Our fiscal year begins on April 1 and ends on March 31. This document refers to fiscal 2012, which is defined as the period beginning on April 1, 2012 and concluding on March 31, 2013. The second quarter of fiscal 2012 began on July 1, 2012 and concluded on September 30, 2012.

On April 4, 2012 we completed a private placement of \$25.0 million of senior convertible notes (the “Convertible Notes”) with an affiliate of Heights Capital Management. On June 5, 2012, we entered into a \$10.0 million Loan and Security Agreement (“Term Loan”) with Hercules Technology Growth Capital, Inc.. See Liquidity and Capital Resources below for further discussion of these debt arrangements.

Our cash requirements depend on numerous factors, including managing adverse purchase commitments, maintaining compliance with the covenants and restrictions in our debt agreements, successful completion of our product development activities, ability to commercialize our product prototypes, rate of customer and market adoption of our products, and collecting receivables according to established terms. Significant deviations to our business plan with regard to these factors, which are important drivers to our business, could have a material adverse effect on our operating performance, financial condition, and future business prospects. We expect to pursue the expansion of our operations through internal growth, diversification of our customer base, and potential strategic alliances. See below for a discussion of liquidity and capital resources.

During March 2011, we engaged in discussions with Sinovel, formerly our largest customer, regarding the acceptance of its scheduled shipments, outstanding receivables, and the delivery of a custom solution desired by Sinovel for low voltage ride through (“LVVRT”) that required a modification to our existing LVRT design. The custom design required modified software and additional hardware. Toward the end of March, Sinovel requested that we provide them with the additional hardware without additional cost. On March 31, 2011, we proposed to Sinovel that we would provide the additional hardware without additional cost if Sinovel would accept the scheduled shipments. Sinovel rejected this proposal due to what we were told was excess inventory of our components. Since Sinovel did not give us the requisite notice under our contracts that they intended to delay deliveries, we believe that these actions constitute material breaches of our contracts.

As of the date of this filing, we have not received payment from Sinovel for any outstanding receivables nor have we been notified as to when, if ever, Sinovel will accept contracted shipments that were scheduled for delivery after March 31, 2011. Additionally, based in part upon evidence obtained through an internal investigation and a criminal investigation conducted by Austrian authorities regarding the actions of a former employee of our Austrian subsidiary, we believe that Sinovel illegally obtained and used our intellectual property in violation of civil and criminal intellectual property laws. In July 2011, a former employee of our Austrian subsidiary was arrested in Austria on charges of economic espionage and fraudulent manipulation of data. In September 2011, the former employee pled guilty to the charges, and was imprisoned. The evidence presented during the court hearing showed that this former employee was contracted by Sinovel through an intermediary while employed by us and improperly obtained and transferred to Sinovel portions of our wind turbine control software source code developed for Sinovel’s 1.5MW wind turbines. Except for portions of this 1.5MW wind turbine software, we do not believe that the source code for any other turbines, such as the 3MW, 5MW and 6MW wind turbines that were designed by and co-developed with us have been transferred to Sinovel. Moreover, we believe the evidence shows this former employee illegally used source code to develop for Sinovel a software modification to circumvent the encryption and remove technical protection measures on the PM3000 power converters in 1.5MW wind turbines in the field. We believe that only the binary code, or upper layer, of the PM3000 software developed to circumvent the encryption and remove technical protection measures was transferred to Sinovel. We do not believe that any PM3000 source code was transferred to Sinovel. These actions potentially enable Sinovel to deploy, independent of us, wind turbine control software, including a low voltage ride through solution, on all of its 1.5MW wind turbines in the field. In addition, by having the wind turbine control source code, Sinovel could potentially modify the source code to allow the use of core electrical components, including power converters, from other manufacturers.

On September 13, 2011, we commenced a series of legal actions in China against Sinovel. We filed a claim for arbitration in Beijing, China to compel Sinovel to pay us for past product shipments and to accept all contracted but not yet delivered core electrical components and spare parts under all existing contracts with us. The arbitration claim was filed with the Beijing Arbitration Commission in accordance with the terms of our supply contracts with Sinovel. We also filed civil and criminal complaints against Sinovel.

## [Table of Contents](#)

We cannot provide any assurance as to the outcome of these legal actions. See Part II, Item 1, Legal Proceedings below for additional information regarding these legal proceedings.

### **Critical Accounting Policies and Estimates**

The preparation of the unaudited condensed consolidated financial statements requires that we make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. We base our estimates on historical experience and various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ under different assumptions or conditions. Except as stated below, there were no significant changes in the critical accounting policies during the six months ended September 30, 2012 that were disclosed in our Form 10-K/A for fiscal 2011, which ended on March 31, 2012.

### **Fair Value of Financial Instruments**

Our financial instruments consist principally of cash and cash equivalents, marketable securities, accounts receivable, accounts payable, accrued expenses, derivatives, warrants, convertible notes and a term loan. The estimated fair values have been determined through information obtained from market sources and management estimates. The carrying amounts of these instruments approximate fair value. We have identified all of the derivatives associated with the Convertible Notes which include holder change of control redemption rights, issuer optional redemption rights, sale redemption rights and a feature to convert the Convertible Note into equity at the holder's option. The derivative liability is subject to revaluation at each balance sheet date, and any change in fair value will be recorded as a change in fair value in other income (expense) until the earlier of their exercise or expiration of the derivatives associated with the Convertible Notes. We rely on assumptions in a lattice model to determine the fair value of the derivative liability. We have appropriately valued the derivative liability within Level 3 of the valuation hierarchy. Warrants were issued in conjunction with the Convertible Notes and Term Loan. These warrants are subject to revaluation at each balance sheet date, and any change in fair value will be recorded as a change in fair value in other income (expense) until the earlier of the warrants' exercise or expiration. We rely on assumptions used in a Black-Scholes model to determine the fair value of the warrants. We have appropriately valued the warrants within Level 3 of the valuation hierarchy.

### **Results of Operations**

#### **Three and six months ended September 30, 2012 compared to the three and six months ended September 30, 2011**

#### **Revenues**

Total revenues increased by less than 1% and 66% to \$20.9 million and \$49.6 million, respectively, for the three and six months ended September 30, 2012, respectively, compared to \$20.8 million and \$29.9 million for the three and six months ended September 30, 2011, respectively. Our revenues are summarized as follows (in thousands):

	Three months ended September 30,		Six months ended September 30,	
	2012	2011	2012	2011
<b>Revenues:</b>				
Wind	\$12,002	\$13,449	\$28,513	\$17,712
Grid	8,865	7,351	21,070	12,146
Total	<u>\$20,867</u>	<u>\$20,800</u>	<u>\$49,583</u>	<u>\$29,858</u>

Our Wind business unit accounted for 58% of total revenues for the three and six months ended September 30, 2012, respectively, compared to 65% and 59% for the three and six months ended September 30, 2011, respectively. Revenues in the Wind business unit decreased 11% and increased 61% to \$12.0 million and \$28.5 million in the three and six months ended September 30, 2012, respectively, from \$13.5 million and \$17.7 million in the three and six months ended September 30, 2011, respectively. The decrease in the Wind business unit revenues in the three months ended September 30, 2012, compared to the same prior year period was primarily due to decreased shipments of electrical control systems to customers in Korea. Wind business unit revenues increased in the six months ended September 30, 2012, as compared to the prior year period primarily due to increased shipments of electrical control systems to customers in China and India.

## [Table of Contents](#)

Our Grid business unit accounted for 42% of total revenues for both the three and six months ended September 30, 2012, respectively, compared to 35% and 41% for the three and six months ended September 30, 2011, respectively. Our Grid business unit revenues increased 21% and 73% to \$8.9 million and \$21.1 million in the three and six months ended September 30, 2012, respectively, from \$7.4 million and \$12.1 million for the three and six months ended September 30, 2011, respectively. For the three and six months ended September 30, 2012, Grid business unit revenues increased primarily due to increased D-VAR shipments to customers in Europe and Australia.

Revenues from significant government-funded contracts are summarized as follows (in thousands):

<u>Project name</u>	<u>Expected total contract value</u>	<u>Revenue earned through September 30, 2012</u>	<u>Three months ended September 30,</u>		<u>Six months ended September 30,</u>	
			<u>2012</u>	<u>2011</u>	<u>2012</u>	<u>2011</u>
HYDRA	\$ 29,043	\$ 13,266	\$ 787	\$ 286	\$ 1,109	\$ 697
LIPA I and II	40,141	40,141	134	74	163	1,383
DOE-FCL	7,898	7,511	126	82	261	314
Total	<u>\$ 77,082</u>	<u>\$ 60,918</u>	<u>\$ 1,047</u>	<u>\$ 442</u>	<u>\$ 1,533</u>	<u>\$ 2,394</u>

These significant projects represented 12% and 7% of the Grid business unit revenues for the three and six months ended September 30, 2012, respectively, compared to 6% and 20% of the Grid business unit revenues for the three and six months ended September 30, 2011, respectively.

Project HYDRA is a project with Consolidated Edison, Inc. that is being partially funded by the Department of Homeland Security (“DHS”). DHS is expected to invest up to a total of \$29.0 million in the development of a new HTS power grid technology called FaultBlocker™ cable systems. FaultBlocker™ cable systems are designed to utilize customized Amperium™ HTS wires, and ancillary controls to deliver more power through the grid while also being able to suppress power surges that can disrupt service. On June 29, 2012, DHS committed an additional \$3.3 million in funding for Project HYDRA. Of the total \$29.0 million in funding expected from DHS, it has committed funding of \$18.9 million to us as of September 30, 2012. Consolidated Edison and Southwire Company are our subcontractors on this project.

LIPA II is a project to install an HTS power cable using our Amperium™ wire for the Long Island Power Authority. DOE-FCL is a project to develop and demonstrate a transmission voltage SuperLimiter fault current limiter (“FCL”).

The following table sets forth customers who represented 10% or more of our total revenues for the three and six months ended September 30, 2012 and 2011:

	<u>Three months ended September 30,</u>		<u>Six months ended September 30,</u>	
	<u>2012</u>	<u>2011</u>	<u>2012</u>	<u>2011</u>
Beijing JINGCHENG New Energy Co., Ltd.	26%	<10%	22%	<10%
INOX Wind Limited	19%	24%	17%	17%
Karara Mining Ltd.	<10%	— %	13%	— %
Doosan Heavy Industries & Construction Co Ltd.	<10%	17%	<10%	16%

### **Cost of Revenues and Gross Margin**

Cost of revenues was \$20.4 million and \$37.3 million for the three and six months ended September 30, 2012, respectively, and \$21.9 million and \$38.9 million for the three and six months ended September 30, 2011, respectively. Gross margin was 2% and 25% for the three and six months ended September 30, 2012, respectively, compared to (6%) and (30%) for the three and six months ended September 30, 2011, respectively. The increases in gross margin for both the three and six months ended September 30, 2012 as compared to the same periods in fiscal 2011 were primarily due to settlements of certain adverse purchase order liabilities resulting in a benefit to

## [Table of Contents](#)

cost of revenues of \$1.0 million and \$8.3 million in the three and six months ended September 30, 2012, as well as higher revenues, primarily in the six months ended September 30, 2012, which included approximately \$3.3 million of revenue from Chinese customers representing payment for past shipments for which revenue was recognized upon cash collection. Costs associated with this revenue were recorded in prior periods.

### **Operating Expenses**

#### *Research and development*

A portion of our R&D expenditures related to externally funded development contracts has been classified as cost of revenues (rather than as R&D expenses). Additionally, a portion of R&D expenses was offset by cost-sharing funding. Our R&D expenditures are summarized as follows (in thousands):

	Three months ended September 30,		Six months ended September 30,	
	2012	2011	2012	2011
R&D expenses per condensed consolidated statements of operations	\$3,621	\$ 7,276	\$ 7,532	\$15,411
R&D expenditures reclassified as cost of revenues	4,280	3,263	7,140	7,303
R&D expenditures offset by cost-sharing funding	100	46	193	81
Aggregated R&D expenses	<u>\$8,001</u>	<u>\$10,585</u>	<u>\$14,865</u>	<u>\$22,795</u>

R&D expenses (exclusive of amounts classified as cost of revenues and amounts offset by cost-sharing funding) decreased by 50% and 51% to \$3.6 million and \$7.5 million for the three and six months ended September 30, 2012, respectively, from \$7.3 million and \$15.4 million for the three and six months ended September 30, 2011, respectively. The decrease in R&D expenses was driven primarily by the realization of savings from actions to reduce personnel and other costs that were implemented in fiscal 2011. The increase in R&D expenditures reclassified to costs of revenue during the three months ended September 30, 2012 was a result of increased activity under our government funded contracts in our Grid business unit compared to the prior year period. The decrease in R&D expenditures reclassified as costs of revenue during the six months ended September 30, 2012 was a result of decreased activity under license and development contracts for wind turbine designs, particularly during the first quarter of the six months ended September 30, 2012. Aggregated R&D expenses, which include amounts classified as cost of revenues and amounts offset by cost-sharing funding, decreased 24% and 35% to \$8.0 million and \$14.9 million for the three and six months ended September 30, 2012, respectively, compared to \$10.6 million and \$22.8 million for the three and six months ended September 30, 2011, respectively.

We present aggregated R&D, which is a non-GAAP measure, because we believe this presentation provides useful information on our aggregate R&D spending and because R&D expenses as reported on the unaudited condensed consolidated statements of income have been, and may in the future be, subject to significant fluctuations solely as a result of changes in the level of externally funded contract development work, resulting in significant changes in the amount of the costs recorded as costs of revenues rather than as R&D expenses, as discussed above.

#### *Selling, general, and administrative*

SG&A expenses decreased by 33% and 35% to \$11.7 million and \$25.5 million in the three and six months ended September 30, 2012, respectively, from \$17.6 million and \$39.6 million in the three and six months ended September 30, 2011, respectively. The decrease in SG&A expenses during the three and six month periods ended September 30, 2012, as compared to the prior year periods, was due primarily to the realization of savings from our actions to reduce personnel and other costs and for the six months ended September 30, 2012, costs associated with the severance of our former chief executive officer that were incurred during the comparable period of the prior year.

#### *Amortization of acquisition related intangibles*

We recorded amortization expense related to our core technology and know-how, trade names and trademark intangible assets of \$0.1 million and \$0.2 million in the three and six months ended September 30, 2012, respectively, compared to \$0.3 million and \$0.6 million in the three and six months ended September 30, 2011, respectively. These intangible assets are primarily as a result of our Windtec acquisition in 2007.

## [Table of Contents](#)

### *Restructuring*

We recorded restructuring and impairment charges \$0.0 million and \$0.1 million in the three and six months ended September 30, 2012, respectively compared to \$4.3 million in both the three and six months ended September 30, 2011. These costs consist primarily of employee severance and benefits costs.

### *Operating (loss) income*

Our operating (loss) income is summarized as follows (in thousands):

	Three months ended September 30,		Six months ended September 30,	
	2012	2011	2012	2011
<b>Operating (loss) income:</b>				
Wind	\$ (6,449)	\$ (16,336)	\$ (5,148)	\$ (40,705)
Grid	(6,572)	(7,645)	(11,915)	(18,197)
Unallocated corporate expenses	(1,949)	(27,144)	(4,035)	(30,549)
<b>Total</b>	<b><u>\$(14,970)</u></b>	<b><u>\$(51,125)</u></b>	<b><u>\$(21,098)</u></b>	<b><u>\$(89,451)</u></b>

Our Wind segment generated operating losses of \$6.4 million and \$5.1 million in the three and six months ended September 30, 2012, respectively, compared to operating losses of \$16.3 million and \$40.7 million in the three and six months ended September 30, 2011, respectively. The decreases in Wind business unit operating losses were primarily due to the settlement of certain adverse purchase order liabilities and the realization of savings from actions to reduce personnel and other costs that were implemented in fiscal 2011.

Our Grid segment operating losses decreased to \$6.6 million and \$11.9 million in the three and six months ended September 30, 2012, respectively, from \$7.6 million and \$18.2 million in the three and six months ended September 30, 2011, respectively. The decreases in Grid business unit operating losses were primarily due to the realization of savings from actions to reduce personnel and other costs that were implemented in fiscal 2011 and increased revenues from D-VAR shipments to customers in Europe and Australia.

Unallocated corporate expenses consist primarily of stock-based compensation expense of \$2.0 million and \$4.0 million for the three and six months ended September 30, 2012, respectively. Unallocated corporate expenses in both the three and six months ended September 30, 2011, primarily consisted of the write-off of an advance payment to The Switch of \$20.6 million, restructuring and impairment charges of \$4.3 million and stock based compensation expense of \$2.1 million and \$5.6 million respectively.

### *Change in fair value of derivatives and warrants*

As a result of our completed debt financings during the six months ended September 30, 2012, we recognized a liability for derivative features embedded within the financing agreements, including the convertible feature of the Convertible Note and warrants issued in conjunction with the Convertible Note and Term Loan. We are required to value the derivative liabilities and warrants at fair value each quarter and recognize a gain or loss on the change in fair value of these instruments.

The fair value of the derivative liabilities and warrants decreased by \$3.3 million and \$0.9 million and resulted in a gain to our consolidated statements of operations for the three and six months ended September 30, 2012, respectively. The primary driver of the gain was the decrease in our stock price during the three months ended September 30, 2012.

### *Interest (expense) income, net*

Interest expense, net, was \$2.9 million and \$5.6 million in the three and six months ended September 30, 2012, respectively, compared to interest income of less than \$0.1 million and \$0.2 million for the three and six months ended September 30, 2011, respectively. The increase in interest expense was due to the debt financings completed during the six months ended September 30, 2012.

## [Table of Contents](#)

### **Other (expense) income, net**

Other expense, net, was \$1.3 million and \$1.1 million in the three and six months ended September 30, 2012, respectively, compared to other income of \$0.4 million and \$0.9 million for the three and six months ended September 30, 2011, respectively. The increase in other expense, net primarily relates to foreign currency translation losses.

### **Income Taxes**

In the three and six months ended September 30 2012, we recorded income tax expense of \$0.1 million and an income tax benefit of \$0.8 million, respectively. For the three and six months ended September 30, 2011, we recorded income tax expense of \$0.9 million and \$1.1 million, respectively. The income tax expense of \$0.1 million for the three months ended September 30, 2012, was primarily due to income taxes in foreign jurisdictions. The income tax benefit for the six months ended September 30, 2012, is primarily due to a refund of income taxes paid in China. We have provided a valuation allowance against all existing and newly created deferred tax assets as of September 30, 2012, as it is more likely than not that our deferred tax assets are not currently realizable due to the net operating losses we have incurred since our inception.

### **Non-GAAP Measures**

Generally, a non-GAAP financial measure is a numerical measure of a company's performance, financial position, or cash flow that either excludes or includes amounts that are not normally excluded or included in the most directly comparable measure calculated and presented in accordance with GAAP. The non-GAAP measures included in this Form 10-Q, however, should be considered in addition to, and not as a substitute for, or superior to, the comparable measure prepared in accordance with GAAP.

We define non-GAAP net (loss) income as net (loss) income before adverse purchase commitment (recoveries) losses, net, stock-based compensation, amortization of acquisition-related intangibles, restructuring and impairment charges, changes in fair value of derivatives and warrants, non-cash interest expense, and the other non-cash or unusual items indicated in the table below. We believe non-GAAP net (loss) income assists management and investors in comparing our performance across reporting periods on a consistent basis by excluding these non-cash or non-recurring charges that we do not believe are indicative of our core operating performance. We also regard non-GAAP net (loss) income as a useful measure of operating performance which more closely aligns net (loss) income with cash used in/provided by continuing operations. In addition, we use non-GAAP net (loss) income as a factor in evaluating management's performance when determining incentive compensation and to evaluate the effectiveness of our business strategies. A reconciliation of non-GAAP to GAAP net (loss) income is set forth in the table below (in thousands, except per share data):

	Three months ended September 30,		Six months ended September 30,	
	2012	2011	2012	2011
Net loss	<u>\$ (15,949)</u>	<u>\$ (51,709)</u>	<u>\$ (26,224)</u>	<u>\$ (89,388)</u>
Adverse purchase commitment (recoveries) losses, net	(1,009)	(904)	(8,309)	167
Stock-based compensation	2,044	2,113	4,039	5,579
Amortization of acquisition-related intangibles	80	300	161	604
Restructuring and impairment charges	16	4,301	143	4,301
Executive severance	—	—	—	2,066
Sinovel litigation	304	3,334	424	3,334
Consumption of zero cost-basis inventory	401	(127)	788	(127)
Change in fair value of derivatives and warrants	(3,285)	—	(897)	—
Non-cash interest expense	2,161	—	4,443	—
Write-off of advance payment	—	20,551	—	20,551
Non-GAAP net loss	<u>\$ (15,237)</u>	<u>\$ (22,141)</u>	<u>\$ (25,432)</u>	<u>\$ (52,913)</u>
Non-GAAP loss earnings per share	<u>\$ (0.29)</u>	<u>\$ (0.44)</u>	<u>\$ (0.49)</u>	<u>\$ (1.04)</u>
Weighted average shares outstanding*	<u>51,907</u>	<u>50,876</u>	<u>51,551</u>	<u>50,716</u>

\* Diluted shares are used for periods where net income is generated.

