MERRIMAC INDUSTRIES INC
Form SC 14D9
January 05, 2010

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

SCHEDULE 14D-9

SOLICITATION/RECOMMENDATION STATEMENT
PURSUANT TO SECTION 14(D)(4) OF THE
SECURITIES EXCHANGE ACT OF 1934

Merrimac Industries, Inc.
(Name of Subject Company)

Merrimac Industries, Inc.
(Name of Person Filing Statement)

Common Stock, par value $.01 per share
(Title of Class of Securities)

590262101
(CUSIP Number of Class of Securities)

Mason N. Carter
Chairman, President and Chief Executive Officer
41 Fairfield Place
West Caldwell, NJ 07006
(973) 575-1300
(Name, address and telephone number of person authorized to receive notices and communications on behalf of the persons filing statement)

With a copy to:
David H. Landau, Esq.
Katten Muchin Rosenman LLP
575 Madison Avenue
New York, NY 10022
(212) 940-8800

o Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

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Item 1. ***Subject Company Information.***

Name and Address

The name of the subject company is Merrimac Industries, Inc., a Delaware corporation (Merrimac or the Company). The address of Merrimac s principal executive offices is 41 Fairfield Place, West Caldwell, NJ 07006, and Merrimac s telephone number is (973) 575-1300.

Securities

This Solicitation/Recommendation Statement on Schedule 14D-9 (together with the exhibits and annexes hereto, this Statement) relates to the common stock, par value $.01 per share, of Merrimac (collectively, the Shares). As of December 22, 2009 there were 2,997,456 Shares issued and outstanding.

Item 2. ***Identity and Background of Filing Person.***

Name and Address

Merrimac is the person filing this Statement. Merrimac s name, business address and business telephone number set forth in Item 1, under the heading Name and Address, are incorporated herein by reference.

Tender Offer

This Statement relates to the tender offer by Crane Merger Co., a Delaware corporation (Purchaser), and a wholly-owned subsidiary of Crane Co., a Delaware corporation (Parent), disclosed in the Tender Offer Statement on Schedule TO (together with the exhibits thereto, as amended from time to time, the Schedule TO), filed by Purchaser and Parent with the Securities and Exchange Commission (the SEC) on January 5, 2010, pursuant to which Purchaser is offering to purchase all of the issued and outstanding Shares at a price per Share of $16.00, net to the holder thereof in cash, without interest thereon (the Offer Price), subject to any required withholding of taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated January 5, 2010 (the Offer to Purchase), and the related Letter of Transmittal (the Letter of Transmittal, which, together with the Offer to Purchase, as each may be amended or supplemented from time to time, constitute the Offer). The Offer to Purchase and Letter of Transmittal are filed as Exhibits (a)(1) and (a)(2) hereto and are incorporated herein by reference.

The Offer is being made pursuant to an Agreement and Plan of Merger, dated as of December 23, 2009 (as such agreement may be amended and in effect from time to time, the Merger Agreement), by and among Parent, Purchaser and Merrimac. The Merger Agreement provides, among other things, that following the consummation of the Offer and subject to the terms and conditions set forth in the Merger Agreement and in accordance with the General Corporation Law of the State of Delaware (the DGCL), Purchaser will merge with and into Merrimac (the Merger). As a result of the Merger, at the effective time of the Merger (the Effective Time), each issued and outstanding Share (other than Shares that are held by Parent, Purchaser, any direct or indirect wholly-owned subsidiary or affiliate of Parent or Purchaser or by Merrimac or by stockholders, if any, who properly exercise their appraisal rights under the DGCL) that is not tendered pursuant to the Offer will be cancelled and converted into the right to receive an amount in cash equal to the Offer Price. Following the Effective Time, Merrimac will continue as a wholly-owned subsidiary of Parent. A copy of the Merger Agreement is filed as Exhibit (e)(1) hereto and is incorporated herein by reference and descriptions of it contained herein are qualified in their entirety by reference to the Merger Agreement.

The initial expiration date for the Offer is 12:00 midnight, New York City time, on February 2, 2010, subject to extension in certain circumstances as required or permitted by the Merger Agreement and applicable law.

As set forth in the Schedule TO, Purchaser s principal address is 100 First Stamford Place, Stamford, Connecticut 06902, and Purchaser s telephone number is (203) 363-7300.

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Item 3. ***Past Contacts, Transactions, Negotiations and Agreements.***

Conflicts of Interest

Except as set forth in this Item 3 or in the Information Statement of Merrimac that is attached to this Statement as Annex I and incorporated herein by reference (the Information Statement) or as otherwise incorporated by reference herein, as of the date hereof, there are no material agreements, arrangements or understandings or any actual or potential conflicts of interest between Merrimac or its affiliates and (i) Merrimac s executive officers, directors or affiliates or (ii) Parent, Purchaser or their respective executive officers, directors or affiliates. The Information Statement is being furnished to Merrimac s stockholders pursuant to Section 14(f) of the Securities Exchange Act of 1934, as amended (the Exchange Act), and Rule 14f-1 promulgated under the Exchange Act, in connection with Purchaser s right to designate persons to the Board of Directors of Merrimac (the Merrimac Board) other than at a meeting of the stockholders of Merrimac.

In the case of each plan or agreement discussed below to which the terms change-in-control or change-of-control apply, the consummation of the Offer would constitute a change-in-control or change-of-control, as applicable.

