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

FORM 10-Q

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

For the quarterly period ended September 28, 2008

OR

o **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 001-34166

SunPower Corporation

(Exact Name of Registrant as Specified in Its Charter)

Delaware	**94-3008969**
(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification No.)

3939 North First Street, San Jose, California 95134
(Address of Principal Executive Offices and Zip Code)

(408) 240-5500
(Registrant's Telephone Number, Including Area Code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Sections 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 x 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. (Check one):

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

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

The total number of outstanding shares of the registrant's class A common stock as of October 31, 2008 was 43,751,699.
The total number of outstanding shares of the registrant's class B common stock as of October 31, 2008 was 42,033,287.

SunPower Corporation

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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

SunPower Corporation

Condensed Consolidated Balance Sheets
(In thousands, except share data)
(unaudited)

	September 28, 2008	December 30, 2007
Assets		
Current assets:		
Cash and cash equivalents	$ 256,616	$ 285,214
Restricted cash, current portion	47,983	—
Short-term investments	38,982	105,453
Accounts receivable, net	193,822	138,250
Costs and estimated earnings in excess of billings	56,717	39,136
Inventories	190,487	140,504
Deferred project costs	12,031	8,316
Advances to suppliers, current portion	60,082	52,277
Prepaid expenses and other current assets	62,604	33,110
Total current assets	919,324	802,260
Restricted cash, net of current portion	62,057	67,887
Long-term investments	25,017	29,050
Property, plant and equipment, net	535,945	377,994
Goodwill	196,378	184,684
Intangible assets, net	44,263	50,946
Advances to suppliers, net of current portion	84,759	108,943
Other long-term assets	59,333	31,974
Total assets	$ 1,927,076	$ 1,653,738
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	$ 237,880	$ 119,869
Accounts payable to Cypress	17,839	4,854
Accrued liabilities	92,845	79,434
Billings in excess of costs and estimated earnings	9,640	69,900
Customer advances, current portion	19,941	9,250
Convertible debt	200,000	425,000
Total current liabilities	578,145	708,307
Convertible debt	225,000	—
Deferred tax liability	9,285	6,213
Customer advances, net of current portion	96,631	60,153
Other long-term liabilities	20,956	14,975
Total liabilities	930,017	789,648
Commitments and Contingencies (Note 8)		
Stockholders' Equity:		
Preferred stock, $0.001 par value, 10,042,490 shares authorized; none issued and outstanding	—	—
Common stock, $0.001 par value, 375,000,000 shares authorized: 43,916,940 and 40,269,719 shares of class A common stock issued; 43,734,532 and 40,176,957 shares of class A common stock outstanding; 42,033,287 and 44,533,287 shares of class B common stock issued and outstanding, at September 28, 2008 and December 30, 2007, respectively	86	85
Additional paid-in capital	960,461	883,033
Accumulated other comprehensive income	4,411	5,762
Accumulated earnings (deficit)	39,929	(22,815)
	1,004,887	866,065
Less: shares of class A common stock held in treasury, at cost; 182,408 and 112,762 shares at September 28, 2008 and December 30, 2007, respectively	(7,828)	(1,975)
Total stockholders' equity	997,059	864,090
Total liabilities and stockholders' equity	$ 1,927,076	$ 1,653,738

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

SunPower Corporation

Condensed Consolidated Statements of Operations
(In thousands, except per share data)
(unaudited)

	Three Months Ended		Nine Months Ended	
	September 28, 2008	September 30, 2007	September 28, 2008	September 30, 2007
Revenue:				
Systems	$ 193,330	$ 157,734	$ 642,774	$ 340,266
Components	184,170	76,600	391,178	210,181
Total revenue	377,500	234,334	1,033,952	550,447
Costs and expenses:				
Cost of systems revenue	158,730	135,111	511,080	289,095
Cost of components revenue	113,149	60,818	270,901	160,730
Research and development	6,049	3,902	15,504	9,659
Sales, general and administrative	46,075	27,708	123,141	76,188
Purchased in-process research and development	—	—	—	9,575
Impairment of acquisition-related intangibles	—	—	—	14,068
Total costs and expenses	324,003	227,539	920,626	559,315
Operating income (loss)	53,497	6,795	113,326	(8,868)
Other income (expense):				
Interest income	2,650	4,609	9,086	8,789
Interest expense	(1,411)	(1,372)	(4,286)	(3,576)
Other, net	(3,560)	(205)	(5,513)	(448)
Other income (expense), net	(2,321)	3,032	(713)	4,765
Income (loss) before income taxes	51,176	9,827	112,613	(4,103)
Income tax provision (benefit)	29,797	1,396	49,869	(8,429)
Net income	$ 21,379	$ 8,431	$ 62,744	$ 4,326
Net income per share:				
Basic	$ 0.27	$ 0.11	$ 0.79	$ 0.06
Diluted	$ 0.25	$ 0.10	$ 0.75	$ 0.05
Weighted-average shares:				
Basic	80,465	77,693	79,614	75,516
Diluted	84,488	82,610	84,061	80,526

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

SunPower Corporation

Condensed Consolidated Statements of Cash Flows
(In thousands)
(unaudited)

	Nine Months Ended	
	September 28, 2008	September 30, 2007 Note 1
Cash flows from operating activities:		
Net income	$ 62,744	$ 4,326
Adjustments to reconcile net income to net cash provided by (used in) operating activities:		
Stock-based compensation	52,026	37,197
Depreciation	35,595	17,727
Amortization of intangible assets	12,552	21,408
Impairment of acquisition-related intangibles	—	14,068
Purchased in-process research and development	—	9,575
Impairment of long-lived assets	2,203	—
Impairment of investments	933	—
Amortization of debt issuance costs	972	999
Share in loss (earnings) of joint venture	(4,006)	214
Excess tax benefits from stock-based award activity	(33,899)	—
Deferred income taxes and other tax liabilities	48,333	(10,532)
Changes in operating assets and liabilities, net of effect of acquisitions:		
Accounts receivable	(55,324)	10,347
Costs and estimated earnings in excess of billings	(17,700)	(69,766)
Inventories	(44,568)	(48,028)
Prepaid expenses and other assets	(29,636)	(8,276)
Deferred project costs	(3,733)	14,637
Advances to suppliers	19,102	(33,560)
Accounts payable and other accrued liabilities	63,528	1,933
Accounts payable to Cypress	12,985	(1,029)
Billings in excess of costs and estimated earnings	(60,064)	(17,490)
Customer advances	45,884	29,803
Net cash provided by (used in) operating activities	107,927	(26,447)
Cash flows from investing activities:		
Increase in restricted cash	(42,153)	(24,492)
Purchases of property, plant and equipment	(150,302)	(154,590)
Purchases of available-for-sale securities	(65,748)	(58,570)
Proceeds from sales or maturities of available-for-sale securities	133,948	16,496
Cash paid for acquisitions, net of cash acquired	(18,311)	(98,645)
Cash paid for investments in joint ventures and other private companies	(24,625)	—
Net cash used in investing activities	(167,191)	(319,801)
Cash flows from financing activities:		
Proceeds from exercises of stock options	3,786	6,868
Excess tax benefits from stock-based award activity	33,899	—
Purchases of stock for tax withholding obligations on vested restricted stock	(5,853)	—
Proceeds from issuance of common stock, net	—	167,379
Proceeds from issuance of convertible debt	—	425,000
Convertible debt issuance costs	—	(10,942)
Principal payments on line of credit and notes payable	—	(3,563)
Net cash provided by financing activities	31,832	584,742
Effect of exchange rate changes on cash and cash equivalents	(1,166)	3,087
Net increase (decrease) in cash and cash equivalents	(28,598)	241,581
Cash and cash equivalents at beginning of period	285,214	165,596
Cash and cash equivalents at end of period	$ 256,616	$ 407,177
Non-cash transactions:		
Additions to property, plant and equipment acquired under accounts payable and other accrued liabilities	$ 46,780	$ 7,890
Change in goodwill relating to adjustments to acquired net assets	231	1,798
Issuance of common stock for purchase acquisition	3,054	111,266
Stock options assumed in relation to acquisition	—	21,280

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

SunPower Corporation

Notes to Condensed Consolidated Financial Statements
(unaudited)

Note 1. ***THE COMPANY AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES***

The Company

SunPower Corporation (together with its subsidiaries, the "Company" or "SunPower") was originally incorporated in the State of California on April 24, 1985. In October 1988, the Company organized as a business venture to commercialize high-efficiency solar cell technologies. The Company designs, manufactures and markets high-performance solar electric power technologies. The Company's solar cells and solar panels are manufactured using proprietary processes and technologies based on more than 15 years of research and development. The Company's solar power products are sold through its components and systems business segments.

On November 10, 2005, the Company reincorporated in Delaware and filed an amendment to its certificate of incorporation to effect a 1-for-2 reverse stock split of the Company's outstanding and authorized shares of common stock. All share and per share figures presented herein have been adjusted to reflect the reverse stock split.

In November 2005, the Company raised net proceeds of $145.6 million in an initial public offering (the "IPO") of 8.8 million shares of class A common stock at a price of $18.00 per share. In June 2006, the Company completed a follow-on public offering of 7.0 million shares of its class A common stock, at a per share price of $29.50, and received net proceeds of $197.4 million. In July 2007, the Company completed a follow-on public offering of 2.7 million shares of its class A common stock, at a discounted per share price of $64.50, and received net proceeds of $167.4 million.

In February 2007, the Company issued $200.0 million in principal amount of its 1.25% senior convertible debentures to Lehman Brothers Inc. ("Lehman Brothers") and lent approximately 2.9 million shares of its class A common stock to Lehman Brothers International (Europe) Limited ("LBIE"). Net proceeds from the issuance of senior convertible debentures in February 2007 were $194.0 million. The Company did not receive any proceeds from the approximately 2.9 million loaned shares of its class A common stock, but received a nominal lending fee. On September 15, 2008, Lehman Brothers Holding Inc. ("Lehman"), filed a petition for protection under Chapter 11 of the U.S. bankruptcy code, and LBIE commenced administration proceedings (analogous to bankruptcy) in the United Kingdom (see Note 10). In July 2007, the Company issued $225.0 million in principal amount of its 0.75% senior convertible debentures to Credit Suisse Securities (USA) LLC ("Credit Suisse") and lent approximately 1.8 million shares of its class A common stock to Credit Suisse International ("CSI"). Net proceeds from the issuance of senior convertible debentures in July 2007 were $220.1 million. The Company did not receive any proceeds from the approximately 1.8 million loaned shares of class A common stock, but received a nominal lending fee (see Note 10).

In January 2007, the Company completed the acquisition of PowerLight Corporation ("PowerLight"), a privately-held company which developed, engineered, manufactured and delivered large-scale solar power systems for residential, commercial, government and utility customers worldwide. These activities are now performed by the Company's systems business segment. As a result of the acquisition, PowerLight became an indirect wholly-owned subsidiary of the Company. In June 2007, the Company changed PowerLight's name to SunPower Corporation, Systems ("SP Systems"), to capitalize on SunPower's name recognition.

Cypress Semiconductor Corporation ("Cypress") made a significant investment in the Company in 2002. On November 9, 2004, Cypress completed a reverse triangular merger with the Company in which all of the outstanding minority equity interest of SunPower was retired, effectively giving Cypress 100% ownership of all of the Company's then outstanding shares of capital stock but leaving its unexercised warrants and options outstanding. After completion of the Company's IPO in November 2005, Cypress held, in the aggregate, approximately 52.0 million shares of class B common stock. On May 4, 2007 and August 18, 2008, Cypress completed the sale of 7.5 million shares and 2.5 million shares, respectively, of the Company's class B common stock in offerings pursuant to Rule 144 of the Securities Act. Such shares converted to 10.0 million shares of class A common stock upon the sale. The Company was a majority-owned subsidiary of Cypress through the third quarter ended September 28, 2008. As of September 28, 2008, Cypress owned approximately 42.0 million shares of the Company's class B common stock, which represented approximately 50.1% of the total outstanding shares of the Company's common stock, or approximately 47.4% of such shares on a fully diluted basis after taking into account outstanding stock options (or 46.5% of such shares on a fully diluted basis after taking into account outstanding stock options and approximately 1.8 million shares lent to an affiliate of Credit Suisse), and 88.5% of the voting power of the Company's total outstanding common stock. After the close of trading on the New York Stock Exchange on September 29, 2008, Cypress completed a spin-off of all of its shares of the Company's class B common stock, in the form of a pro rata dividend to the holders of record as of September 17, 2008 of Cypress common stock. As a result, the Company's class B common stock now trades publicly and is listed on the Nasdaq Global Select Market, along with the Company's class A common stock.

The condensed consolidated financial statements include purchases of goods and services from Cypress, including wafers, employee benefits and other Cypress corporate services and infrastructure costs. The expenses allocations have been determined based on a method that Cypress and the Company considered to be a reasonable reflection of the utilization of services provided or the benefit received by the Company. See Note 2 for additional information on the transactions with Cypress.

The Company is subject to a number of risks and uncertainties including, but not limited to, an industry-wide shortage of polysilicon, potential downward pressure on product pricing as new polysilicon manufacturers begin operating and the worldwide supply of solar cells and panels increases, the possible reduction or elimination of government and economic incentives that encourage industry growth, the challenges of achieving its goal to reduce costs of installed solar systems by 50% by 2012 to maintain competitiveness, the continued availability of third-party financing for the Company's customers, difficulties in maintaining or increasing the Company's growth rate and managing such growth, and accurately predicting warranty claims.

Summary of Significant Accounting Policies

Fiscal Years

The Company reports on a fiscal-year basis and ends its quarters on the Sunday closest to the end of the applicable calendar quarter, except in a 53-week fiscal year, in which case the additional week falls into the fourth quarter of that fiscal year. Both fiscal 2008 and 2007 consist of 52 weeks. The third quarter of fiscal 2008 ended on September 28, 2008 and the third quarter of fiscal 2007 ended on September 30, 2007.

Basis of Presentation

The accompanying condensed consolidated financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC") regarding interim financial reporting. The year-end Condensed Consolidated Balance Sheets data was derived from audited financial statements. Accordingly, these financial statements do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements and should be read in conjunction with the Financial Statements and notes thereto included in the Company's Annual Report on Form 10-K for the year ended December 30, 2007.

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Significant estimates in these financial statements include the "percentage-of-completion" revenue recognition method for construction projects, allowances for doubtful accounts receivable and sales returns, inventory write-downs, estimates for future cash flows and economic useful lives of property, plant and equipment, asset impairments, valuation of auction rate securities, certain money market funds, certain accrued liabilities including accrued warranty reserves and income taxes and tax valuation allowances. Actual results could differ from those estimates.

In the opinion of management, the accompanying condensed consolidated financial statements contain all adjustments, consisting only of normal recurring adjustments, which the Company believes are necessary for a fair statement of the Company's financial position as of September 28, 2008 and its results of operations for the three and nine months ended September 28, 2008 and September 30, 2007 and its cash flows for the nine months ended September 28, 2008 and September 30, 2007. These condensed consolidated financial statements are not necessarily indicative of the results to be expected for the entire year.

Recent Accounting Pronouncements

In December 2007, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 141 (revised 2007), "Business Combinations" ("SFAS No. 141(R)"), which replaces SFAS No. 141, "Business Combinations" ("SFAS No. 141"). SFAS No. 141(R) will significantly change the accounting for business combinations in a number of areas including the treatment of contingent consideration, contingencies, acquisition costs, in-process research and development and restructuring costs. In addition, under SFAS No. 141(R), changes in deferred tax asset valuation allowances and acquired income tax uncertainties in a business combination after the measurement period will impact income tax expense. SFAS No. 141(R) is effective for fiscal years beginning after December 15, 2008 and will be adopted by the Company for any purchase business combinations consummated subsequent to December 28, 2008.

In December 2007, the FASB issued SFAS No. 160, "Noncontrolling Interests in Consolidated Financial Statements — an amendment of Accounting Research Bulletin No. 51" ("SFAS No. 160"), which will change the accounting and reporting for minority interests, which will be recharacterized as noncontrolling interests and classified as a component of equity. This new consolidation method will significantly change the accounting for transactions with minority interest holders. SFAS No. 160 is effective for fiscal years beginning after December 15, 2008. The Company is currently evaluating the potential impact, if any, of the adoption of SFAS No. 160 on its financial position and results of operations.

In February 2008, the FASB issued FASB Staff Position ("FSP") No. FAS 157-2, "Effective Date of FASB Statement No. 157" ("FSP 157-2"). FSP 157-2 deferred the effective date of SFAS No. 157, "Fair Value Measurements" ("SFAS No. 157"), for nonfinancial assets and nonfinancial liabilities, except for items that are recognized or disclosed at fair value in the financial statements on a recurring basis, until fiscal years beginning after November 15, 2008. With the exception of investments and foreign currency derivatives held, this deferral makes SFAS No. 157 effective for the Company beginning in the first quarter of fiscal 2009. The Company is currently evaluating the potential impact, if any, of the adoption of SFAS No. 157 on measurement of fair value of its nonfinancial assets, including goodwill, and nonfinancial liabilities.