## [Table of Contents](#)

We incurred non-GAAP net losses of \$15.2 million and \$25.4 million or (\$0.29) and (\$0.49) per share, for the three and six months ended September 30, 2012, respectively, compared to a non-GAAP net losses of \$22.1 million and \$52.9 million, or (\$0.44) and (\$1.04) per share, for the three and six months ended September 30, 2011, respectively. The decreases in the non-GAAP net losses were driven primarily by the factors that resulted in a lower net loss, including the savings from cost reduction actions undertaken in fiscal 2011 and increased revenues, particularly during the six months ended September 30, 2012.

### **Liquidity and Capital Resources**

At September 30, 2012, we had cash, cash equivalents, marketable securities and restricted cash of \$73.1 million, compared to \$66.2 million at March 31, 2012, an increase of \$6.9 million. Our cash and cash equivalents, marketable securities and restricted cash are summarized as follows (in thousands):

	September 30, 2012	March 31, 2012
Cash and cash equivalents	\$ 49,136	\$46,279
Marketable securities	5,220	5,304
Restricted cash	18,762	14,626
Total cash, cash equivalents, marketable securities and restricted cash	<u>\$ 73,118</u>	<u>\$66,209</u>

With respect to the unaudited condensed consolidated statement of cash flows, for the six months ended September 30, 2012, net cash used in operating activities was \$23.2 million compared to \$106.9 million for the six months ended September 30, 2011. The decrease in net cash used in operations is due primarily to the \$63.2 million decrease in net loss and a decrease in cash used for working capital of \$50.0 million, partially offset by a decrease in non-cash items of \$29.3 million primarily relating to the write-off of the advance payment to the Switch of \$20.6 million during the six months ended September 30, 2011.

For the six months ended September 30, 2012, net cash used in investing activities was \$4.9 million compared to net cash provided by investing activities of \$76.2 million for the six months ended September 30, 2011. The decrease in net cash provided by investing activities for the six months ended September 30, 2012 was driven primarily by a decrease in the proceeds from the maturity of marketable securities of \$111.0 million, partially offset by a decrease in capital expenditures of \$6.4 million, and the \$20.6 million advance payment to The Switch and the additional minority investment in Tres Amigas of \$1.8 million during the six months ended September 30, 2011, neither of which recurred.

For the six months ended September 30, 2012, net cash provided by financing activities was \$31.2 million compared to cash used in financing activities of \$0.1 million in the six months ended September 30, 2011. The increase in net cash provided by financing activities is primarily due to the net proceeds from our financings of \$31.1 million during the six months ended September 30, 2012.

At September 30, 2012, we had \$13.6 million of restricted cash included in current assets, and \$5.1 million of restricted cash included in long-term assets. These amounts included in restricted cash represent deposits to secure letters of credit for various supply contracts and are held in interest bearing accounts. We are working with our inventory suppliers to delay cash settlements and to reduce the gross liability associated with our adverse purchase commitments, which is approximately \$12.1 million as of September 30, 2012. During the six months ended September 30, 2012, we agreed to settle adverse purchase commitments with certain of our vendors. In conjunction with certain of these settlements, we agreed to provide letters of credit and bank guarantees in the amount of approximately \$9.0 million with expirations through January 31, 2013. The letters of credit and bank guarantees were secured with cash collateral of \$8.5 million. Settlements of adverse purchase commitments with certain vendors have resulted in a reduction of our adverse purchase commitments liability of \$1.0 million and \$8.3 million, during the three and six months ended September 30, 2012, respectively.

As of September 30, 2012, we had three performance bonds in support of customer contracts. The total value of the outstanding performance bonds is \$3.5 million with expiration dates through March 2014. In the event that the payment is made in accordance with the requirements of any of these performance bonds, we would record the payment as an offset to revenue.



## [Table of Contents](#)

On April 4, 2012, we completed a private placement of \$25.0 million of Convertible Notes with Capital Ventures International (“CVI”). The Convertible Notes bear interest of 7% and have an initial conversion price of \$4.85 per share. The Convertible Notes are payable in monthly installments beginning four months from issuance and ending on October 4, 2014. Monthly payments are payable in cash or common stock at our option, subject to certain trading volume, stock price and other conditions. The Convertible Notes contain certain covenants and restrictions, including, among others, that for so long as the Convertible Notes are outstanding, we will not incur any indebtedness (other than permitted indebtedness under the Convertible Notes), permit liens on our properties (other than permitted liens under the Convertible Notes), make payments on junior securities or declare dividends. The Convertible Notes also contain limitations on the transfer of certain assets. Events of default under the Convertible Notes include failure to pay principal or interest as due on the Convertible Notes, failure to deliver registered shares of common stock upon the holders request for conversion of part or all of the Convertible Notes, failure to maintain our common stock eligible for trading on defined markets, cross defaults to other material indebtedness, receipt of uninsured judgments against us in excess of defined limits and other administrative covenants, as defined in the Convertible Notes and related documentation. Upon an event of default, the holders may require us to redeem all or any portion of the outstanding principal amount of the Convertible Notes in cash plus a penalty specified in the agreement. In addition, if we fail to maintain an effective registration statement covering common stock to be used in settling obligations under the Convertible Notes, we will be required to pay a penalty specified in the agreement. CVI can also elect to defer receipt of monthly installment payments at its option. Any deferred installment payments will continue to accrue interest. CVI elected to defer the installment payment due September 4, 2012 of \$1.1 million.

On June 5, 2012, we entered into a Term Loan with Hercules Technology Growth Capital, Inc., under which we borrowed \$10.0 million. After the closing fees and expenses, the net proceeds were \$9.7 million. The Term Loan bears an interest rate equal to 11% plus the percentage, if any, in which the prime rate as reported by The Wall Street Journal exceeds 3.75%. We made interest only payments from July 1, 2012 through October 31, 2012, after which we will repay the Term Loan in equal monthly installments ending on December 1, 2014. The Term Loan is secured by substantially all of our existing and future assets, including a mortgage on real property owned by our wholly owned subsidiary, ASC Devens LLC, and located at 64 Jackson Road, Devens, Massachusetts. The Term Loan contains certain covenants that restrict our ability to, among other things, incur or assume certain debt, merge or consolidate, materially change the nature of our business, make certain investments, acquire or dispose of certain assets, make guaranties or grant liens on its assets, make certain loans, advances or investments, declare dividends or make distributions or enter into transactions with affiliates. In addition, the Term Loan contains a covenant which requires us to maintain a minimum unrestricted cash balance in the United States of at least \$10.0 million at the inception of the Term Loan, which will decrease starting November 1, 2012 and monthly thereafter by the amount of principal paid. The events of default under the Term Loan include, but are not limited to, failure to pay amounts due, breaches of covenants, bankruptcy events, cross defaults under other material indebtedness and the occurrence of a material adverse effect and/or change in control. In the case of a continuing event of default, the lender may, among other remedies, declare due all unpaid principal amounts outstanding and any accrued but unpaid interest and foreclose on all collateral granted to the lender as security under the Term Loan.

Although we are in and expect to remain in compliance with covenants and restrictions on the Convertible Notes and Term Loan as of the date of this Quarterly Report on Form 10-Q, there can be no assurance that we will continue to be in compliance. If we fail to stay in compliance with our covenants or suffer some other event of default, we may be forced to repay the outstanding principal of one or both of our debt obligations. In the case of the Convertible Note, such an event of default would also include the requirement to pay a penalty as defined in the agreement. Should this occur, our liquidity would be adversely affected.

At September 30, 2012, we had cash, cash equivalents, and marketable securities of \$54.4 million. We experienced a substantial decline in revenues, incurred a net loss of \$136.8 million and used \$141.0 million of cash for operations during the fiscal year ended March 31, 2012. As a result, we reduced our global workforce by approximately 50% and consolidated certain business operations in three locations to reduce facility costs. As of September 30, 2012, we had a global workforce of approximately 445 persons.

We used \$23.2 million in cash for operations during the six months ended September 30, 2012, compared to \$106.9 million during the six months ended September 30, 2011. We expect that our cost reduction efforts and anticipated revenue growth will result in a substantial reduction in cash used for operations during the fiscal year ending March 31, 2013. We plan to closely monitor our expenses and, if required, expect to further reduce operating costs and capital spending to enhance liquidity.

We believe that our available cash, together with additional reductions in operating costs and capital expenditures that we expect to make if necessary, will be sufficient to fund our operations, capital expenditures and any scheduled cash payments under our debt

## [Table of Contents](#)

obligations through September 30, 2013. Our liquidity is highly dependent on our ability to profitably grow revenues, successfully manage adverse purchase commitments, fund and maintain compliance with the covenants and restrictions on our debt obligations, and raise additional capital, as required. We may seek additional financing, however, there can be no assurance that financing will be available on commercially acceptable terms or at all.

### **Legal Proceedings**

We are involved in legal and administrative proceedings and claims of various types. See Part II, Item 1, "Legal Proceedings," for additional information. We record a liability in our consolidated financial statements for these matters when a loss is known or considered probable and the amount can be reasonably estimated. We review these estimates each accounting period as additional information is known and adjust the loss provision when appropriate. If a matter is both probable to result in a liability and the amounts of loss can be reasonably estimated, we estimate and disclose the possible loss or range of loss. If the loss is not probable or cannot be reasonably estimated, a liability is not recorded in its consolidated financial statements.

### **Off-Balance Sheet Arrangements**

We do not have any off-balance sheet arrangements, as defined under SEC rules, such as relationships with unconsolidated entities or financial partnerships, which are often referred to as structured finance or special purpose entities, established for the purpose of facilitating transactions that are not required to be reflected on our balance sheet except as discussed below.

We occasionally enter into construction contracts that include a performance bond. As these contracts progress, we continually assess the probability of a payout from the performance bond. Should we determine that such a payout is probable, we would record a liability.

In addition, we have various contractual arrangements in which minimum quantities of goods or services have been committed to be purchased on an annual basis.

### **Recent Accounting Pronouncements**

In June 2011, the FASB issued Accounting Standards Update (ASU) No. 2011-05, *Comprehensive Income (Topic 220): Presentation of Comprehensive Income*. ASU 2011-05 requires entities to present net income and other comprehensive income in either a single continuous statement or in two separate, but consecutive, statements of net income and other comprehensive income. ASU 2011-05 is effective for fiscal years and interim periods beginning after December 15, 2011. We early adopted ASU 2011-05 and it did not have a material impact on our consolidated results of operations, financial condition, or cash flows.

In September 2011, the FASB issued Accounting Standards Update No. 2011-08, *Intangibles - Goodwill and Other (Topic 350)*. ASU 2011-08 allows entities to first assess qualitatively whether it is necessary to perform the two-step goodwill impairment test. If an entity believes, as a result of its qualitative assessment, that it is more likely than not that the fair value of a reporting unit is less than its carrying amount, the quantitative two-step goodwill impairment test is required. An entity has the unconditional option to bypass the qualitative assessment and proceed directly to performing the first step of the goodwill impairment test. ASU 2011-08 is effective for our first quarter of fiscal 2013 but is eligible for early adoption. We do not believe adoption of this standard will have an impact on our consolidated results of operations, financial condition, or cash flows.

In December 2011, the FASB issued Accounting Standards Update No. 2011-11, *Balance Sheet (Topic 210)-Disclosures about Offsetting Assets and Liabilities* (ASU 2011-11). The update requires entities to disclose information about offsetting and related arrangements of financial instruments and derivative instruments. ASU 2011-11 is effective for our first quarter of fiscal 2014. We are currently evaluating the impact of adopting ASU 2011-11, but currently believe there will be no significant impact on our consolidated results of operations, financial condition, or cash flows.

We do not believe that other recently issued accounting pronouncements will have a material impact on our financial statements.

**ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

We face exposure to financial market risks, including adverse movements in foreign currency exchange rates and changes in interest rates. These exposures may change over time as our business practices evolve and could have a material adverse impact on our financial results.

***Interest Rate Risk***

Our exposure to interest rate risk through financial instruments includes investments in marketable securities as well as our Term Loan that carries a variable interest rate. To manage the interest rate exposure on our investments, our strategy is to invest in short-term, highly liquid investments. Our investments in marketable securities consist primarily of government-backed securities and commercial paper and are designed, in order of priority, to preserve principal, provide liquidity, and maximize income. Investments are monitored to limit exposure to instruments responsible for the recent turmoil in the credit markets. Interest rates are variable and fluctuate with current market conditions. Our Term Loan bears an interest rate equal to 11% plus the percentage, if any, by which the prime rate as reported by The Wall Street Journal exceeds 3.75%. We do not believe that a 10% change in interest rates would have a material impact on our financial position or results of operations. Our Convertible Note bears a fixed interest rate of 7%; however upon the occurrence on an event of default pursuant to the Note, the interest rate would increase to 15%.

***Foreign currency exchange risk***

The functional currency of each of our foreign subsidiaries is the U.S. dollar, except for AMSC Austria, for which the local currency (Euro) is the functional currency, and AMSC China, for which the local currency (Renminbi) is the functional currency. The assets and liabilities of AMSC Austria and AMSC China are translated into U.S. dollars at the exchange rate in effect at the balance sheet date and income and expense items are translated at average rates for the period. Cumulative translation adjustments are excluded from net income (loss) and shown as a separate component of stockholders' equity.

We face exposure to movements in foreign currency exchange rates whenever we, or any of our subsidiaries, enter into transactions with third parties that are denominated in currencies other than our functional currency. Intercompany transactions between entities that use different functional currencies also expose us to foreign currency risk. Gross margins of products we manufacture in the U.S and sell in currencies other than the U.S. dollar are also affected by foreign currency exchange rate movements. In addition, a portion of our earnings is generated by our foreign subsidiaries, whose functional currencies are other than the U.S. dollar, and our revenues and earnings could be materially impacted by movements in foreign currency exchange rates upon the translation of the earnings of such subsidiaries into the U.S. dollar.

Foreign currency impacts included in net (loss) income were a loss of (\$0.6) million and a gain of \$0.3 million for the three and six months ended September 30, 2012 and gains of \$1.1 million and \$2.3 million for the three and six months ended September 30, 2011, respectively.

**ITEM 4. CONTROLS AND PROCEDURES**

***Evaluation of Disclosure Controls and Procedures***

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as of September 30, 2012. The term “disclosure controls and procedures,” as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company’s management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on that evaluation of our disclosure controls and procedures as of September 30, 2012, our Chief Executive Officer and Chief Financial Officer concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

***Changes in Internal Control over Financial Reporting***

There were no changes in our internal control over financial reporting during the quarter ended September 30, 2012 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## PART II—OTHER INFORMATION

### ITEM 1. LEGAL PROCEEDINGS

Between April 6, 2011 and May 12, 2011, seven putative securities class action complaints were filed against us and two of our officers in the United States District Court for the District of Massachusetts; one complaint additionally asserted claims against the underwriters who participated in our November 12, 2010 securities offering. On June 7, 2011, the United States District Court for the District of Massachusetts consolidated these actions under the caption *Lenartz v. American Superconductor Corporation, et al.*, Docket No. 1:11-cv-10582-WGY. On August 31, 2011, Lead Plaintiff, the Plumbers and Pipefitters National Pension Fund, filed a consolidated amended complaint against us, our officers and directors, and the underwriters who participated in our November 12, 2010 securities offering, asserting claims under sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated under the Securities Exchange Act of 1934 (the “Exchange Act”), as well as under sections 11, 12(a)(2) and 15 of the Securities Act of 1933 (the “Securities Act”). The complaint alleges that during the relevant class period, we and our officers omitted to state material facts and made materially false and misleading statements relating to, among other things, our projected and recognized revenues and earnings, as well as our relationship with Sinovel Wind Group Co., Ltd. that artificially inflated the value of our stock price. The complaint further alleges that our November 12, 2010 securities offering contained untrue statements of material facts and omitted to state material facts required to be stated therein. The plaintiffs seek unspecified damages, rescindment of our November 12, 2010 securities offering, and an award of costs and expenses, including attorney’s fees. All defendants moved to dismiss the consolidated amended complaint. On December 16, 2011, the district court issued a summary order declining to dismiss the Securities Act claims against us and our officers, and taking under advisement the motion to dismiss the Exchange Act claims against us and our officers and the motion to dismiss the Securities Act claims made against the underwriters. On July 26, 2012, the district court dismissed the Exchange Act claims against us and our officers and denied the motion to dismiss the Securities Act claims made against the underwriters.

Between May 4, 2011 and June 17, 2011, four putative shareholder derivative complaints were filed against us (as a nominal defendant) and certain of our directors in the United States District Court for the District of Massachusetts. On July 5, 2011, the District Court consolidated three of these actions, and that matter is now captioned *In re American Superconductor Corporation Derivative Litigation*, Docket No. 1:11-cv-10784-WGY. On June 1, 2011, the plaintiff in the fourth action, *Marlborough Family Revocable Trust v. Yurek, et al.*, moved to voluntarily dismiss its complaint and refiled its complaint in Superior Court for the Commonwealth of Massachusetts, Middlesex County. On September 7, 2011, the Marlborough action and another putative shareholder derivative complaint filed in Superior Court for the Commonwealth of Massachusetts were consolidated. That consolidated matter is captioned *Marlborough Family Revocable Trust v. Yurek, et al.*, Docket No. 11-1961. On January 12, 2012, an additional shareholder derivative complaint was filed in the Court of Chancery for the State of Delaware. That matter is captioned *Krasnoff v. Budhraj, et al.*, Docket No. 7171. The allegations of the derivative complaints mirror the allegations made in the putative class action complaints described above. The plaintiffs purport to assert claims against the director defendants for breach of fiduciary duty, abuse of control, gross mismanagement, unjust enrichment and corporate waste. The plaintiffs seek unspecified damages on behalf of us, as well as an award of costs and expenses, including attorney’s fees.

If a matter is both probable to result in liability and the amounts of loss can be reasonably estimated, we estimate and disclose the possible loss or range of loss. With respect to the above referenced litigation matters, such an estimate cannot be made. There are numerous factors that make it difficult to meaningfully estimate possible loss or range of loss at this stage of these litigation matters, including that: the proceedings are in relatively early stages, there are significant factual and legal issues to be resolved, information obtained or rulings made during the lawsuits could affect the methodology for calculation of rescission and the related statutory interest rate. In addition, with respect to claims where damages are the requested relief, no amount of loss or damages has been specified. Therefore, we are unable at this time to estimate possible losses. We believe that these litigations are without merit, and we intend to defend these actions vigorously. Therefore no adjustment has been made to the financial statements to reflect the outcome of these uncertainties.

On September 13, 2011, we commenced a series of legal actions in China against Sinovel Wind Group Co. Ltd. (“Sinovel”). Our Chinese subsidiary, Suzhou AMSC Superconductor Co. Ltd., filed a claim for arbitration with the Beijing Arbitration Commission in accordance with the terms of our supply contracts with Sinovel. The case is captioned (2011) Jin Zhong An Zi No. 0963. On March 31, 2011, Sinovel refused to accept contracted shipments of 1.5 megawatt (MW) and 3 MW wind turbine core

## [Table of Contents](#)

electrical components and spare parts that we were prepared to deliver. We allege that these actions constitute material breaches of our contracts because Sinovel did not give us notice that it intended to delay deliveries as required under the contracts. Moreover, we allege that Sinovel has refused to pay past due amounts for prior shipments of core electrical components and spare parts. We are seeking compensation for past product shipments and retention (including interest) in the amount of approximately RMB 485 million (\$76 million) due to Sinovel's breaches of our contracts. We are also seeking specific performance of our existing contracts as well as reimbursement of all costs and reasonable expenses with respect to the arbitration. The value of the undelivered components under the existing contracts, including the deliveries refused by Sinovel in March 2011, amounts to approximately RMB 4.6 billion (\$720 million).