(a) The Subject Company, its Executive Officers, Directors or Affiliates

Arrangements with Current Executive Officers, Directors and Affiliates of Merrimac

Merrimac s executive officers, the members of the Merrimac Board and affiliates of Merrimac may be deemed to have interests in the transactions contemplated by the Merger Agreement that may be different from or in addition to those of Merrimac stockholders generally. These interests may create potential conflicts of interest. The Merrimac Board was aware of these interests and considered them, among other matters, in reaching its decision to approve the Merger Agreement and the transactions contemplated by the Merger Agreement.

Cash Consideration Payable Pursuant to Offer

If Merrimac s executive officers, directors and affiliates tender the Shares that they own for purchase pursuant to the Offer, they will receive the same cash consideration per Share on the same terms and conditions as the other stockholders of Merrimac. As of December 22, 2009, Merrimac s executive officers, directors and affiliates beneficially owned in the aggregate 1,126,012 Shares (excluding stock options and unvested restricted stock awards with respect to the Shares). If the executive officers, directors and affiliates were to tender all 1,126,012 Shares beneficially owned by them for purchase pursuant to the Offer and those Shares were accepted for purchase and purchased by Purchaser, the executive officers, directors and affiliates would receive an aggregate of approximately $18,016,192 in cash. Each of E.I. DuPont de Nemours and Company (through its subsidiary, DuPont Chemical and Energy Operations, Inc.), an affiliate of the Company which has designated Timothy McCann as its designee to the Merrimac Board, Mason N. Carter, the Company s Chairman, President and Chief Executive Officer, Edward H. Cohen, a director of the Company, Ludwig G. Kuttner, a director of the Company, along with certain of Mr. Kuttner s affiliates, Fernando L. Fernandez, a director of the Company, Harold J. Raveché, a director of the Company, Arthur A. Oliner, a director of the Company, and Joel H. Goldberg, a director of the Company (collectively, the Signing Stockholders), who collectively own approximately 37% of the outstanding Shares, have entered into separate Tender and Voting Agreements (the Tender Agreements) with Parent, Purchaser and the Company dated as of the date of the Merger Agreement pursuant to which the Signing Stockholders have agreed to tender into the Offer all Shares owned by them and not to withdraw any such Shares previously tendered except as provided for in the Tender Agreements. The Tender Agreements, a form of which is filed as Exhibit (e)(2) hereto and is incorporated herein by reference, are described in more detail in Item 4, under the heading Intent to Tender .

Merrimac Stock Options and Restricted Stock Awards

The terms of Merrimac s equity incentive plans provide that when Purchaser accepts Shares for payment in the Offer, each of the outstanding and unexercised options to purchase Shares, that were not previously vested, shall vest in full and become fully exercisable. The Merger Agreement also provides that immediately following to the Effective Time, options to purchase Shares, including stock options held by Merrimac s executive officers and

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directors, will be cancelled and the holders of such options will be eligible to receive a lump sum cash payment equal to $16.00 less the exercise price per Share for the option multiplied by the number of Shares issuable under the option. As of December 22, 2009, Merrimac s executive officers and directors held vested options to purchase an aggregate of 159,123 Shares, with exercise prices ranging from $5.15 to $17.00 per Share and a weighted average exercise price of $9.28 per Share, and unvested options to purchase an aggregate of 154,177 Shares, with exercise prices ranging from $5.15 to $10.40 per Share and a weighted average exercise price of $7.99 per Share. In the event a stock option has an exercise price per Share equal to or greater than $16.00, the option will be cancelled, without any consideration being payable in respect thereof.

The terms of Merrimac s equity incentive plans further provide that when Purchaser accepts Shares for payment in the Offer, each unvested restricted stock award (Restricted Stock Award) with respect to the Shares that was not previously vested, including Restricted Stock Awards held by Merrimac s directors, will vest and such Shares will have the right to receive the Offer Price at the Effective Time. As of December 22, 2009, Merrimac s executive officers and directors held an aggregate of 18,000 unvested Restricted Stock Awards with respect to 18,000 Shares.

In connection with the approval by the Merrimac Board of the Merger Agreement, the Offer and the Merger on December 23, 2009, the Compensation Committee of the Merrimac Board (composed solely of independent directors in accordance with the requirements of Rule 14d-10(d)(2) under the Exchange Act and the instructions thereto) approved, in accordance with the non-exclusive safe harbor provisions contained in Rule 14d-10 under the Exchange Act, among other things, each of foregoing arrangements as an employment compensation, severance or other employee benefit arrangement within the meaning of Rule 14d-10(d)(2) under the Exchange Act.

The acceleration of vesting and cancellation of Merrimac stock options, the acceleration of vesting of Restricted Stock Awards and the related cash payments to the holders of such options and Restricted Stock Awards are in addition to any benefits following a change-in-control or change-of-control under any of the agreements or arrangements described below.

Summary of Benefits Payable in Connection with the Merger

The table below assumes consummation of the Merger followed by the occurrence of associated triggering events (such as termination of employment). The table below sets forth the amounts payable upon consummation of the Merger to the Company s Chief Executive Officer and the Company s two most highly compensated executive officers other than the Chief Executive Officer (each, a NEO) and all other executive officers as a group, in connection with: (1) the acceleration and cash-out of stock options and Restricted Stock Awards; (2) the payment of Mr. Carter s bonus in connection with the sale of the Company; (3) the settlement of the Company s obligations under Mr. Carter s employment agreement in the event Mr. Carter is terminated without cause by the Company, or Mr. Carter terminates his employment for good reason , in each case, following the consummation of the Offer, and (4) the provision of benefits payable under the Company s Amended and Restated Severance Plan, as amended (the Severance Plan), in the event a NEO (other than Mr. Carter) is terminated without cause by the Company, or the executive terminates his employment for good reason , in each case, following the consummation of the Offer. The table does not ascribe a value to certain health and life insurance related benefits to which NEO s may be entitled following termination of employment.