In March 2008, the FASB issued SFAS No. 161, “Disclosures about Derivative Instruments and Hedging Activities — an amendment of SFAS No. 133” (“SFAS No. 161”), which expands the disclosure requirements for derivative instruments and hedging activities. SFAS No. 161 specifically requires entities to provide enhanced disclosures addressing the following: (a) how and why an entity uses derivative instruments; (b) how derivative instruments and related hedged items are accounted for under SFAS No. 133 and its related interpretations; and (c) how derivative instruments and related hedged items affect an entity’s financial position, financial performance, and cash flows. SFAS No. 161 is effective for fiscal years and interim periods beginning after November 15, 2008. The Company is currently evaluating the potential impact, if any, of the adoption of SFAS No. 161 on its financial position, results of operations and disclosures.

In April 2008, the FASB issued FSP FAS No. 142-3, “Determination of Useful Life of Intangible Assets” (“FSP 142-3”), which amends the factors that should be considered in developing the renewal or extension assumptions used to determine the useful life of a recognized intangible asset under SFAS 142, “Goodwill and Other Intangible Assets.” FSP 142-3 also requires expanded disclosure related to the determination of intangible asset useful lives. FSP 142-3 is effective for fiscal years beginning after December 15, 2008. The Company is currently evaluating the potential impact, if any, of the adoption of FSP 142-3 on its financial position, results of operations and disclosures.

In May 2008, the FASB issued SFAS No. 162, “The Hierarchy of Generally Accepted Accounting Principles” (“SFAS No. 162”), which identifies the sources of accounting principles to be used in the preparation of financial statements of nongovernmental entities that are presented in conformity with U.S. GAAP. This Statement is effective 60 days following the SEC's approval of the Public Company Accounting Oversight Board amendments to AU Section 411, “The Meaning of Present Fairly in Conformity with Generally Accepted Accounting Principles.” The Company currently adheres to the hierarchy of U.S. GAAP as presented in SFAS No. 162 and the adoption of SFAS No. 162 during the three months ended September 28, 2008 did not have a material impact on its financial position, results of operations and disclosures.

In May 2008, the FASB issued FSP APB 14-1, “Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement)” (“FSP APB 14-1”), which clarifies the accounting for convertible debt instruments that may be settled in cash upon conversion, including partial cash settlement. FSP APB 14-1 significantly impacts the accounting for instruments commonly referred to as Instruments B, Instruments C and Instruments X from Emerging Issue Task Force (“EITF”) Issue No. 90-19, “Convertible Bonds with Issuer Option to Settle for Cash upon Conversion” (“EITF 90-19”), and any other convertible debt instruments that allow settlement in any combination of cash and shares at the issuer’s option. The new guidance requires the issuer to separately account for the liability and equity components of the instrument in a manner that reflects interest expense equal to the issuer’s non-convertible debt borrowing rate. FSP APB 14-1 is effective for fiscal years and interim periods beginning after December 15, 2008, and retrospective application will be required for all periods presented. The new guidance may have a significant impact on the Company’s outstanding convertible debt balance of $425.0 million, potentially resulting in significantly higher non-cash interest expense on its convertible debt (see Note 10). The Company is currently evaluating the potential impact of the new guidance on its results of operations and financial condition.

In October 2008, the FASB issued FSP FAS No. 157-3, “Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active” (“FSP 157-3”), which demonstrated how the fair value of a financial asset is determined when the market for that financial asset is inactive. FSP 157-3 is applicable to the valuation of auction rate securities held by the Company for which there was no active market as of September 28, 2008. FSP 157-3 was effective upon issuance, including prior periods for which financial statements had not been issued (see Note 5). The adoption of FSP 157-3 during the three months ended September 28, 2008 did not have a material impact on the Company’s consolidated results of operations or financial condition.

Revision of Statement of Cash Flow Presentation Related to Purchases of Property, Plant and Equipment

The Company has changed its Condensed Consolidated Statements of Cash Flows for the nine months ended September 30, 2007 to exclude the impact of purchases of property, plant and equipment that remain unpaid and as such are included in “accounts payable and other accrued liabilities” at the end of the reporting period. Historically, changes in “accounts payable and other accrued liabilities” related to such purchases were included in cash flows from operations, while the investing activity caption "Purchase of property, plant and equipment" included these purchases. As these unpaid purchases do not reflect cash transactions, the Company has revised its cash flow presentations to exclude them. The correction resulted in an increase to the previously reported amount of cash used for operating activities of $7.9 million in the nine months ended September 30, 2007, resulting from a reduction in the amount of cash provided from the change in accounts payable and other accrued liabilities in that period. The corresponding correction in the investing section was to decrease cash used for investing activities by $7.9 million in the nine months ended September 30, 2007, as a result of the reduction in the amount of cash used for purchases of property, plant and equipment in that period. These corrections had no impact on previously reported results of operations, working capital or stockholders’ equity of the Company. The Company concluded that these corrections were not material to any of its previously issued condensed consolidated financial statements, based on SEC Staff Accounting Bulletin No. 99-Materiality.

Note 2. ***TRANSACTIONS WITH CYPRESS***

Purchases of Imaging and Infrared Detector Products from Cypress

The Company purchased fabricated semiconductor wafers from Cypress at intercompany prices consistent with Cypress's internal transfer pricing methodology. In December 2007, Cypress announced the planned closure of its Texas wafer fabrication facility that manufactured the Company's imaging and infrared detector products. The planned closure is expected to be completed in the fourth quarter of fiscal 2008. The Company evaluated its alternatives relating to the future plans for this business and decided to wind-down its activities related to the imaging detector product line in the first quarter of fiscal 2008. Accordingly, in the three months ended March 30, 2008, cost of revenue included a $2.2 million impairment charge to long-lived assets primarily related to manufacturing equipment located in the Texas wafer fabrication facility. The Company did not purchase wafers from Cypress in the second and third quarters of fiscal 2008. Wafer purchases totaled $0.6 million for the nine months ended September 28, 2008 and $0.7 million and $3.8 million for the three and nine months ended September 30, 2007, respectively.

Administrative Services Provided by Cypress

Cypress seconded employees and consultants to the Company for different time periods for which the Company paid their fully-burdened compensation. In addition, Cypress personnel rendered services to the Company to assist with administrative functions such as employee benefits and other Cypress corporate services and infrastructure. Cypress billed the Company for a portion of the Cypress employees' fully-burdened compensation. In the case of the Philippines subsidiary, which entered into a services agreement for such secondments and other consulting services in January 2005, the Company paid the fully burdened compensation plus 10%. The amounts that the Company has recorded as general and administrative expenses in the accompanying statements of operations for these services was approximately $0.7 million and $2.8 million for the three and nine months ended September 28, 2008, respectively, and $0.5 million and $1.2 million for the three and nine months ended September 30, 2007, respectively.

Leased Facility in the Philippines

In 2003, the Company and Cypress reached an understanding that the Company would build out and occupy a building owned by Cypress for its solar cell manufacturing facility in the Philippines. The Company entered into a lease agreement for this facility and a sublease for the land under which the Company paid Cypress at a rate equal to the cost to Cypress for that facility (including taxes, insurance, repairs and improvements). Under the lease agreement, the Company had the right to purchase the facility and assume the lease for the land from Cypress at any time at Cypress's original purchase price of approximately $8.0 million, plus interest computed on a variable index starting on the date of purchase by Cypress until the sale to the Company, unless such purchase option was exercised after a change of control of the Company, in which case the purchase price would be at a market rate, as reasonably determined by Cypress. In May 2008, the Company exercised its right to purchase the facility from Cypress and assumed the lease for the land from an unaffiliated third party for a total purchase price of $9.5 million. The lease for the land expires in May 2048 and is renewable for an additional 25 years. Rent expense paid to Cypress for this building and land was approximately zero and $0.1 million for the three and nine months ended September 28, 2008, respectively, and $0.1 million and $0.2 million for the three and nine months ended September 30, 2007, respectively.

Leased Headquarters Facility in San Jose, California

In May 2006, the Company entered into a lease agreement for its 43,732 square foot headquarters, which is located in a building owned by Cypress in San Jose, California, for $6.0 million over the five-year term of the lease. In August 2008, the Company amended the lease agreement, increasing the rentable square footage and the total lease obligations to 55,594 and $7.2 million, respectively, over the five-year term of the lease. In the event Cypress decides to sell the building, the Company has the right of first refusal to purchase the building at a fair market price which will be based on comparable sales in the area. Rent expense paid to Cypress for this facility was approximately $0.4 million and $1.1 million for the three and nine months ended September 28, 2008, respectively, and $0.3 million and $0.9 million for the three and nine months ended September 30, 2007, respectively.

Employee Matters Agreement

In October 2005, the Company entered into an employee matters agreement with Cypress to allocate assets, liabilities and responsibilities relating to its current and former U.S. and international employees and its participation in the employee benefits plans that Cypress sponsored and maintained. In July 2008, the Company transferred all accounts in the Cypress 401(k) Plan held by the Company's employees to its recently established SunPower 401(k) Savings Plan. In September 2008, all of the Company's eligible employees began participating in SunPower's own health and welfare plans and no longer participate in the Cypress health and welfare plans. In connection with Cypress' spin-off of its shares of the Company's class B common stock, the Company and Cypress agreed to terminate the employee matters agreement.

Indemnification and Insurance Matters Agreement

The Company will indemnify Cypress and its affiliates, agents, successors and assigns from all liabilities arising from environmental conditions: existing on, under, about or in the vicinity of any of the Company's facilities, or arising out of operations occurring at any of the Company's facilities, including its California facilities, whether prior to or after Cypress's spin-off of the Company's class B common stock held by Cypress; existing on, under, about or in the vicinity of the Philippines facility which the Company occupies, or arising out of operations occurring at such facility, whether prior to or after the separation, to the extent that those liabilities were caused by the Company; arising out of hazardous materials found on, under or about any landfill, waste, storage, transfer or recycling site and resulting from hazardous materials stored, treated, recycled, disposed or otherwise handled by any of the Company's operations or the Company's California and Philippines facilities prior to the separation; and arising out of the construction activity conducted by or on behalf of us at Cypress's Texas facility.

The indemnification and insurance matters agreement also contains provisions governing the Company's insurance coverage, which was under the Cypress insurance policies. As of September 29, 2008, the Company has obtained its own separate policies for the coverage previously provided under the indemnification and insurance matters agreement.

Tax Sharing Agreement

The Company has entered into a tax sharing agreement with Cypress providing for each of the party's obligations concerning various tax liabilities. The tax sharing agreement is structured such that Cypress will pay all federal, state, local and foreign taxes that are calculated on a consolidated or combined basis (while being a member of Cypress's consolidated or combined group pursuant to federal, state, local and foreign tax law). The Company's portion of such tax liability or benefit will be determined based upon its separate return tax liability as defined under the tax sharing agreement. Such liability or benefit will be based on a pro forma calculation as if the Company were filing a separate income tax return in each jurisdiction, rather than on a combined or consolidated basis with Cypress subject to adjustments as set forth in the tax sharing agreement.

On June 6, 2006, the Company ceased to be a member of Cypress's consolidated group for federal income tax purposes and certain state income tax purposes. On September 29, 2008, the Company ceased to be a member of Cypress's combined group for all state income tax purposes. To the extent that the Company becomes entitled to utilize on the Company's separate tax returns portions of those credit or loss carryforwards existing as of such date, the Company will distribute to Cypress the tax effect, estimated to be 40% for federal income tax purposes, of the amount of such tax loss carryforwards so utilized, and the amount of any credit carryforwards so utilized. The Company will distribute these amounts to Cypress in cash or in the Company's shares, at the Company's option. As of December 30, 2007, the Company has $44.0 million of federal net operating loss carryforwards and approximately $73.5 million of California net operating loss carryforwards meaning that such potential future payments to Cypress, which would be made over a period of several years, would therefore aggregate approximately $19.1 million.

The majority of these net operating loss carryforwards were created by employee stock transactions. Because there is uncertainty as to the realizability of these loss carryforwards, the portion created by employee stock transactions are not reflected on the Company's Condensed Consolidated Balance Sheets.

Upon completion of its follow-on public offering of common stock in June 2006, the Company was no longer considered to be a member of Cypress's consolidated group for federal income tax purposes. Upon completion of the spin-off on September 29, 2008, the Company is no longer considered to be a member of Cypress's combined group for state income tax purposes. Accordingly, the Company will be subject to the obligations payable to Cypress for any federal income tax credit or loss carryforwards utilized in its federal tax returns in subsequent periods, as explained in the preceding paragraph.

The Company will continue to be jointly and severally liable for any tax liability as governed under federal, state and local law during all periods in which it is deemed to be a member of the Cypress consolidated or combined group. Accordingly, although the tax sharing agreement allocates tax liabilities between Cypress and all its consolidated subsidiaries, for any period in which the Company is included in Cypress's consolidated group, the Company could be liable in the event that any federal tax liability was incurred, but not discharged, by any other member of the group.

Subject to certain caveats, Cypress has obtained a ruling from the Internal Revenue Service ("IRS") to the effect that the distribution by Cypress of the Company's class B common stock to Cypress stockholders qualified as a tax-free distribution under Section 355 of the Internal Revenue Code (the "Code"). Despite such ruling, the distribution may nonetheless be taxable to Cypress under Section 355(e) of the Code if 50% or more of the Company's voting power or economic value is acquired as part of a plan or series of related transactions that includes the distribution of the Company's stock. The tax sharing agreement includes the Company's obligation to indemnify Cypress for any liability incurred as a result of issuances or dispositions of the Company's stock after the distribution, other than liability attributable to certain dispositions of the Company's stock by Cypress, that cause Cypress's distribution of shares of the Company's stock to its stockholders to be taxable to Cypress under Section 355(e) of the Code.

The tax sharing agreement further provides for cooperation with respect to tax matters, the exchange of information and the retention of records which may affect the income tax liability of either party. Disputes arising between Cypress and the Company relating to matters covered by the tax sharing agreement are subject to resolution through specific dispute resolution provisions contained in the agreement.

In connection with Cypress' spin-off of its shares of the Company's class B common stock, the Company and Cypress, on August 12, 2008, entered into an Amendment No. 1 to Tax Sharing Agreement (the "Amended Tax Sharing Agreement") to address certain transactions that may affect the tax treatment of the spin-off and certain other matters.

Under the Amended Tax Sharing Agreement, the Company is required to provide notice to Cypress of certain transactions that could give rise to the Company's indemnification obligation relating to taxes resulting from the application of Section 355(e) of the Code or similar provision of other applicable law to the spin-off as a result of one or more acquisitions (within the meaning of Section 355(e)) of the Company's stock after the spin-off. An acquisition for these purposes includes any such acquisition attributable to a conversion of any or all of the Company's class B common stock to class A common stock or any similar recapitalization transaction or series of related transactions (a "Recapitalization"). The Company is not required to indemnify Cypress for any taxes which would result solely from (A) issuances and dispositions of the Company's stock prior to the spin-off and (B) any acquisition of the Company's stock by Cypress after the spin-off.

Under the Amended Tax Sharing Agreement, the Company also agreed that, for a period of 25 months following the spin-off, it will not (i) effect a Recapitalization or (ii) enter into or facilitate any other transaction resulting in an acquisition (within the meaning of Section 355(e) of the Code) of the Company's stock without first obtaining the written consent of Cypress; provided, the Company is not required to obtain Cypress's consent unless such transaction (either alone or when taken together with one or more other transactions entered into or facilitated by the Company consummated after August 4, 2008 and during the 25-month period following the spin-off) would involve the acquisition for purposes of Section 355(e) of the Code after August 4, 2008 of more than 25% of the Company's outstanding shares of common stock. In addition, the requirement to obtain Cypress's consent does not apply to (A) any acquisition of the Company's stock that will qualify under Treasury Regulation Section 1.355-7(d)(8) in connection with the performance of services, (B) any acquisition of the Company's stock for which it furnishes to Cypress prior to such acquisition an opinion of counsel and supporting documentation, in form and substance reasonably satisfactory to Cypress (a "Tax Opinion"), that such acquisition will qualify under Treasury Regulation Section 1.355-7(d)(9), (C) an acquisition of the Company's stock (other than involving a public offering) for which the Company furnishes to Cypress prior to such acquisition a Tax Opinion to the effect that such acquisition will qualify under the so-called "super safe harbor" contained in Treasury Regulation Section 1.355-7(b)(2) or (D) the adoption by the Company of a standard stockholder rights plan. The Company further agreed that it will not (i) effect a Recapitalization during the 36 month period following the spin-off without first obtaining a Tax Opinion to the effect that such Recapitalization (either alone or when taken together with any other transaction or transactions) will not cause the spin-off to become taxable under Section 355(e), or (ii) seek any private ruling, including any supplemental private ruling, from the IRS with regard to the spin-off, or any transaction having any bearing on the tax treatment of the spin-off, without the prior written consent of Cypress.

Note 3. ***BUSINESS COMBINATIONS, GOODWILL AND INTANGIBLE ASSETS***

Business Combinations

PowerLight

In January 2007, the Company completed the acquisition of PowerLight (subsequently renamed SunPower Corporation, Systems). Of the total consideration issued for the acquisition, approximately $23.7 million in cash and approximately 0.7 million shares of its class A common stock, with a total aggregate value of $118.1 million as of December 30, 2007, were held in escrow as security for the indemnification obligations of certain former PowerLight stockholders.