On October 8, 2011, Sinovel filed with the Beijing Arbitration Commission an application under the caption (2011) *Jing Zhong An Zi No. 0963*, for a counterclaim against us for breach of the same contracts under which we filed our original arbitration claim. Sinovel claimed, among other things, that the goods supplied by us do not conform to the standards specified in the contracts and claimed damages in the amount of approximately RMB 370 million (\$58 million). On October 17, 2011, Sinovel filed with the Beijing Arbitration Commission a request for change of counterclaim to increase its damage claim to approximately RMB 1 billion (\$157 million). On December 22, 2011, Sinovel filed with the Beijing Arbitration Commission an additional request for change of counterclaim to increase its damages claim to approximately RMB 1.2 billion (\$190 million). On February 27, 2012, Sinovel filed with the Beijing Arbitration Commission an application under the caption (2012) *Jing Zhong An Zi No. 0157*, against us for breach of the same contracts under which we filed our original arbitration claim. Sinovel claimed, among other things, that the goods supplied by us do not conform to the standards specified in the contracts and claimed damages in the amount of approximately RMB 105 million (\$17 million). We believe that Sinovel's claims are without merit and we intend to defend these actions vigorously. Since the proceedings in this matter are in relatively early stages, we cannot reasonably estimate possible losses or range of losses at this time.

We also submitted a civil action application to the Beijing No. 1 Intermediate People's Court under the caption (2011) *Yi Zhong Min Chu Zi No. 15524*, against Sinovel for software copyright infringement on September 13, 2011. The application alleges Sinovel's unauthorized use of portions of our wind turbine control software source code developed for Sinovel's 1.5MW wind turbines and the binary code, or upper layer, of our software for our PM3000 power converters in 1.5MW wind turbines. In July 2011, a former employee of our Austrian subsidiary was arrested in Austria on charges of economic espionage and fraudulent manipulation of data. In September 2011, the former employee pled guilty to the charges, and was imprisoned. As a result of our internal investigation and a criminal investigation conducted by Austrian authorities, we believe that this former employee was contracted by Sinovel through an intermediary while employed by us and improperly obtained and transferred to Sinovel portions of our wind turbine control software source code developed for Sinovel's 1.5MW wind turbines. Moreover, we believe the former employee illegally used source code to develop for Sinovel a software modification to circumvent the encryption and remove technical protection measures on the PM3000 power converters in 1.5MW wind turbines in the field. We are seeking a cease and desist order with respect to the unauthorized copying, installation and use of our software, monetary damages of approximately RMB 38 million (\$6 million) for our economic losses and reimbursement of all costs and reasonable expenses. The Beijing No. 1 Intermediate People's Court accepted the case, which was necessary in order for the case to proceed. In November 2011, Sinovel filed a motion to remove this case from the Beijing No. 1 Intermediate People's Court and to transfer the matter to the Beijing Arbitration Commission. On February 14, 2012, the court denied Sinovel's motion to remove the case. On February 21, 2012, Sinovel filed an appeal of the Beijing No. 1 Intermediate People's Court decision to the Beijing Higher People's Court. On April 25, 2012, the Beijing Higher People's Court issued a final Civil Ruling which supports the Beijing No.1 Intermediate People's Court's civil ruling and rejected Sinovel's appeal. Sinovel filed an appeal of the Beijing Higher People's Court's decision with China's Supreme People's Court. A hearing regarding this appeal was held at the Chinese Supreme People's Court on October 26, 2012. The Court's decision will follow.

Sinovel filed a new motion on June 18, 2012, to remove this case from the Beijing No. 1 Intermediate People's Court to the court located in Gansu Province. On October 19, 2012, the Court disallowed Sinovel's motion due to its late filing.

We submitted a civil action application to the Beijing Higher People's Court against Sinovel and certain of its employees for trade secret infringement on September 13 2011 under the caption (2011) *Gao Min Chu Zi No. 4193*. The application alleges the defendants' unauthorized use of portions of our wind turbine control software source code developed for Sinovel's 1.5MW wind turbines as described above with respect to the Copyright Action. We are seeking monetary damages of RMB 2.9 billion (\$453 million) for the trade secret infringement as well as reimbursement of all costs and reasonable expenses. The Beijing Higher People's Court has accepted the case, which was necessary in order for the case to proceed. On December 22, 2011 the Beijing Higher People's

## [Table of Contents](#)

Court transferred the case to the Beijing No. 1 Intermediate People's Court under the caption (2011) Gao Min Chu Zi No. 4193. On June 7, 2012, we received the Acceptance Notice from the Beijing No.1 Intermediate People's Court under the caption (2012) Yi Zhong Min Chu Zi No.6833. We are currently awaiting notice from the Beijing No. 1 Intermediate People's Court regarding the first hearing date. In August 2012, Sinovel filed a motion to remove this case from the Beijing No. 1 Intermediate People's Court and transfer the matter to the Beijing Arbitration Commission.

On September 16, 2011, we filed a civil copyright infringement complaint in the Hainan Province No. 1 Intermediate People's Court against Dalian Guotong Electric Co. Ltd. ("Guotong"), a supplier of power converter products to Sinovel, and Huaneng Hainan Power, Inc. ("Huaneng"), a wind farm operator that has purchased Sinovel wind turbines containing Guotong power converter products. The case is captioned (2011) Hainan Yi Zhong Min Chu Zi No. 62. The application alleges that our PM1000 converters in certain Sinovel wind turbines have been replaced by converters produced by Guotong. Because the Guotong converters are being used in wind turbines containing our wind turbine control software, we believe that our copyrighted software is being infringed. We are seeking a cease and desist order with respect to the unauthorized use of our software, monetary damages of RMB 1.2 million (\$0.2 million) for our economic losses (with respect to Guotong only) and reimbursement of all costs and reasonable expenses. The court has accepted the case, which was necessary in order for the case to proceed. In addition, upon the request of the defendant Huaneng, Sinovel has been added by the court to this case as a defendant and Huaneng has been released from this case. In December 2011, Sinovel filed a jurisdiction opposition motion requesting dismissal by the Hainan Province No. 1 Intermediate People's Court, saying the case should be governed by the Beijing Arbitration Commission. On February 3, 2012, we received the Civil Ruling from the court, which granted Sinovel's motion, and dismissed the entire case. We appealed the court's ruling to the Hainan Higher Court, which on April 5, 2012 upheld the decision of the Hainan Province No. 1 Intermediate People's Court. On April 9, 2012, we filed an appeal of the Hainan Higher Court's decision with China's Supreme People's Court. The Supreme Court accepted the appeal on May 23, 2012. The case is captioned, (2012) Min Shen Zi No. 630.

Ghodawat Energy Pvt Ltd ("Ghodawat"), a company registered in India carrying on the business of wind power development, lodged a Request for Arbitration with the Secretariat of the ICC International Court of Arbitration on May 12, 2011 and named AMSC Windtec GmbH ("AMSC Austria") as the Respondent. Under the Request for Arbitration, Ghodawat alleges that AMSC Austria breached an agreement dated March 19, 2008 pursuant to which AMSC Austria granted a license to Ghodawat to manufacture, use, sell, market, erect, commission and maintain certain wind turbines using its technical information and wind turbine design (the "License Agreement"). Under the Request for Arbitration, Ghodawat's claims in this arbitration amount to approximately €18 million (\$24 million). AMSC Austria filed an Answer to Request for Arbitration and Counterclaim ("Answer and Counterclaim"), in which AMSC Austria denied Ghodawat's claims in their entirety. AMSC Austria has also submitted counterclaims under the License Agreement against Ghodawat in the amount of approximately €6 million (\$9.0 million). Ghodawat has filed a Reply to Answer to Request for Arbitration and Counterclaim in which it denies AMSC Austria's counterclaims. The arbitration proceedings are currently ongoing. We have recorded a loss contingency based on our assessment of probable losses on this claim; however, this amount is immaterial to our consolidated financial statements.

### **ITEM 1A. RISK FACTORS**

Investing in our common stock involves a high degree of risk. In addition to the updated risk factor set forth below and the other information set forth in this Quarterly Report on Form 10-Q, you should carefully consider factors discussed in Part I, "Item 1A. Risk Factors" in our Annual Report on Form 10-K/A for the year ended March 31, 2012, which could materially affect our business, financial condition or future results. To the best of our knowledge, as of the date of this report there has been no material change in the risk factors described in our Annual Report on Form 10-K/A, except for the following:

#### ***New regulations related to conflict-free minerals may force us to incur significant additional expenses.***

The Dodd-Frank Wall Street Reform and Consumer Protection Act contains provisions to improve transparency and accountability concerning the supply of minerals originating from the conflict zones of the Democratic Republic of Congo (DRC) and adjoining countries. As a result, in August 2012 the SEC established new annual disclosure and reporting requirements for those companies who use "conflict" minerals mined from the DRC and adjoining countries in their products. These new requirements will require due diligence efforts for the 2013 calendar year, with initial disclosure requirements beginning in May 2014. These new

## [Table of Contents](#)

requirements could affect the sourcing and availability of minerals used in the manufacture of our products. As a result, we may not be able to obtain minerals at competitive prices and there will likely be significant additional costs associated with implementing new due diligence procedures that satisfy the new regulation. In addition, as our supply chain is complex, we may face reputational challenges with our customers and other stakeholders if we are unable to sufficiently verify the origins of all minerals used in our products through the due diligence procedures that we implement, and we may incur additional costs as a result of changes to product, processes or sources of supply as a consequence of these new requirements.

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

None

### **ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

None

### **ITEM 4. MINE SAFETY DISCLOSURES**

Not Applicable

### **ITEM 5. OTHER INFORMATION**

On November 6, 2012, the Company amended an agreement with one of its vendors to settle certain of its adverse purchase commitments (as amended, the “Settlement Agreement”). In conjunction with the Settlement Agreement, the Company agreed to pay the vendor approximately €2.2 million (the “Settlement Amount”). Under the Settlement Agreement, the Company has the option, at its sole discretion, to pay the settlement amount in cash, shares of the Company’s common stock, or a combination of cash and common stock. Accordingly, the Company plans to issue 765,301 shares of common stock (the “Vendor Stock”) to the vendor and has agreed to file a registration statement on Form S-3 to register the vendor’s resale of such shares of common stock. If the net proceeds from the vendor’s resale of the shares of common stock during a specified period plus any other cash payments made by the Company subsequent to the date of the Settlement Agreement will be less than the Settlement Amount, the Company agreed to make an additional payment equal to the shortfall in cash to the vendor no later than December 31, 2012. The vendor represented to the Company that the vendor is not a U.S. Person (as that term is defined in Regulation S) and is an “accredited investor” (as that term is defined in Rule 501(a) of Regulation D). The Company intends to issue the Vendor Stock in an offshore transaction pursuant to an exemption from the registration requirements of the Securities Act of 1933, as amended (the “Act”), under Regulation S and/or Section 4(2) of the Act.

### **ITEM 6. EXHIBITS**

See the Exhibit Index on the page immediately preceding the exhibits for a list of exhibits filed as part of this quarterly report, which Exhibit Index is incorporated herein by this reference.



**SIGNATURE**

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.

AMERICAN SUPERCONDUCTOR CORPORATION

Date: November 6, 2012

**By:** \_\_\_\_\_ /s/ **David A. Henry**  
David A. Henry  
Senior Vice President and Chief Financial Officer  
(Principal Financial and Accounting Officer)

**EXHIBIT INDEX**

<u>Exhibit No.</u>	<u>Description</u>
10.1	Executive Incentive Plan for fiscal year ending March 31, 2013
10.2	2007 Stock Incentive Plan, as amended(1)
10.3	Mortgage and Security Agreement, dated as of July 31, 2012, by and between ASC Devens LLC and Hercules Technology Growth Capital, Inc.
10.4	Environmental Indemnity Agreement, dated as of July 31, 2012, made by the Registrant and ASC Devens LLC in favor of Hercules Technology Growth Capital, Inc.
31.1	Chief Executive Officer—Certification pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Chief Financial Officer—Certification pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	Chief Executive Officer—Certification pursuant to Rule 13a-14(b) or Rule 15d-14(b) of the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2	Chief Financial Officer—Certification pursuant to Rule 13a-14(b) or Rule 15d-14(b) of the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS	XBRL Instance Document.**
101.SCH	XBRL Taxonomy Extension Schema Document.**
101.CAL	XBRL Taxonomy Calculation Linkbase Document.**
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document**
101.LAB	XBRL Taxonomy Label Linkbase Document.**
101.PRE	XBRL Taxonomy Presentation Linkbase Document.**

(1) Incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the Commission on July 27, 2012 (Commission file No.000-19672).

Attached as Exhibits 101 to this report are the following formatted in XBRL (Extensible Business Reporting Language): (i) Condensed Consolidated Statements of Income for the three and six months ended September 30, 2012 and 2011, (ii) Condensed Consolidated Balance Sheets as of September 30, 2012 and March 31, 2012, (iii) Condensed Consolidated Statements of Comprehensive (Loss) Income for the three and six months ended September 30, 2012 and 2011, (iv) Condensed Consolidated Statements of Cash Flows for the six months ended September 30, 2012 and 2011, and (v) Notes to Condensed Consolidated Financial Statements.

**Fiscal 2012 Executive Incentive Plan.** On July 26, 2012, the Compensation Committee of the Board of Directors of the Company (the “Committee”) and the Board of Directors of the Company approved an executive incentive plan for the Company’s fiscal year ending March 31, 2013 (“fiscal 2012”). Participants in the plan include the Company’s chief executive officer and all other executive officers. Pursuant to the plan, the Committee designated for each executive officer a target cash incentive amount, expressed as a percentage of the officer’s base salary. The Committee is responsible for determining the payout under the plan to each executive officer except the chief executive officer. The Board of Directors of the Company determines the payout under the plan for the chief executive officer, taking into account the recommendation of the Committee.

The amount of the incentive award actually paid to each executive officer may be less than or greater than the executive’s target cash incentive, with the amount capped at 156% of the target incentive. For each executive officer, individual incentive awards will be determined following the end of fiscal 2012 based on the following factors and their corresponding weightings:

- the Company’s net loss before amortization of acquisition-related intangibles, restructuring and impairments, stock-based compensation expense, change in fair value of derivative liability and warrants, non-cash interest expense, other unusual charges and any tax effects related to these items for fiscal 2012 as compared to the established target – 40%
- the executive’s achievement of individual, measurable objectives during fiscal 2012 as determined by the Committee for all executives with the exception of the chief executive officer, who is evaluated by the Board of Directors – 40%
- the executive’s overall contribution during fiscal 2012 towards the achievement of the Company’s financial and non-financial objectives (subjective performance measure) – 20%

The following table sets forth each executive officer’s target cash incentive for fiscal 2012:

<u>Executive Officer</u>	<u>Title</u>	<u>Target Incentive as % of Base Salary</u>	<u>Target Incentive</u>
Daniel P. McGahn	President and Chief Executive Officer	100%	\$ 500,000
David A. Henry	Senior Vice President, Chief Financial Officer and Treasurer	50%	\$ 156,000
Timothy D. Poor	Executive Vice President, Windtec Solutions	75%	\$ 228,750
James F. Maguire	Executive Vice President, Gridtec Solutions	75%	\$ 221,250
Susan J. DiCecco	Senior Vice President, Corporate Administration	50%	\$ 125,000

This Instrument was prepared by  
and after recording, please return to:

Cooley LLP  
3175 Hanover Street  
Palo Alto, CA 94304-1130  
Attn: John B. Hale, Esq.

**MORTGAGE AND SECURITY AGREEMENT**

Dated: July 31, 2012

**ASC DEVENS LLC**  
Mortgagor

TO

**HERCULES TECHNOLOGY GROWTH CAPITAL, INC.**  
Mortgagee

Mortgaged Property:

64 Jackson Road  
Devens Enterprise Zone  
Harvard, Massachusetts 01434-4020

## MORTGAGE AND SECURITY AGREEMENT

**THIS MORTGAGE AND SECURITY AGREEMENT** (the "**Mortgage**") is entered into as of the 31<sup>st</sup> day of July, 2012, by and between **ASC DEVENS LLC**, a Delaware limited liability company, having an address at c/o American Superconductor Corporation, 64 Jackson Road, Devens, Massachusetts 01434-4020 ("**Mortgagor**"), and **HERCULES TECHNOLOGY GROWTH CAPITAL, INC.**, a Maryland corporation, having an office at 400 Hamilton Avenue, Suite 310, Palo Alto, California 94301, Attention: Chief Legal Officer and Brad Pritchard ("**Mortgagee**").

### RECITALS

**WHEREAS**, pursuant to that certain Loan and Security Agreement of even date herewith between American Superconductor Corporation ("**Parent**"), the direct 100% owner of Mortgagor, and Mortgagee (the "**Loan Agreement**"), Mortgagee has made a loan in the principal amount of \$10,000,000 (the "**Loan**") to Mortgagor and Parent, which Loan is evidenced by that certain Secured Term Promissory Note in the amount of the Loan executed by Mortgagor in favor of Mortgagee (the "**Note**"); and

**WHEREAS**, this Mortgage secures the Secured Obligations (as defined in the Loan Agreement);

**NOW, THEREFORE**, in consideration of the foregoing recitals, which are incorporated into the operative provisions of this Mortgage by this reference, and for other good and valuable consideration, the receipt and adequacy of which are hereby conclusively acknowledged, Mortgagor hereby represents and warrants to and covenants and agrees with Mortgagee as follows:

### GRANT

**NOW, WITNESSETH**, that Mortgagor, for better securing the observance, payment, and performance by Parent of the Secured Obligations, and in further consideration of the sum of ONE and 00/100 DOLLAR (\$1.00) and for other good and valuable consideration, the receipt whereof before the ensembling and delivery of these presents is hereby acknowledged, Mortgagor does grant, bargain, sell, and convey to Mortgagee and to its successors and assigns forever, WITH MORTGAGE COVENANTS:

That tract or parcel of real property commonly known as 64 Jackson Road, situate, lying, and being in Devens Enterprise Zone, Town of Harvard, County of Worcester, and Commonwealth of Massachusetts, as more particularly described on Exhibit A attached hereto and made a part hereof, (the "**Property**"), being the same premises which were conveyed to Mortgagor by Deed from the Massachusetts Development Finance Agency dated October 19, 2000 which Deed was recorded in the Worcester District Registry of Deeds on October 20, 2000 in Book 23120, at Page 209;

**TOGETHER** with all and singular the tenements, hereditaments, easements, appurtenances, passages, waters, water courses, riparian rights, other rights, liberties and privileges thereof or in any way now or hereafter appertaining, Mortgagor's proportionate undivided interest in all streets, alleys, passages and ways, all other rights, liberties and privileges of whatsoever kind or character, the reversions and remainders, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well at law or in equity, in and to all the foregoing or any or every part thereof;

**TOGETHER** with all buildings and improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alteration and repair of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the mortgaged premises immediately upon the delivery thereof to such mortgaged premises, and all fixtures and articles of personal property now or hereafter owned by Mortgagor and attached to or contained in and used in connection with said premises; and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Property or building or buildings in any manner; it being mutually agreed that all the aforesaid property owned by said Mortgagor and placed by it on said premises shall, so far as permitted by law, be deemed to be affixed to the realty and covered by this Mortgage (collectively, the "**Improvements**");

**TOGETHER** with all right, title and interest of Mortgagor, now owned or hereafter acquired, in and to any and all sidewalks and alleys, and all strips and gores, adjacent to or used in connection with, the Property;

**TOGETHER** with all of right, title and interest of Mortgagor, now owned or hereinafter acquired, to any and all fixtures, partitions and dividers, and all machinery, equipment, chattels, goods and other articles of property, whether real estate or not, now or at any time hereafter attached to or situated in or upon, and used or useful in the operation of, the Property, or of any business now or hereafter operated by Mortgagor, (except any personal property, furnishings or furniture owned by any tenant unrelated to Mortgagor occupying any part of the Property, or any part of either or both and used by such tenant in the space occupied by it, to the extent that the same does not become the property of Mortgagor, as landlord, under the lease with such tenant or under applicable law), including without limitation:

All gas and electric fixtures, radiators, heaters, engines and machinery, boilers, elevators and motors, bathtubs, sinks, water closets, basins, pipes, faucets, air conditioning equipment, plumbing fixtures, heating fixtures, mirrors, mantels,

refrigerating plant, carpeting, furniture, ranges, refrigerators, ovens, dishwashers, laundry equipment, cooking apparatus and appurtenances, and all building material and equipment now or hereafter delivered to the Improvements; and

All renewals or replacements thereof, all additions thereto or articles in substitution thereof and all of the estate, right, title and interest of Mortgagor in and to all property of any nature whatsoever, now or hereafter situate at the Property or intended to be used in connection with the operation thereof shall be deemed to be fixtures and an accession to Mortgagor's interest in the Property as between the parties hereto and all persons claiming by, through or under them and shall be deemed to be a portion of the security for the indebtedness herein mentioned and secured by this Mortgage;

**TOGETHER** with its interest in any and all awards, damages, payments and other compensation and any and all claims therefor and rights thereto which may result from taking or injury by virtue of the exercise of the power of eminent domain of or to, or any damage, injury or destruction in any manner caused to, the Mortgaged Property (as hereinafter defined), or any part thereof, or from any change of grade or vacation of any street abutting thereon, all of which awards, damages, payments, compensation, claims and rights are hereby assigned, transferred and set over to Mortgagee to the fullest extent that Mortgagor may under the law so do. Mortgagee is hereby irrevocably appointed attorney-in-fact coupled with an interest for Mortgagor to settle for, collect and receive any such awards, damages, payments and compensation from the authorities making the same, to appear in and prosecute any proceeding therefor, and to give receipts and acquittances therefor;

**TOGETHER** with all right, title and interest of Mortgagor in and to all unearned premiums accrued, accruing or to accrue under any and all insurance policies now or hereafter obtained by Mortgagor with respect to the Mortgaged Property; and

**TOGETHER** with all rights, dividends and/or claims of any kind, nature or description whatsoever (including, without limitation, damage, secured, unsecured, lien, priority, or administration claims); together with the right to take any action or file any papers or process in any Court of competent jurisdiction, which may in the opinion of Mortgagee be necessary to preserve, protect, or enforce such rights or claims, including without limitation the filing of any proof of claim in any insolvency proceeding under any state, federal or other laws; including any rights, claims or awards accruing to, or to be paid to, Mortgagor in its capacity as landlord under any lease affecting all or any portion of the Property. Mortgagee's lien and interest in the foregoing rights and claims is hereby deemed to be presently vested and perfected as of the date hereof

(said Improvements, fixtures, machinery, equipment, tenements, and other property interests described and enumerated above are hereinafter collectively referred to as the “**Mortgaged Property**”);

**TO HAVE AND TO HOLD**, the above granted and described Mortgaged Property, with the appurtenances, fixtures, equipment and betterments, unto Mortgagee, its successors and assigns, to its and their own proper use and benefit forever;

**PROVIDED ALWAYS**, and these Mortgaged Property are upon the express condition, that if Mortgagor or Parent shall well and truly pay to Mortgagee its successors or assigns, for the benefit of the Mortgagee, the Secured Obligations, and any renewals or extensions thereof in whatever form, and the interest thereon as it shall become due, according to the true intent and meaning thereof, together with all advances hereunder, costs, charges and expenses, including reasonable attorneys’ fees, which Mortgagee may incur or be put to in collecting the same by foreclosure or otherwise; and if Parent or Mortgagor shall duly, promptly and fully perform, discharge, execute, effect, complete, comply with and abide by each and every of the stipulations, agreements, conditions and covenants of the Loan Documents such that the Loan Agreement is terminated pursuant to Section 10.18 thereof, then this Mortgage and the estate hereby created shall cease and be null and void and this instrument shall be released by Mortgagee, at the cost and expense of Mortgagor or Parent.