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	Upon Change-in-Control			Upon Termination	
Named Executive Officers	**Previously Vested Options(1)**	**Accelerated Options(1)**	**Mason N. Carter Bonus(2)**	**Employment Agreement(3)**	**Severance Plan**
Mason N. Carter, Chairman, President and Chief Executive Officer	$ 379,850	$ 352,950	$ 1,037,326	$ 1,034,412	$
Reynold K. Green, Vice President and Chief Operating Officer	$ 166,882	$ 144,888			$ 390,000
J. Robert Patterson, Chief Financial Officer	$	$ 81,700			$ 360,000
All Other Executive Officers (5 Persons)	$ 228,035	$ 354,872			$ 1,442,706

(1) All Company stock options outstanding immediately prior to the Effective Time will become fully vested (if not previously vested), and, at the time the Merger is consummated, each such stock option will be cancelled and the holder of each such stock option will receive an amount of cash determined by multiplying (x) the excess of $16.00 over the applicable exercise price per Share of such stock option by (y) the number of Shares subject to such stock option. Amounts shown reflect stock options vested as of December 22, 2009.

(2) Represents Mr. Carter s bonus to be received as a result of a sale of the Company.

(3) Includes a three year car allowance as provided for in Mr. Carter s employment agreement with the Company.

The table below sets forth the amounts payable upon consummation of the Merger to the Company s Non-Employee Directors pursuant to the cash-out of such Directors outstanding stock options and Restricted Stock Awards, and assume consummation of the Merger.

	Cash-Out of Stock Options(1)		Restricted Stock Awards(2)	
Non-Employee Directors	**Previously Vested Options**	**Accelerated Options**	**Previously Vested Stock Awards**	**Accelerated Stock Awards**
Edward H. Cohen	$ 53,000	$ 44,000	$ 48,000	$ 48,000
Fernando L. Fernandez	$ 53,000	$ 44,000	$ 48,000	$ 48,000
Joel H. Goldberg	$ 53,000	$ 44,000	$ 48,000	$ 48,000
Ludwig G. Kuttner	$ 19,000	$ 44,000	$ 24,000	$ 48,000
Timothy P. McCann	$ 9,000	$ 39,000	$	$
Arthur A. Oliner	$ 53,000	$ 44,000	$ 48,000	$ 48,000
Harold J. Raveché	$ 53,000	$ 44,000	$ 48,000	$ 48,000

(1) All Company stock options outstanding immediately prior to the Effective Time will become fully vested (if not previously vested), and, following the consummation of the Merger, each such stock such option will be cancelled and the holder of each such stock option will receive an amount of cash determined by multiplying (x) the excess of

$16.00 over the applicable exercise price per Share of such stock option by (y) the number of Shares subject to such stock option. Amounts shown reflect stock options vested as of December 22, 2009.

(2) All Company Restricted Stock Awards will vest (if not previously vested) immediately prior to the Effective Time and following the consummation of the Merger will be cancelled and converted into the right to receive the Offer Price. Amounts shown reflect Restricted Stock Awards vested as of December 22, 2009.

Employment Agreement with Mason N. Carter

The Company has an Employment Agreement, dated April 11, 2006 (the Employment Agreement), with Mason N. Carter, the Chairman, President and Chief Executive Officer of the Company, which provides that Mr. Carter s annual base salary is $332,000. The initial term of the Employment Agreement ends on December 31, 2010, and will be renewable for successive 12-month periods unless terminated pursuant to the terms of the Employment Agreement. In addition, Mr. Carter will be eligible to participate in the Company s medical benefits, life insurance, 401(k) and similar programs generally available to employees. Mr. Carter will also be eligible to

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participate in the Company s stock purchase, stock option, and long term incentive plans, and to receive bonuses, in the sole discretion of the Compensation Committee of the Merrimac Board. The Company will maintain a $500,000 term life insurance policy for Mr. Carter s beneficiaries.

Under the Employment Agreement, Mr. Carter will be entitled to receive a Special Retirement Benefit of $75,000 per year if the Company achieves pre-tax earnings of $9 million in the aggregate over the three fiscal years prior to his retirement at or over age 65 (the Performance Target). In addition, Mr. Carter would receive the Special Retirement Benefit if the Company terminates him without cause, if he resigns for good reason, or his employment is terminated as a result of a disability, and in any such case the Company has also achieved the Performance Target. During the term and for a period of three years following such retirement or termination (Restrictive Period), and for as long as Mr. Carter is receiving the Special Retirement Benefit, Mr. Carter is bound to a confidentiality, non-competition and non-solicitation agreement with us. However, if after the Restrictive Period, Mr. Carter gives written notice to the Company of his forfeiture of the Special Retirement Benefit, Mr. Carter would be released from the non-competition and non-solicitation agreement.