In January 2008, following the first anniversary of the acquisition date, the Company authorized the release of approximately one-half of the original escrow amount, leaving in escrow approximately $12.9 million in cash and approximately 0.4 million shares of its class A common stock, with a total aggregate value of $38.6 million as of September 28, 2008. The Company's rights to recover damages under several provisions of the acquisition agreement also expired on the first anniversary of the acquisition date. As a result, the Company is now entitled to recover only limited types of losses, and any recovery will be limited to the amount available in the escrow fund at the time of a claim. The remaining amount in the escrow fund will be progressively reduced to zero on each anniversary of the acquisition date over a period of four years.

Solar Solutions

In January 2008, the Company completed the acquisition of Solar Solutions, a solar systems integration and product distribution company based in Italy. Solar Solutions was a division of Combigas S.r.l., a petroleum products trading firm. Active since 2002, Solar Solutions distributes components such as solar panels and inverters, and offers turnkey solar power systems and standard system kits via a network of dealers throughout Italy. Prior to the acquisition, Solar Solutions had been a customer of the Company since fiscal 2006. As a result of the acquisition, Solar Solutions became a wholly-owned subsidiary of the Company. In connection with the acquisition, the Company changed Solar Solutions' name to SunPower Italia S.r.l. ("SunPower Italia"). The acquisition of SunPower Italia was not material to the Company's financial position or results of operations.

Solar Sales Pty. Ltd. ("Solar Sales")

In July 2008, the Company completed the acquisition of Solar Sales, a solar systems integration and product distribution company based in Australia. Solar Sales distributes components such as solar panels and inverters via a national network of dealers throughout Australia, and designs, builds and commissions large-scale commercial systems. Prior to the acquisition, Solar Sales had been a customer of the Company since fiscal 2005. As a result of the acquisition, Solar Sales became a wholly-owned subsidiary of the Company. In connection with the acquisition, the Company changed Solar Sales' name to SunPower Corporation Australia Pty. Ltd. ("SunPower Australia"). The acquisition of SunPower Australia was not material to the Company's financial position or results of operations.

Goodwill

The following table presents the changes in the carrying amount of goodwill under the Company's reportable business segments:

(In thousands)	Components Business Segment	Systems Business Segment	Total
As of December 30, 2007	$ 2,883	$ 181,801	$ 184,684
Goodwill acquired	11,688	—	11,688
Adjustments	6	—	6
As of September 28, 2008	$ 14,577	$ 181,801	$ 196,378

Changes to goodwill during the nine months ended September 28, 2008 resulted from the acquisitions of SunPower Italia and SunPower Australia. Approximately $11.7 million had been allocated to goodwill within the components segment, which represents the excess of the purchase price over the fair value of the underlying net tangible and intangible assets of SunPower Italia and SunPower Australia. SunPower Italia is a Euro functional currency subsidiary and SunPower Australia is an Australian dollar functional currency subsidiary. Therefore, the Company records a translation adjustment for the revaluation of the subsidiary's goodwill and intangible assets into U.S. dollar. As of September 28, 2008, the cumulative translation adjustment decreased the balance of goodwill by $0.2 million. Also during the nine months ended September 28, 2008, the Company recorded an adjustment to increase goodwill by $0.2 million to adjust the value of acquired investments.

In accordance with SFAS No. 142, "Goodwill and Other Intangible Assets," ("SFAS No. 142"), goodwill will not be amortized but instead will be tested for impairment at least annually, or more frequently if certain indicators are present. The Company conducts its annual impairment test of goodwill as of the Sunday closest to the end of the third calendar quarter of each year. Based on its last impairment test as of September 28, 2008, the Company determined there was no impairment. In the event that management determines that the value of goodwill has become impaired, the Company will incur an accounting charge for the amount of the impairment during the fiscal quarter in which the determination is made.

Intangible Assets

The following tables present details of the Company's acquired identifiable intangible assets:

(In thousands)	Gross	Accumulated Amortization	Net
As of September 28, 2008			
Patents and purchased technology	$ 51,398	$ (28,649)	$ 22,749
Tradenames	2,600	(1,463)	1,137
Backlog	11,787	(11,787)	—
Customer relationships and other	27,993	(7,616)	20,377
	$ 93,778	$ (49,515)	$ 44,263
As of December 30, 2007			
Patents and purchased technology	$ 51,398	$ (20,630)	$ 30,768
Tradenames	1,603	(808)	795
Backlog	11,787	(11,460)	327
Customer relationships and other	23,193	(4,137)	19,056
	$ 87,981	$ (37,035)	$ 50,946

In connection with the acquisitions of SunPower Italia and SunPower Australia, the Company recorded $6.2 million of intangible assets less $0.4 million of cumulative translation adjustment for acquired intangibles in the nine months ended September 28, 2008. In connection with the acquisition of SP Systems, the Company recorded $79.5 million of intangible assets in the first quarter of fiscal 2007, of which $15.5 million was related to the PowerLight tradename. The determination of the fair value and useful life of the tradename was based on the Company's strategy of continuing to market its systems products and services under the PowerLight brand. Based on the Company's change in branding strategy and changing PowerLight's name to SunPower Corporation, Systems, during the quarter ended July 1, 2007, the Company recognized an impairment charge of $14.1 million, which represented the net book value of the PowerLight tradename.

All of the Company's acquired identifiable intangible assets are subject to amortization. Aggregate amortization expense for intangible assets totaled $4.2 million and $12.6 million for the three and nine months ended September 28, 2008, respectively, and $6.9 million and $21.4 million for the three and nine months ended September 30, 2007, respectively. As of September 28, 2008, the estimated future amortization expense related to intangible assets is as follows (in thousands):

2008 (remaining three months)	$ 4,263
2009	16,476
2010	14,874
2011	4,638
2012	3,907
Thereafter	105
	$ 44,263

Note 4. ***BALANCE SHEET COMPONENTS***

(In thousands)	**September 28, 2008**	**December 30, 2007**
Accounts receivable, net:		
Accounts receivable, gross	$ 195,347	$ 139,991
Less: Allowance for doubtful accounts	(1,357)	(1,373)
Less: Allowance for sales returns	(168)	(368)
	$ 193,822	$ 138,250
Costs and estimated earnings in excess of billings on contracts in progress and billings in excess of costs and estimated earnings on contracts in progress consists of the following:		
Costs and estimated earnings in excess of billings on contracts in progress	$ 56,717	$ 39,136
Billings in excess of costs and estimated earnings on contracts in progress	(9,640)	(69,900)
	$ 47,077	$ (30,764)
Contracts in progress:		
Costs incurred to date	$ 824,632	$ 481,340
Estimated earnings to date	269,290	145,643
Contract revenue earned to date	1,093,922	626,983
Less: Billings to date, including earned incentive rebates	(1,046,845)	(657,747)
	$ 47,077	$ (30,764)
Inventories:		
Raw materials(1)	$ 89,130	$ 89,604
Work-in-process	23,860	2,027
Finished goods	77,497	48,873
	$ 190,487	$ 140,504
(1) In addition to polysilicon and other raw materials for solar cell manufacturing, raw materials includes solar panels purchased from third-party vendors and installation materials for systems projects.		
Prepaid expenses and other current assets:		
VAT receivables, current portion	$ 17,429	$ 7,266
Deferred tax assets, current portion	7,413	8,437
Other receivables	24,794	9,946
Other prepaid expenses	12,968	7,461
	$ 62,604	$ 33,110

(In thousands)	September 28, 2008	December 30, 2007
Property, plant and equipment, net:		
Land and buildings	$ 8,923	$ 7,482
Manufacturing equipment	301,684	194,963
Computer equipment	22,691	12,399
Furniture and fixtures	4,338	2,648
Leasehold improvements	131,801	113,801
Construction-in-process (manufacturing facility in the Philippines)	150,301	99,945
	619,738	431,238
Less: Accumulated depreciation(2)	(83,793)	(53,244)
	$ 535,945	$ 377,994

(2) Total depreciation expense was $13.6 million and $35.6 million for the three and nine months ended September 28, 2008, respectively, and $6.2 million and $17.7 million for the three and nine months ended September 30, 2007, respectively.

Other long-term assets:		
VAT receivable, net of current portion	$ 14,274	$ 24,269
Investments in joint ventures	18,935	5,304
Note receivable(3)	10,000	—
Other	16,124	2,401
	$ 59,333	$ 31,974

(3) In June 2008, the Company loaned $10.0 million to a third-party private company pursuant to a three-year interest-bearing note receivable that is convertible into equity at the Company's option.

Accrued liabilities:		
VAT payables	$ 15,331	$ 18,138
Employee compensation and employee benefits	15,533	15,338
Income taxes payable	20,411	11,106
Warranty reserves	15,359	10,502
Foreign exchange derivative liability	170	8,920
Other	26,041	15,430
	$ 92,845	$ 79,434

Note 5. *INVESTMENTS*

On December 31, 2007, the Company adopted SFAS No. 157, which refines the definition of fair value, provides a framework for measuring fair value and expands disclosures about fair value measurements. The Company's adoption of SFAS No. 157 was limited to its financial assets and financial liabilities, as permitted by FSP 157-2. The Company does not have any nonfinancial assets or nonfinancial liabilities that are recognized or disclosed at fair value in its condensed consolidated financial statements on a recurring basis.

Assets Measured at Fair Value on a Recurring Basis

SFAS No. 157 establishes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy assigns the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities ("Level 1") and the lowest priority to unobservable inputs ("Level 3"). Level 2 measurements are inputs that are observable for assets or liabilities, either directly or indirectly, other than quoted prices included within Level 1. The following table presents information about the Company's available-for-sale securities under SFAS No. 115, "Accounting for Certain Investments in Debt and Equity Securities" ("SFAS No. 115") measured at fair value on a recurring basis as of September 28, 2008 and indicates the fair value hierarchy of the valuation techniques utilized by the Company to determine such fair value in accordance with the provisions of SFAS No. 157:

(In thousands)	Quoted Prices in Active Markets for Identical Instruments (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Balance as of September 28, 2008
Asset				
Money market funds	$ 105,304	$ —	$ 25,744	$ 131,048
Corporate securities	202,599	25,136	25,017	252,752
Total available-for-sale securities	$ 307,903	$ 25,136	$ 50,761	$ 383,800

Available-for-sale securities utilizing Level 3 inputs to determine fair value are comprised of investments in money market funds totaling $25.7 million and auction rate securities held totaling $25.0 million at September 28, 2008. Investments in money market funds consist of the Company's investments in the Reserve Primary Fund and the Reserve International Liquidity Fund (collectively referred to as the "Reserve Funds"). The net asset value for the Reserve Funds fell below $1.00 because the funds had investments in Lehman, which filed for bankruptcy on September 15, 2008. As a result of this event, the Reserve Funds wrote down their investments in Lehman to zero. The Company has estimated the loss on the Reserve Funds to be approximately $0.9 million based on an evaluation of the fair value of the securities held by the Reserve Funds and the net asset value that was last published by the Reserve Funds before the funds suspended redemptions. The Company recorded an impairment charge of $0.9 million in "Other, net" in its Condensed Consolidated Statements of Operations, thereby establishing a new cost basis for each fund.

The Company's money market fund instruments are classified within Level 1 of the fair value hierarchy because they are valued using quoted prices for identical instruments in active markets. However, the Company conducted its fair value assessment of the Reserve Funds using Level 2 and Level 3 inputs. Management has reviewed the Reserve Funds' underlying securities portfolios which are substantially comprised of discount notes, certificates of deposit and commercial paper issued by highly-rated institutions. The Company has used a pricing service to assist in its review of fair value of the underlying portfolios, which estimates fair value of some instruments using proprietary models based on assumptions as to term, maturity dates, rates, credit risk, etc. Normally, the Company would classify such an investment within Level 2 of the fair value hierarchy. However, management also evaluated the fair value of its unit interest in the Reserve Funds itself, considering risk of collection, timing and other factors. These assumptions are inherently subjective and involve significant management judgment. As a result, the Company has classified its holdings in the Reserve Funds within Level 3 of the fair value hierarchy.

On October 31, 2008, the Company received a distribution of $11.9 million from the Reserve Funds. The Company expects that the remaining distribution of $13.8 million from the Reserve Funds will occur over the remaining twelve months as the investments held in the funds mature. Therefore, the Company has changed the designation of its $13.8 million investment in the Reserve Funds that was not received in the subsequent period from cash and cash equivalents to short-term investments at the new cost basis on the Condensed Consolidated Balance Sheets. This re-designation is included in "purchases of available-for-sale securities" in investing activities in the Company's accompanying Condensed Consolidated Statements of Cash Flows. While the Company expects to receive substantially all of its current holdings in the Reserve Funds within the next twelve months, it is possible the Company may encounter difficulties in receiving distributions given the current credit market conditions. If market conditions were to deteriorate even further such that the current fair value were not achievable, the Company could realize additional losses in its holdings with the Reserve Funds and distributions could be further delayed.

Auction rate securities held are typically over-collateralized and secured by pools of student loans originated under the Federal Family Education Loan Program ("FFELP") that are guaranteed and insured by the U.S. Department of Education. In addition, all auction rate securities held are rated by one or more of the Nationally Recognized Statistical Rating Organizations ("NRSRO") as triple-A. Historically, these securities have provided liquidity through a Dutch auction at pre-determined intervals every seven to 49 days. At the end of each reset period, investors can continue to hold the securities or sell the securities at par through an auction process. The "stated" or "contractual" maturities for these securities generally are between 20 to 30 years. Beginning in February 2008, the auction rate securities market experienced a significant increase in the number of failed auctions, resulting from a lack of liquidity, which occurs when sell orders exceed buy orders, and does not necessarily signify a default by the issuer.

All auction rate securities invested in at September 28, 2008 have failed to clear at auctions. For failed auctions, the Company continues to earn interest on these investments at the maximum contractual rate as the issuer is obligated under contractual terms to pay penalty rates should auctions fail. Historically, failed auctions have rarely occurred, however, such failures could continue to occur in the future. In the event the Company needs to access these funds, the Company will not be able to do so until a future auction is successful, the issuer redeems the securities, a buyer is found outside of the auction process or the securities mature. Accordingly, auction rate securities at September 28, 2008 and December 30, 2007 that were not sold in a subsequent period totaling $25.0 million and $29.1 million, respectively, are classified as long-term investments on the Condensed Consolidated Balance Sheets, because they are not expected to be used to fund current operations and consistent with the stated contractual maturities of the securities.

The Company determined that use of a valuation model was the best available technique for measuring the fair value of its auction rate securities. The Company used an income approach valuation model to estimate the price that would be received to sell its securities in an orderly transaction between market participants ("exit price") as of September 28, 2008. The exit price was derived as the weighted average present value of expected cash flows over various periods of illiquidity, using a risk-adjusted discount rate that was based on the credit risk and liquidity risk of the securities. While the valuation model was based on both Level 2 (credit quality and interest rates) and Level 3 inputs, the Company determined that the Level 3 inputs were the most significant to the overall fair value measurement, particularly the estimates of risk adjusted discount rates and ranges of expected periods of illiquidity. The valuation model also reflected the Company's intention to hold its auction rate securities until they can be liquidated in a market that facilitates orderly transactions. The following key assumptions were used in the valuation model:

- 5 years to liquidity;
- continued receipt of contractual interest which provides a premium spread for failed auctions; and
- discount rates ranging from 4.8% to 6.2%, which incorporate a spread for both credit and liquidity risk.

Based on these assumptions, the Company estimated that the auction rate securities would be valued at approximately 96% of their stated par value, representing a decline in value of approximately $1.0 million. The following table provides a summary of changes in fair value of the Company’s available-for-sale securities utilizing Level 3 inputs as of September 28, 2008:

(In thousands)	Money Market Funds	Auction Rate Securities
Balance at December 31, 2007	$ —	$ —
Transfers from Level 1 to Level 3	26,677	—
Transfers from Level 2 to Level 3	—	29,050
Purchases	—	10,000
Sales (1)	—	(13,000)
Impairment loss recorded in “Other, net”	(933)	—
Unrealized loss included in “Other comprehensive income”	—	(1,033)
Balance at September 28, 2008 (2)	$ 25,744	$ 25,017

(1) In the second quarter of fiscal 2008, the Company sold auction rate securities with a carrying value of $12.5 million for their stated par value of $13.0 million to the issuer of the securities outside of the auction process.
(2) On October 31, 2008, the Company received a distribution of $11.9 million from the Reserve Funds.