Mortgagor warrants, covenants and agrees with Mortgagee as follows:

**1. DEFINITIONS:**

Unless the context otherwise connotes, as used herein:

- (a) “**Note**” shall have the meaning set forth in the recitals of this Mortgage.
- (b) “**Title Binder**” means: that certain title insurance policy issued by the Title Insurance Company bearing policy number \_\_\_\_\_.
- (c) “**Title Insurance Company**” means: Fidelity National Title Insurance Company.
- (d) All other capitalized terms used herein but not defined herein shall have the respective meanings given such terms in the Loan Agreement.



2. **[RESERVED.]**

3. **FIRST LIEN:**

(a) This Mortgage is a valid first mortgage and is a valid first lien against the Mortgaged Property (subject to the Permitted Liens, if any), and secures:

(1) the Secured Obligations, including without limitation:

- (A) all amounts from time to time advanced, paid or expended by Mortgagee under Article 18 of this Mortgage, with interest thereon at the date stated in the Note to Mortgagee of even date herewith; and
- (B) any additional Advance made by Mortgagee in accordance with Section 2.6 of the Loan Agreement;

(2) all other amounts which Mortgagor and Mortgagee may agree are to be secured hereby, with interest thereon at the rate or rates agreed upon.

4. **REPRESENTATIONS AND WARRANTIES:**

Mortgagor represents, warrants and covenants as follows

(a) Organization and Existence. Mortgagor is duly organized and validly existing as a limited liability company in good standing under the laws of the jurisdiction in which Mortgagor was formed, and in the jurisdiction in which the Mortgaged Property is located. Mortgagor has the power and authority to execute, deliver and perform the obligations imposed on it under the Loan Documents to which it is a party and to consummate the transactions contemplated by the Loan Documents and Mortgagor has taken all necessary actions for the authorization of the borrowing on account of the Loan and for the execution and delivery of the Loan Documents to which it is a party.

(b) Enforceability/No Conflicts. All of the Loan Documents to which Mortgagor is a party constitute valid, legal and binding obligations of Mortgagor and are fully enforceable against Mortgagor in accordance with their terms by Mortgagee and its successors, and permitted transferees and assigns under the Loan Agreement, subject only to bankruptcy laws and general principles of equity. The execution, delivery and performance of the obligations imposed on Mortgagor under the Loan Documents will not cause Mortgagor to be in default, including after due notice or lapse of time or both, under the provisions of any material agreement, judgment or order to which Mortgagor is a party or by which Mortgagor is bound.

(c) Compliance with Applicable Laws and Regulations. All of the Improvements and the use of the Mortgaged Property comply, in all material respects, with, and shall remain in compliance with, all applicable laws, zoning and subdivision ordinances (including without limitation, parking requirements), rules, regulations, covenants and restrictions now or hereafter affecting or otherwise relating to the ownership, construction, occupancy, use or operation of the Mortgaged Property.

(d) Title. Mortgagor is indefeasibly seized of the Mortgaged Property in fee simple and has full power and lawful right to convey the same in fee simple as aforesaid. It shall be lawful for Mortgagee at all times peaceably and quietly to enter upon, hold, occupy and enjoy the Mortgaged Property and every part thereof. The Mortgaged Property is free from all liens and encumbrances except (i) those matters shown of record as of the date hereof and (ii) the Permitted Liens encumbering the Mortgaged Property, if any. Mortgagor will make such further assurances to prove the fee simple title to all and singular the Mortgaged Property in Mortgagee and to prove the lien and priority of this Mortgage, as may be reasonably required, and will forever fully warrant and defend the lien and priority of this Mortgage and the title to the Mortgaged Property and every part thereof against the lawful claims and demands of all persons whomsoever.

(e) Access/Utilities. The Mortgaged Property has adequate rights of access to public ways and is served by adequate water, sewer, sanitary sewer and storm drain facilities.

(f) Single Tax Lot; Subdivision. The Mortgaged Property consists of a single tax lot or multiple tax lots; no portion of said tax lot(s) covers property other than the Mortgaged Property or a portion of the Mortgaged Property and no portion of the Mortgaged Property lies in any other tax lot.

(g) No Condemnation. No part of any property subject to this Mortgage has been taken in condemnation or other like proceeding nor is any proceeding pending, threatened in writing or known to Mortgagor to be contemplated for the partial or total condemnation or taking of the Mortgaged Property.

(h) No Labor or Materialmen Claims. All parties furnishing labor and materials to Mortgagor, and to the best of Mortgagor's knowledge, the Mortgaged Property, have been paid in full and, except for such liens or claims insured against by the policy of title insurance to be issued in connection with the Loan, there are no mechanics', laborers' or materialmen's liens or, to the best of Mortgagor's knowledge, claims outstanding for work, labor or materials affecting the Mortgaged Property, whether prior to, equal with or subordinate to the lien of this Mortgage.

(i) **OFAC**. Neither the Mortgagor nor any member or partner in the Mortgagor or member of such partner nor any owner of a direct or indirect interest in the Mortgagor (a) is listed on any Government Lists (as defined below), (b) is a person who has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC (as defined below) or in any enabling legislation or other Presidential Executive Orders in respect thereof, (c) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense (as defined below), or (d) is not currently under investigation by any governmental authority for alleged criminal activity. For purposes hereof, the term “**Patriot Act Offense**” means any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (a) the criminal laws against terrorism; (b) the criminal laws against money laundering, (c) the Bank Secrecy Act, as amended, (d) the Money Laundering Control Act of 1986, as amended, or the (e) Patriot Act. “**Patriot Act Offense**” also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense. For purposes hereof, the term “**Government Lists**” means (i) the Specially Designated Nationals and Blocked Persons Lists maintained by Office of Foreign Assets Control (“**OFAC**”), (ii) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that Mortgagee notified Mortgagor in writing is now included in Governmental Lists, or (iii) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other government authority or pursuant to any Executive Order of the President of the United States of America that Mortgagee notified Mortgagor in writing is now included in Governmental Lists.

**5. REPAIR:**

Mortgagor shall maintain the Mortgaged Property in a good and substantial state of repair, subject to ordinary wear and tear.

**6. COMPLIANCE WITH LAW:**

Mortgagor shall comply with and maintain the Mortgaged Property in compliance with all laws and requirements of all governments and governmental authorities applicable thereto, including, without limitation, all applicable environmental laws, ordinances, rules, regulations, orders and requirements, whether federal, state, county, regional or municipal, which are applicable to the Mortgaged Property, including but not limited to, laws relating to air, water and noise pollution, handling of toxic substances, underground storage tanks and occupational safety and health requirements (“**Laws**”).

**7. TAXES AND OTHER CHARGES:**

Mortgagor covenants to pay (or cause to be paid) promptly as the same shall become due and payable all taxes, assessments, water and sewer charges and governmental charges on or with respect to the Mortgaged Property; and Mortgagor shall not be entitled to any credit by reason of the payment of any tax, assessment or other imposition thereon. Mortgagor shall provide Mortgagee with such evidence as Mortgagee may reasonably require, within ten (10) days after the final date any taxes, assessments, water and sewer charges or other governmental charges can be paid without penalty, that all such taxes, assessments, water and sewer charges and other governmental charges have been paid in full.

**8. INSURANCE:**

(a) In addition to insurance required to be maintained by Mortgagor pursuant to the Loan Agreement, Mortgagor shall keep in effect upon the Mortgaged Property Special Form Causes of Loss property insurance for not less than the full replacement cost of the Mortgaged Property, with the following endorsements: (i) valuation replacement cost (without depreciation), (ii) changes in laws and ordinance coverage, (iii) pressure vessel, if applicable, (iv) agreed value, (v) earthquake, and (vi) demolition costs.

(b) Mortgagor shall deliver to Mortgagee certificates of insurance that evidence Mortgagor's compliance with these insurance obligations. Mortgagor's insurance certificates shall state Mortgagee is an additional insured and a loss payee for all risk property damage insurance, and a loss payee for property insurance and additional insured for liability insurance for any future insurance that Mortgagor may acquire from such insurer. Attached to the certificates of insurance will be lender's loss payable endorsements for all risk property damage insurance. All certificates of insurance will provide for a minimum of thirty (30) days advance written notice to Mortgagor of cancellation. Any failure of Mortgagee to scrutinize such insurance certificates for compliance is not a waiver of any of Mortgagee's rights, all of which are reserved.

(c) If the insurance, or any part thereof shall expire, or be withdrawn or become void or voidable by Mortgagor's breach of any condition thereof, or become void or unsafe by reason of failure or impairment of the capital of any company in which the insurance may then be carried, Mortgagor shall immediately place new insurance on the Mortgaged Property, which new insurance shall comply with the requirements of this Article 8. In the event Mortgagor fails to comply with this Article 8, or upon any other Event of Default, Mortgagee may procure, at Mortgagor's sole cost and expense, whether by a transfer of interest under the current policy of insurance or by purchase of a new policy of insurance, a single interest policy of insurance naming Mortgagee as sole loss payee for the Mortgaged Property. If Mortgagee shall acquire title to the Mortgaged

Property by virtue of a deed in lieu of foreclosure, or a judicial sale thereof pursuant to the proceedings under the Note or Mortgage, then all of Mortgagor's estate, right, title and interest in and to all such policies, including unearned premiums thereon and the proceeds thereof, shall vest in Mortgagee.

(d) Mortgagee shall be entitled to receive all insurance proceeds according to the terms of a standard mortgagee clause, not subject to contribution, pursuant to Subsection 8(g) below. Mortgagee shall have the right, at its election, to adjust or compromise any loss claims under such insurance and to collect and receive the proceeds thereof.

(e) Mortgagee is hereby irrevocably appointed by Mortgagor, as attorney-in-fact of Mortgagor, to assign any policy to itself or its nominee in the event of foreclosure of this Mortgage or other extinguishment of the Mortgage indebtedness.

(f) Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Mortgage unless Mortgagee is included thereon as a named insured with loss payable to Mortgagee under a standard mortgage endorsement of character above described. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the policy or policies of such insurance.

(g) No damage or destruction of the Mortgaged Property or any application of insurance proceeds to the payment of the Note secured by this Mortgage shall postpone or reduce the amount of any of the current installments of interest becoming due under the Note which shall continue to be made in accordance with the terms of the Note until the Note and all interest due thereunder is paid in full.

(h) In the event of partial or total destruction of the Mortgaged Property in an amount greater than \$250,000 by fire or other insured casualty, provided (1) there is no outstanding Event of Default, (2) that insurance proceeds are sufficient to pay projected costs of repair and restoration, (3) that all repairs and reconstruction can be completed at least one year prior to the Term Loan Maturity Date, and (4) that repairs and restoration are not otherwise, in Mortgagor's reasonable judgment, impractical or economically unfeasible, then the insurance proceeds shall be held in a trust fund by Mortgagee to be disbursed for repairs and reconstruction of the Mortgaged Property on an "as work progresses" basis in accordance with customary construction lending requisition criteria and retainages. Any excess insurance proceeds after completion of restoration shall be released and delivered to Mortgagor provided that there is no outstanding Event of Default. In the event that any of the foregoing conditions are not met, then Mortgagee may apply the insurance proceeds toward reduction of the outstanding balance due under the Note without prepayment penalty. In no event shall the Mortgage lien be reduced,

except to the extent and by the amount of the proceeds of such insurance retained by Mortgagee and applied upon said indebtedness. Said trust fund shall be interest-bearing with said interest to be paid or credited to Mortgagor provided that there is no outstanding Event of Default.

**9. EMINENT DOMAIN; CONDEMNATION:**

(a) As to any taking of the Mortgaged Property by the exercise of power of eminent domain or purchase under threat thereof:

(1) Mortgagor shall notify Mortgagee promptly of all action taken and, to Mortgagor's knowledge, proposed to be taken with respect thereto;

(2) Mortgagor shall not exercise or waive any right with respect thereto, unless Mortgagee consents; and

(3) Mortgagee shall be entitled to receive the award of proceeds, and, at its sole option, to apply the same on account of the Note and/or to reimburse Mortgagor for the cost of the repair of the Mortgaged Property pursuant to this Section.

(b) To further secure said indebtedness, Mortgagor hereby assigns to Mortgagee any award of damages made in connection with any condemnation or taking with respect to the Mortgaged Property or any part thereof. Mortgagee is authorized and empowered (but not required) to collect and receive any such award and is authorized to apply it in whole or in part in reduction of the then outstanding debt secured by this Mortgage without prepayment penalty, notwithstanding the fact that the same may not then be due and payable. Any amounts so applied to principal shall be applied to the principal last maturing hereon. Mortgagor agrees to execute such further assignments of any such awards as Mortgagee may require.

(c) In the event of partial taking of the Mortgaged Property in an amount greater than \$250,000 by the exercise of power of eminent domain or purchase under threat thereof, provided (1) there is no outstanding Event of Default, (2) that award proceeds are sufficient to pay projected costs of repair and restoration, (3) that all repairs and reconstruction can be completed at least one year prior to the Term Loan Maturity Date, and (4) that repairs and restoration are not otherwise, in Mortgagor's reasonable judgment, impractical or economically unfeasible, then the award proceeds shall be held in a trust fund by Mortgagee to be disbursed for repairs and reconstruction of the Mortgaged Property on an "as work progresses" basis in accordance with customary construction lending requisition criteria and retainages. Any excess award proceeds after completion of restoration shall be released and delivered to Mortgagor provided that there is no outstanding Event of Default. In the event that any of the foregoing conditions are not met, then Mortgagee may apply the award proceeds toward reduction of the

outstanding balance due under the Note without prepayment penalty. In no event shall the Mortgage lien be reduced, except to the extent and by the amount of the proceeds of such award retained by Mortgagee and applied upon said indebtedness. Said trust fund shall be interest-bearing with said interest to be paid or credited to Mortgagor provided that there is no outstanding Event of Default.

**10. LEASES:**

(a) Mortgagor hereby irrevocably, absolutely, presently and unconditionally assigns to Mortgagee:

(1) all of Mortgagor's right, title and interest in, to and under any and all leases, licenses and other agreements of any kind relating to the use or occupancy of all or any portion of the Mortgaged Property, whether now in effect or entered into in the future (collectively, the "**Leases**" and each individually, a "**Lease**"), including (i) all guarantees of and security for lessees' performance under any and all Leases, and (ii) all amendments, extensions, renewals or modifications to any Leases; and

(2) all rents (and payments in lieu of rents), income, profit, payments, charges and revenue at any time payable under any and all Leases, any and all security deposits received or to be received by Mortgagor pursuant to any and all Leases, and all rights and benefits accrued or to accrue to Mortgagor under any and all Leases (collectively, the "**Rents**").

**THIS IS AN ABSOLUTE ASSIGNMENT, NOT AN ASSIGNMENT FOR SECURITY ONLY.**

(b) Mortgagee hereby confers upon Mortgagor a license (the "**License**") to collect and retain the Rents as they become due and payable, so long as no Event of Default, as defined in Article 13, shall exist and be continuing. If an Event of Default has occurred and is continuing, Mortgagee shall have the right, which it may choose to exercise in its sole discretion, to terminate the License without notice to or demand upon Mortgagor, and without regard to the adequacy of Mortgagee's security under this Mortgage.

(c) Subject to the License granted to Mortgagor above, Mortgagee has the right, power and authority to collect any and all Rents. Mortgagor hereby appoints Mortgagee its attorney-in-fact to perform any and all of the following acts, if and at the times when Mortgagee in its sole discretion may so choose:

- (1) demand, receive and enforce payment of any and all Rents;
- (2) give receipts, releases and satisfactions for any and all Rents; or

(3) sue either in the name of Mortgagor or in the name of Mortgagee for any and all Rents.

Notwithstanding the foregoing, Mortgagee shall not exercise its rights under this power of attorney except during the continuation of an Event of Default.

Mortgagee's right to the Rents does not depend on whether or not Mortgagee takes possession of the Mortgaged Property as permitted under Section 15(c). In the event that Mortgagee exercises its rights under the foregoing power of attorney, Mortgagee in its sole discretion may choose to collect Rents either with or without taking possession of the Mortgaged Property. If an Event of Default occurs while Mortgagee is in possession of all or part of the Mortgaged Property and is collecting and applying Rents as permitted under this Mortgage, Mortgagee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Mortgage and at law or in equity, including the right to exercise the power of sale granted under Section 40(c).

(d) All lessees under any and all Leases are hereby irrevocably authorized and notified by Mortgagor to rely upon and to comply with (and are fully protected in so doing) any notice or demand by Mortgagee for the payment to Mortgagee of any rental or other sums which may at any time become due under the Leases, or for the performance of any of lessees' undertakings under the Leases, and lessees shall have no right or duty to inquire as to whether any Event of Default has actually occurred or is then existing hereunder.

(e) In the event that Mortgagee exercises its rights under the power of attorney contained in Section 10(c) above, Mortgagee has the right to apply all amounts received by it pursuant to this assignment to pay any of the following in such amounts and in such order as Mortgagee deems appropriate: (a) any and all Secured Obligations, together with all costs and reasonable attorneys' fees; (b) all expenses of leasing, operating, maintaining and managing the Mortgaged Property, including without limitation, the salaries, fees, commissions and wages of a managing agent and such other employees, agents or independent contractors as Mortgagee deems necessary or desirable; (c) all taxes, charges, claims, assessments, any other liens, and premiums for all insurance Mortgagee deems necessary or desirable; (d) the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Mortgaged Property.

(f) Regardless of whether or not Mortgagee, in person or by agent, takes actual possession of the Mortgaged Property, Mortgagee is not and will not be deemed to be:

(1) a "mortgagee in possession" for any purpose;



(2) responsible for performing any of the obligations of Mortgagor under any Lease;

(3) responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Mortgaged Property, or any negligence in the management, upkeep, repair or control of the Mortgaged Property; or

(4) liable in any manner for the Mortgaged Property or the use, occupancy, enjoyment or operation of all or any part of it.

(g) Mortgagor will not enter into, modify, amend, consent to the cancellation of or terminate any Lease without the prior written consent of Mortgagee which consent may be granted or withheld in Mortgagee's sole discretion.