In addition, the Employment Agreement provides various payments and benefits upon Mr. Carter s termination of employment with the Company due to his death or disability (as defined in the Employment Agreement), Mr. Carter s termination of employment by the Company with or without cause (as defined in the Employment Agreement) and termination of employment by Mr. Carter for good reason (as defined in the Employment Agreement). If Mr. Carter s employment is terminated within 12 months following a change in control (as defined in the Employment Agreement), Mr. Carter will receive, payments and benefits that are in lieu of those payments and benefits available to Mr. Carter upon termination of employment in the absence of a change in control.

If Mr. Carter s employment terminates due to his death, the Company will provide to Mr. Carter s estate all salary and benefits accrued by Mr. Carter but unpaid as of the date of his death.

If Mr. Carter s employment terminates due to his disability, the Company will provide to Mr. Carter all salary and benefits accrued by Mr. Carter but unpaid as of the date of termination. The Company will pay Mr. Carter his Special Retirement Benefit to the extent that the conditions for payment of such benefit have been met. Mr. Carter has a disability for purposes of the Employment Agreement if, as a result of physical or mental illness or injury, Mr. Carter is unable to perform the essential duties of his position for a period of 90 consecutive work days or for a period of 120 non-consecutive work days in a 12-month period, or poses a direct threat to his own safety and health or that of others and there is no reasonable accommodation that can be provided by the Company that would allow Mr. Carter to perform the essential functions of his position as determined under applicable law.

If the Company terminates Mr. Carter s employment for cause , the Company will provide to Mr. Carter all salary and benefits accrued by Mr. Carter but unpaid as of the date of termination. For purposes of the Employment Agreement, cause means Mr. Carter s: (i) willful failure to perform his normal and customary duties for an extended period for any reason, other than due to disability; (ii) gross negligence or willful misconduct, including, without limitation, fraud, embezzlement or intentional misrepresentation; (iii) commission of, or indictment or conviction for, a felony; (iv) willful engagement in competitive activities against the Company, including, without limitation, purposely aiding a competitor; (v) misappropriation of a material opportunity of the Company; or (vi) violation of any material provision of the Employment Agreement, and in each case Mr. Carter has failed to cure such act (if curable as determined by the Merrimac Board) within ten days after receipt of written notice from the Company of such act or, if reasonable under the circumstances, such additional period of time during which Mr. Carter is using his best efforts to so cure, not to exceed 30 days in the aggregate.

If Mr. Carter terminates his employment for good reason or the Company terminates Mr. Carter s employment without cause, the Company will provide Mr. Carter with the following payments and benefits (i) his then applicable base

salary beginning six months plus one day after the date of termination until the later of (A) the end of the term of the Employment Agreement plus six months and one day and (B) the date which is 12 months after the date of termination plus six months and one day, (ii) continued group medical coverage, under the Company s group medical plan in effect from time to time, on the same terms as provided to the Company s other executives until the later of (A) the end of the term of the Employment Agreement plus six months and one day and (B) the date which is 12 months after the date of termination plus six months and one day, (iii) if applicable, the

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Special Retirement Benefit, (iv) in the case of an automobile owned or leased by Mr. Carter, the car allowance provided under the Employment Agreement, payable beginning six months plus one day after the date of termination until the earlier of (A) 12 months after the date of termination plus six months and one day and (B) the end of the term of the Employment Agreement plus six months and one day, or, in the case of an automobile owned or leased by the Company, use of such automobile from the date of termination until the earlier of (A) 12 months after the date of termination and (B) the end of the then current term, (v) the option to assume any remaining lease payments of the automobile provided under the Employment Agreement, assuming the leased automobile is one of the Company s automobiles, or to purchase such automobile in accordance with the terms of its lease, (vi) a payment in lieu of any bonus (the In-Lieu Bonus) in an amount equal to the average of Mr. Carter s annual bonuses, if any, for the two fiscal years ended immediately prior to the termination, which payment shall be made in respect of each period of 12 months remaining during the term of the Employment Agreement, and a pro-rated amount shall be paid in respect of any period of less than 12 months, payable at the time that other annual bonuses are paid to our other executives (or if no annual bonus is paid during a particular year, in December of the applicable year) and in accordance with Section 409A of the Internal Revenue Code of 1986, as amended (the Code), and (vii) notwithstanding the terms of any of our option plans, all unvested stock options to purchase shares of the our common stock granted by the Company and held by Mr. Carter as of the date of termination (the Executive Options) under any of the Company s option plans shall immediately vest and be exercisable in accordance with their terms and, notwithstanding the terms of any of our incentive plans, all restricted stock awarded under any incentive plans held by Mr. Carter (Executive Restricted Stock) shall be vested and free of restrictions. For purposes of the Employment Agreement, good reason means a material diminution of Mr. Carter s duties and responsibilities or a substantial reduction in Mr. Carter s compensation and benefits.