The following table summarizes unrealized gains and losses by major security type designated as available-for-sale:

	September 28, 2008				December 30, 2007			
		Unrealized				Unrealized		
(In thousands)	Cost	Gross Gains	Gross Losses	Fair Value	Cost	Gross Gains	Gross Losses	Fair Value
Money market funds	131,048	—	—	131,048	281,458	—	—	281,458
Corporate securities	253,936	15	(1,199)	252,752	92,395	6	(50)	92,351
Commercial paper	—	—	—	—	78,163	2	(2)	78,163
Total available-for-sale securities	$ 384,984	$ 15	$ (1,199)	$ 383,800	$ 452,016	$ 8	$ (52)	$ 451,972

In accordance with EITF 03-1, “The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments,” the following table summarizes the fair value and gross unrealized losses of the Company’s available-for-sale securities, aggregated by type of investment instrument and length of time that individual securities have been in a continuous unrealized loss position:

	As of September 28, 2008					
	Less than 12 Months		12 Months or Greater		Total	
(In thousands)	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses
Corporate securities	$ 45,112	$ (1,199)	$ —	$ —	$ 45,112	$ (1,199)

	As of December 30, 2007					
	Less than 12 Months		12 Months or Greater		Total	
(In thousands)	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses
Corporate securities	$ 25,536	$ (50)	$ —	$ —	$ 25,536	$ (50)
Commercial paper	24,002	(2)	—	—	24,002	(2)
	$ 49,538	$ (52)	$ —	$ —	$ 49,538	$ (52)

As of September 28, 2008 and December 30, 2007, the Company did not have any investments in available-for-sale securities that were in an unrealized loss position for 12 months or greater. Of the $1.2 million gross unrealized losses of the Company's corporate securities, $1.0 million resulted from the decline in the estimated fair value of auction rate securities primarily due to their lack of liquidity. The decline in fair value for the remaining corporate securities was primarily related to changes in interest rates. The Company has concluded that no other-than-temporary impairment losses occurred in the nine months ended September 28, 2008 in regards to the corporate securities because the lack of liquidity in the market for auction rate securities and changes in interest rates are considered temporary in nature for which the Company has recorded an unrealized loss within comprehensive income, a component of stockholders' equity. The Company has the ability and intent to hold these corporate securities until a recovery of fair value. In addition, the Company evaluated the near-term prospects of the corporate securities in relation to the severity and duration of the impairment. Based on that evaluation and the Company's ability and intent to hold these corporate securities for a reasonable period of time, the Company did not consider these investments to be other-than-temporarily impaired. If it is determined that the fair value of these corporate securities is other-than-temporarily impaired, the Company would record a loss in its Condensed Consolidated Statements of Operations in the future, which could be material.

The classification and contractual maturities of available-for-sale securities is as follows:

(In thousands)	September 28, 2008	December 30, 2007
Included in:		
Cash equivalents	$ 209,761	$ 249,582
Short-term restricted cash(1)	47,983	—
Short-term investments	38,982	105,453
Long-term restricted cash(1)	62,057	67,887
Long-term investments	25,017	29,050
	$ 383,800	$ 451,972
Contractual maturities:		
Due in less than one year	$ 296,804	$ 396,228
Due from one to two years (2)	2,423	4,994
Due from two to 30 years	84,573	50,750
	$ 383,800	$ 451,972

(1) The Company provided security in the form of cash collateralized bank standby letters of credit for advance payments received from customers.
(2) The Company classifies all available-for-sale securities that are intended to be available for use in current operations as short-term investments.

Assets Measured at Fair Value on a Nonrecurring Basis

The Company measures its nonpublicly traded investments at fair value on a nonrecurring basis, of which $5.0 million is accounted for using the cost method and $18.9 million is accounted under APB Opinion No. 18, "The Equity Method of Accounting for Investments in Common Stock" (see Note 8). These assets are recognized at fair value when they are deemed to be other-than-temporarily impaired. During the three and nine months ended September 28, 2008, the Company did not record any other-than-temporary impairments on those assets required to be measured at fair value on a nonrecurring basis.

Note 6. ***ADVANCES TO SUPPLIERS***

The Company has entered into agreements with various polysilicon, ingot, wafer, solar cells and solar module vendors and manufacturers. These agreements specify future quantities and pricing of products to be supplied by the vendors for periods up to 12 years. Certain agreements also provide for penalties or forfeiture of advanced deposits in the event the Company terminates the arrangements (see Note 8). Under certain of these agreements, the Company is required to make prepayments to the vendors over the terms of the arrangements. In the nine months ended September 28, 2008, the Company paid advances totaling $8.0 million in accordance with the terms of existing supply agreements. As of September 28, 2008, advances to suppliers totaled $144.8 million, the current portion of which is $60.1 million.

The Company's future prepayment obligations related to these agreements as of September 28, 2008 are as follows (in thousands):

2008 (remaining three months)	$ 50,490
2009	78,006
2010	59,642
2011	19,792
	$ 207,930

In October 2008, the Company paid advances of $44.9 million in accordance with the terms of existing supply agreements.

Note 7. ***STOCK-BASED COMPENSATION***

During the preparation of its condensed consolidated financial statements for the nine months ended September 28, 2008, the Company identified errors in its financial statements related to the year ended December 30, 2007, which resulted in $1.3 million overstatement of stock-based compensation expense. The Company corrected these errors in its condensed consolidated financial statements for the nine months ended September 28, 2008, which resulted in a $1.3 million credit to income before income taxes and net income. The out-of-period effect is not expected to be material to estimated full-year 2008 results, and, accordingly has been recognized in accordance with APB 28, Interim Financial Reporting, paragraph 29 as the error is not material to any financial statements of prior periods.

The following table summarizes the consolidated stock-based compensation expense by line items in the Condensed Consolidated Statements of Operations:

	Three Months Ended		Nine Months Ended	
(In thousands)	**September 28, 2008**	**September 30, 2007**	**September 28, 2008**	**September 30, 2007**
Cost of systems revenue	$ 2,911	$ 2,049	$ 7,661	$ 6,235
Cost of components revenue	1,964	1,539	6,057	2,801
Research and development	987	404	2,770	1,253
Sales, general and administrative	13,049	9,372	35,538	26,908
Total stock-based compensation expense	$ 18,911	$ 13,364	$ 52,026	$ 37,197

Consolidated net cash proceeds from the issuance of shares in connection with exercises of stock options under the Company's employee stock plans were $1.5 million and $3.8 million for the three and nine months ended September 28, 2008, respectively, and $1.9 million and $6.9 million for the three and nine months ended September 30, 2007, respectively. The Company recognized an income tax benefit from stock option exercises of $19.3 million and $33.9 million for the three and nine months ended September 28, 2008, respectively. No income tax benefit was realized from stock option exercises during the three and nine months ended September 30, 2007. As required, the Company presents excess tax benefits from the exercise of stock options, if any, as financing cash flows rather than operating cash flows.

The following table summarizes the consolidated stock-based compensation expense, by type of awards:

	Three Months Ended		Nine Months Ended	
(In thousands)	**September 28, 2008**	**September 30, 2007**	**September 28, 2008**	**September 30, 2007**
Stock options	$ 1,072	$ 4,183	$ 3,273	$ 13,776
Restricted stock awards and units	10,053	3,742	28,183	8,262
Shares and options released from re-vesting restrictions	7,627	5,305	21,260	15,333
Change in stock-based compensation capitalized in inventory	159	134	(690)	(174)
Total stock-based compensation expense	$ 18,911	$ 13,364	$ 52,026	$ 37,197

In connection with the acquisition of SP Systems on January 10, 2007, 1.1 million shares of the Company's class A common stock and 0.5 million stock options issued to employees of SP Systems, which were valued at $60.4 million, are subject to certain transfer restrictions and a repurchase option held by the Company. The Company is recognizing expense as the re-vesting restrictions of these shares lapse over the two-year period beginning on the date of acquisition. The value of shares released from such re-vesting restrictions is included in stock-based compensation expense in the table above.

The following table summarizes the unrecognized stock-based compensation cost by type of awards:

(In thousands, except years)	As of September 28, 2008	Weighted-Average Amortization Period (in years)
Stock options	$ 12,779	2.9
Restricted stock awards and units	103,485	2.8
Shares subject to re-vesting restrictions	7,795	0.3
Total unrecognized stock-based compensation cost	$ 124,059	

For stock options issued prior to the adoption of SFAS No. 123(revised 2004), "Share-Based Payment" ("SFAS No. 123(R)") and for certain performance based awards, the Company recognizes its stock-based compensation cost using the graded amortization method. For all other awards, stock-based compensation cost is recognized on a straight-line basis. Additionally, the Company issues new shares upon exercises of options by employees.

Valuation Assumptions

The determination of fair value of each stock option award on the date of grant using the Black-Scholes valuation model ("Black-Scholes model") is affected by the stock price as well as assumptions regarding a number of highly complex and subjective variables. These variables include, but are not limited to, expected stock price volatility over the term of the awards, and actual and projected employee stock option exercise behaviors. The following weighted average assumptions were used for the three and nine months ended September 28, 2008 and September 30, 2007:

	Three Months Ended*	Nine Months Ended	
	September 28, 2008	September 28, 2008	September 30, 2007
Expected term	6.5 years	6.5 years	6.5 years
Risk-free interest rate	3.48%	3.48%	4.60%
Volatility	60%	60%	90%
Dividend yield	0%	0%	0%

* No stock options were granted in the three months ended September 30, 2007.

Expected Term:

The Company continues to utilize the simplified method under the provisions of Staff Accounting Bulletin No. 110 ("SAB No. 110"), an amendment to Staff Accounting Bulletin No. 107 ("SAB No. 107"), for estimating expected term, instead of its historical exercise data. The Company elected not to base the expected term on historical data because of the significant difference in its status before and after the effective date of SFAS No. 123(R). The Company was a privately-held company until its IPO, and the only available liquidation event for option holders was Cypress's buyout of minority interests in November 2004. At all other times, optionees could not cash out on their vested options. From the time of the Company's IPO in November 2005 through May 2006 when lock-up restrictions expired, a majority of the optionees were unable to exercise and sell vested options.

Volatility:

In fiscal 2008, the Company computed the expected volatility for its equity awards based on its historical volatility from traded options and class A common stock. Prior to fiscal 2008, the Company computed the expected volatility for its equity awards based on historical volatility rates for a publicly-traded U.S.-based direct competitor. Because of the limited history of its stock trading publicly, the Company did not believe that its historical volatility would be representative of the expected volatility for its equity awards.

Risk-Free Interest Rate and Dividend Yield:

The interest rate is based on the U.S. Treasury yield curve in effect at the time of grant. Since the Company does not pay and does not expect to pay dividends, the expected dividend yield is zero.

Equity Incentive Programs

Second Amended and Restated 2005 SunPower Corporation Stock Incentive Plan:

In May 2008, the Company's stockholders approved an increase of 1.7 million shares and, beginning in fiscal 2009 through 2015, an automatic annual increase in the number of shares available for grant under the Company's Second Amended and Restated 2005 SunPower Corporation Stock Incentive Plan under which the Company may issue incentive or non-statutory stock options, restricted stock awards, restricted stock units, or stock appreciation rights to directors, employees and consultants. The automatic annual increase is equal to the lower of three percent of the outstanding shares of all classes of the Company's common stock measured on the last day of the immediately preceding fiscal quarter, 6.0 million shares, or such other number of shares as determined by the Company's board of directors. As of September 28, 2008, approximately 1.4 million shares were available for grant under the Company's Second Amended and Restated 2005 SunPower Corporation Stock Incentive Plan.

The majority of shares issued are net of the minimum statutory withholding requirements that the Company pays on behalf of its employees. During the three and nine months ended September 28, 2008, the Company withheld approximately 15,000 shares and 67,000 shares, respectively, to satisfy $1.7 million and $5.9 million, respectively, of employees' tax obligations. The Company paid this amount in cash to the appropriate taxing authorities. Shares withheld are treated as common stock repurchases for accounting and disclosure purposes and reduce the number of shares outstanding upon vesting.

The following table summarizes the Company's stock option activities:

	Shares (in thousands)	Weighted-Average Exercise Price Per Share
Outstanding as of December 30, 2007	3,701	$ 5.44
Granted	100	62.82
Exercised	(1,030)	4.52
Forfeited	(159)	3.67
Outstanding as of September 28, 2008	2,612	8.39
Exercisable as of September 28, 2008	1,342	

The following table summarizes the Company's non-vested stock options and restricted stock activities thereafter:

	Stock Options		Restricted Stock Awards and Units	
	Shares (in thousands)	Weighted-Average Exercise Price Per Share	Shares (in thousands)	Weighted-Average Grant Date Fair Value Per Share
Outstanding as of December 30, 2007	2,454	$ 6.29	1,174	$ 68.74
Granted	100	62.82	742	78.42
Vested(1)	(1,125)	4.08	(255)	77.99
Forfeited	(159)	4.52	(58)	79.29
Outstanding as of September 28, 2008	1,270	12.92	1,603	75.51

(1) Restricted stock awards and units vested include shares withheld on behalf of employees to satisfy the minimum statutory tax withholding requirements.

Information regarding the Company's outstanding stock options as of September 28, 2008 follows:

	Options Outstanding				Options Exercisable			
Range of Exercise Price	Shares (in thousands)	Weighted-Average Remaining Contractual Life (in years)	Weighted-Average Exercise Price per Share	Aggregate Intrinsic Value (in thousands)	Shares (in thousands)	Weighted-Average Remaining Contractual Life (in years)	Weighted-Average Exercise Price per Share	Aggregate Intrinsic Value (in thousands)
$ 0.04—1.77	498	3.74	$ 0.51	$ 41,164	361	3.99	$ 0.52	$ 29,800
2.00—7.00	1,565	6.21	3.67	124,418	865	6.20	3.50	68,930
9.50—17.00	149	7.06	10.19	10,864	59	7.06	10.22	4,298
17.46—43.01	283	7.75	25.33	16,375	53	7.67	27.74	2,955
44.50—67.93	117	9.60	61.89	2,476	3	8.61	56.20	86
	2,612			$ 195,297	1,341			$ 106,069

The aggregate intrinsic value in the preceding table represents the total pre-tax intrinsic value, based on the Company's closing stock price of $83.16 at September 28, 2008, which would have been received by the option holders had all option holders exercised their options as of that date. The total number of in-the-money options exercisable was 1.3 million shares as of September 28, 2008.

Stock Unit Plan:

As of September 28, 2008, the Company has granted approximately 236,000 stock units to 2,200 employees in the Philippines at an average unit price of $39.80 in relation to its 2005 Stock Unit Plan, under which participants are awarded the right to receive cash payments from the Company in an amount equal to the appreciation in the Company's common stock between the award date and the date the employee redeems the award. A maximum of 300,000 stock units may be subject to stock unit awards granted under the 2005 Stock Unit Plan. Pursuant to a voluntary exchange offer that concluded in November 2007, approximately 53,000 stock units were exchanged for approximately 32,000 restricted stock units issued under the Company's Second Amended and Restated 2005 SunPower Corporation Stock Incentive Plan. The Company conducted a second voluntary exchange offer that concluded in May 2008, in which approximately 109,000 stock units were exchanged for approximately 50,000 restricted stock units issued under the Company's Second Amended and Restated 2005 SunPower Corporation Stock Incentive Plan. In both the three and nine months ended September 28, 2008, total compensation expense associated with the 2005 Stock Unit Plan was $0.1 million as compared to $0.7 million and $1.5 million in the three and nine months ended September 30, 2007, respectively.

Note 8. ***COMMITMENTS AND CONTINGENCIES***

Operating Lease Commitments

The Company leases its San Jose, California facility under a non-cancelable operating lease from Cypress, which expires in April 2011 (see Note 2). The lease requires the Company to pay property taxes, insurance and certain other costs. In addition, the Company leases its Richmond, California facility under a non-cancelable operating lease from an unaffiliated third party, which expires in September 2018. In December 2005, the Company entered into a 5-year operating lease from an unaffiliated third party for a solar panel assembly facility in the Philippines. The Company also has various lease arrangements, including its European headquarters located in Geneva, Switzerland under a lease that expires in September 2012, as well as sales and support offices in Southern California, New Jersey, Australia, Canada, Germany, Italy, Spain and South Korea, all of which are leased from unaffiliated third parties. Future minimum obligations under all non-cancelable operating leases as of September 28, 2008 are as follows (in thousands):

2008 (remaining three months)	$ 1,316
2009	5,457
2010	5,147
2011	3,861
2012	3,123
Thereafter	24,632
	$ 43,536

Rent expense, including the rent paid to Cypress for the San Jose, California facility and the solar cell manufacturing facility in the Philippines (see Note 2), was $1.9 million and $5.4 million for the three and nine months ended September 28, 2008, respectively, and $0.8 million and $2.2 million for the three and nine months ended September 30, 2007, respectively.

Purchase Commitments

The Company purchases raw materials for inventory, services and manufacturing equipment from a variety of vendors. During the normal course of business, in order to manage manufacturing lead times and help assure adequate supply, the Company enters into agreements with contract manufacturers and suppliers that either allow them to procure goods and services based upon specifications defined by the Company, or that establish parameters defining the Company's requirements. In certain instances, these agreements allow the Company the option to cancel, reschedule or adjust the Company's requirements based on its business needs prior to firm orders being placed. Consequently, only a portion of the Company's recorded purchase commitments arising from these agreements are firm, non-cancelable and unconditional commitments.

The Company also has agreements with several suppliers, including joint ventures, for the procurement of polysilicon, ingots, wafers, solar cells and solar panels which specify future quantities and pricing of products to be supplied by the vendors for periods up to 12 years and provide for certain consequences, such as forfeiture of advanced deposits and liquidated damages relating to previous purchases, in the event that the Company terminates the arrangements (see Note 6).