(h) Mortgagor (i) shall observe and perform all the obligations imposed upon the lessor under all Leases and shall not do or permit to be done anything to impair the value of the Leases as security for the Loan; (ii) shall promptly send copies to Mortgagee of all notices of default which Mortgagor shall send or receive thereunder; (iii) shall enforce all the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed, (iv) shall not collect any rent more than one (1) month in advance; (v) shall not execute any other assignment of the lessor's interest in the Leases or the rents; and (vi) shall deliver to Mortgagee, upon request, tenant estoppel certificates from each commercial tenant at the Mortgaged Property in form and substance reasonably satisfactory to Mortgagee, provided that, Mortgagor shall not be required to deliver such certificates more frequently than once in any calendar year. Except to the extent Mortgagor has received the prior written consent of Mortgagee, which consent may be granted or withheld in Mortgagee's sole discretion, Mortgagor shall not consent to any assignment of or subletting under any Lease not in accordance with its terms.

(i) If Mortgagor shall, in a timely manner, fail to cure any such default on its part, as landlord under any such Lease, then Mortgagor expressly authorizes Mortgagee, at its option, to cure such default in order to prevent termination of any such Lease by any such tenant, and the Leases shall set forth the foregoing provisions. If by reason of default of Mortgagor in the performance of any such Lease, the tenant has the right to cancel such Lease or to claim any diminution of or offset against future rents, then, at the option of Mortgagee, such default shall be an Event of Default under the Note and this Mortgage.

(j) In the event that Mortgagee forecloses this Mortgage, Mortgagor authorizes Mortgagee, at its option, to foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants party-defendants to any

such foreclosure proceeding and to foreclose their rights will not be asserted by Mortgagor as a defense to any proceeding instituted by Mortgagee to collect the indebtedness secured hereby or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property, it being expressly understood and agreed, however, that nothing herein contained shall prevent Mortgagor from asserting in any proceeding disputing the amount of the deficiency or the sufficiency of any bid at such foreclosure sale, that any such tenancies adversely affect the value of the Mortgaged Property.

(k) Any agreement entered into by Mortgagor, its representatives, agents, successors or assigns, which provides for the payment of leasing commissions, (1) shall provide that the obligation to pay such leasing commissions will not be enforceable against any party other than the party who entered into such agreement, (2) shall be subordinate to this Mortgage, and (3) shall not be enforceable against Mortgagee or its successors by foreclosure, deed in lieu of foreclosure or by assignment of this Mortgage. Mortgagor shall, upon the request of Mortgagee, furnish satisfactory evidence to Mortgagee of Mortgagor's compliance with the provisions of this Section.

(l) At the sole option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority entitlement to any award in condemnation), to any and all Leases of any part of the Mortgaged Property upon the execution by Mortgagee and recording thereof, at any time hereinafter, in the office of the recording of such documents for the locality in which the Mortgaged Property are located, of a unilateral declaration to that effect.

**11. [RESERVED.]**

**12. RESTRICTIVE AND AFFIRMATIVE COVENANTS:**

(a) Mortgagor shall not take or abstain from taking any action that would, if taken by Parent, be a violation of the Loan Agreement.

(b) Mortgagor shall not suffer or permit waste on the Mortgaged Property or remove or demolish the Mortgaged Property.

(c) Except as otherwise permitted in the Loan Documents, without the prior written consent of Mortgagee, Mortgagor shall not make any material alterations to the Mortgaged Property.

(d) Mortgagor shall not install, or permit to be installed, in or on the Mortgaged Property any new fixture or equipment in replacement of, substitution for, or addition to, any fixtures or equipment in or on the Mortgaged Property, if such new fixture or equipment would be subject to a security interest held by any person other than Mortgagee, unless such security interest is a Permitted Lien.

(e) Mortgagor covenants that it shall not, except to the extent expressly permitted in Section 20 hereof, sell, transfer, convey, assign, pledge or hypothecate any interest in the Mortgaged Property or any part thereof without Mortgagee's prior written approval which may be withheld in Mortgagee's sole discretion.

(f) Mortgagor shall not create nor permit to exist any interest, lien, charge, encumbrance, or security interest in the Mortgaged Property other than (i) as set forth in the Title Policy received by Mortgagee in connection with the closing of the Loan, and (ii) Permitted Liens; provided however, Mortgagor shall not be in default for failure to pay or discharge mechanic's or materialman's lien asserted against the Mortgaged Property if, and so long as, (a) Mortgagor shall have provided Mortgagee with written notice thereof within five (5) days of obtaining knowledge thereof; (b) Mortgagor shall diligently and in good faith contest the same by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same and the sale of the Mortgaged Property or any part thereof, to satisfy the same; (c) Mortgagor shall have furnished to Mortgagee a cash deposit, or an indemnity bond satisfactory to Mortgagee with a surety satisfactory to Mortgagee, in the amount of the mechanic's or materialman's lien claim, plus a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith, to assure payment of the matters under contest and to prevent any sale or forfeiture of the Mortgaged Property or any part thereof; (d) Mortgagor shall promptly upon final determination thereof pay the amount of any such claim so determined, together with all costs, interest and penalties which may be payable in connection therewith; (e) the failure to pay the mechanic's or materialman's lien claim does not constitute a default under any other deed of trust, mortgage or security interest covering or affecting any part of the Mortgaged Property; and (f) notwithstanding the foregoing, Mortgagor shall immediately upon request of Mortgagee pay any such claim (and if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay or cause to be discharged or bonded against), if in the opinion of Mortgagee, the Mortgaged Property or any part thereof or interest therein may be in danger of being sold, forfeited, foreclosed, terminated, cancelled or lost. Mortgagee may pay over any such cash deposit or part thereof to the claimant entitled thereto at any time when, in the judgment of Mortgagee, the entitlement of such claimant is established.

(g) Mortgagor shall not, except to the extent expressly permitted under the Loan Documents, sell, convey, transfer, nor assign, whether directly or indirectly, whether outright or as collateral security, any interest in the Mortgaged Property held by Mortgagor.

(h) Mortgagor covenants that it shall not, except to the extent expressly permitted under the Loan Documents, sell, lease or otherwise transfer all or any portion of its assets during the term of the Loan which would materially impair the financial condition, net worth, and/or liquidity of Mortgagor without the express written consent of Mortgagee.

(i) Mortgagor shall not lease any portion of the Mortgaged Property except as may be permitted under this Mortgage or the other Loan Documents, and Mortgagor shall not further assign the leases or rents affecting the Mortgaged Property.

(j) Mortgagor shall promptly notify Mortgagee of the occurrence of any of the following: (1) fire or other casualty the restoration cost of which is in excess of One Hundred Thousand and 00/100 Dollars (\$100,000.00); (2) receipt of notice of condemnation; (3) a change in tax assessment or proposed assessment; or (4) other material facts affecting the Mortgaged Property.

(k) Mortgagor covenants that it shall, at all times, occupy the Mortgaged Property, or use its best efforts to keep the Mortgaged Property fully rented at market rents and that it shall not inventory or warehouse vacant units.

(l) Mortgagor shall comply with all applicable laws and regulations regarding landlord's handling of tenant security deposits.

(m) Except as expressly permitted under the Loan Documents, Mortgagor has not and shall not: (1) merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case Mortgagee's consent; (2) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or without the prior written consent of Mortgagee, amend, modify in any material respect, terminate or fail to comply with the provisions of Mortgagor's organizational documents, as same may be further amended or supplemented, if such amendment, modification, termination or failure to comply would adversely affect the ability of Mortgagor to perform its obligations hereunder, under the Note or under the other Loan Documents; (3) own any subsidiary or make any investment in, any person or entity without the consent of Mortgagee, except as permitted under the Loan Agreement or the other Loan Documents; (4) commingle its assets with the assets of any of its affiliates, principals or of any other person or entity; (5) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Secured Obligations, except as otherwise permitted under the Loan Agreement or the other Loan Documents; (6) fail to pay its debts and liabilities from its assets as the same shall become due; (7) fail to maintain its records, books of account and bank accounts separate and apart from those of the principals and affiliates of Mortgagor, the affiliates of a general partner of Mortgagor, and any other person or entity; (8) enter into any contract or agreement with any principal or affiliate of Mortgagor, except upon terms

and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any principal or affiliate of Mortgagor; (9) seek the dissolution or winding up in whole, or in part, of Mortgagor; (10) make any loans or advances to any third party, including any general partner, principal or affiliate of Mortgagor, or any general partner, principal or affiliate thereof; (11) fail to file its own tax returns unless included on a consolidated tax return; (12) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not to mislead others as to the identity with which such other party is transacting business; (13) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; or (14) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors.

(n) Mortgagor hereby represents and warrants, that except as previously disclosed to Mortgagee, from the date of its formation to the date of this Mortgage, Mortgagor has not: (1) failed to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation; (2) commingled its assets with the assets of any of its affiliates, principals or of any other person or entity; (3) become insolvent and failed to pay its debts and liabilities from its assets as the same had become due; (4) failed to maintain its records, books of account and bank accounts separate and apart from those of its affiliates, principals or of any other person or entity; (5) entered into any contract or agreement with any principal or affiliate of Mortgagor, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any principal or affiliate of Mortgagor; (6) sought the dissolution or winding up in whole, or in part, of Mortgagor; (7) maintained its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any principal or affiliate of Mortgagor, or any general partner, principal or affiliate thereof or any other person; (8) held itself out to be responsible for the debts of another person; (9) made any loans or advances to any third party, including any principal or affiliate of Mortgagor, or any general partner, principal or affiliate thereof; (10) failed to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; (11) filed or consented to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors; or (14) other than as permitted under the Loan Agreement, incurred any indebtedness that is still outstanding and has not had any of its obligations guaranteed by an affiliate, except for guarantees that have been either released or discharged (or that will be discharged as a result of the closing of the Loan).

### 13. EVENTS OF DEFAULT:

The occurrence of any of the following events shall constitute an Event of Default:

(a) The occurrence of any "Event of Default" as defined in Section 8 of the Loan Agreement;

(b) The failure of Mortgagor to duly observe or fulfill or perform any non-monetary covenant, condition or agreement contained in this Mortgage other than the other Event of Defaults set forth in this Section 13, and such default shall have remained uncured for a period of thirty (30) days after the earlier of (i) the date Mortgagee has given notice of such default to Mortgagor, or (ii) Mortgagor has actual knowledge of such default. If such default cannot reasonably be cured within such thirty (30) day period and Mortgagor shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as it shall require Mortgagor in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days;

(c) Any state, local or federal government or any department, bureau, administration or instrumentality thereof or any corporation having the power of eminent domain shall take any estate or interest in the Mortgaged Property, the taking of which would be reasonably likely to cause a Material Adverse Effect;

(d) Mortgagor shall have transferred or caused to have been transferred title to or possession of any interest in the Mortgaged Property, or any part thereof, or the making of an installment contract therefor, to any party, or any member of Mortgagor shall have transferred or caused to have been transferred title to or possession of any interest in the Mortgagor, or the making of an installment contract therefor, to any party, in each case in a manner which constitutes an Event of Default under any Loan Document;

(e) The sale, transfer, conveyance, assignment, pledge, hypothecation or encumbrance of any interest in the ownership of the Mortgagor or the Mortgaged Property except as expressly permitted under the Loan Documents;

(f) Mortgagor suffers or permits any waste on the Mortgaged Property, reasonable wear and tear excepted;

(g) Subject to the terms of Section 19 hereof, Mortgagor shall fail to comply promptly with all applicable requirements of the federal, state and municipal governments, or of any departments officials or bureaus thereof having jurisdiction, or shall use the Mortgaged Property or property in any way that violates any federal, state or local law ordinance, rule, regulation, or requirement, or any restrictive covenant on the use of the Mortgaged Property, and such failure or violation would be reasonably likely to cause a Material Adverse Effect;

(h) Mortgagor's failure to maintain the insurance as required by Article 8 hereof;

(i) Mortgagor fails to repair or replace any Improvements damaged by fire or other casualty to the reasonable satisfaction of Mortgagee to the condition of the Mortgaged Property existing immediately prior to the casualty, provided, however, that such failure shall not constitute an Event of Default hereunder if (i) such damage or casualty is covered by the insurance required to be maintained by Mortgagor pursuant to Article 8 hereof, and (ii) Mortgagee fails to make insurance proceeds available to Mortgagor for such repair or replacement in accordance with Section 8(h) hereof;

(j) Mortgagor fails to maintain the Mortgaged Property and property in a rentable and tenantable condition and state of repair recognizing industry standards and with reasonable wear and tear excepted; or

(k) Mortgagor abandons all or part of the Mortgaged Property.

#### **14. RENTS AFTER DEFAULT:**

(a) Pursuant to Article 10 above, Mortgagor is assigning to Mortgagee the Rents heretofore accrued and hereafter accruing;

(b) During the continuation of an Event of Default, Mortgagor shall hold in trust for Mortgagee the Rents which Mortgagor receives, shall not commingle the same with Mortgagor's other property, and shall pay the same promptly to Mortgagee, and

(c) If Mortgagor remains in occupancy of the Mortgaged Property during a foreclosure action it shall keep the Mortgaged Property in good repair and condition or Mortgagee shall have the right to have Mortgagor removed, in any event Mortgagor's occupancy shall terminate upon delivery of deed whether voluntary or in foreclosure.

#### **15. REMEDIES:**

During the continuation of any Event of Default, Mortgagee in its sole discretion may declare the entire unpaid balance of the principal, all accrued interest, and all other

sums secured by this Mortgage immediately due and payable without further notice or demand, and in any such Event of Default, Mortgagee may forthwith undertake any one or more of the following:

(a) Declare the Loan to be immediately due and payable, and thereupon the same shall become immediately due and payable;

(b) Recover judgment against Mortgagor for any debt; and neither the recovery of judgment nor the levy of execution thereof on any property, including the Mortgaged Property, shall affect Mortgagee's rights hereunder or the lien hereof;

(c) Enter upon and take possession of the Mortgaged Property, or have a receiver of the rents, issues and profits thereof appointed on an ex parte basis without notice to Mortgagor, without proof of depreciation in the value of the Mortgaged Property, inadequacy of the Mortgaged Property, or insolvency of Mortgagor; and Mortgagee or the receiver may lease the Mortgaged Property, in the name of Mortgagor, Mortgagee or the receiver, and may receive the rents issues and profits and apply the same:

(1) to the payment of expenses of operating, maintaining, repairing and improving the Mortgaged Property, including renting commission and rental collection commissions paid to an agent of Mortgagee or of the receiver; and/or

(2) on account of the Note, in such order and in such amounts as Mortgagee or the receiver determines, but while in possession of the Mortgaged Property, Mortgagee or the receiver shall be liable to account only for the rents, issues and profits actually received; and/or

(d) Take such other action to protect and enforce Mortgagee's rights hereunder and the lien hereof, as Mortgagee deems advisable, including:

(1) the foreclosure hereof, subject, at Mortgagee's option, and upon the filing of a Complaint in Foreclosure, Mortgagee shall be entitled to the appointment of a receiver of the rents of the Mortgaged Property without the necessity of either inadequacy of the security or insolvency of Mortgagor or any person who may be legally or equitably liable to pay money secured by this Mortgage, and Mortgagor and each person waives such proof and consents to the appointment of such receiver; and in any proceeding to enforce any liability of the debt, Mortgagor shall not assert as a defense that Mortgagee failed to foreclosure any such rights or that any such rights adversely affected the value of the Mortgaged Property; and

(2) the sale of the Mortgaged Property, in a foreclosure proceeding, and without obligation to have the Mortgaged Property marshaled.



**16. MORTGAGEE’S RIGHTS CUMULATIVE:**

The rights and remedies of Mortgagee hereunder shall be in addition to every other right and remedy now and hereafter provided by law; the rights and remedies of Mortgagee shall be cumulative and not exclusive one or the other; Mortgagee may exercise the same at such times, in such order, to such extent, and as often as Mortgagee deems advisable, and without regard to whether the exercise of one precedes, concurs with, or succeeds the exercise of another; no delay or omission by Mortgagee in exercising a right or remedy shall exhaust or impair the same, or constitute a waiver of, or acquiescence in, the default; and no waiver of a default by Mortgagee shall extend to or affect any other default or impair any right or remedy with respect thereto.

**17. INDULGENCES AND EXTENSIONS:**

Mortgagee may: (i) allow Mortgagor or Parent any indulgences, forbearances and extensions with respect to the Note, the other Loan Documents, the Mortgaged Property and Mortgagor’s obligations hereunder; (ii) waive compliance with any of the provisions hereof, or of any other Loan Document; (iii) release all or any part of the Mortgaged Property from the lien hereof; and/or (iv) release all or any part of any other property securing the Secured Obligations from any lien thereon in favor of Mortgagee, all without affecting any obligations of Mortgagor under this Mortgage, or the priority of the lien hereof upon the remainder of the Mortgaged Property.

**18. ADVANCES BY MORTGAGEE:**

During the continuation of any Event of Default, if Mortgagor does not pay any amount payable by it under, or fails to comply with any provision of, this Mortgage or the other Loan Documents to which Mortgagor is a party, Mortgagee may pay such amount or comply with such provision of this Mortgage or the other Loan Documents, and make such expenditures, including reasonable counsel fees, in connection therewith and with enforcing this Mortgage and the other Loan Documents, for repairing, maintaining and preserving the Mortgaged Property, for establishing, preserving, protecting and restoring the priority of the lien hereof, for obtaining official tax searches of the Mortgaged Property, for protecting and preserving any use being made of the Mortgaged Property now or hereafter, and for advances to any trustee or receiver of the Mortgaged Property, as Mortgagee reasonably deems advisable; each amount so paid or expended, with interest at the rate stated in the Note, shall become part of the Secured Obligations and be secured hereby; and Mortgagor shall pay to Mortgagee, on demand, the amount of each such payment or expenditure with interest at the rate stated in the Note; but no such payment or compliance by Mortgagee shall constitute a waiver of Mortgagor’s failure to do so or affect any right or remedy of Mortgagee with respect thereto.

**19. WASTE - IMPAIRMENT OF SECURITY:**

Mortgagor shall abstain from the commission of waste on the Mortgaged Property and shall not remove, alter (subject to Section 12(a) hereof), or demolish any of the Improvements and shall not remove or demolish any fixtures or personal property covered by this Mortgage without the written consent of Mortgagee, which consent shall not be unreasonably withheld. Mortgagor covenants and agrees with Mortgagee and the successors and assigns of Mortgagee that Mortgagor will keep and maintain (or cause to be kept and maintained) the Mortgaged Property and all improvements thereon and all personal property included in this Mortgage in a good condition and complete state of repair and will promptly comply with all the requirements of the federal, state, and municipal governments or of any departments or bureaus thereof having jurisdiction (unless the same are being contested in good faith in accordance with the terms of the Loan Documents); that neither the value of the Mortgaged Property nor the lien of this Mortgage will be diminished or impaired in any way by any act or omission of Mortgagor; and that Mortgagor will not do or permit to be done to, in, upon or about said Mortgaged Property or any part thereof, anything that may in any way substantially impair the value thereof, or substantially weaken, diminish, or impair the security of this Mortgage; provided, however, that Mortgagor may replace obsolete or worn out items of personal property by similar items of equal or greater value and utility, in accordance with sound practice ordinarily employed by prudent and diligent owners of similar property. This paragraph is based upon industry standards and with reasonable wear and tear excepted.

**20. ALIENATION**

The Loan shall be accelerated and become due and payable, and subject to Prepayment Charge upon any Transfer, unless such Transfer is expressly permitted under the Loan Documents. For purposes hereof, the term “**Transfer**” means (a) any sale, transfer, conveyance, alienation, pledge or encumbrance of (i) the Mortgaged Property (except for leases to commercial tenants for portions of the Mortgaged Property as permitted hereunder), or (ii) any direct or indirect “controlling interest” in Mortgagor or of any direct or indirect interests comprising forty-nine percent (49%) or more (in the aggregate) of the direct or indirect ownership of Mortgagor, or (b) a change in the management of the Mortgaged Property without the prior written consent of Mortgagee. “**Controlling interest**” means any direct or indirect interest in Mortgagor which grants the holder of such interests the rights to direct and/or manage the Mortgagor. Notwithstanding the foregoing: (x) transfers of interests in Mortgagor solely for estate planning purposes to “**Family Members**” (defined as any spouse, child, grandchild, parent or sibling) or to a trust (or limited partnership or limited liability company established and structured for estate planning purposes) solely for the benefit of Family Members shall be permitted with Mortgagee’s prior written consent, which consent shall

not be unreasonably withheld provided that there is no change in the direct or indirect control of Mortgagor or management of the Mortgaged Property; and (y) transfers of the direct or indirect interests in Mortgagor among the existing shareholders of Mortgagor as of the date hereof shall be permitted with Mortgagee's prior written consent, which consent shall not be unreasonably withheld provided that there is no change in the direct or indirect control of Mortgagor or management of the Mortgaged Property.

**21. NOTICES:**

All notices, requests, consents, approvals, waivers, service of process or other communications under this Mortgage shall be given in the manner set forth in Section 10.2 of the Loan Agreement, at the address for each party specified in the preamble hereto, or at such other address as the parties may designate by written notice given accordance with Section 10.2 of the Loan Agreement.