If, within 12 months of a change in control , Mr. Carter terminates his employment for good reason or the Company terminates Mr. Carter s employment without cause, in lieu of the payments and benefits described above, the Company will provide Mr. Carter with the following payments and benefits: (i) the greater of (x) three times his then applicable base salary and (y) the base salary from the date of termination to the end of the term of the Employment Agreement, payable over a 12-month period beginning six months plus one day after the date of termination, (ii) continued group medical coverage, under our group medical plan in effect from time to time, on the same terms as provided to our other executives until the later of (A) the third anniversary of the date of termination and (B) the end of the term of the Employment Agreement, (iii) if applicable, the Special Retirement Benefit, (iv) in the case of an automobile owned or leased by Mr. Carter, the car allowance provided under the agreement, payable beginning six months plus one day after the date of termination until the later of (A) the third anniversary of the date of termination plus six months and one day and (B) the end of the term of the Employment Agreement plus six months and one day, or, in the case of an automobile owned or leased by the Company, use of such automobile from the date of termination until the later of (A) the third anniversary of the date of termination and (B) the end of the term of the Employment Agreement, (v) the option to assume any remaining lease payments of the automobile provided under the Employment Agreement or to purchase such automobile in accordance with the terms of its lease, and (vi) three times the In-Lieu Bonus, payable over a 12-month period beginning six months plus one day after the date of termination. In the event of a change in control, all Executive Options shall immediately vest and be exercisable in accordance with their terms and the Executive Stock shall be vested and free of restrictions. In the event that these payment or benefits give rise to the excise tax payable by Mr. Carter under Section 4999 of the Code, the Company will reduce the amount of such payments by the minimum amount necessary to avoid payment of the excise tax.

Under the Employment Agreement, the term change in control means (i) the Company is merged or consolidated with, or, in any transaction or series of transactions, all or substantially all of the Company s business or assets shall be sold or otherwise acquired by, another corporation or entity and, as a result thereof, the Company s stockholders immediately prior thereto shall not have at least 50% or more of the combined voting power of the surviving, resulting or transferee corporation or entity; (ii) any person (as that term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended from time to time) who is not an affiliate of the Company or a 5% or more holder,

in each case as of the date of this the Employment Agreement, is or becomes the beneficial owner (as that term is used in Section 13(d) of said Act and the applicable rules and regulations thereof) of the Shares entitled to cast more than 25% of the votes at the time entitled to be cast generally for the election of directors; or (iii) more than 50% of the members of the Merrimac Board shall not be Continuing Directors.

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Continuing Directors means the Company s directors (A) who were members of the Merrimac Board on January 1, 2006 or (B) who subsequently became the Company s directors and who were elected or designated to be candidates for election as nominees of the Merrimac Board, or whose election or nomination for election by the Company s stockholders was otherwise approved, by a vote of a majority of the Continuing Directors then on the Merrimac Board).

The summary of Mr. Carter s employment agreement contained herein is qualified by reference to his employment agreement, which is filed herewith as Exhibit (e)(3) and is incorporated herein by reference.

Mason N. Carter Bonus

On December 10, 2009, the Merrimac Board approved a cash bonus for Mr. Carter (which is in addition to any amounts Mr. Carter would receive under the Employment Agreement upon the termination of his employment under certain circumstances following a change in control) in the event the Company s then on- going process of investigating strategic alternatives resulted in the sale of the Company or a similar transaction. Mr. Carter s bonus is based on a percentage of the sale price of the Company, as follows:

If the purchase price for the Company is more than $9.00 per fully diluted share but less than $12.00 per fully diluted share, a bonus equal to 1% of the total purchase paid for the Company or its shares.

If the purchase price for the Company is $12.00 or more per fully diluted share but less than $15.00 per fully diluted share, a bonus pro-rated on a linear basis of 1% to 2% of the total purchase price for the Company or its shares.

If the purchase price for the Company is $15.00 or more per fully diluted share, a bonus equal to 2% of the total purchase price paid for the Company or its shares.

Assuming the completion of the transactions contemplated by the Merger Agreement, Mr. Carter will be paid $1,037,326 in cash based upon the Offer Price of $16.00 per Share.

Amended and Restated Severance Plan

On March 29, 2006, the Compensation Committee of the Merrimac Board adopted the Severance Plan, which replaces the previous plan adopted in September 2003, for key executives designated from time to time by the Compensation Committee, including the NEO s, with the exception of Mr. Carter. On December 13, 2007, the Merrimac Board amended the Severance Plan to provide that any determinations to be made by the Compensation Committee pursuant to the Severance Plan will instead be made by the Merrimac Board on the recommendation of the Compensation Committee. The Severance Plan provides, among other things, that if an executive is terminated by the Company without cause and other than on account of the executive s death or disability, or if the executive resigns for good reason (as such terms are defined in the Severance Plan) within 12 months following a change in control (as defined therein), the Company, or a successor of the Company, is obligated to pay to the executive one or two times (as recommended by the Compensation Committee and approved by the Merrimac Board) his annual base salary (as defined in the Severance Plan) and to continue to provide health insurance benefits for 24 months (to the extent not covered by any new employer). However, to the extent that any payments made under the Severance Plan would otherwise be subject to the excise tax imposed under the Golden Parachute Payment provisions of Section 4999 of the Code, the Company will reduce the amount of such payments by the minimum amount necessary to avoid being subject to such excise tax.

For purposes of the Severance Plan, an executive s annual base salary is the executive s regular basic annual compensation prior to any reduction under a salary reduction agreement pursuant to Section 401(k) or Section 125 of the Code, and will not include (without limitation) cost of living allowances, fees, retainers, reimbursements, bonuses, incentive awards, prizes or similar payments. The executive has a disability for purposes of the Severance Plan if, as result of physical or mental illness or injury, the executive is unable to perform the essential duties of his or her position for a period of 90 consecutive days or for a period of 120 non-consecutive days in any 12-month period, or poses a direct threat to the safety and health of the executive or others and there is no reasonable accommodation that the Company can make that would allow the executive to perform the essential functions of the executive s position as determined by applicable law.