At September 28, 2008, total obligations related to non-cancelable purchase orders totaled approximately $134.6 million and long-term supplier agreements totaled approximately $3.4 billion. In addition, the Company has entered into agreements to purchase solar renewable energy certificates ("SRECs") from solar installation owners in New Jersey. The Company primarily sells SRECs to entities that must either retire a certain volume of SRECs each year or face much higher alternative compliance payments. At September 28, 2008, total obligations related to future purchases of SRECs were $2.4 million.

Future purchase obligations under non-cancelable purchase orders, long-term supplier agreements and SRECs as of September 28, 2008 are as follows (in thousands):

2008 (remaining three months)	$ 206,130
2009	421,779
2010	523,075
2011	531,600
2012	335,237
Thereafter	1,526,705
	$ 3,544,526

Total future purchase commitments of $3.5 billion as of September 28, 2008 include tolling agreements with suppliers in which the Company provides polysilicon required for silicon ingot manufacturing and procures the manufactured silicon ingots from the supplier. Annual future purchase commitments in the table above are calculated using the gross price paid by the Company for silicon ingots and are not reduced by the price paid by suppliers for polysilicon. Total future purchase commitments as of September 28, 2008 would be reduced by $636.7 million had the Company's obligations under such tolling agreements been disclosed using net cash outflows.

Joint Ventures

Woongjin Energy Co., Ltd ("Woongjin Energy")

In the third quarter of fiscal 2006, the Company entered into an agreement with Woongjin Coway Co., Ltd. ("Woongjin"), a provider of environmental products located in Korea, to form Woongjin Energy, a joint venture to manufacture monocrystalline silicon ingots. Under the joint venture, the Company and Woongjin have funded the joint venture through capital investments. In addition, Woongjin Energy obtained a $33.0 million loan originally guaranteed by Woongjin. The Company supplies polysilicon and technology required for the silicon ingot manufacturing to the joint venture, and the Company procures the manufactured silicon ingots from the joint venture under a five-year agreement. Woongjin Energy began manufacturing in the third quarter of fiscal 2007. For the three and nine months ended September 28, 2008, the Company paid $21.7 million and $36.7 million, respectively, to Woongjin Energy for manufacturing silicon ingots. As of September 28, 2008 and December 30, 2007, $3.7 million and $2.4 million, respectively, remained due and payable to Woongjin Energy.

In October 2007, the Company entered into an agreement with Woongjin and Woongjin Holdings Co., Ltd. ("Woongjin Holdings"), whereby Woongjin transferred its equity investment held in Woongjin Energy to Woongjin Holdings and Woongjin Holdings assumed all rights and obligations formerly owned by Woongjin under the joint venture agreement described above, including the $33.0 million loan guarantee. In January 2008, the Company and Woongjin Holdings provided Woongjin Energy with additional funding through capital investments in which the Company invested an additional $5.4 million in the joint venture.

As of September 28, 2008, the Company had a $13.9 million investment in the joint venture on its Condensed Consolidated Balance Sheets which consisted of a 40.0% equity investment. As of December 30, 2007, the Company had a $4.4 million investment in the joint venture on its Condensed Consolidated Balance Sheets which consisted of a 19.9% equity investment valued at $1.1 million and a $3.3 million convertible note that is convertible at the Company's option into an additional 20.1% equity ownership in the joint venture. The Company exercised the option and converted the notes into equity in September 2008. The Company accounts for this investment in Woongjin Energy using the equity method of accounting, in which the entire investment is classified as "Other long-term assets" in the Condensed Consolidated Balance Sheets and the Company's share of Woongjin Energy's income totaling $2.2 million and $4.1 million for the three and nine months ended September 28, 2008, respectively, and share of Woongjin Energy's losses totaling $0.2 million in both the three and nine months ended September 30, 2007, is included in "Other, net" in the Condensed Consolidated Statements of Operations. Neither party has contractual obligations to provide any additional funding to the joint venture.

In the nine months ended September 28, 2008, the Company conducted other related-party transactions with Woongjin Energy. For the three and nine months ended September 28, 2008, the Company recognized $4.1 million and $4.8 million, respectively, in components revenue related to the sale of solar modules. As of September 28, 2008 and December 30, 2007, zero and $3.2 million, respectively, remained due and receivable from Woongjin Energy related to the sale of solar modules.

First Philec Solar Corporation ("First Philec Solar")

In October 2007, the Company entered into an agreement with First Philippine Electric Corporation ("First Philec") to form First Philec Solar, a joint venture to provide wafer slicing services of silicon ingots to the Company. The Company and First Philec have funded the joint venture through capital investments. The Company supplies to the joint venture silicon ingots and technology required for the slicing of silicon, and the Company procures the silicon wafers from the joint venture under a five-year wafering supply and sales agreement. This joint venture is located in the Philippines and became operational in the second quarter of fiscal 2008. As of September 28, 2008, $4.4 million remained due and payable to First Philec Solar.

As of September 28, 2008, the Company had a $5.0 million investment in the joint venture on its Condensed Consolidated Balance Sheets which consisted of a 19.0% equity investment. As of December 30, 2007, the Company had a $0.9 million investment in the joint venture on its Condensed Consolidated Balance Sheets which consisted of a 16.9% equity investment. The Company accounts for this investment using the equity method of accounting, in which the entire investment is classified as "Other long-term assets" in the Condensed Consolidated Balance Sheets and the Company's share of First Philec Solar's losses totaling $0.1 million in both the three and nine months ended September 28, 2008, is included in "Other, net" in the Condensed Consolidated Statements of Operations.

The Company periodically evaluates the qualitative and quantitative attributes of the joint ventures to determine whether the joint ventures need to be consolidated into the Company's financial statements in accordance with FSP FASB Interpretation No. 46 "Consolidation of Variable Interest Entities" ("FSP FIN 46(R)").

NorSun AS ("NorSun")

In January 2008, the Company entered into an Option Agreement with NorSun pursuant to which the Company will deliver cash advance payments to NorSun for the purchase of polysilicon under a long-term polysilicon supply agreement with NorSun, which NorSun will use to partly fund its portion of the equity investment in the joint venture with Swicorp Joussour Company and Chemical Development Company for the construction of a new polysilicon manufacturing facility in Saudi Arabia. The Company deposited funds in an escrow account to secure NorSun's right to such advance payments. NorSun will initially hold a fifty percent equity interest in the joint venture. Under the terms of the Option Agreement, the Company may exercise a call option and apply the advance payments to purchase half, subject to certain adjustments, of NorSun's fifty percent equity interest in the joint venture. The Company may exercise its option at any time until six months following the commercial operation of the Saudi Arabian polysilicon manufacturing facility. The Option Agreement also provides NorSun an option to put half, subject to certain adjustments, of its fifty percent equity interest in the joint venture to the Company. NorSun's option is exercisable commencing July 1, 2009 through six months following commercial operation of the polysilicon manufacturing facility. The Company accounts for the put and call options as one instrument, which are measured at fair value at each reporting period. The changes in the fair value of the combined option are recorded as other income in the Condensed Consolidated Statements of Operations. The fair value of the combined option at September 28, 2008 was not material.

Product Warranties

The Company warrants or guarantees the performance of the solar panels that the Company manufactures at certain levels of power output for extended periods, usually 25 years. It also warrants that the solar cells will be free from defects for at least ten years. In addition, it passes through to customers long-term warranties from the original equipment manufacturers of certain system components. Warranties of 20 to 25 years from solar panel suppliers are standard, while inverters typically carry two-, five- or ten-year warranties. The Company maintains warranty reserves to cover potential liabilities that could result from these guarantees. The Company's potential liability is generally in the form of product replacement or repair. Warranty reserves are based on the Company's best estimate of such liabilities and are recognized as a cost of revenue. The Company continuously monitors product returns for warranty failures and maintains a reserve for the related warranty expenses based on historical experience of similar products as well as various other assumptions that are considered reasonable under the circumstances.

The Company generally warrants or guarantees systems installed for a period of five to ten years. The Company's estimated warranty cost for each project is accrued and the related costs are charged against the warranty accrual when incurred. It is not possible to predict the maximum potential amount of future warranty-related expenses under these or similar contracts due to the conditional nature of the Company's obligations and the unique facts and circumstances involved in each particular contract. Historically, warranty costs related to contracts have been within the range of management's expectations.

Provisions for warranty reserves charged to cost of revenue were $4.2 million and $14.0 million for the three and nine months ended September 28, 2008, respectively, and $1.4 million and $7.0 million during the three and nine months ended September 30, 2007, respectively. Activity within accrued warranty for the three and nine months ended September 28, 2008 and September 30, 2007 is summarized as follows:

	Three Months Ended		Nine Months Ended	
(In thousands)	September 28, 2008	September 30, 2007	September 28, 2008	September 30, 2007
Balance at the beginning of the period	$ 22,521	$ 14,314	$ 17,194	$ 3,446
SP Systems accrued balance at date of acquisition	—	—	—	6,542
Accruals for warranties issued during the period	4,163	1,373	14,003	6,961
Warranty claims made during the period	(2,920)	(776)	(7,433)	(2,038)
Balance at the end of the period	$ 23,764	$ 14,911	$ 23,764	$ 14,911

The accrued warranty balance at September 28, 2008 and December 30, 2007 includes $8.4 million and $6.7 million, respectively, of accrued costs primarily related to servicing the Company's obligations under long-term maintenance contracts entered into under the systems segment and the balance is included in "Other long-term liabilities" in the Condensed Consolidated Balance Sheets.

FIN 48 Uncertain Tax Positions

As of September 28, 2008 and December 30, 2007, total liabilities associated with FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes, and Related Implementation Issues," ("FIN 48"), uncertain tax positions were $7.0 million and $4.1 million, respectively, and are included in "Other long-term liabilities" on its Condensed Consolidated Balance Sheets at September 28, 2008 and December 30, 2007, respectively, as they are not expected to be paid within the next twelve months. Due to the complexity and uncertainty associated with its tax positions, the Company cannot make a reasonably reliable estimate of the period in which cash settlement will be made for its liabilities associated with uncertain tax positions in "Other long-term liabilities."

Royalty Obligations

As of January 10, 2007, the Company assumed certain royalty obligations related to existing agreements entered into by PowerLight before the date of acquisition. In September 2002, PowerLight entered into a Technology Assignment and Services Agreement and other ancillary agreements, subsequently amended in December 2005, with Jefferson Shingleton and MaxTracker Services, LLC, a New York limited liability company controlled by Mr. Shingleton. Under the agreements, the PowerTracker®, now referred to as SunPower™ Tracker, was acquired through an assignment and acquisition of the patents associated with the product from Mr. Shingleton and the Company is obligated to pay Mr. Shingleton royalties on the tracker systems that it sells. In addition, several of the systems segment's government awards require the Company to pay royalties based on specified formulas related to sales of products developed or enhanced from such government awards. The Company incurred royalty expense totaling $0.3 million and $1.3 million for the three and nine months ended September 28, 2008, respectively, and $0.6 million and $1.9 million during the three and nine months ended September 30, 2007, respectively, which were charged to cost of systems revenue. As of September 28, 2008 and December 30, 2007, the Company's royalty liabilities totaled $0.3 million.

Indemnifications

The Company is a party to a variety of agreements pursuant to which it may be obligated to indemnify the other party with respect to certain matters. Typically, these obligations arise in connection with contracts and license agreements or the sale of assets, under which the Company customarily agrees to hold the other party harmless against losses arising from a breach of warranties, representations and covenants related to such matters as title to assets sold, negligent acts, damage to property, validity of certain intellectual property rights, non-infringement of third-party rights and certain tax related matters. In each of these circumstances, payment by the Company is typically subject to the other party making a claim to the Company pursuant to the procedures specified in the particular contract. These procedures usually allow the Company to challenge the other party's claims or, in case of breach of intellectual property representations or covenants, to control the defense or settlement of any third-party claims brought against the other party. Further, the Company's obligations under these agreements may be limited in terms of activity (typically to replace or correct the products or terminate the agreement with a refund to the other party), duration and/or amounts. In some instances, the Company may have recourse against third parties and/or insurance covering certain payments made by the Company.

Legal Matters

From time to time the Company is a party to litigation matters and claims that are normal in the course of its operations. While the Company believes that the ultimate outcome of these matters will not have a material adverse effect on the Company, negative outcomes may adversely affect the Company's financial position, liquidity or results of operations.

Note 9. ***LINE OF CREDIT***

In July 2007, the Company entered into a credit agreement with Wells Fargo and has entered into amendments to the credit agreement from time to time. As of September 28, 2008, the credit agreement provides for a $50.0 million unsecured revolving credit line, with a $50.0 million unsecured letter of credit subfeature, and a separate $150.0 million secured letter of credit facility. The Company may borrow up to $50.0 million and request that Wells Fargo issue up to $50.0 million in letters of credit under the unsecured letter of credit subfeature through April 4, 2009. Letters of credit issued under the subfeature reduce the Company's borrowing capacity under the revolving credit line. The Company may request that Wells Fargo issue up to $150.0 million in letters of credit under the secured letter of credit facility through July 31, 2012. As detailed in the agreement, the Company will pay interest on outstanding borrowings and a fee for outstanding letters of credit. At any time, the Company can prepay outstanding loans. All borrowings must be repaid by April 4, 2009, and all letters of credit issued under the unsecured letter of credit subfeature expire on or before April 4, 2009 unless the Company provides by such date collateral in the form of cash or cash equivalents in the aggregate amount available to be drawn under letters of credit outstanding at such time. All letters of credit issued under the secured letter of credit facility expire no later than July 31, 2012. The Company concurrently entered into a security agreement with Wells Fargo, granting a security interest in a securities account and deposit account to secure its obligations in connection with any letters of credit that might be issued under the credit agreement. In connection with the credit agreement, SunPower North America, Inc., a wholly-owned subsidiary of the Company, SP Systems, an indirect wholly-owned subsidiary of the Company, and SunPower Systems SA, another indirect wholly-owned subsidiary of the Company, entered into an associated continuing guaranty with Wells Fargo. The terms of the credit agreement include certain conditions to borrowings, representations and covenants, and events of default customary for financing transactions of this type.

As of September 28, 2008 and December 30, 2007, nine letters of credit totaling $47.1 million and four letters of credit totaling $32.0 million, respectively, were issued by Wells Fargo under the unsecured letter of credit subfeature. In addition, 23 letters of credit totaling $68.7 million and 8 letters of credit totaling $47.9 million were issued by Wells Fargo under the secured letter of credit facility as of September 28, 2008 and December 30, 2007, respectively. On September 28, 2008 and December 30, 2007, cash available to be borrowed under the unsecured revolving credit line was $2.9 million and $18.0 million, respectively, and includes letter of credit capacities available to be issued by Wells Fargo under the unsecured letter of credit subfeature of $2.9 million and $8.0 million, respectively. Letters of credit available under the secured letter of credit facility at September 28, 2008 and December 30, 2007 totaled $81.3 million and $2.1 million, respectively.

Note 10. ***SENIOR CONVERTIBLE DEBENTURES AND SHARE LENDING ARRANGEMENTS***

February 2007 and July 2007 Debt Issuance

In February 2007, the Company issued $200.0 million in principal amount of its 1.25% senior convertible debentures. Interest on the February 2007 debentures is payable on February 15 and August 15 of each year, commencing August 15, 2007. The February 2007 debentures will mature on February 15, 2027. Holders may require the Company to repurchase all or a portion of their February 2007 debentures on each of February 15, 2012, February 15, 2017 and February 15, 2022, or if the Company experiences certain types of corporate transactions constituting a fundamental change. In addition, the Company may redeem some or all of the February 2007 debentures on or after February 15, 2012. The February 2007 debentures are initially convertible, subject to certain conditions, into cash up to the lesser of the principal amount or the conversion value. If the conversion value is greater than $1,000, then the excess conversion value will be convertible into common stock. The initial effective conversion price of the February 2007 debentures is approximately $56.75 per share, which represented a premium of 27.5% to the closing price of the Company's common stock on the date of issuance. The applicable conversion rate will be subject to customary adjustments in certain circumstances.

In July 2007, the Company issued $225.0 million in principal amount of its 0.75% senior convertible debentures. Interest on the July 2007 debentures is payable on February 1 and August 1 of each year, commencing February 1, 2008. The July 2007 debentures will mature on August 1, 2027. Holders may require the Company to repurchase all or a portion of their July 2007 debentures on each of August 1, 2010, August 1, 2015, August 1, 2020, and August 1, 2025, or if the Company is involved in certain types of corporate transactions constituting a fundamental change. In addition, the Company may redeem some or all of the July 2007 debentures on or after August 1, 2010. The July 2007 debentures are initially convertible, subject to certain conditions, into cash up to the lesser of the principal amount or the conversion value. If the conversion value is greater than $1,000, then the excess conversion value will be convertible into cash, common stock or a combination of cash and common stock, at the Company's election. The initial effective conversion price of the February 2007 debentures is approximately $82.24 per share, which represented a premium of 27.5% to the closing price of the Company's common stock on the date of issuance. The applicable conversion rate will be subject to customary adjustments in certain circumstances.