**22. INSPECTION:**

Mortgagee shall have the right to conduct inspections of the interior and exterior of the Mortgaged Property from time to time upon written notice during reasonable hours and without interfering with Mortgagor's operation of the property. If no Event of Default shall have occurred, Mortgagee shall conduct such inspections no more frequently than once per calendar year. During the continuation of any Event of Default, Mortgagee may conduct such inspections as often as it reasonably deems necessary or advisable.

**23. THIRD PARTY SECURED OBLIGATIONS:**

(a) As used in this Section 23, "**Third Party Secured Obligation**" means any Secured Obligation which is required to be performed by any person or entity other than Mortgagor. As used in this Section 8, "**Obligor**" means the person or entity obligated to perform any Third Party Secured Obligation. All other capitalized words used herein are used as defined in this Mortgage.

(b) Mortgagor authorizes Mortgagee to perform any or all of the following acts at any time in its sole discretion, all without notice to Mortgagor and without affecting Mortgagee's rights or Mortgagor's obligations under this Mortgage, provided that such acts do not violate the terms of the Loan Agreement:

(1) Mortgagee may alter any terms of the Third Party Secured Obligation or any part of it, including renewing, compromising, modifying, extending or accelerating, terminating early, or otherwise changing the time for payment of, or increasing or decreasing the rate of interest on, the Third Party Secured Obligation or any part of it.

(2) Mortgagee may enforce or forbear from enforcing the Third Party Secured Obligations on a net or gross basis.

(3) Mortgagee may take and hold security for the Third Party Secured Obligation, accept additional or substituted security for that obligation, and subordinate, exchange, enforce, waive, release, reconvey, compromise, fail to perfect and sell or otherwise dispose of any such security.

(4) Mortgagee may direct the order and manner of any sale of all or any part of any security now or later to be held for the Third Party Secured Obligation, and Mortgagee may also bid at any such sale and may apply all or any part of the Third Party Secured Obligation against the amount so bid.

(5) Mortgagee may apply any payments or recoveries from Obligor, Mortgagor or any other source, and any proceeds of any security, to the Third Party Secured Obligation in such manner, order and priority as Mortgagee may elect, whether that obligation is secured by this Mortgage or not at the time of the application.

(6) Mortgagee may substitute, add or release any one or more Obligors, guarantors or endorsers.

(7) In addition to the Third Party Secured Obligation, Mortgagee may extend other credit to Obligor, and may take and hold security for the credit so extended, whether or not such security is also security for the Third Party Secured Obligation, all without affecting Mortgagee's rights or Mortgagor's liability under this Mortgage.

(c) Mortgagor expressly agrees that until the Third Party Secured Obligation is paid and performed in full, and each and every term, covenant and condition of this Mortgage is fully performed, Mortgagor shall not be released by or because of:

(1) Any act or event which might otherwise discharge, reduce, limit or modify Mortgagor's obligations under this Mortgage;

(2) Any waiver, extension, modification, forbearance, delay or other act or omission of Mortgagee, or its failure to proceed promptly or otherwise against Obligor, Mortgagor or any security;

(3) Any action, omission or circumstance which might increase the likelihood that Mortgagor may be called upon to perform under this Mortgage or which might affect the rights or remedies of Mortgagor against Obligor; or

(4) Obligor becoming insolvent or subject to any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor

relationships (“*Insolvency Proceeding*”) and as a result thereof some or all of the Third Party Secured Obligation being terminated, rejected, discharged, modified or abrogated.

(d) This Mortgage shall remain in full force and effect without regard to, and shall not be affected or impaired, by any invalidity, irregularity or unenforceability, in whole or in part (including with respect to any netting provision) of any Loan Document secured hereunder or any limitation on the liability of Obligor thereunder or any limitation on the method or terms of payment thereunder which may now or in the future be caused or imposed in any manner whatsoever. Mortgagor hereby acknowledges that absent this Section 23(d), Mortgagor might have a defense to the enforcement of this Mortgage as a result of one or more of the foregoing acts, omissions, agreements, waivers or matters. Mortgagor hereby expressly waives and surrenders any defense to any liability under this Mortgage based upon any of such acts, omissions, agreements, waivers or matters. It is the express intent of Mortgagor that Mortgagor’s obligations under this Mortgage are and shall be absolute, unconditional and irrevocable.

(e) Mortgagor waives:

(1) All statutes of limitations as a defense to any action or proceeding brought against Mortgagor by Mortgagee, to the fullest extent permitted by law;

(2) Any right it may have to require Mortgagee to proceed against Obligor or any other party, proceed against or exhaust any security held from Obligor or any other party, or pursue any other remedy in Mortgagee’s power to pursue;

(3) To the extent permitted by applicable law, the benefit of all laws now existing or which may hereafter be enacted providing for any appraisal, valuation, stay, extension, redemption or moratorium;

(4) All rights of marshaling in the event of foreclosure;

(5) Any defense based on any claim that Mortgagor’s obligations exceed or are more burdensome than those of Obligor;

(6) Any defense based on: (i) any legal disability of Obligor, (ii) any release, discharge, modification, impairment or limitation of the liability of Obligor to Mortgagee from any cause, whether consented to by Mortgagee or arising by operation of law or from any *Insolvency Proceeding* and (iii) any rejection, disallowance or disaffirmance of the Third Party Secured Obligation, or any part of it, or any security held for it, in any such *Insolvency Proceeding*;

(7) Any defense based on any action taken or omitted by Mortgagee in any Insolvency Proceeding involving Obligor, including, without limitation, filing, defending, settling or obtaining a judgment or order on any proof of claim or any adversary proceeding, making any election to have Mortgagee's claim allowed as being secured, partially secured or unsecured, including any election under 11 U.S.C. Section 1111(b), seeking relief from the automatic stay or adequate protection, including submitting an appraisal of any security, voting to reject or accept or failing to vote on any reorganization plan, making any extension of credit by Mortgagee to Obligor in any Insolvency Proceeding, and the taking and holding by Mortgagee of any security for any such extension of credit, whether or not such security is also security for the Third Party Secured Obligation;

(8) All presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of acceptance of this Mortgage and of the existence, creation, or incurring of new or additional indebtedness, and demands and notices of every kind; and

(9) Any defense based on or arising out of any defense that Obligor may have to the payment or performance of the Third Party Secured Obligation or any part of it.

(f) Mortgagor acknowledges, covenants and agrees that:

(1) The obligations of Mortgagor hereunder are independent of the obligations of Obligor, and a separate action or actions may be brought against Mortgagor whether or not action or suit is brought against Obligor or Obligor is joined in any such action or actions. At the option of Mortgagee, Mortgagor may be joined in any action or proceeding commenced by Mortgagee against Obligor in connection with or based on the Third Party Secured Obligation or any security for such obligation, and recovery may be had against Mortgagor in such action or proceeding without any requirement that Mortgagee first assert, prosecute or exhaust any remedy or claim against Obligor.

(2) Upon a default by Obligor, Mortgagee in its sole discretion, without prior notice to or consent of Mortgagor, may elect to: (i) foreclose either judicially or nonjudicially against any real or personal property security that Mortgagee may hold for the Third Party Secured Obligation other than the Property hereby encumbered, (ii) accept a transfer of any such security in lieu of foreclosure, (iii) compromise or adjust the Third Party Secured Obligation or any part of it or make any other accommodation with Obligor or Mortgagor, or (iv) exercise any other remedy against Obligor or any security other than the Property hereby encumbered. With respect to security other than the Property hereby encumbered, no such action by Mortgagee shall release or limit the

liability of Mortgagor, who shall remain liable under this Mortgage after the action, even if the effect of the action is to deprive Mortgagor of any subrogation rights, rights of indemnity, rights of contribution, or other rights to collect reimbursement from Obligor for any recovery by Mortgagee against Mortgagor, whether contractual or arising by operation of law or otherwise. After any foreclosure or deed in lieu of foreclosure of any real or personal property pledged to secure the Third Party Secured Obligation, Mortgagor shall under no circumstances be deemed to have any right, title, interest or claim in or to such property, whether it is held by Mortgagee or any third party.

(3) Regardless of whether Mortgagee may have recovered against Mortgagor, Mortgagor hereby waives: (i) all rights of subrogation, all rights of indemnity, and any other rights to collect reimbursement or contribution from Obligor or any other party for any recovery by Mortgagee against Mortgagor, whether contractual or arising by operation of law (including the United States Bankruptcy Code or any successor or similar statute) or otherwise (collectively, "**Reimbursement Rights**"), (ii) all rights to enforce any remedy that Mortgagee may have against Obligor, and (iii) all rights to participate in any security now or later to be held by Mortgagee for the Third Party Secured Obligation. To the extent Mortgagor's waiver of Reimbursement Rights is found by a court of competent jurisdiction to be void or voidable for any reason, any Reimbursement Rights Mortgagor may have against Obligor or any collateral or security shall be junior and subordinate to any rights Mortgagee may have against Obligor and to all right, title and interest Mortgagee may have in any such collateral or security. If any amount should be paid to Mortgagor on account of any Reimbursement Rights at any time when the Third Party Secured Obligation has not been paid in full, such amount shall be held in trust for Mortgagee and shall immediately be paid over to Mortgagee to be credited and applied against the Third Party Secured Obligation, whether matured or unmatured, in accordance with the terms of the Loan Documents. The covenants and waivers of Mortgagor set forth in this Section 23(f)(3) shall be effective until the Third party Secured Obligation has been paid and performed in full and are made solely for the benefit of Mortgagee.

(4) Mortgagor waives any and all rights and defenses described in Section 2856(a) of the California Civil Code that are or may become available to Mortgagor, including, without limitation, any rights and defenses by reason of Sections 2787 to 2855, inclusive, of the California Civil Code.

(5) Mortgagor waives all rights and defenses that Mortgagor may have because the Third Party Secured Obligation may be secured by real property other than the Property hereby encumbered. This means, among other things:

- (A) Mortgagee may collect from Mortgagor (including enforcing this Mortgage against Mortgagor) without first foreclosing on any real or personal property collateral pledged by Obligor;
- (B) If Mortgagee forecloses on any real property collateral pledged by Obligor, (i) the amount of the Third Party Secured Obligation may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price and (ii) Mortgagee may collect from Mortgagor (including enforcing this Mortgage against Mortgagor) even if Mortgagee, by foreclosing on the real property collateral pledged by Obligor, has destroyed any right Mortgagor may have to collect from Obligor.

This Section 23(f)(5) is an unconditional and irrevocable waiver of any rights and defenses Mortgagor may have because the Third Party Secured Obligation may be secured by real property other than the Property hereby encumbered. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

(6) Without limiting the generality of the foregoing Section 23(f)(5), Mortgagor understands and acknowledges that if Mortgagee forecloses judicially or nonjudicially against any real property securing the Third Party Secured Obligation other than the Property hereby encumbered, that foreclosure could impair or destroy any ability that Mortgagor may have to seek reimbursement, contribution or indemnification from Obligor or others based on any Reimbursement Right Mortgagor may have for any recovery by Mortgagee under this Mortgage. Mortgagor further understands and acknowledges that in the absence of this Section 23(f), such potential impairment or destruction of Mortgagor's rights, if any, may entitle Mortgagor to assert a defense to this Mortgage based on Section 580d of the California Code of Civil Procedure as interpreted in Union Bank v. Gradsky, 265 Cal.App.2d 40 (1968). By executing this Mortgage, Mortgagor freely, irrevocably and unconditionally: (i) waives and relinquishes that defense and agrees that Mortgagor will be fully liable under this Mortgage even though Mortgagee may foreclose judicially or nonjudicially against any real property security for the Third Party Secured Obligation other than the Property; (ii) agrees that Mortgagor will not assert that defense in any action or proceeding which Mortgagee may commence to enforce this Mortgage; (iii) acknowledges and agrees that the rights and defenses waived by Mortgagor under this Mortgage include any right or defense that Mortgagor may have or be entitled to assert based upon or arising out of any one or more of Sections 580a, 580b, 580d or 726 of the California Code of Civil Procedure or Section 2848 of the California Civil Code; and (iv) acknowledges and agrees that Mortgagee is relying on this waiver in extending credit to Obligor in the form of the Third Party Secured Obligation, and that this waiver is a material part of the consideration which Mortgagee is receiving for extending such credit to Obligor.



(7) Mortgagor waives any right or defense it may have at law or equity, including California Code of Civil Procedure Section 580a, to a fair market value hearing or action to determine a deficiency judgment after a foreclosure of any property other than the Property hereby encumbered.

(8) No provision or waiver in this Mortgage shall be construed as limiting the generality of any other provision or waiver contained in this Mortgage.

(g) If Mortgagee is required to pay, return or restore to Obligor or any other person any amounts previously paid on the Third Party Secured Obligation because of any Insolvency Proceeding of Obligor, any stop notice or any other reason, the obligations of Mortgagor shall be reinstated and revived and the rights of Mortgagee shall continue with regard to such amounts, all as though they had never been paid, and this Mortgage shall continue to be effective or be reinstated, as the case may be.

(h) Mortgagor represents that: (a) Mortgagee has made no representation to Mortgagor as to the creditworthiness of Obligor, and (b) no oral promises, assurances, representations or warranties have been made by or on behalf of Mortgagee to induce Mortgagor to execute and deliver this Mortgage. Mortgagor has received and approved copies of all other requested Loan Documents. Before signing this Mortgage, Mortgagor investigated the financial condition and business operations of Obligor and such other matters as Mortgagor deemed appropriate to assure itself of Obligor's ability to discharge its obligations in connection with the Third Party Secured Obligation. Mortgagor assumes full responsibility for that due diligence and for keeping informed of all matters which may affect Obligor's ability to pay and perform its obligations to Mortgagee. Mortgagee has no duty to disclose to Mortgagor any information which Mortgagee may have or receive about Obligor's financial condition or business operations or any other circumstances bearing on Obligor's ability to perform.

(i) Mortgagor acknowledges that Mortgagor has had adequate opportunity to carefully read this Mortgage and to consult with an attorney of Mortgagor's choice prior to signing it. No consent, approval or authorization of or notice to any person or entity is required in connection with Mortgagor's execution of and obligations under this Mortgage, and Mortgagor acknowledges its execution and delivery of this Mortgage is made voluntarily without any duress or undue influence of any kind. No course of prior dealing, usage of trade, parol or extrinsic evidence of any nature shall be used to supplement, modify or vary any of the terms hereof. This Mortgage is intended by the parties to be a fully integrated and final expression of their agreement. This Mortgage and the other Loan Documents incorporate all negotiations of the parties and constitute

the parties' entire agreement. Mortgagor acknowledges that is relying on no written or oral agreement, representation, warranty or understanding of any kind made by Mortgagee or any employee, attorney or agent of Mortgagee, except for the agreements of Mortgagee set forth herein and in the Loan Documents.

**24. [RESERVED.]**

**25. NO CREDIT FOR TAXES:**

Mortgagor will not claim or demand or be entitled to receive any credit or credits on the principal indebtedness to secure payment of which this Mortgage is made, or on the interest payable thereon, for so much of the taxes assessed against said Mortgaged Property as is equal to the tax rate applied to the principal indebtedness due on this Mortgage or any part thereof, and no deduction shall be claimed from the taxable value of said Mortgaged Property by reason of this Mortgage.

**26. SUCCESSORS AND ASSIGNS:**

The provisions hereof shall bind and inure to the benefit of Mortgagor and Mortgagee and their respective successors and assigns.

**27. COUNSEL FEES:**

If Mortgagee becomes a party (by intervention or otherwise) to any action or proceeding affecting the Mortgaged Property or the title thereto or Mortgagee's interest under this Mortgage, or employs an attorney to collect any of the indebtedness or to enforce performance of the obligations, covenants and agreements secured hereby, or to advise Mortgagee with respect to its rights and remedies hereunder in case of an Event of Default or threatened Event of Default, Mortgagor shall reimburse Mortgagee forthwith, upon written notice, and without further demand, for all reasonable costs, charges and counsel fees actually incurred by Mortgagee in any such case, whether or not suit shall be commenced, and the same shall be added to the principal sum secured hereby as a further charge and lien upon the Mortgaged Property and shall bear interest at the rate provided for in the Note.

**28. TAXATION OF NOTE AND MORTGAGE:**

If at any time before the Note hereby secured is fully paid, any law of the Commonwealth of Massachusetts shall be enacted deducting from the value of the real estate for the purposes of taxation, the amount of any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor or revising or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagee's

interest in the Mortgaged Property or the manner of collection of taxes so as to affect adversely this Mortgage or the debt hereby secured, or the owner and holder thereof in respect thereto, then and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments or reimburse Mortgagee therefor; provided, however, that if, in the opinion of counsel for Mortgagee, (a) it might be unlawful to require Mortgagor to make such payment; or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then, and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all the indebtedness secured hereby to be and become due and payable within ninety (90) days from the giving of such notice.

**29. FURTHER ASSURANCES:**

At any time, and from time to time, upon request by Mortgagee, Mortgagor will make, execute, acknowledge and deliver or cause to be made, executed, acknowledged and delivered to Mortgagee any and all further instruments, mortgages, conveyances, deeds, certificates, and other documents as may, in the reasonable opinion of Mortgagee, be necessary or desirable in order to effectuate, complete, confirm or perfect or to continue and preserve the obligation of Mortgagor under the Note and the lien of this Mortgage. Upon any failure by Mortgagor to do so, Mortgagee may make, execute and record any and all such instruments, certificates and documents for and in the name of Mortgagor and Mortgagor hereby irrevocably appoints Mortgagee as the agent and attorney-in-fact of Mortgagor to do so. Mortgagor agrees to pay all filing, registration and recording fees and all federal, state, county and municipal stamp taxes or other duties, imposts, assessments and charges on all such instruments, certificates and documents.

**30. DECLARATION OF NO SET-OFFS:**

Within ten (10) days after requested to do so by Mortgagee, Mortgagor shall certify to Mortgagee or to any proposed assignee of Mortgagee in writing duly acknowledged, the amount of principal, interest, and other charges then owing on the obligation secured by this Mortgage and by any prior liens, if any, whether there are any set-offs or defenses against them and whether any default has been asserted by any tenant of the Mortgaged Property.

**31. SECURITY AGREEMENT:**

This Mortgage creates a security interest in the personal property included in the Mortgaged Property and constitutes a security agreement under the Commonwealth of Massachusetts Uniform Commercial Code. Mortgagor, at its expense, shall execute, file and refile, and authorize Mortgagee to file and refile, such financing statements or other security agreements as Mortgagee shall reasonably require from time to time with respect to all of the personal property owned by Mortgagor included in the Mortgaged Property.

**32. SEVERABILITY:**

In case any one or more of the covenants, agreements, terms or provisions contained in this Mortgage or the Note shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein and in the Note shall be in no way affected, prejudiced or disturbed hereby.

**33. GOVERNING LAW:**

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Massachusetts. All judicial proceedings arising in or under or related to this Agreement shall be brought in any state or federal court located in the Commonwealth of Massachusetts. By execution and delivery of this Agreement, each party hereto generally and unconditionally: (a) consents to nonexclusive personal jurisdiction in Worcester County, Commonwealth of Massachusetts; (b) waives any objection as to jurisdiction or venue in Worcester County, Commonwealth of Massachusetts; (c) agrees not to assert any defense based on lack of jurisdiction or venue in the aforesaid courts; and (d) irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement. Service of process on any party hereto in any action arising out of or relating to this Agreement shall be effective if given in accordance with the requirements for notice set forth in the Loan Agreement, and shall be deemed effective and received as set forth in the Loan Agreement.

**34. MODIFICATION:**

This Mortgage cannot be changed or modified except by agreement between the parties hereto, signed and acknowledged for recordation. The parties to this Mortgage may agree to change the interest rate, due date or other terms or conditions of this Mortgage or the obligations secured by this Mortgage. If the parties agree to a change, Mortgagor shall pay for, and deliver to Mortgagee, a title insurance endorsement insuring that this Mortgage, as modified, remains a first lien on the Mortgaged Property.

**35. ASSUMPTION:**

This Mortgage is not assumable.

**36. FORBEARANCE BY MORTGAGEE NOT A WAIVER:**

Any forbearance by Mortgagee in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

**37. LOAN CHARGES:**

Any and all payments under the Loan Documents, including, without limitation, the interest rate, any applicable default interest rate, late charges, Prepayment Charge and any other charges or amounts due hereunder constitute material covenants of the underlying loan and are (a) a material inducement for Mortgagee to enter into this Mortgage; (b) Mortgagee would not have entered into the Loan Documents without Mortgagor's agreement and covenant to make the payments as specified in the Loan Documents; (c) some additional payments, such as any applicable default interest rate, are deemed by Mortgagee as compensation to Mortgagee for the increased risk associated with the Note not being timely repaid; and (d) the additional payments represent reasonable estimates to Mortgagee in allocating its resources (both personnel and financial) to the ongoing review, monitoring, administration and collection of the Loan.