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All payments under the Severance Plan will be payable at such times as recommended by the Compensation Committee and approved by the Merrimac Board provided that all such payments are made prior to the later of (1) March 15 of the calendar year following the year in which the termination occurs and (2) two and one-half months after the end of the Company s year end in which such termination occurred. All payments will be made so as to comply with Section 409A of the Code. In connection with any payment under the Severance Plan, the Compensation Committee may recommend and the Merrimac Board may require that the executive enter into non-competition/non-solicitation and confidentiality agreements as it deems appropriate. If an executive has entered into an agreement with the Company, which agreement covers the subject matter of the Severance Plan, such agreement will govern so that the executive will not be entitled to payments under both the agreement and the Severance Plan.

For purposes of the Severance Plan, change in control shall mean and be deemed to have occurred if: (i) the Company has merged or consolidated with, or, in any transaction or series of transactions, all or substantially all of the Company s business or assets shall be sold or otherwise acquired by, another corporation or entity and, as a result thereof, the Company s stockholders immediately prior thereto shall not have at least 50% or more of the combined voting power of the surviving, resulting or transferee corporation or entity, (ii) any person (as that term is used in Sections 13(d) and 14(d) of the Exchange Act) who is not an affiliate of the Company or a 5% or more holder, in each case as of January 1, 2006, is or becomes the beneficial owner (as that term is used in Section 13(d) of the Exchange Act) of the Shares entitled to cast more than 25% of the votes at the time entitled to be cast generally for the election of directors, or (iii) more than 50% of the members of the Merrimac Board shall not be continuing directors. Under the Severance Plan, continuing directors are our directors (i) who were members of the Merrimac Board on January 1, 2006, or (ii) who subsequently became our directors and who were elected or designated to be candidates for election as nominees of the Merrimac Board, or whose election or nomination for election by the Company s stockholders was otherwise approved, by a vote of a majority of the continuing directors then on the Merrimac Board.

Under the Severance Plan, cause means the executive s (1) willful failure to perform his or her normal and customary duties for an extended period of time for any reason, other than disability, (ii) gross negligence or willful misconduct, including but not limited to fraud, embezzlement or intentional misrepresentation, (iii) commission of, or indictment or conviction for, a felony, (iv) misappropriation of a material opportunity of the Company, (v) willfully engaging in competitive activities against the Company or purposely aiding a competitor of the Company, or (vi) violation of any fiduciary duty owed to the Company or any subsidiaries or any material provision of any agreement the executive has with the Company or any subsidiary and, in each case, the executive has failed to cure the violation (if curable as determined by the Company) within ten days after receipt of written notice from the Company of such violation or, if reasonable under the circumstances, such additional period of time during which the executive is using his best efforts to so cure, not to exceed 30 days in the aggregate.

In addition, the Severance Plan defines good reason to mean the occurrence (without the executive s prior express written consent) of any one of the following acts, or failures to act: (i) a material diminution of the duties and responsibilities of the executive, (ii) a substantial reduction in compensation or benefits of the executive, (iii) any failure by the Company to comply with any of the provisions of the Severance Plan, other than an isolated, insubstantial and inadvertent failure not occurring in bad faith and which is remedied by Company promptly after receipt of notice thereof given by the executive, (iv) any purported termination of the executive s employment which is not pursuant to a notice of termination under the Severance Plan (citing specific provisions of the Severance Plan relied upon in the termination and detain the facts and circumstances claimed to provide a basis thereof), or (v) the relocation of our principal executive offices where the executive works at a location more than 25 miles from its location on the date of the adoption of the Severance Plan or the Company requiring the executive to be based anywhere other than the Company s principal executive offices.

The Merrimac Board may amend or terminate the Severance Plan in whole or in part at any time upon notice to all of the participating executives; provided, however, that, subsequent to a change in control or during the period of 180 days prior to a change in control, no such amendment which could adversely affect the rights of any executive nor any termination shall become effective until the expiration of one year following the change in control.

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The summary of the Severance Plan contained herein is qualified by reference to the Severance Plan, which is filed herewith as Exhibit (e)(4) and the amendment thereto is filed herewith as Exhibit (e)(5), each of which is incorporated herein by reference.

Indemnification of Officers and Directors

Section 102 of the DGCL allows a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware law or obtained an improper personal benefit. Article Seventh of Merrimac s Certificate of Incorporation provides that no director shall be personally liable for any monetary damages for any breach of fiduciary duty as a director, except to the extent that the DGCL prohibits the elimination or limitation of liability of directors for breach of fiduciary duty.

Section 145 of the DGCL provides that a corporation has the power to indemnify a director, officer, employee or agent of the corporation and certain other persons serving at the request of the corporation in related capacities against amounts paid and expenses incurred in connection with an action or proceeding to which he is or is threatened to be made a party by reason of such position, if such person shall have acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, in any criminal proceeding, if such person had no reasonable cause to believe his conduct was unlawful; provided that, in the case of actions brought by or in the right of the corporation, indemnification is limited to expenses and no indemnification shall be made with respect to any matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the adjudicating court or the Delaware Court of Chancery determines that such indemnification is proper under the circumstances.

In addition, Merrimac maintains insurance on behalf of its directors and officers insuring them against liability asserted against them in their capacities as directors or officers or arising out of such status.