The February 2007 debentures and July 2007 debentures are senior, unsecured obligations of the Company, ranking equally with all existing and future senior unsecured indebtedness of the Company. The February 2007 debentures and July 2007 debentures are effectively subordinated to the Company's secured indebtedness to the extent of the value of the related collateral and structurally subordinated to indebtedness and other liabilities of the Company's subsidiaries. The February 2007 debentures and July 2007 debentures do not contain any covenants or sinking fund requirements.

For the year ended December 30, 2007, the closing price of the Company's class A common stock equaled or exceeded 125% of the $56.75 per share initial effective conversion price governing the February 2007 debentures and the closing price of the Company's class A common stock equaled or exceeded 125% of the $82.24 per share initial effective conversion price governing the July 2007 debentures, for 20 out of 30 consecutive trading days ending on December 30, 2007, thus satisfying the market price conversion trigger pursuant to the terms of the debentures. As of the first trading day of the first quarter in fiscal 2008, holders of the February 2007 debentures and July 2007 debentures were able to exercise their right to convert the debentures any day in that fiscal quarter. Therefore, since holders of the February 2007 debentures and July 2007 debentures were able to exercise their right to convert the debentures in the first quarter of fiscal 2008, the Company classified the $425.0 million in aggregate convertible debt as short-term debt in its Condensed Consolidated Balance Sheets as of December 30, 2007. In addition, the Company wrote off $8.2 million and $1.0 million of unamortized debt issuance costs in the fourth fiscal quarter of 2007 and first fiscal quarter of 2008, respectively. No holders of the February 2007 debentures and July 2007 debentures exercised their right to convert the debentures in the first quarter of fiscal 2008.

For the quarter ended September 28, 2008, the closing price of the Company's class A common stock equaled or exceeded 125% of the $56.75 per share initial effective conversion price governing the February 2007 debentures for 20 out of 30 consecutive trading days ending on September 28, 2008, thus satisfying the market price conversion trigger pursuant to the terms of the February 2007 debentures. As of the first trading day of the fourth quarter in fiscal 2008, holders of the February 2007 debentures are able to exercise their right to convert the debentures any day in that fiscal quarter. Therefore, since holders of the February 2007 debentures are able to exercise their right to convert the debentures in the fourth quarter of fiscal 2008, the Company classified the $200.0 million in aggregate convertible debt as short-term debt in its Condensed Consolidated Balance Sheets as of September 28, 2008. As of October 31, 2008, the Company has received notices for the conversion of approximately $1.4 million of the February 2007 debentures which the Company has settled for approximately $1.2 million in cash and 1,000 shares of class A common stock. If the full $200.0 million in aggregate convertible debt was called for conversion prior to December 28, 2008, the Company would likely not have sufficient unrestricted cash and cash equivalents on hand to satisfy the conversion without additional liquidity. If necessary, the Company may seek to restructure its obligations under the convertible debt, or raise additional cash through sales of investments, assets or common stock, or from borrowings. However, there can be no assurance that the Company would be successful in these efforts in the current market conditions.

Because the closing stock price did not equal or exceed 125% of the initial effective conversion price governing the July 2007 debentures for 20 out of 30 consecutive trading days during the quarter ended September 28, 2008, holders of the debentures did not have the right to convert the debentures, based on the market price conversion trigger, any day in the fourth fiscal quarter beginning on September 29, 2008. Accordingly, the Company classified the $225.0 million in aggregate convertible debt as long-term debt in its Condensed Consolidated Balance Sheets as of September 28, 2008. This test is repeated each fiscal quarter, therefore, if the market price conversion trigger is satisfied in a subsequent quarter, the debentures may again be re-classified as short-term debt.

The following table summarizes the Company's outstanding convertible debt:

	As of			
	September 28, 2008		December 30, 2007	
(In thousands)	Carrying Value	Fair Value*	Carrying Value	Fair Value*
February 2007 debentures	$ 200,000	$ 334,706	$ 200,000	$ 465,576
July 2007 debentures	225,000	290,399	225,000	366,316
Total convertible debt	$ 425,000	$ 625,105	$ 425,000	$ 831,892

* The fair value of the convertible debt was determined based on quoted market prices as reported by Bloomberg.

As of October 31, 2008, the estimated fair value of the February 2007 debentures and July 2007 debentures was approximately $152.2 million and $139.3 million, respectively.

February 2007 Amended and Restated Share Lending Arrangement and July 2007 Share Lending Arrangement

Concurrent with the offering of the February 2007 debentures, the Company lent approximately 2.9 million shares of its class A common stock to LBIE, an affiliate of Lehman Brothers, one of the underwriters of the February 2007 debentures. Concurrent with the offering of the July 2007 debentures, the Company also lent approximately 1.8 million shares of its class A common stock to CSI, an affiliate of Credit Suisse, one of the underwriters of the July 2007 debentures. The loaned shares are to be used to facilitate the establishment by investors in the February 2007 debentures and July 2007 debentures of hedged positions in the Company's class A common stock. Under the share lending agreement, LBIE had the ability to offer the shares that remain in LBIE's possession to facilitate hedging arrangements for subsequent purchasers of both the February 2007 debentures and July 2007 debentures and, with the Company's consent, purchasers of securities the Company may issue in the future. The Company did not receive any proceeds from these offerings of class A common stock, but received a nominal lending fee of $0.001 per share for each share of common stock that is loaned pursuant to the share lending agreements described below.

Share loans under the share lending agreement terminate and the borrowed shares must be returned to the Company under the following circumstances: (i) LBIE and CSI may terminate all or any portion of a loan at any time; (ii) the Company may terminate any or all of the outstanding loans upon a default by LBIE and CSI under the share lending agreement, including a breach by LBIE and CSI of any of its representations and warranties, covenants or agreements under the share lending agreement, or the bankruptcy or administrative proceeding of LBIE and CSI; or (iii) if the Company enters into a merger or similar business combination transaction with an unaffiliated third party (as defined in the agreement). In addition, CSI has agreed to return to the Company any borrowed shares in its possession on the date anticipated to be five business days before the closing of certain merger or similar business combinations described in the share lending agreement. Except in limited circumstances, any such shares returned to the Company cannot be re-borrowed.

Any shares loaned to LBIE and CSI are considered issued and outstanding for corporate law purposes and, accordingly, the holders of the borrowed shares have all of the rights of a holder of the Company's outstanding shares, including the right to vote the shares on all matters submitted to a vote of the Company's stockholders and the right to receive any dividends or other distributions that the Company may pay or make on its outstanding shares of class A common stock. The shares are listed for trading on The Nasdaq Global Select Market.

While the share lending agreement does not require cash payment upon return of the shares, physical settlement is required (i.e., the loaned shares must be returned at the end of the arrangement). In view of this share return provision and other contractual undertakings of LBIE and CSI in the share lending agreement, which have the effect of substantially eliminating the economic dilution that otherwise would result from the issuance of the borrowed shares, historically the loaned shares were not considered issued and outstanding for the purpose of computing and reporting the Company's basic and diluted weighted average shares or earnings per share. However, on September 15, 2008, Lehman filed a petition for protection under Chapter 11 of the U.S. bankruptcy code, and LBIE commenced administration proceedings (analogous to bankruptcy) in the United Kingdom. After reviewing the circumstances of the Lehman bankruptcy and LBIE administration proceedings, the Company has determined that it will record the shares lent to LBIE as issued and outstanding starting on September 15, 2008, the date on which LBIE commenced administration proceedings, for the purpose of computing and reporting the Company's basic and diluted weighted average shares and earnings per share.

The shares lent to CSI will continue to be excluded for the purpose of computing and reporting the Company's basic and diluted weighted average shares or earnings per share. If Credit Suisse or its affiliates, including CSI, were to file bankruptcy or commence similar administrative, liquidating, restructuring or other proceedings, the Company may have to consider approximately 1.8 million shares lent to CSI as issued and outstanding for purposes of calculating earnings per share.

Note 11. *COMPREHENSIVE INCOME*

Comprehensive income is defined as the change in equity of a business enterprise during a period from transactions and other events and circumstances from non-owner sources. Comprehensive income includes unrealized gains and losses on the Company's available-for-sale investments, foreign currency derivatives designated as cash flow hedges and cumulative translation adjustments. The components of comprehensive income, net of tax, were as follows:

(In thousands)	Three Months Ended September 28, 2008	Three Months Ended September 30, 2007	Nine Months Ended September 28, 2008	Nine Months Ended September 30, 2007
Net income	$ 21,379	$ 8,431	$ 62,744	$ 4,326
Other comprehensive income:				
Cumulative translation adjustment	(16,570)	3,498	(4,241)	5,395
Unrealized gain (loss) on investments, net of tax	(138)	11	(1,140)	15
Unrealized gain (loss) on derivatives, net of tax	435	(1,873)	4,030	(1,073)
Total comprehensive income	$ 5,106	$ 10,067	$ 61,393	$ 8,663

Note 12. ***FOREIGN CURRENCY DERIVATIVES***

The Company has non-U.S. subsidiaries that operate and sell the Company's products in various global markets, primarily in Europe. As a result, the Company is exposed to risks associated with changes in foreign currency exchange rates. It is the Company's policy to use various hedge instruments to manage the exposures associated with purchases of foreign sourced equipment, net asset or liability positions of its subsidiaries and forecasted revenues and expenses. The counterparties to these hedging transactions are creditworthy multinational banks and the risk of counterparty nonperformance associated with these contracts is not expected to be material. In connection with its global tax planning the Company recently changed the functional currency of certain European subsidiaries from U.S. dollar to Euro, resulting in greater exposure to changes in the value of the Euro. Implementation of this tax strategy had, and will continue to have, the ancillary effect of limiting the Company's ability to fully hedge certain Euro-denominated revenue. The Company currently does not enter into foreign currency derivative financial instruments for speculative or trading purposes.

Under SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities" ("SFAS No. 133"), the Company is required to recognize all derivative instruments as either assets or liabilities at fair value in the Condensed Consolidated Balance Sheets. The Company calculates the fair value of its forward contracts based on market volatilities, spot rates and interest differentials from published sources. The following table presents information about the Company's hedge instruments measured at fair value on a recurring basis as of September 28, 2008 and indicates the fair value hierarchy of the valuation techniques utilized by the Company to determine such fair value in accordance with the provisions of SFAS No. 157 (in thousands):

(In thousands)	Balance Sheet Location	Significant Other Observable Inputs (Level 2)
Asset		
Foreign currency forward exchange contracts	Prepaid expenses and other current assets	$ 2,201
Liability		
Foreign currency forward exchange contracts	Accrued liabilities	$ 170

Cash Flow Hedges

In accordance with SFAS No. 133, the Company accounts for its hedges of forecasted foreign currency revenue and cost of revenue as cash flow hedges. Changes in fair value of the effective portion of hedge contracts are recorded in accumulated other comprehensive income in stockholders' equity in the Condensed Consolidated Balance Sheets. Amounts deferred in accumulated other comprehensive income are reclassified to other, net in the Condensed Consolidated Statements of Operations in the periods in which the hedged exposure impacts earnings. At September 28, 2008, the Company had zero outstanding cash flow hedge forward contracts. At December 30, 2007, the Company had outstanding cash flow hedge forward contracts with an aggregate notional value of $140.1 million and the effective portion of unrealized losses recorded in accumulated other comprehensive income, net of tax, were losses of $3.9 million. In the second quarter of fiscal 2008, the Company discontinued a portion of an existing cash flow hedge of foreign currency revenue when it determined it was probable that the original forecasted transaction would not occur by the end of the originally specified time period. The amount of derivative loss, $0.8 million, was reclassified from accumulated other comprehensive income to other, net in the Condensed Consolidated Statements of Operations as a result of the discontinuance of the cash flow hedge.

Cash flow hedges are tested for effectiveness each period on a spot to spot basis using the dollar-offset method. Both the excluded time value and any ineffectiveness, which were not significant for all periods, are recorded in other, net.

Other Derivatives

Other derivatives not designated as hedging instruments under SFAS No. 133 consist of forward contracts used to hedge the net balance sheet effect of foreign currency denominated assets and liabilities primarily for intercompany transactions, receivables from customers, prepayments to suppliers and advances received from customers. The Company records its hedges of foreign currency denominated monetary assets and liabilities at fair value with the related gains or losses recorded in other, net. The gains or losses on these contracts are substantially offset by transaction gains or losses on the underlying balances being hedged. As of September 28, 2008 and December 30, 2007, the Company held forward contracts with an aggregate notional value of $50.3 million and $62.7 million, respectively, to hedge the risks associated with foreign currency denominated assets and liabilities.

Note 13. ***INCOME TAXES***

The Company's effective rate of income tax provision was 58% and 44% for the three and nine months ended September 28, 2008, respectively, and the effective rate of income tax provision (benefit) was 14% and (205%) for the three and nine months ended September 30, 2007, respectively. The tax provision for the three and nine months ended September 28, 2008 was primarily attributable to the consumption of non-stock net operating loss carryforwards, net of foreign income taxes in profitable jurisdictions where the tax rates are less than the U.S. statutory rate, and the spin-off from Cypress. The tax provision (benefit) for the three and nine months ended September 30, 2007 was primarily the result of recognition of deferred tax assets to the extent of deferred tax liabilities created by the acquisition of SP Systems, net of foreign income taxes in profitable jurisdictions where the tax rates are less than the U.S. statutory rate.

Unrecognized Tax Benefits

On January 1, 2007, the Company adopted the provisions for FIN 48, which is an interpretation of SFAS No. 109, "Accounting for Income Taxes" ("SFAS No. 109"). FIN 48 prescribes a recognition threshold that a tax position is required to meet before being recognized in the financial statements and provides guidance on de-recognition, measurement, classification, interest and penalties, accounting in interim periods, disclosure and transition issues. FIN 48 contains a two-step approach to recognizing and measuring uncertain tax positions accounted for in accordance with SFAS No. 109. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates that it is more likely than not that the position will be sustained on audit, including resolution of related appeals or litigation processes, if any. The second step is to measure the tax benefit as the largest amount that is more than 50% likely of being realized upon ultimate settlement.

The total amount of unrecognized tax benefits recorded in the Condensed Consolidated Balance Sheets at the date of adoption was approximately $1.1 million, which, if recognized, would affect the Company's effective tax rate. The additional amount of unrecognized tax benefits accrued during the year ended December 30, 2007 was $3.1 million. A reconciliation of the beginning and ending amount of unrecognized tax benefits for the nine months ended September 28, 2008 is as follows:

(In thousands)	September 28, 2008
Balance at December 30, 2007	$ 4,172
Additions based on tax positions related to the current period	2,804
Balance at September 28, 2008	$ 6,976

Management believes that events that could occur in the next 12 months and cause a change in unrecognized tax benefits include, but are not limited to, the following:

- commencement, continuation or completion of examinations of the Company's tax returns by the U.S. or foreign taxing authorities; and
- expiration of statutes of limitation on the Company's tax returns.

The calculation of unrecognized tax benefits involves dealing with uncertainties in the application of complex global tax regulations. Uncertainties include, but are not limited to, the impact of legislative, regulatory and judicial developments, transfer pricing and the application of withholding taxes. Management regularly assesses the Company's tax positions in light of legislative, bilateral tax treaty, regulatory and judicial developments in the countries in which the Company does business. Management determined that an estimate of the range of reasonably possible change in the amounts of unrecognized tax benefits within the next 12 months cannot be made.

Classification of Interest and Penalties

The Company accrues interest and penalties on tax contingencies as required by FIN 48 and SFAS No. 109. This interest and penalty accrual is classified as income tax provision (benefit) in the Condensed Consolidated Statements of Operations and was not material.

Tax Years and Examination

The Company files tax returns in each jurisdiction in which they are registered to do business. In the U.S. and many of the state jurisdictions, and in many foreign countries in which the Company files tax returns, a statute of limitations period exists. After a statute of limitations period expires, the respective tax authorities may no longer assess additional income tax for the expired period. Similarly, the Company is no longer eligible to file claims for refund for any tax that it may have overpaid. The following table summarizes the Company's major tax jurisdictions and the tax years that remain subject to examination by these jurisdictions as of December 31, 2007:

Tax Jurisdictions	Tax Years
United States	2004 and onward
California	2003 and onward
Switzerland	2004 and onward
Philippines	2004 and onward

Additionally, while years prior to 2003 for the U.S. corporate tax return are not open for assessment, the IRS can adjust net operating loss and research and development carryovers that were generated in prior years and carried forward to 2003.

The IRS is currently conducting an audit of SP Systems' federal income tax returns for fiscal 2005 and 2004. As of September 28, 2008, no material adjustments have been proposed by the IRS. If material tax adjustments are proposed by the IRS and acceded to by the Company, an adjustment to goodwill and income taxes payable may result.

Note 14. ***NET INCOME PER SHARE***

Basic net income per share is computed using the weighted-average of the combined class A and class B common shares outstanding. Diluted net income per share is computed using the weighted-average common shares outstanding plus any potentially dilutive securities outstanding during the period using the treasury stock method, except when their effect is anti-dilutive. Potentially dilutive securities include stock options, restricted stock and senior convertible debentures.