If the loan secured by this Mortgage is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Mortgagor which exceeded permitted limits will be refunded to Mortgagor. Mortgagee may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Mortgagor. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

**38. WAIVER OF JURY TRIAL:**

(a) Because disputes arising in connection with complex financial transactions are most quickly and economically resolved by an experienced and expert person and the parties wish applicable state and federal laws to apply (rather than arbitration rules), the parties desire that their disputes be resolved by a judge applying such applicable laws. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF MORTGAGOR AND MORTGAGEE SPECIFICALLY WAIVES ANY RIGHT IT MAY HAVE TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, CROSS-CLAIM, COUNTERCLAIM, THIRD PARTY CLAIM OR ANY OTHER CLAIM (COLLECTIVELY, "CLAIMS") ASSERTED BY MORTGAGOR AGAINST MORTGAGEE OR ITS ASSIGNEE OR BY MORTGAGEE OR ITS ASSIGNEE AGAINST MORTGAGOR. This waiver extends to all such Claims, including Claims that involve Persons other than Mortgagor and Mortgagee; Claims that arise out of or are in any way connected to the relationship between Mortgagor and Mortgagee; and any Claims for damages, breach of contract, tort, specific performance, or any equitable or legal relief of any kind, arising out of this Mortgage, any other Loan Document.

(b) If the waiver of jury trial set forth in above is ineffective or unenforceable, the parties agree that all Claims shall be resolved by reference to a private judge sitting without a jury, before a mutually acceptable referee or, if the parties cannot agree, a referee selected by the Presiding Judge of Worcester County, Massachusetts. Such proceeding shall be conducted in Worcester County, Massachusetts, with Massachusetts rules of evidence and discovery applicable to such proceeding.

(c) In the event Claims are to be resolved by judicial reference, either party may seek from a court identified in Article 39, any prejudgment order, writ or other relief and have such prejudgment order, writ or other relief enforced to the fullest extent permitted by law notwithstanding that all Claims are otherwise subject to resolution by judicial reference.

**39. [RESERVED.]**

**40. STATE-SPECIFIC PROVISIONS**

(a) Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Article 40 and the other terms and conditions of this Mortgage, the terms and conditions of this Article 40 shall control and be binding.

(b) Mortgagor hereby, as continuing security for payment or performance of the Secured Obligations in accordance with the terms of the Loan Documents, grants with MORTGAGE COVENANTS and assigns to Mortgagee, and grants to Mortgagee a continuing security interest in and to all the Mortgaged Property.

(c) This Mortgage is upon the STATUTORY CONDITION and upon the further condition that all covenants and agreements on the part of Mortgagor herein undertaken shall be kept and fully and seasonably performed and that no breach of any other of the covenants or conditions specified herein shall be permitted, for any breach of which, upon the occurrence of an Event of Default Mortgagee shall have the STATUTORY POWER OF SALE together with all other remedies now or hereafter permitted by law.

MORTGAGOR HEREBY DECLARES AND ACKNOWLEDGES THAT IT HAS RECEIVED, WITHOUT CHARGE A TRUE COPY OF THIS MORTGAGE AND SECURITY AGREEMENT.

Exhibits Attached:

A – Mortgaged Property

*[Signature Page Follows]*

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage and Security Agreement as of the date first above written.

**MORTGAGOR:**

WITNESS:

ASC DEVENS LLC, a Delaware limited liability company  
By: American Superconductor Corporation, its authorized signatory

/s/ John R. Samia

Print Name: John R. Samia

By: /s/ David A. Henry

Name: David A. Henry

Title: Senior Vice President, Chief Financial Officer and Treasurer

Commonwealth of Massachusetts

Worcester County

On this 31<sup>st</sup> day of July, 2012, before me appeared David A. Henry, to me personally known, who, being by me duly sworn (or affirmed), did say that he is the Senior Vice President, Chief Financial Officer and Treasurer of AMERICAN SUPERCONDUCTOR CORPORATION, a Delaware Corporation and that the seal affixed to said instrument is the seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said David A. Henry acknowledged said instrument to be the free act and deed of said corporation.

/s/ Russet L. Morrow

Notary Public

Print Name: Russet L. Morrow

My commission expires:

December 22, 2017

**EXHIBIT A**

**LEGAL DESCRIPTION**

The land with the improvements thereon situated on the southwesterly side of Givry Street, Harvard, Worcester County, Massachusetts and being shown as Lot 7 on plan entitled "Level 1 Subdivision Lot 7 Givry Street" dated July 19, 2000, prepared by Howe Surveying Associates, Inc. and recorded with the Worcester District Registry of Deeds in Plan Book 761, Plan 44.

Together with the benefit of the appurtenant rights as set forth in the following deeds:

- a. Deed from the USA recorded with said Deeds in Book 17907, Page 1;
- b. Deed to ASC Devens LLC recorded with said Deeds in Book 23120, Page 209, except the slope easements recited therein, which have been released.



## INDEMNITY AGREEMENT

**THIS ENVIRONMENTAL INDEMNITY AGREEMENT** (the “**Agreement**”) is made as of the 31<sup>st</sup> day of July, 2012, by **ASC DEVENS, LLC**, a Delaware limited liability company (“**Devens**”), and **AMERICAN SUPERCONDUCTOR CORPORATION**, a Delaware corporation (“**ASC**”), in favor of **HERCULES TECHNOLOGY GROWTH CAPITAL, INC.**, a Maryland corporation (“**Lender**”), having an office at 400 Hamilton Avenue, Suite 310, Palo Alto, California 94301, Attention: Chief Legal Officer and Brad Pritchard. Devens and ASC are collectively referred to herein as “**Indemnitors**” and each individually as an “**Indemnitor**”.

A. **WHEREAS**, Lender extended to ASC a loan in a principal amount of Ten Million Dollars (\$10,000,000.00) (the “**Loan**”), pursuant to that certain Loan and Security Agreement of June 5, 2012 between ASC and Lender (as amended from time to time, the “**Loan Agreement**”);

B. **WHEREAS**, the Loan is evidenced by that certain Secured Term Promissory Note dated June 5, 2012 executed by ASC in favor of Lender in the original principal amount of Ten Million Dollars (\$10,000,000.00) (the “**Note**”). The Note is secured by that certain Mortgage and Security Agreement of even date herewith executed by Devens for the benefit of Lender (the “**Mortgage**”) covering certain real and personal property, as therein described (all collectively, the “**Property**”). The Note may also be secured by other collateral, as more fully explained in the Loan Agreement; and

C. **WHEREAS**, because Lender has agreed to make the Loan and will obtain the Mortgage, Lender may potentially become subject to certain costs, risks and liabilities. Among other things, Lender may become subject to liabilities or alleged liabilities relating to environmental conditions as an “owner” or “operator” under applicable environmental law. These costs and liabilities may arise before or after repayment of the Loan, and before or after foreclosure under the Mortgage. Because these costs and liabilities, if they occur, will be the result of Lender’s agreement to make the Loan, and in consideration of that agreement, Lender and Indemnitors have agreed as set forth below.

**NOW, THEREFORE**, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Indemnitors hereby covenant, warrant, represent and agree as follows:

**1. Lender Rights Under the Agreement.** Lender’s rights and remedies under this Agreement shall be in addition to all rights and remedies of Lender under the “**Loan Documents**,” as that term is defined in the Loan Agreement. Payments, if any, by Indemnitors as required under this Agreement shall not reduce Indemnitors’ obligations and liabilities under any of the Loan Documents. Any default by Indemnitors under this Agreement (including any breach of any representation or warranty made by Indemnitors) shall, at Lender’s option, constitute a default and an Event of Default (“**Event of Default**”) under the Note, the Mortgage, the Loan Agreement and/or any of the other Loan Documents after the expiration of any applicable cure period.

**2. Definitions.** For purposes of this Agreement, the following terms shall have the following meanings:

(a) **“Environmental Laws”** means all federal, state or commonwealth and local laws, regulations, statutes, codes, rules, resolutions, directives, orders, executive orders, consent orders, guidance from regulatory agencies, policy statements, judicial decrees, standards, permits, licenses and ordinances, or any judicial or administrative interpretation of any of the foregoing, pertaining to the protection of land, water, air, health, safety or the environment, whether now or in the future enacted, promulgated or issued, including the laws of the state where the Mortgage is or is to be recorded;

(b) **“Regulated Substances”** includes any substances, chemicals, materials or elements that are prohibited, limited or regulated by the Environmental Laws, or any other substances, chemicals, materials or elements that are defined as “hazardous” or “toxic,” or otherwise regulated, under the Environmental Laws, or that are known or considered to be harmful to the health or safety of occupants or users of the Property. The term Regulated Substances shall also include any substance, chemical, material or element (i) defined as a “hazardous substance” under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“**CERCLA**”) (42 U.S.C. §§ 9601, et seq.), as amended by the Superfund Amendments and Reauthorization Act of 1986, and as further amended from time to time, and regulations promulgated thereunder; (ii) defined as a “regulated substance” within the meaning of Subtitle I of the Resource Conservation and Recovery Act (42 U.S.C. §§ 6991-6991i), and regulations promulgated thereunder; (iii) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1321), or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317); (iv) defined as “hazardous”, “toxic”, or otherwise regulated, under any Environmental Laws adopted by the state in which the Property is located, or its agencies or political subdivisions; (v) which is petroleum, petroleum products or derivatives or constituents thereof; (vi) which is asbestos or asbestos-containing materials; (vii) the presence of which requires notification, investigation or remediation under any Environmental Laws or common law; (viii) the presence of which on the Property causes or threatens to cause a nuisance upon the Property or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Property; (ix) the presence of which on adjacent properties would constitute a trespass by the Indemnitee; (x) which is urea formaldehyde foam insulation or urea formaldehyde foam insulation-containing materials; (xi) which is lead base paint or lead base paint-containing materials; (xii) which are polychlorinated biphenyls or polychlorinated biphenyl-containing materials; (xiii) which is radon or radon-containing or producing materials; or (xiv) which by any laws of any governmental authority requires special handling in its collection, storage, treatment, or disposal; and

(c) **“Contamination”** means the seeping, spilling, leaking, pumping, pouring, emitting, using, emptying, discharging, injecting, escaping, leaching, dumping, disposing, releasing or the presence of Regulated Substances at, under or upon the Property or into the environment, or arising from the Property or migrating to or from the Property, which may require notification, treatment, response or removal action or remediation under any Environmental Laws.

**3. Representations and Warranties.** Indemnitors hereby represent and warrant that, except as disclosed to Lender in the Environmental Reports (as defined below):

(a) to the best of Indemnitors' knowledge, no Contamination is present at, on or under the Property and no Contamination is being emitted from the Property onto any surrounding or adjacent areas;

(b) to the best of Indemnitors' knowledge, all activities and operations at the Property have been and are being conducted in material compliance with all Environmental Laws, and Indemnitors have obtained all material permits, licenses, consents and approvals required under the Environmental Laws for the conduct of operations and activities at the Property, and all such permits, licenses, consents and approvals are in full force and effect;

(c) to the best of Indemnitors' knowledge, the Property has never been used to generate, manufacture, refine, transport, handle, transfer, produce, treat, store, dispose of or process any Regulated Substances, except in compliance with all Environmental Laws and in such a manner that no Contamination has been released on or under the Property;

(d) to the best of Indemnitors' knowledge, no underground or aboveground storage tanks subject to regulation under any Environmental Laws are, or to the best of Indemnitors' knowledge, are presently located on or under the Property;

(e) to the best of Indemnitors' knowledge, no levels of radon or radon containing or producing products are present in the existing structures on the Property above the EPA action level of 4 pCi/l. If at any time during the term of the Loan, amounts of radon exceeding the EPA action level are detected in any structures on the Property, Indemnitors hereby agree, at no expense to Lender, to take all actions reasonably necessary to reduce such radon gas to levels permitted pursuant to applicable law;

(f) to the best of Indemnitors' knowledge, and with the exception of the inclusion of the Fort Devens site on the National Priorities List and the disclosures listed in the Quitclaim Deed between Grantor Massachusetts Development Finance Agency and Devens executed October 19, 2000, no civil, administrative or criminal proceeding is pending or threatened against Indemnitors relating to the condition of or activities at the Property, nor has any notice of any violation or potential liability under any Environmental Laws been received, nor have Indemnitors reason to believe such notice will be received or proceedings initiated, nor have Indemnitors entered into any consent, decree or judicial order or settlement affecting the Property, nor have Indemnitors or the Property been the subject of any other administrative or judicial order or decree relating to the condition of or activities at the Property;

(g) no lien has been attached to any revenues or any real or personal property owned by Indemnitors and located in the state where the Property is located, including the Property, for damages or cleanup, response or removal costs, under any Environmental Laws, or arising from an intentional or unintentional act or omission in violation thereof by the Indemnitors or to the best of Indemnitors' knowledge, any previous owner or operator of the Property;

(h) to the best of Indemnitors' knowledge, no Contamination has been discharged or emitted from the Property into waters on, under or adjacent to the Property, or onto lands from which Regulated Substances might seep, flow or drain into such waters;

(i) Indemnitors have provided to Lender all material environmental reports, analyses, studies and other documents in Indemnitors' possession prepared by or for any person identifying that any Contamination has been, or currently is, located upon or under the Property ("Environmental Reports")<sup>1</sup>, and, to the best of Indemnitors' knowledge, the circumstances surrounding the Property have not changed since the Environmental Reports were prepared;

(j) neither the transaction contemplated by the Loan Documents nor any other transaction involving the sale, transfer or exchange of the Property will trigger or has triggered any obligation under the Environmental Laws to make a filing, provide a deed notice, provide disclosure or take any other action, or in the event that any such transaction-triggered obligation does arise or has arisen under any Environmental Laws, all such actions required thereby have been taken;

(k) the execution, delivery and performance by Indemnitors of this Agreement does not and will not contravene any (i) law or governmental rule, regulation or order which is applicable to Indemnitors and no authorization, approval or other action by, and no notice to or filing with, any governmental entity is required for the due execution, delivery and performance by the Indemnitor of this Agreement, or (ii) contractual restriction which is binding upon or which affects Indemnitors, and does not and will not result in or require the creation of any lien, security interest or other charge or encumbrance upon or with respect to any property of Indemnitors; and

(l) this agreement is a legal, valid and binding obligation of Indemnitors, enforceable against Indemnitors in accordance with its terms.

**4. Environmental Covenants.** Indemnitors hereby covenant and agree as follows:

(a) Indemnitors shall cause all activities at the Property during the term of the Loan to be conducted in material compliance with all Environmental Laws; provided, however, that as of the date hereof, Indemnitors are not under any current obligation to conduct any additional remedial or investigatory actions with respect to those matters disclosed in the Environmental Reports.

(b) Indemnitors shall provide Lender with copies of all: (i) correspondence, notices of violation, summons, orders, complaints or other material documents received by the Indemnitors, and to the extent in possession by Indemnitors, its lessees, sublessees, occupants or assigns, pertaining to compliance with any Environmental Laws; (ii) reports of any environmental investigations that have been or may be undertaken at the Property from time to

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<sup>1</sup> The Environmental Reports provided to Lender are listed on Exhibit B.

time which the Indemnitor has possession; (iii) licenses, certificates and permits required by the Environmental Laws; (iv) a description of the operations and processes of Indemnitors with respect to Environmental Laws, Regulated Substances or Contamination; and (v) any other information related to Environmental Laws, Regulated Substances or Contamination that Lender may reasonably request.

(c) Indemnitors shall not generate, manufacture, refine, transport, transfer, produce, store, use, process, treat, dispose of, handle, or in any manner deal with, any Regulated Substances on any part of the Property, nor permit others to engage in any such activity on the Property, except for (i) those Regulated Substances which are used or present in the ordinary course of Indemnitors' and/or any tenant's, subtenant's, occupant's or assigns', business in compliance with all Environmental Laws and have not been released into the environment in such a manner as to constitute Contamination hereunder; (ii) those Regulated Substances which are naturally occurring or exist on the Property at levels that do not constitute Contamination; and (iii) those Regulated Substances or Contamination that are associated with the Fort Devens Superfund Site.

(d) Indemnitors shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of Indemnitors or any tenant, subtenant, occupant or assigns, the presence of Regulated Substances or Contamination on the Property, except for (i) those Regulated Substances which are used or present in the ordinary course of Indemnitors' and/or any tenant's, subtenant's, occupant's or assigns', business in compliance with all Environmental Laws and have not been released into the environment in such a manner as to constitute Contamination hereunder, (ii) those Regulated Substances which are naturally occurring or exist on the Property at levels that do not constitute Contamination; and (iii) those Regulated Substances or Contamination that are associated with the Fort Devens Superfund Site.

(e) Indemnitors shall give notice and a full description to Lender promptly upon the Indemnitors' acquiring knowledge of (i) any and all enforcement, clean-up, removal or other regulatory actions instituted or completed by any governmental authority with respect to the Indemnitors or the Property; (ii) all claims made by any third party against Indemnitors or the Property relating to damage, contribution, compensation, loss or injury resulting from any Regulated Substances or Contamination; (iii) any complaint made by any third party against the Indemnitors or the Property relating to damage, contribution, compensation, loss or injury resulting from any Regulated Substances or Contamination; (iv) the presence of any Contamination on, under, from or affecting the Property not previously disclosed in the Environmental Reports; (v) Indemnitors' violation of any Environmental Laws; (vi) the imposition, attachment or recording of any lien or encumbrance under Environmental Laws against the Property; and (vii) the inability to obtain or renew any Environmental Permit or a written notice from a governmental authority that it has revoked or suspended, or otherwise intends to revoke or suspend, whether in whole or in part, any permit for the Property, which permit relates, in any way, to any Environmental Law.

(f) Indemnitors shall timely comply with any Environmental Laws requiring the removal, treatment, storage, processing, handling, transportation or disposal of such Regulated Substances or Contamination and provide Lender with satisfactory evidence of such

compliance. Notwithstanding the foregoing, Indemnitors may diligently and in good faith contest any alleged failure to comply with any Environmental Laws by appropriate legal proceedings which shall operate to prevent the enforcement of the same, provided that Indemnitors maintain adequate reserves therefor in accordance with GAAP.

(g) Indemnitors shall conduct and complete all investigations, studies, sampling and testing, as well as all remedial, removal and other actions reasonably necessary to clean up and remove all Contamination on, under, from or affecting the Property, all in accordance with the Environmental Laws, other than any Contamination associated with the Fort Devens Superfund Site to the extent disclosed in the Environmental Reports.

(h) Indemnitors shall continue to have all material licenses, certificates and permits required under the Environmental Laws relating to the Indemnitor and the Property.

#### **5. Lender's Right to Conduct an Investigation.**

(a) Lender may, at any time and at its sole discretion, commission an investigation into the presence of Regulated Substances or Contamination on, from or affecting the Property, or the compliance with Environmental Laws at, or relating to, the Property. Such an investigation performed by Lender shall be at the Indemnitors' expense if the performance of the investigation is commenced during the continuation of a default hereunder or an "Event of Default" under the Note, the Mortgage or any other Loan Document. All other investigations performed by Lender shall be at Lender's expense. In connection with any such investigation, Indemnitors shall comply with all reasonable requests for information made by Lender or its agents and Indemnitors represent and warrant that all responses made by Indemnitors to any such requests for information will be correct and complete in all material respects. Indemnitors shall provide Lender and its agents with rights of access to all areas of the Property and permit Lender and its agents to perform testing (including any invasive testing) necessary or appropriate, in Lender's reasonable judgment, to perform such investigation upon reasonable notice not less than three (3) business days, except during the continuation of a default hereunder or an "Event of Default" under any Loan Document, in which case no notice shall be required. Notwithstanding the foregoing, (i) Lender's rights of access and performance of any testing is subject to any rights of tenants pursuant to leases affecting the Property, and following any testing Lender agrees to restore the Property to its condition as existed prior to any such testing, and (ii) Lender's rights of access for any investigation permitted under this Section 5(a) is limited to once per year unless an Event of Default exists under the Loan Agreement.

(b) Lender is under no duty, however, to conduct such investigations of the Property and any such investigations by Lender shall be solely for the purposes of protecting Lender's security interest in the Property and preserving its rights under the Loan Documents. No site visit, observation, or testing by Lender shall constitute a waiver of any default of Indemnitors or be characterized as a representation regarding the presence or absence of Regulated Substances or Contamination at the Property. Lender owes no duty of care to protect Indemnitors or any third party from the presence of Regulated Substances, Contamination or any other adverse condition affecting the Property nor shall Lender be obligated to disclose to Indemnitors or any third party any report or findings made in connection with any investigation done on behalf of Lender.