The Merger Agreement provides that for a period of six years after completion of the Merger, Parent shall (and Parent shall cause the surviving corporation to) indemnify and hold harmless each current and former officer and director of the Company or its subsidiaries (collectively, the Indemnified Parties), from and against all claims, losses, liabilities, damages, judgments, inquiries, fines and fees, costs and expenses, including actual attorneys fees and disbursements incurred in connection with any proceeding, whether civil, criminal, administrative or investigative, arising out of or pertaining to the fact that the Indemnified Party is or was an officer, director or fiduciary of the Company or its subsidiaries at or prior to the Effective Time, whether asserted or claimed prior to, at or after the Effective Time, to the fullest extent that the Company would be permitted under applicable law and required under the Company s Certificate of Incorporation or Bylaws (or, as relevant, those of the applicable subsidiary) as at the date of the Merger Agreement.

In addition, the Merger Agreement provides that except as may be required by applicable law, for a period of six years from the Effective Time, all rights to indemnification and exculpation from liabilities for acts or omissions occurring at or prior to the Effective Time and rights to advancement of expenses relating thereto now existing in favor of any Indemnified Party as provided in the Company s Certificate of Incorporation or Bylaws (or, as relevant, those of the applicable subsidiary) or in any indemnification agreement between such Indemnified Party and the Company or its subsidiaries shall survive the Merger and continue in full force and effect, and for a period of six years from the Effective Time, shall not be amended, repealed or otherwise modified in any manner that would adversely affect any right thereunder of any such Indemnified Party.

The Merger Agreement also provides prior to the Effective Time, Parent shall obtain one or more prepaid tail insurance policies for the persons who, as of the date hereof, are covered by the Company s and its subsidiaries

existing directors and officers insurance policies (D&O Insurance), with a claims period of at least six years from the Effective Time with terms and conditions (including scope and coverage amounts) that are, taken as a whole, at least as favorable as the Company s and its subsidiaries existing D&O Insurance, for claims arising from facts or events that occurred at or prior to the Effective Time, covering without limitation the transactions contemplated by the Merger Agreement. However, the aggregate premium for such tail insurance policies that

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Parent shall be required to expend shall not exceed 300% of the annual D&O Insurance premium for the Company s and its subsidiaries 2009 fiscal year.

(b) The Offeror, its Executive Officers, Directors or Affiliates

The Merger Agreement

The summary of the Merger Agreement and the descriptions of the terms and conditions of the Offer and related procedures and withdrawal rights contained in the Offer, which is being filed as an exhibit to the Schedule TO, are incorporated in this Statement by reference. Such summary and description are qualified in their entirety by reference to the Merger Agreement, which has been filed as Exhibit (e)(1) to this Statement and is incorporated herein by reference.

The Merger Agreement governs the contractual rights between the Company, Parent and Purchaser in relation to the Offer and the Merger. The Merger Agreement has been filed as an exhibit to this Statement to provide you with information regarding the terms of the Merger Agreement and is not intended to modify or supplement any factual disclosures about the Company or Parent in the Company s or Parent s public reports filed with the SEC. In particular, the Merger Agreement and this summary of terms are not intended to be, and should not be relied upon as, disclosures regarding any facts or circumstances relating to the Company or Parent. The representations and warranties have been negotiated with the principal purpose of establishing the circumstances in which Purchaser may have the right not to consummate the Offer, or a party may have the right to terminate the Merger Agreement, if the representations and warranties of the other party prove to be untrue due to a change in circumstance or otherwise, and allocate risk between the parties, rather than establish matters as facts. The representations and warranties may also be subject to a contractual standard of materiality different from those generally applicable to stockholders.

Confidentiality Agreement

In connection with the process leading to the execution of the Merger Agreement, the Company and Parent entered into a Confidentiality Agreement dated as of September 10, 2009 (the Confidentiality Agreement). Pursuant to the Confidentiality Agreement, as a condition to being furnished confidential information by the Company, Parent agreed, among other things, to not (i) for a period of twelve months, solicit for employment any member of the Company s senior management and (ii) for a period of eighteen months from the date of the agreement, not seek to effect or participate in any acquisition of Shares, any business combination involving the Company, any recapitalization or restructuring of the Company or any solicitation of proxies or consents to vote any voting securities of the Company, join any group with respect to any of the Company s securities, seek to control or influence the Merrimac Board or the Company s executive officers, or enter into any arrangements with respect to the foregoing.

Exclusivity Agreement

In connection with the process leading to the execution of the Merger Agreement, the Company and Parent entered into a Letter Agreement, dated as of December 10, 2009 (the Exclusivity Agreement). Pursuant to the Exclusivity Agreement, the Company granted Parent the exclusive right to negotiate a definitive written agreement to acquire the Company from the date of the Exclusivity Agreement through the earliest of (i) 5:00 p.m. Eastern Standard Time on December 23, 2009, (ii) the time the Company received written notice from Parent that it was terminating negotiations with the Company and (iii) the date of execution of a definitive written agreement with respect to Parent s proposed acquisition of the Company (the Negotiation Period). During the Negotiation Period, the Company was not permitted to solicit or engage in discussions regarding third party proposals to acquire the Company.