Holders of the Company's senior convertible debentures may, under certain circumstances at their option, convert the senior convertible debentures into cash and, if applicable, shares of the Company's class A common stock at the applicable conversion rate, at any time on or prior to maturity (see Note 10). Pursuant to EITF 90-19, the senior convertible debentures are included in the calculation of diluted net income per share if their inclusion is dilutive under the treasury stock method.

The following is a summary of all outstanding anti-dilutive potential common shares:

	As of	
(In thousands)	September 28, 2008	September 30, 2007
Stock options	116	18
Restricted stock awards and units	335	421

The following table sets forth the computation of basic and diluted weighted-average common shares:

	Three Months Ended		Nine Months Ended	
(In thousands)	September 28, 2008	September 30, 2007	September 28, 2008	September 30, 2007
Basic weighted-average common shares	80,465	77,693	79,614	75,516
Effect of dilutive securities:				
Stock options	2,438	3,826	2,708	4,402
Restricted stock awards and units and shares subject to re-vesting restrictions	558	398	675	341
February 2007 debentures	1,027	693	1,044	267
July 2007 debentures	—	—	20	—
Diluted weighted-average common shares	84,488	82,610	84,061	80,526

As of September 15, 2008, the date on which LBIE commenced administrative proceedings regarding the Lehman bankruptcy, approximately 2.9 million shares of class A common stock lent to LBIE in connection with the February 2007 debentures are included in basic weighted-average common shares. Basic weighted-average common shares exclude approximately 1.8 million shares of class A common stock lent to CSI in connection with the July 2007 debentures. If Credit Suisse or its affiliates, including CSI, were to file bankruptcy or commence similar administrative, liquidating, restructuring or other proceedings, the Company may have to include approximately 1.8 million shares lent to CSI in basic weighted-average common shares (see Note 10).

Dilutive potential common shares includes approximately 1.0 million shares in each of the three and nine months ended September 28, 2008 for the impact of the February 2007 debentures, and approximately 20,000 shares in the nine months ended September 28, 2008 for the impact of the July 2007 debentures, as the Company has experienced a substantial increase in its common stock price. Similarly, dilutive potential common shares includes approximately 0.7 million shares and 0.3 million shares for the three and nine months ended September 30, 2007, respectively, for the impact of the February 2007 debentures. Under the treasury stock method, such senior convertible debentures will generally have a dilutive impact on net income per share if the Company's average stock price for the period exceeds the conversion price for the senior convertible debentures.

Note 15. ***SEGMENT AND GEOGRAPHICAL INFORMATION***

The Company operates in two business segments: systems and components. The systems segment generally represents sales directly to systems owners of engineering, procurement, construction and other services relating to solar electric power systems that integrate the Company's solar panels and balance of systems components, as well as materials sourced from other manufacturers. The components segment primarily represents sales of the Company's solar cells, solar panels and inverters to solar systems installers and other resellers. The Chief Operating Decision Maker ("CODM"), as defined by SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information" ("SFAS No. 131"), is the Company's Chief Executive Officer. The CODM assesses the performance of both operating segments using information about their revenue and gross margin.

The following tables present revenue by geography and segment, gross margin by segment, revenue by significant customer and property, plant and equipment information based on geographic region. Revenue is based on the destination of the shipments. Property, plant and equipment are based on the physical location of the assets:

	Three Months Ended		Nine Months Ended	
(As a percentage of total revenue)	**September 28, 2008**	**September 30, 2007**	**September 28, 2008**	**September 30, 2007**
Revenue by geography:				
United States	49%	56%	29%	46%
Europe:				
Spain	16%	25%	44%	28%
Germany	10%	10%	8%	10%
Other	13%	7%	10%	12%
Rest of world	12%	2%	9%	4%
	100%	100%	100%	100%
Revenue by segment:				
Systems	51%	67%	62%	62%
Components	49%	33%	38%	38%
	100%	100%	100%	100%
Gross margin by segment:				
Systems	18%	14%	20%	15%
Components	39%	21%	31%	24%

Significant Customers:		Three Months Ended		Nine Months Ended	
(As a percentage of total revenue)	**Business Segment**	**September 28, 2008**	**September 30, 2007**	**September 28, 2008**	**September 30, 2007**
Naturener Group	Systems	11%	*	23%	*
Sedwick Corporate, S.L.	Systems	*	*	15%	*
MMA Renewable Ventures	Systems	*	30%	*	17%
SolarPack	Systems	*	21%	*	21%
Solon AG	Components	*	*	*	10%

* denotes less than 10% during the period

(In thousands)	**September 28, 2008**	**December 30, 2007**
Property, plant and equipment by geography:		
Philippines	$ 506,016	$ 359,968
United States	29,328	18,026
Europe	469	—
Australia	132	—
	$ 535,945	$ 377,994

Note 16. ***SUBSEQUENT EVENTS***

Cypress Completed Tax-Free Distribution of the Company's Class B Common Stock

After the close of trading on September 29, 2008, Cypress completed a spin-off of all of its shares of the Company's class B common stock, in the form of a pro rata dividend to the holders of record as of September 17, 2008 of Cypress common stock. As a result, the Company's class B common stock now trades publicly and is listed on the Nasdaq Global Select Market, along with the Company's class A common stock.

Dennis V. Arriola Named CFO

On October 20, 2008, the Company announced the appointment of Dennis V. Arriola, 47, as its next Chief Financial Officer. Mr. Arriola is expected to assume the role of Senior Vice President and Chief Financial Officer on November 10, 2008. In such role, he will serve as SunPower's principal financial officer and principal accounting officer. Emmanuel Hernandez, SunPower's current Chief Financial Officer, is expected to assist in the transition through January 2009.

Daniel S. Shugar Announces Personal Leave of Absence in 2009

On October 24, 2008, Daniel S. Shugar announced that he plans to take a personal leave of absence for 9 to 12 months to pursue personal interests commencing in March, 2009. Mr. Shugar currently serves as President of SP Systems. He joined SP Systems (formerly known as PowerLight) in 1996 prior to the Company's acquisition of the subsidiary in January 2007.

Amended and Restated By-laws

On November 7, 2008, the Company's board of directors amended and restated the By-laws of the Company. The amendments to the By-laws provide, among other things, that stockholders must give advance notice to the Company of any business that they propose to bring before an annual meeting or of any person that they propose to be nominated as a director and must follow the other procedures set forth in the amended and restated By-Laws.

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

Cautionary Statement Regarding Forward-Looking Statements

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Forward-looking statements are statements that do not represent historical facts. We use words such as ""may," "will," "should," "could," "would," "expect," "plan," "anticipate," "believe," "estimate," "predict," "potential" and "continue" and similar expressions to identify forward-looking statements. Forward-looking statements in this Quarterly Report on Form 10-Q include, but are not limited to, our plans and expectations regarding our ability to obtain polysilicon ingots or wafers, future financial results, operating results, business strategies, projected costs, products, competitive positions and management's plans and objectives for future operations, and industry trends. These forward-looking statements are based on information available to us as of the date of this Quarterly Report on Form 10-Q and current expectations, forecasts and assumptions and involve a number of risks and uncertainties that could cause actual results to differ materially from those anticipated by these forward-looking statements. Such risks and uncertainties include a variety of factors, some of which are beyond our control. Please see "PART II. OTHER INFORMATION, Item 1A: Risk Factors" and our other filings with the Securities and Exchange Commission for additional information on risks and uncertainties that could cause actual results to differ. These forward-looking statements should not be relied upon as representing our views as of any subsequent date, and we are under no obligation, and expressly disclaim any responsibility, to update or alter our forward-looking statements, whether as a result of new information, future events or otherwise.

The following information should be read in conjunction with the Condensed Consolidated Financial Statements and the accompanying Notes to Condensed Consolidated Financial Statements included in this Quarterly Report on Form 10-Q. Our fiscal quarters end on the Sunday closest to the end of the applicable calendar quarter. All references to fiscal periods apply to our fiscal quarters or fiscal year which end on the Sunday closest to the calendar quarter end.

Adjustments to Previously Announced Preliminary Quarterly Results

On October 16, 2008, we issued a press release announcing our preliminary results for the three and nine months ended September 28, 2008. In the press release, we reported net income of $22.4 million and $63.8 million for the three and nine months ended September 28, 2008, respectively, in the Condensed Consolidated Statements of Operations. Subsequent to the issuance of our press release, we recorded certain adjustments to our reported results relating to: (1) reversal of impairment of long-lived assets, (2) additional loss from foreign exchange, and (3) related tax effects of the adjustments. These adjustments totaled $1.0 million, which reduced our net income to $21.4 million and $62.7 million for the three and nine months ended September 28, 2008, respectively.

Reversal of impairment of long-lived assets: In the first quarter of fiscal 2008, we replaced certain solar product manufacturing equipment with new processes, which resulted in a $3.3 million impairment charge to cost of revenue. In October 2008, we entered into an agreement with the vendor for the return of the equipment to the vendor and the application of cash paid for the returned equipment as prepayments for future purchases of equipment from the vendor. As a result of the agreement, the impairment of long-lived assets incurred in the first quarter of fiscal 2008 was reversed as of the third quarter of fiscal 2008.

Foreign currency exchange loss: We recorded an additional foreign currency exchange loss of $1.5 million in the three and nine months ended September 28, 2008.

Addition in tax provision: We recorded a $2.8 million addition in our tax provision as a result of the above adjustments and the change in our full year projected earnings.

The following table presents a reconciliation of the preliminary net income and net income per share announced in our press release on October 16, 2008 to the final results reported in this Quarterly Report on Form 10-Q:

(In thousands, except per share data)	September 28, 2008 Three Months Ended	Nine Months Ended
Net income announced on October 16, 2008	$ 22,389	$ 63,754
Adjustments:		
Reversal of impairment of long-lived assets	3,286	3,286
Foreign currency exchange loss	(1,517)	(1,517)
Addition in tax provision	(2,779)	(2,779)
Net Income reported in Quarterly Report on Form 10-Q	$ 21,379	$ 62,744
Net income per share:		
Basic – announced on October 16, 2008	$ 0.28	$ 0.80
Basic – reported in Quarterly Report on Form 10-Q	$ 0.27	$ 0.79
Diluted – announced on October 16, 2008	$ 0.26	$ 0.76
Diluted – reported in Quarterly Report on Form 10-Q	$ 0.25	$ 0.75

Company Overview

We are a vertically integrated solar products and services company that designs, manufactures, markets and installs high-performance solar electric power technologies. Our solar cells and solar panels are manufactured using proprietary processes and technologies based on more than 15 years of research and development. We believe our solar cells have the highest conversion efficiency, a measurement of the amount of sunlight converted by the solar cell into electricity, of all the solar cells available for the mass market. Our solar power products are sold through our components business segment, or our components segment. In January 2007, we acquired PowerLight Corporation, or PowerLight, now known as SunPower Corporation, Systems, or SP Systems, which developed, engineered, manufactured and delivered large-scale solar power systems. These activities are now performed by our systems business segment, or our systems segment. Our solar power systems, which generate electricity, integrate solar cells and panels manufactured by us as well as other suppliers.

Components segment: Our components segment sells solar power products, including solar cells, solar panels and inverters, which convert sunlight to electricity compatible with the utility network. We believe our solar cells provide the following benefits compared with conventional solar cells:

- superior performance, including the ability to generate up to 50% more power per unit area;
- superior aesthetics, with our uniformly black surface design that eliminates highly visible reflective grid lines and metal interconnect ribbons; and
- efficient use of silicon, a key raw material used in the manufacture of solar cells.

We sell our solar components products to installers and resellers, including our global dealer network, for use in residential and commercial applications where the high efficiency and superior aesthetics of our solar power products provide compelling customer benefits. We also sell products for use in multi-megawatt solar power plant applications. In many situations, we offer a materially lower area-related cost structure for our customers because our solar panels require a substantially smaller roof or land area than conventional solar technology and half or less of the roof or land area of commercial solar thin film technologies. We sell our products primarily in Asia, Europe and North America, principally in regions where government incentives have accelerated solar power adoption.

We manufacture our solar cells at our two solar cell manufacturing facilities in the Philippines. We currently operate ten cell manufacturing lines in our solar cell manufacturing facilities, with a total rated manufacturing capacity of 334 megawatts per year. By the end of 2008, we plan to operate 12 solar cell manufacturing lines with an aggregate manufacturing capacity of 414 megawatts per year. We plan to begin production as soon as the first quarter of 2010 on the first line of our third solar cell manufacturing facility in Malaysia, which is expected to have an aggregate manufacturing capacity of more than 1 gigawatt per year when completed.

We manufacture our solar panels at our solar panel assembly facility located in the Philippines. Our solar panels are also manufactured for us by a third-party subcontractor in China. We currently operate five solar panel manufacturing lines with a rated manufacturing capacity of 150 megawatts of solar panels per year. In addition, our SunPower branded inverters are manufactured for us by multiple suppliers.

Systems segment: Our systems segment generally sells solar power systems directly to system owners and developers. When we sell a solar power system it may include services such as development, engineering, procurement of permits and equipment, construction management, access to financing, monitoring and maintenance. We believe our solar systems provide the following benefits compared with competitors' systems:

- superior performance delivered by maximizing energy delivery and financial return through systems technology design;
- superior systems design to meet customer needs and reduce cost, including non-penetrating, fast roof installation technologies; and
- superior channel breadth and delivery capability including turnkey systems.

Our systems segment is comprised primarily of the business we acquired from SP Systems in January 2007. Our customers include commercial and governmental entities, investors, utilities and production home builders. We work with development, construction, system integration and financing companies to deliver our solar power systems to customers. Our solar power systems are designed to generate electricity over a system life typically exceeding 25 years and are principally designed to be used in large-scale applications with system ratings of typically more than 500 kilowatts. Worldwide, more than 500 SunPower solar power systems have been constructed or are under contract, rated in aggregate at more than 400 megawatts of peak capacity.

We have solar power system projects completed or in the process of being completed in various countries including Germany, Italy, Portugal, South Korea, Spain and the United States. We sell distributed rooftop and ground-mounted solar power systems as well as central-station power plants. Distributed solar power systems are typically rated at more than 500 kilowatts of capacity to provide a supplemental, distributed source of electricity for a customer's facility. Many customers choose to purchase solar electricity from our systems under a power purchase agreement with a financing company which buys the system from us. In Europe, South Korea and the United States, our products and systems are typically purchased by a financing company and operated as a central station solar power plant. These power plants are rated with capacities of approximately one to 20 megawatts, and generate electricity for sale under tariff to private and public utilities.

We manufacture certain of our solar power system products at our manufacturing facilities in Richmond, California and at other facilities located close to our customers. Some of our solar power system products are also manufactured for us by third-party suppliers.

Relationship with Cypress Semiconductor Corporation, or Cypress

Cypress made a significant investment in SunPower in 2002. On November 9, 2004, Cypress completed a reverse triangular merger with us in which all of the outstanding minority equity interest of SunPower was retired, effectively giving Cypress 100% ownership of all of our then outstanding shares of capital stock but leaving our unexercised warrants and options outstanding. After completion of our initial public offering in November 2005, Cypress held, in the aggregate, 52.0 million shares of class B common stock. On May 4, 2007 and August 18, 2008, Cypress completed the sale of 7.5 million shares and 2.5 million shares, respectively, of class B common stock in offerings pursuant to Rule 144 of the Securities Act. Such shares converted to 10.0 million shares of class A common stock upon the sale.

As of September 28, 2008, Cypress owned approximately 42.0 million shares of class B common stock, which represented approximately 50.1% of the total outstanding shares of our common stock, or approximately 47.4% of such shares on a fully diluted basis after taking into account outstanding stock options (or 46.5% of such shares on a fully diluted basis after taking into account outstanding stock options and approximately 1.8 million shares lent to an affiliate of Credit Suisse), and 88.5% of the voting power of our total outstanding common stock.

After the close of trading on September 29, 2008, Cypress completed a spin-off of all of its shares of our class B common stock, in the form of a pro rata dividend to the holders of record as of September 17, 2008 of Cypress common stock. As a result, our class B common stock now trades publicly and is listed on the Nasdaq Global Select Market, along with our class A common stock.

Critical Accounting Policies

Our critical accounting policies are disclosed in our Form 10-K for the year ended December 30, 2007 and have not changed materially as of September 28, 2008, with the exception of the following:

Fair Value of Financial Instruments: Effective December 31, 2007, we adopted the provisions of Statement of Financial Accounting Standards, or SFAS, No. 157, "Fair Value Measurements," or SFAS No. 157, which defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Our financial assets and financial liabilities that require recognition under SFAS No. 157 include available-for-sale investments and foreign currency derivatives. In determining fair value, we use various valuation techniques, including market and income approaches to value available-for-sale investments and foreign currency derivatives. SFAS No. 157 establishes a hierarchy for inputs used in measuring fair value that maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that the observable inputs be used when available. Observable inputs are inputs that market participants would use in pricing the asset or liability developed based on market data obtained from sources independent of us. Unobservable inputs are inputs that reflect our assumptions about the assumptions market participants would use in pricing the asset or liability developed based on the best information available in the circumstances. As such, fair value is a market-based measure considered from the perspective of a market participant who holds the asset or owes the liability rather than an entity-specific measure. The hierarchy is broken down into three levels based on the reliability of inputs as follows:

- Level 1—Valuations based on quoted prices in active markets for identical assets or liabilities that we have the ability to access. Since valuations are based on quoted prices that are readily and regularly available in an active market, valuation of these products does not entail a significant degree of judgment. Financial assets utilizing Level 1 inputs include most money market funds and corporate securities.