## **6. Indemnification.**

(a) Indemnitors covenant and agree, at their sole cost and expense, to indemnify, defend, protect, save and hold harmless Lender (including Lender as holder of the Mortgage, as mortgagee in possession, or as successor in interest to Indemnitor as owner of the Property by virtue of a foreclosure or acceptance of a deed in lieu of foreclosure) and all of its officers, directors, employees and agents, any participant in the Loan, and their respective successors and assigns, against and from any and all Environmental Damages (as defined in subsection (b) below), which may at any time be imposed upon, threatened against, incurred by or asserted or awarded against Lender (whether before or after the release, satisfaction or extinguishment of the Mortgage) and arising from or out of:

(i) Indemnitors' failure to comply with any of the provisions of this Agreement, including Indemnitors' breach of any covenant, representation or warranty contained in this Agreement; or

(ii) any Contamination, or threatened release of any Regulated Substances or Contamination, on, in, under, affecting or migrating or threatening to migrate to or from all or any portion of the Property, any surrounding areas or other property or any persons; or

(iii) any violation of, or noncompliance with, or alleged violation of, or noncompliance with, Environmental Laws (and/or any permit relating to any Environmental Laws) by the Property or Indemnitors, including, without limitation, all costs and reasonable attorneys' fees, environmental consultants and the like incurred to remove any environmentally related lien imposed upon the Property; or

(iv) the willful misconduct, error or omission or negligent act or omission of Indemnitors; or

(v) any judgment, lien, order, complaint, notice, citation, action, proceeding or investigation pending or threatened by or before any governmental authority or any private party litigant, including any environmental regulatory body, or before any court of law (including any private civil litigation) with respect to the Property, in connection with any Regulated Substances, Contamination or any Environmental Laws (including the assertion that any lien existing or arising pursuant to any Environmental Laws takes priority over the lien of the Mortgage); or

(vi) the enforcement of this Agreement or the assertion by Indemnitors of any defense to its obligations hereunder.

Subject to the provisions set forth in Section 16 hereof, Indemnitors' indemnification obligations set forth in this Section 6 shall be in effect and enforceable regardless of whether any such

indemnification obligations arise before or after the satisfaction of the Loan, foreclosure of the Mortgage or other taking of title to all or any portion of the Property by Lender or any affiliate of Lender, and whether the underlying basis of any claim arose from events prior to the Indemnitor acquiring ownership of the Property.

(b) For the purposes of this Agreement, “**Environmental Damages**” shall mean all claims, judgments, damages, actual losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any claim with respect to Regulated substances, Environmental Laws or Contamination, whether or not such claim is ultimately defeated, and of any good faith settlement, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including reasonable attorneys’ fees and disbursements and consultants’ fees, any of which are actually incurred at any time, and including:

(i) damages for personal injury, or injury to property or natural resources, occurring upon or off of the Property, including lost profits, consequential damages, punitive damages, the cost of demolition and rebuilding of any improvements on real property, interest and penalties;

(ii) reasonable fees actually incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other reasonable and out of pocket costs and expenses incurred in connection with investigation, remediation or post-remediation monitoring, operation and maintenance, of any Regulated Substances or Contamination or violation of any Environmental Laws including the preparation of any feasibility studies or reports or the performance of any cleanup, remediation, removal, response, abatement, contaminant, closure, restoration, treatment, investigation work or monitoring work required by any Environmental Laws, or reasonably necessary to make use of the Property as contemplated by the Loan Documents or any other property or otherwise expended in connection with such conditions, including any and all Corrective Work under Section 7, and further including any reasonable attorneys’ fees, costs and expenses actually incurred in enforcing this Agreement or collecting any sums due hereunder;

(iii) any additional out of pocket costs reasonably incurred and required as necessary precautions to protect against a release of Regulated Substances or Contamination on, in, under or affecting the Property into the air, any body of water, any other public domain or any surrounding or adjoining areas;

(iv) any reasonable out of pocket costs incurred to comply, in connection with all or any portion of the Property or any area surrounding or adjoining the Property, with all Environmental Laws; and

(v) liability to any third persons or governmental agency for reasonable out of pocket costs expended in connection with the items referenced in clause (ii) above; and



(vi) diminution in the value of the Property, and damages for the loss of business and restriction on the use or adverse impact on the marketing of rentable or usable space or of any amenity of the Property, in each such case limited to the actual losses suffered by Lender.

(c) Promptly after the receipt by Lender of written notice of any demand or claim or the commencement of any action, suit or proceeding concerning Indemnitors or Lender in connection with the Property, Lender shall endeavor to notify Indemnitors thereof in writing. The failure by Lender promptly to give such notice shall not relieve Indemnitors of any liability to Lender hereunder.

#### **7. Indemnitors' Obligation to Perform Corrective Work.**

(a) Indemnitors shall have the obligation to promptly commence and perform any corrective work required to address any Environmental Damages, including any actions required by Indemnitors under this Agreement ("**Corrective Work**") after the occurrence of any of the following: (i) Indemnitors obtain actual knowledge of any Contamination on, in, under, affecting, or migrating to or from the Property or any surrounding areas not previously disclosed by the Environmental Reports; or (ii) an event occurs for which Lender can seek indemnification from Indemnitors pursuant to Section 6 hereof. Notwithstanding the foregoing, Indemnitors may diligently and in good faith contest any alleged obligation to perform Corrective Work or failure to perform Corrective Work by appropriate legal proceedings which shall operate to prevent the enforcement of the same, provided that Indemnitors maintain adequate reserves therefor in accordance with GAAP.

(b) Indemnitors shall provide to Lender written notification at least ten (10) days prior to the commencement of any such Corrective Work (except in the event of Corrective Work conducted during an emergency, in which case Indemnitors shall endeavor to give Lender written notification as soon as reasonably possible under the circumstances), and shall give Lender a monthly report, during the performance of such Corrective Work, on Indemnitors' progress with respect thereto, and shall promptly give Lender such other information with respect thereto as Lender shall reasonably request. Such written notice shall contain the name of the person or entity performing such Corrective Work and shall be accompanied by: (i) written evidence, reasonably satisfactory in form and content to Lender, showing that such person or entity is insured in a commercially reasonable manner against any and all injury and damages caused by or resulting from the performance of such Corrective Work; and (ii) copies of the plans for such Corrective Work, approved in writing by the appropriate governmental authorities.

(c) Any Corrective Work conducted by Indemnitors shall be diligently performed and shall comply with all Environmental Laws and all other applicable laws to correct, contain, clean up, treat, remove, resolve, dispose of or minimize the impact of all Regulated Substances or Contamination.

(d) Any failure by Lender to object to any actions taken by Indemnitors shall not be construed to be an approval by Lender of such actions. This Agreement shall not be construed as creating any obligation for Lender to initiate any contests or to perform or review the Indemnitors' or any other party's performance of, any Corrective Work, or disburse any funds for any contests or the performance of any Corrective Work.

**8. Lender's Right to Select Engineers, Consultants and Attorneys.** Without limiting the other provisions hereof, in the event any claim (whether or not a judicial or administrative action is involved) is asserted against Lender with respect to Regulated Substances, Environmental Laws or Contamination, Lender shall have the right to select the engineers, other consultants and attorneys for Lender's defense or guidance, determine the appropriate legal strategy for such defense, and compromise or settle such claim, all in Lender's sole discretion, and Indemnitors shall be liable to Lender in accordance with the terms hereof for liabilities, costs and expenses incurred by Lender in this regard.

**9. Indemnitors' Obligation to Deliver Property.** Indemnitors agree that, in the event the Mortgage is foreclosed (whether judicially or by power of sale) or the Indemnitor tenders a deed in lieu of foreclosure, Indemnitor shall deliver the Property to Lender free of any and all Regulated Substances, (except for (a) those Regulated Substances which are used or present in the ordinary course of the Indemnitors' business (including those used by any tenants, subtenants, occupants or assigns) in compliance with all Environmental Laws and have not been released into the environment in such a manner as to constitute Contamination hereunder, (b) those Regulated Substances which are naturally occurring or exist on the Property at levels that do not constitute Contamination or Contamination in a condition such that the Property conforms with all Environmental Laws and such that no remedial or removal action will be required with respect to the Property, and (c) those Regulated Substances or Contamination that are associated with the Fort Devens Superfund Site. Indemnitors' obligations as set forth in this Section are strictly for the benefit of Lender and any successors and assigns of Lender as holder of any portion of the Loan and shall not in any way impair or affect Lender's right to foreclose against the Property.

**10. Lender's Right to Cure.** In addition to the other remedies provided to Lender in the Mortgage and the other Loan Documents, should Indemnitors fail to abide by any provisions of this Agreement, Lender may, should it elect to do so, perform any Corrective Work and any other such actions as it, in its sole discretion, deems necessary to repair and remedy any damage to the Property caused by Regulated Substances or Contamination or any such Corrective Work. In such event, all funds expended by Lender in connection with the performance of any Corrective Work, including all reasonable attorneys' fees, engineering fees, consultant fees and similar charges, shall become a part of the obligation secured by the Mortgage and shall be due and payable by Indemnitors on demand. Each disbursement made by Lender pursuant to this provision shall bear interest at the lower of the default rate of interest provided for in the Loan Agreement or the highest rate allowable under applicable laws from the date the Indemnitor shall have received written notice that the funds have been advanced by Lender until paid in full.

**11. Scope of Liability.** The liability of each Indemnitor under this Agreement shall be joint and several and shall in no way be limited or impaired by (a) any extension of time for performance required by any of the Loan Documents; (b) any sale, assignment or foreclosure of the Note or Mortgage, the acceptance of a deed in lieu of foreclosure or trustee's sale, or any sale or transfer of all or part of the Property; (c) the discharge of the Note or the reconveyance or

release of the Mortgage; (d) any exculpatory provisions in any of the Loan Documents limiting Lender's recourse; (e) the accuracy or inaccuracy of the representations and warranties made by Indemnitors, or any other obligor under any of the Loan Documents; (f) the release of Indemnitors or any guarantor or any other person from performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Loan Documents by operation of law, Lender's voluntary act or otherwise; (g) the release or substitution, in whole or in part, of any security for the Note or other obligations; or (h) Lender's failure to record the Mortgage or file any UCC financing statements (or Lender's improper recording or filing of any thereof) or to otherwise perfect, protect, secure or insure any security interest or lien given as security for the Note or other obligations; and, in any such case, whether with or without notice to Indemnitors or any guarantor or other person or entity and with or without consideration.

**12. Notices.** All notices, demands, requests, consents, approvals and other communications required or permitted hereunder ("**Notices**") must given in the manner provided for in the Loan Agreement.

**13. Preservation of Rights.** No delay or omission on Lender's part to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power, nor will Lender's action or inaction impair any such right or power. Lender's rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which Lender may have under other agreements, at law or in equity. Any representations, warranties, covenants or indemnification liabilities for breach thereof contained in this Agreement shall not be affected by any knowledge of, or investigations performed by, Lender. Any one or more persons or entities comprising the Indemnitor, or any other party liable upon or in respect of this Agreement or the Loan, may be released without affecting the liability of any party not so released.

**14. Illegality.** If any provision contained in this Agreement should be invalid, illegal or unenforceable in any respect, it shall not affect or impair the validity, legality and enforceability of the remaining provisions of this Agreement.

**15. Changes in Writing.** No modification, amendment or waiver of, or consent to any departure by Indemnitors from, any provision of this Agreement will be effective unless made in a writing signed by Lender, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on Indemnitors will entitle Indemnitors to any other or further notice or demand in the same, similar or other circumstance.

**16. Successors and Assigns; Survival.** This Agreement will be binding upon Indemnitors and their heirs, administrators, successors and assigns, and will inure to the benefit of Lender and its successors and assigns as well as any persons or entities who acquire title to or ownership of the Property from, or through action by, Lender (including at a foreclosure, sheriff's or judicial sale or a deed in lieu of foreclosure) (each a "Foreclosure Acquisition"); provided, however, that Indemnitors may not assign this Agreement in whole or in part without Lender's prior written consent and Lender at any time may assign this Agreement pursuant to the terms of the Loan Agreement. Indemnitors' obligations under this Agreement shall survive any

judicial foreclosure, foreclosure by power of sale, deed in lieu of foreclosure, transfer of the Property by the Indemnitor or Lender and payment of the Loan in full. Notwithstanding the foregoing, if Lender, its nominee, designee or affiliate acquires title to the Property through a Foreclosure Acquisition, Indemnitors shall not be liable under this Agreement for losses attributable to Regulated Substances, Environmental Laws or Contamination at the Property by any party (other than Indemnitor or any of its affiliates) first occurring after the date of the Foreclosure Acquisition, provided that any such Regulated Substances, violations of Environmental Laws and/or Contamination is unrelated to any event, activity or condition that existed prior to the date of the Foreclosure Acquisition.

**17. Interpretation.** In this Agreement, unless Lender and Indemnitors otherwise agree in writing, the singular includes the plural and the plural the singular; words importing any gender include the other genders; references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; the word “or” shall be deemed to include “and/or”, the words “including”, “includes” and “include” shall be deemed to be followed by the words “without limitation”; references to articles, sections (or subdivisions of sections) or exhibits are to those of this Agreement; and references to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications to such instruments, but only to the extent such amendments and other modifications are not prohibited by the terms of this Agreement. Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose. If this Agreement is executed by more than one party as Indemnitor, the obligations of such persons or entities will be joint and several.

**18. Governing Law and Jurisdiction.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Massachusetts. All judicial proceedings arising in or under or related to this Agreement shall be brought in any state or federal court located in the Commonwealth of Massachusetts. By execution and delivery of this Agreement, each party hereto generally and unconditionally: (a) consents to nonexclusive personal jurisdiction in Worcester County, Commonwealth of Massachusetts; (b) waives any objection as to jurisdiction or venue in Worcester County, Commonwealth of Massachusetts; (c) agrees not to assert any defense based on lack of jurisdiction or venue in the aforesaid courts; and (d) irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement. Service of process on any party hereto in any action arising out of or relating to this Agreement shall be effective if given in accordance with the requirements for notice set forth in the Loan Agreement, and shall be deemed effective and received as set forth in the Loan Agreement.

**19. Further Assurances.** Indemnitors will, at the cost of Indemnitors, upon Lender’s reasonable request, execute, acknowledge and deliver to Lender such further documents and statements and do or cause to be done such acts or things as Lender may deem reasonably necessary or appropriate to effect the transactions contemplated hereby or to confirm the assumption of and agreement to pay, perform and discharge the liabilities and obligations hereby assumed and agreed to be paid, performed or discharged, or intended so to be.

**20. WAIVER OF JURY TRIAL.**

(a) Because disputes arising in connection with complex financial transactions are most quickly and economically resolved by an experienced and expert person and the parties wish applicable state and federal laws to apply (rather than arbitration rules), the parties desire that their disputes be resolved by a judge applying such applicable laws. TO THE EXTENT PERMITTED BY APPLICABLE LAW, INDEMNITORS AND LENDER EACH SPECIFICALLY WAIVE ANY RIGHT THEY MAY HAVE TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, CROSS-CLAIM, COUNTERCLAIM, THIRD PARTY CLAIM OR ANY OTHER CLAIM (COLLECTIVELY, "CLAIMS") ASSERTED BY INDEMNITORS AGAINST LENDER OR ITS ASSIGNEE OR BY LENDER OR ITS ASSIGNEE AGAINST INDEMNITORS. This waiver extends to all such Claims, including Claims that involve Persons other than Indemnitors and Lender; Claims that arise out of or are in any way connected to the relationship between Indemnitors and Lender; and any Claims for damages, breach of contract, tort, specific performance, or any equitable or legal relief of any kind, arising out of this Agreement, any other Loan Document.

(b) If the waiver of jury trial set forth in Section above is ineffective or unenforceable, the parties agree that all Claims shall be resolved by reference to a private judge sitting without a jury, before a mutually acceptable referee or, if the parties cannot agree, a referee selected by the Presiding Judge of Worcester County, Massachusetts. Such proceeding shall be conducted in Worcester County, Massachusetts, with Massachusetts rules of evidence and discovery applicable to such proceeding.

(c) In the event Claims are to be resolved by judicial reference, either party may seek from a court identified in Section 18, any prejudgment order, writ or other relief and have such prejudgment order, writ or other relief enforced to the fullest extent permitted by law notwithstanding that all Claims are otherwise subject to resolution by judicial reference.

**[Signatures Appear on the Following Page]**

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

**INDEMNITORS:**

AMERICAN SUPERCONDUCTOR CORPORATION, a  
Delaware corporation

By: /s/ David A. Henry

Name: David A. Henry

Title: Senior Vice President, Chief Financial Officer and  
Treasurer

ASC DEVENS, LLC, a Delaware limited liability company

By: American Superconductor Corporation, its  
authorized signatory

By: /s/ David A. Henry

Name: David A. Henry

Title: Senior Vice President, Chief Financial Officer and  
Treasurer

Address: 64 Jackson Road  
Devens, MA 01434-4020

Commonwealth of Massachusetts

Worcester County

On this 31<sup>st</sup> day of July, 2012, before me appeared David A. Henry to me personally known, who, being by me duly sworn (or affirmed), did say that he is the Senior Vice President, Chief Financial Officer and Treasurer of AMERICAN SUPERCONDUCTOR CORPORATION, a Delaware Corporation and that the seal affixed to said instrument is the seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said David A. Henry acknowledged said instrument to be the free act and deed of said corporation.

/s/ Russet L. Morrow

Notary Public

Print Name: Russet L. Morrow

My commission expires:

December 22, 2017

State of Massachusetts

Worcester County

On this 31<sup>st</sup> day of July, 2012, before me appeared David A. Henry to me personally known, who, being by me duly sworn (or affirmed), did say that he is the Senior Vice President, Chief Financial Officer and Treasurer (or other officer or agent of the company) of AMERICAN SUPERCONDUCTOR CORPORATION, authorized signatory of ASC DEVENS, LLC, a Delaware limited liability company, and that the seal affixed to said instrument is the seal of said company, and that said instrument was signed and sealed in behalf of said company by authority of its members and managers, and said David A. Henry acknowledged said instrument to be the free act and deed of said company.

/s/ Russet L. Morrow

Notary Public

Print Name: Russet L. Morrow

My commission expires:

December 22, 2017

**EXHIBIT A**

LEGAL DESCRIPTION

The land with the improvements thereon situated on the southwesterly side of Givry Street, Harvard, Worcester County, Massachusetts and being shown as Lot 7 on plan entitled "Level 1 Subdivision Lot 7 Givry Street" dated July 19, 2000, prepared by Howe Surveying Associates, Inc. and recorded with the Worcester District Registry of Deeds in Plan Book 761, Plan 44.

Together with the benefit of the appurtenant rights as set forth in the following deeds:

- a. Deed from the USA recorded with said Deeds in Book 17907, Page 1;
- b. Deed to ASC Devens LLC recorded with said Deeds in Book 23120, Page 209, except the slope easements recited therein, which have been released.



**EXHIBIT B**

ENVIRONMENTAL REPORTS

The following Environmental Reports were provided to Lender:

- Phase II Environmental Site Assessment, Proposed Development, Jackson Road, Devens, Massachusetts, prepared by GZA GeoEnvironmental, Inc. and dated September 2000.
- Letter to Massachusetts Development Finance Agency from American Superconductor Corporation dated September 13, 2000, including all attachments.
- Environmental Certificate dated October 9, 2000, certified by Haley & Aldrich, Inc. to ASC Devens LLC and American Superconductor Corporation.

**AMERICAN SUPERCONDUCTOR CORPORATION**

**CERTIFICATIONS**

I, Daniel P. McGahn, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of American Superconductor Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer 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 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: November 6, 2012

By: \_\_\_\_\_ /s/ **DANIEL P. MCGAHN**  
Daniel P. McGahn  
Chief Executive Officer

**AMERICAN SUPERCONDUCTOR CORPORATION**

**CERTIFICATIONS**

I, David A. Henry, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of American Superconductor Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer 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 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: November 6, 2012

By: \_\_\_\_\_ /s/ **DAVID A. HENRY**  
David A. Henry  
Chief Financial Officer

**AMERICAN SUPERCONDUCTOR CORPORATION**  
**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 on Form 10-Q of American Superconductor Corporation (the "Company") for the period ended September 30, 2012 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Daniel P. McGahn, Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 6, 2012

**By:** \_\_\_\_\_ /s/ **DANIEL P. MCGAHN**  
Daniel P. McGahn  
Chief Executive Officer

**AMERICAN SUPERCONDUCTOR CORPORATION**  
**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 on Form 10-Q of American Superconductor Corporation (the "Company") for the period ended September 30, 2012 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, David A. Henry, Chief Financial Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 6, 2012

By: \_\_\_\_\_ /s/ **DAVID A. HENRY**  
David A. Henry  
Chief Financial Officer