Representation on the Merrimac Board

The Merger Agreement provides that after Purchaser accepts for payment any Shares tendered, and not properly withdrawn pursuant to the Offer (the Acceptance Date), Parent will be entitled to designate such number of directors, rounded up to the next whole number, on the Merrimac Board equal to the product of (i) the total

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number of directors on the Merrimac Board (giving effect to the directors designated by Parent and including directors continuing to serve as directors of the Company) multiplied by (ii) the percentage that the aggregate number of Shares beneficially owned by Parent, Purchaser or any of their affiliates bears to the aggregate number of Shares then outstanding (the Board Percentage). Under the terms of the Merger Agreement, The Company will promptly take, at the Company s expense, any lawful action necessary to effect any such election. The Merrimac Board, following the Acceptance Date and subject to any limitations imposed by NYSE AMEX Rules, will also cause (x) each committee of the Merrimac Board, (y) if requested by Parent, the board of directors of each of the Company s subsidiaries and (z) if requested by Parent, each committee of such board of directors of each of the Company s subsidiaries to include persons designated by Parent constituting the Board Percentage of each such committee or board as Parent s designees constitute on the Merrimac Board. After the Acceptance Date and prior to the Effective Time, the Merrimac Board will always have at least two directors (the Independent Directors) who were directors of the Company on the date of the Merger Agreement and who are neither officers of the Company nor designees, affiliates or associates of Parent. In addition, any time directors designated by Parent are elected or appointed to the Merrimac Board and prior to the Effective Time, the affirmative vote of a majority of the Independent Directors shall be required to (i) authorize any contract between the Company and any of its subsidiaries, on the one hand, and Parent, Purchaser and any of their affiliates (other than the Company and any of its subsidiaries), on the other hand, (ii) amend or terminate the Merger Agreement on behalf of the Company, (iii) use or waive any of the Company s rights or remedies under the Merger Agreement, (iv) extend the time for performance of Parent s or Purchaser s obligations under the Merger Agreement or (v) take any other action by the Company in connection with the Merger Agreement or the transactions contemplated hereby required to be taken by the Merrimac Board.

The foregoing summary concerning representation on the Merrimac Board does not purport to be complete and is qualified in its entirety by reference to the Merger Agreement, which has been filed as Exhibit (e)(1) hereto and is incorporated herein by reference.

Item 4. ***The Solicitation or Recommendation.***

Recommendation of the Merrimac Board

On December 23, 2009, after careful consideration and a thorough review of the Offer with its outside legal counsel and a thorough review of a financial analysis and related opinion from America s Growth Capital, LLC (America s), the Merrimac Board, at a meeting duly called and held, by unanimous vote of all directors present at the meeting, with Mr. Carter recusing himself from such vote, and, following such vote, the unanimous vote of all directors present at the meeting, including Mr. Carter:

- determined that the terms of the Offer, the Merger and the other transactions contemplated by the Merger Agreement are fair to and in the best interests of the Company and its stockholders, and declared the Merger Agreement advisable;

- approved the execution, delivery and performance of the Merger Agreement and the consummation of the transactions contemplated thereby, including the Tender Agreements, the Offer and the Merger;

- recommended that the stockholders of the Company accept the Offer, tender their Shares to Purchaser pursuant to the Offer and, if applicable, approve and adopt the Merger Agreement and the Merger (the Recommendation);

- rendered the restrictions on business combinations contained in Section 203 of the DGCL inapplicable to the Tender Agreements, the Offer, the Merger Agreements Agreement and the other transactions contemplated thereby, including the Merger;

approved an amendment to the Company s Rights Agreement (as defined in Item 8 of this Statement) rendering the Rights Agreement inapplicable to the Tender Agreements, the Offer, the Merger Agreement and the other transactions contemplated thereby, including the Merger and the Tender Agreements;

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resolved to make the Recommendation to the stockholders of the Company and directing that, to the extent required by the DGCL, the Merger Agreement be submitted for adoption by the stockholders of the Company at a meeting of the Company s stockholders; and

elected that the Offer and the Merger, to the extent of the Merrimac Board s power and authority and to the extent permitted by law, not be subject to any moratorium, control share acquisition, business combination, fa price or other form of anti-takeover laws.

A letter to Merrimac s stockholders communicating the Merrimac Board s recommendation and the press release announcing the Offer are attached hereto as Exhibits (a)(3) and (a)(4), respectively.

Reasons for the Recommendation that Merrimac Stockholders Accept the Offer

Background

The following chronology summarizes the key meetings and events that led to the signing of the Merger Agreement. During this period, representatives of the Company held many conversations, both by telephone and in person, about possible strategic alternatives. The chronology below covers only the key events leading up to the Merger Agreement and does not purport to catalogue every conversation among representatives of the Company or between representatives of the Company and other parties.

In the course of evaluating the direction of the Company s business, the Merrimac Board periodically considers various strategic options to maximize shareholder value through profitable revenue growth and efficiency gains, as well as through possible acquisitions of other businesses, commercial alliance arrangements and strategic combinations with other companies. During the relevant time periods discussed below, the Merrimac Board had only one employee director Mr. Carter, the Company s Chairman, President and Chief Executive Officer.

At a meeting of the Merrimac Board on June 26, 2008 at which the Company s strategic direction was discussed, the independent directors of Merrimac (constituting all directors other than Mr. Carter) determined to instruct Mr. Carter to explore the Company s strategic alternatives, including a sale, merger, joint venture or investment.

At a meeting of the Merrimac Board on September 17, 2008, the Merrimac Board concluded that the sense of the Merrimac Board was to proceed with an approach to focus the Company s business efforts on military and space applications and reduce its business efforts on speculative commercial investments in an effort and to enhance profitability to better position the Company for a possible strategic transaction.

From September 2008 through mid-2009, the Company s management focused its business efforts on military and space application