- Level 2—Valuations based on quoted prices in markets that are not active or for which all significant inputs are observable, directly or indirectly. Financial assets utilizing Level 2 inputs include foreign currency forward exchange contracts and some corporate securities.

- Level 3—Valuations based on inputs that are unobservable and significant to the overall fair value measurement. Financial assets utilizing Level 3 inputs include money market funds comprised of the Reserve Primary Fund and the Reserve International Liquidity Fund, collectively referred to as the Reserve Funds, and corporate securities comprised of auction rate securities. We use the market approach to estimate the price that would be received to sell our Reserve Funds in an orderly transaction between market participants ("exit price"). We reviewed the underlying holdings and estimated the price of underlying fund holdings to estimate the fair value of these funds. We use an income approach valuation model to estimate the exit price of the auction rate securities, which is derived as the weighted average present value of expected cash flows over various periods of illiquidity, using a risk adjusted discount rate that is based on the credit risk and liquidity risk of the securities.

Availability of observable inputs can vary from instrument to instrument and to the extent that valuation is based on inputs that are less observable or unobservable in the market, the determination of fair value requires more judgment. Accordingly, the degree of judgment exercised by our management in determining fair value is greatest for instruments categorized in Level 3. In certain cases, the inputs used to measure fair value may fall into different levels of the fair value hierarchy. In such cases, for disclosure purposes the level in the fair value hierarchy within which the fair value measurement in its entirety falls is determined based on the lowest level input that is significant to the fair value measurement in its entirety. In regards to our Reserve Funds, the market approach was based on both Level 2 (term, maturity dates, rates and credit risk) and Level 3 inputs. We determined that the Level 3 inputs, particularly the liquidity premium, were the most significant to the overall fair value measurement. In regards to our auction rate securities, the income approach valuation model was based on both Level 2 (credit quality and interest rates) and Level 3 inputs. We determined that the Level 3 inputs were the most significant to the overall fair value measurement, particularly the estimates of risk adjusted discount rates and ranges of expected periods of illiquidity.

Results of Operations for the Three Months and Nine Months Ended September 28, 2008 and September 30, 2007

Correction of Errors Identified in our Financial Statements for the Year Ended December 30, 2007

During the preparation of our condensed consolidated financial statements for the nine months ended September 28, 2008, we identified errors in our financial statements related to the year ended December 30, 2007, which resulted in $1.3 million overstatement of stock-based compensation expense. We corrected these errors in our condensed consolidated financial statements for the nine months ended September 28, 2008, which resulted in a $1.3 million credit to income before income taxes and net income. The out-of-period effect is not expected to be material to estimated full-year 2008 results, and, accordingly has been recognized in accordance with APB 28, Interim Financial Reporting, paragraph 29 as the error is not material to any financial statements of prior periods.

Revenue

Revenue and the year-over-year change were as follows:

	Three Months Ended			Nine Months Ended		
(Dollars in thousands)	September 28, 2008	September 30, 2007	Year-over-Year Change	September 28, 2008	September 30, 2007	Year-over-Year Change
Systems revenue	$ 193,330	$ 157,734	23%	$ 642,774	$ 340,266	89%
Components revenue	184,170	76,600	140%	391,178	210,181	86%
Total revenue	$ 377,500	$ 234,334	61%	$ 1,033,952	$ 550,447	88%

We generate revenue from two business segments, as follows:

Systems Segment Revenue: Our systems revenue represents sales of engineering, procurement and construction, or EPC, projects and other services relating to solar electric power systems that integrate our solar panels and balance of systems components, as well as materials sourced from other manufacturers. In the United States, where customers often utilize rebate and tax credit programs in connection with projects rated one megawatt or less of capacity, we typically sell solar systems rated up to one megawatt of capacity to provide a supplemental, distributed source of electricity for a customer's facility. In Europe, South Korea and the United States, our systems are often purchased by third-party investors as central station solar power plants, typically rated from one to 20 megawatts, which generate electricity for sale under tariff to regional and public utilities. We also sell our solar systems under materials-only sales contracts in Asia, Europe and the United States. The balance of our systems revenues are generally derived from sales to new home builders for residential applications and maintenance revenue from servicing installed solar systems.

Systems segment revenue for the three and nine months ended September 28, 2008 were $193.3 million and $642.8 million, respectively, and accounted for 51% and 62%, respectively, of our total revenue. Systems segment revenue for the three and nine months ended September 30, 2007 were $157.7 million and $340.3 million, respectively, and accounted for 67% and 62%, respectively, of our total revenue. Our systems segment revenue is largely dependent on the timing of revenue recognition on large construction projects and, accordingly, will fluctuate from period to period. During the three months ended September 28, 2008, we rebalanced our product allocation between the systems segment and components segment after the systems segment's business surged in Spain during the second quarter of fiscal 2008. For the three months ended September 28, 2008, our systems segment revenue reflects a geographical shift in revenue from Spain to North America. For the nine months ended September 28, 2008, our systems segment benefited from strong power plant scale demand in Europe, primarily in Spain, and reflected the completion of Spain based projects in the third quarter of fiscal 2008 before the expiration of the pre-existing feed-in tariff in September 2008.

Components Segment Revenue: Our components revenue represents sales of our solar cells, solar panels and inverters to solar systems installers and other resellers. Factors affecting our components revenue include unit volumes of solar cells and modules produced and shipped, average selling prices, product mix, product demand and the percentage of our construction projects sourced with SunPower solar panels sold through the systems segment which reduces the inventory available to sell through our components segment. We have experienced quarter-over-quarter unit volume increases in shipments of our solar power products since we began commercial production in the fourth quarter of 2004. From fiscal 2005 through the third quarter of fiscal 2008, we have experienced increases in average selling prices for our solar power products primarily due to the strength of end-market demand and favorable currency exchange rates. Accordingly, our components segment's average selling prices were slightly higher during the three and nine months ended September 28, 2008 compared to the same period of 2007. Over the next several years, we expect average selling prices for our solar power products to decline as the market becomes more competitive, as certain products mature and as manufacturers are able to lower their manufacturing costs and pass on some of the savings to their customers.

Components segment revenue for the three and nine months ended September 28, 2008 were $184.2 million and $391.2 million, respectively, and accounted for 49% and 38%, respectively, of our total revenue. Components segment revenue for the three and nine months ended September 30, 2007 were $76.6 million and $210.2 million, respectively, and accounted for 33% and 38%, respectively, of our total revenue. For the three and nine months ended September 28, 2008, our components segment benefited from strong demand in the residential and small commercial roof-top markets through our dealer network in both Europe and the United States. During the third quarter of fiscal 2008, we grew our worldwide dealer network by more than 25 percent which is now over 300 dealers.

Total Revenue: During the three and nine months ended September 28, 2008, our total revenue of approximately $377.5 million and $1,034.0 million, respectively, represented an increase of 61% and 88%, respectively, from total revenue reported in the comparable period of 2007. The increase in total revenue during the three and nine months ended September 28, 2008 compared to the same period of 2007 is attributable to the systems business segment's installation of more than 40 megawatts for several large-scale solar power plants in Spain in the nine months ended September 28, 2008, the components business segment's continued increase in the demand for our solar cells and solar panels and the continued increases in unit production and unit shipments of both solar cells and solar panels as we have expanded our solar manufacturing capacity. In the first quarter of fiscal 2007, we had four solar cell manufacturing lines in operation with annual production capacity of 108 megawatts. Since then, we began commercial production on lines five through ten with lines five and six having a rated solar cell production capacity of 33 megawatts per year and lines seven through ten having a rated solar cell production capacity of 40 megawatts per year.

International sales comprise the majority of revenue for both our systems and components segments. Sales outside the United States represented approximately 51% and 71% of our total revenue for the three and nine months ended September 28, 2008, respectively, as compared to 44% and 54% of our total revenue for the three and nine months ended September 30, 2007, respectively, and we expect international sales to remain a significant portion of overall sales for the foreseeable future. International sales as a percentage of our total revenue increased approximately 8% and 17% for the three and nine months ended September 28, 2008, respectively, compared to the same period of 2007, as our systems business segment installed more than 40 megawatts for several large-scale solar power plants in Spain in the nine months ended September 28, 2008, and our components business segment continues to expand our global dealer network, with an emphasis on European expansion. With the recent extension of the U.S. Investment Tax Credit, we now have a national solar market in the U.S. with long-term visibility and significant additional demand potential in all three market segments – residential, commercial and utility. As a result, we expect domestic revenues to increase in absolute dollars, however, not necessarily as a percentage of revenue by geography.

Concentrations: We have five customers that each accounted for more than 10 percent of our total revenue in one or more of the three and nine months ended September 28, 2008 and September 30, 2007, as follows:

Significant Customers: (As a percentage of total revenue)	Business Segment	Three Months Ended		Nine Months Ended	
		September 28, 2008	September 30, 2007	September 28, 2008	September 30, 2007
Naturener Group	Systems	11%	*	23%	*
Sedwick Corporate, S.L.	Systems	*	*	15%	*
MMA Renewable Ventures	Systems	*	30%	*	17%
SolarPack	Systems	*	21%	*	21%
Solon AG	Components	*	*	*	10%

* denotes less than 10% during the period

Effective February 6, 2008, the New York Stock Exchange, or NYSE, delisted the common stock of MuniMae, or MMA, the parent company of one of our systems segment customers, MMA Renewable Ventures, because MMA did not expect to file its audited 2006 financial statements by March 3, 2008, the deadline imposed by the NYSE. In connection with completing the restatement and filing their Annual Report on Form 10-K for the year ended December 31, 2006, MMA has disclosed that it incurred substantial accounting costs. In addition, MMA has disclosed that recent credit market disruption has negatively affected many aspects of MMA's business. MMA Renewable Ventures accounted for less than 10% of our total revenue in the three and nine months ended September 28, 2008. MMA Renewable Ventures accounted for 30% and 17% of our total revenue for the three and nine months ended September 30, 2007, respectively.

Naturener Group, Sedwick Corporate, S.L., SolarPack and MMA Renewable Ventures purchased systems from us as central station power plants which generate electricity for sale to commercial customers and under tariff to regional and public utilities customers. In the three and nine months ended September 28, 2008, approximately 22% and 41%, respectively, of our total revenue was derived from such sales of systems to financing companies that engage in power purchase agreements with end-users of electricity, as compared to 51% and 34% of our total revenue for the three and nine months ended September 30, 2007, respectively. Due to the recent tightening of credit markets and concerns regarding the availability of credit, our customers may be delayed in obtaining, or may not be able to obtain, necessary financing for their purchases of solar power systems. If customers are unwilling or unable to finance the cost of our products, or if the parties that have historically provided this financing cease to do so, or only do so on terms that are substantially less favorable for us or these customers, our revenue and growth will be adversely affected.

Cost of Revenue

Cost of revenue as a percentage of revenue and the year-over-year change were as follows:

(Dollars in thousands)	Three Months Ended			Nine Months Ended		
	September 28, 2008	September 30, 2007	Year-over-Year Change	September 28, 2008	September30, 2007	Year-over-Year Change
Cost of systems revenue	$ 158,730	$ 135,111	17%	$ 511,080	$ 289,095	77%
Cost of components revenue	113,149	60,818	86%	270,901	160,730	69%
Total cost of revenue	$ 271,879	$ 195,929	39%	$ 781,981	$ 449,825	74%
Total cost of revenue as a percentage of revenue	72%	84%		76%	82%	
Total gross margin percentage	28%	16%		24%	18%	

Details to cost of revenue by segment and the year-over-year change were as follows:

(Dollars in thousands)	Systems Segment Three Months Ended September 28, 2008	Systems Segment Three Months Ended September 30, 2007	Year-over-Year Change	Components Segment Three Months Ended September 28, 2008	Components Segment Three Months Ended September 30, 2007	Year-over-Year Change
Amortization of purchased intangible assets	$ 1,841	$ 4,787	(62%)	$ 1,106	$ 1,123	(2%)
Stock-based compensation	2,911	2,049	42%	1,964	1,539	28%
Impairment of long-lived assets	(1,343)	—	n.a.	(1,943)	—	n.a.
Factory pre-operating costs	249	162	54%	531	921	(42%)
All other cost of revenue	155,072	128,113	21%	111,491	57,235	95%
Total cost of revenue	$ 158,730	$ 135,111	17%	$ 113,149	$ 60,818	86%
Total cost of revenue as a percentage of revenue	82%	86%		61%	79%	
Total gross margin percentage	18%	14%		39%	21%	

(Dollars in thousands)	Systems Segment Nine Months Ended September 28, 2008	Systems Segment Nine Months Ended September 30, 2007	Year-over-Year Change	Components Segment Nine Months Ended September 28, 2008	Components Segment Nine Months Ended September 30, 2007	Year-over-Year Change
Amortization of purchased intangible assets	$ 5,850	$ 15,297	(62%)	$ 3,216	$ 3,370	(5%)
Stock-based compensation	7,661	6,235	23%	6,057	2,801	116%
Impairment of long-lived assets	—	—	n.a.	2,203	—	n.a.
Factory pre-operating costs	889	692	28%	1,383	3,185	(57%)
All other cost of revenue	496,680	266,871	86%	258,042	151,374	70%
Total cost of revenue	$ 511,080	$ 289,095	77%	$ 270,901	$ 160,730	69%
Total cost of revenue as a percentage of revenue	80%	85%		69%	76%	
Total gross margin percentage	20%	15%		31%	24%	

Systems Segment Cost of Revenue: Our cost of systems revenue consists primarily of solar panels, mounting systems, inverters and subcontractor costs. The cost of solar panels is the single largest cost element in our cost of systems revenue. Our systems segment sourced approximately 69% and 58% of its solar panel installations with SunPower products in the three and nine months ended September 28, 2008, respectively, compared to 25% and 27% for the three and nine months ended September 30, 2007, respectively. We expect that our systems segment will continue to source at or about 69% of its projects with SunPower solar panels during the fourth quarter of fiscal 2008. Our systems segment generally experiences higher gross margin on construction projects that utilize SunPower solar panels compared to construction projects that utilize solar panels purchased from third parties. For the three and nine months ended September 28, 2008, gross margin for the systems segment was $34.6 million and $131.7 million, respectively, or 18% and 20% of systems segment revenue, respectively. Gross margin for the systems segment was $22.6 million and $51.2 million for the three and nine months ended September 30, 2007, respectively, or 14% and 15% of systems segment revenue, respectively. Gross margin in our systems segment increased four percentage points in the three months ended September 28, 2008 as compared to the three months ended September 30, 2007 and five percentage points in the nine months ended September 28, 2008 as compared to the nine months ended September 30, 2007 due to higher percentage of SunPower solar panels used in its projects as well as cost savings we realized from more efficient field implementation of our systems trackers.

In connection with the acquisition of SP Systems in January 2007, there were $79.5 million of identifiable purchased intangible assets, of which $56.8 million was being amortized to cost of systems revenue on a straight-line basis over periods ranging from one to five years. As a result of our new branding strategy, during the quarter ended July 1, 2007, the PowerLight tradename asset with a net book value of $14.1 million was written off as an impairment of acquisition-related intangible assets. As such, the remaining balance of $41.2 million relating to purchased patents, technology and backlog will be amortized to cost of systems revenue on a straight-line basis over periods ranging from one to four years.

Our cost of systems revenue will also fluctuate from period to period due to the mix of projects completed and recognized as revenue, in particular between large projects and large commercial installation projects. Our gross profit each quarter is affected by a number of factors, including the types of projects in process and their various stages of completion, the gross margins estimated for those projects in progress and the actual system group department overhead costs. Historically, revenues from materials-only sales contracts generate a higher gross margin percentage for our systems segment than revenue generated from turnkey contracts which generate higher revenue per watt from providing both materials as well as engineering, procurement and construction management services.

Almost all of our systems segment construction contracts are fixed price contracts. However, we have in several instances obtained change orders that reimburse us for additional unexpected costs due to various reasons. The systems segment also has long-term agreements for solar cell and panel purchases with several major solar panel manufacturers, some with liquidated damages and/or take-or pay-type arrangements. An increase in project costs, including solar panel, inverter and subcontractor costs, over the term of a construction contract could have a negative impact on our systems segment's overall gross profit. Our systems segment gross profit may also be impacted by certain adjustments for inventory reserves. We are seeking to improve gross profit over time as we implement cost reduction efforts, improve manufacturing processes, and seek better and less expensive materials globally, as we grow the business to attain economies of scale on fixed costs. Any increase in gross profit based on these items, however, could be partially or completely offset by increased raw material costs or our inability to increase revenues in line with expectations, and other competitive pressures on gross margin.

Components Segment Cost of Revenue: Our cost of components revenue consists primarily of silicon ingots and wafers used in the production of solar cells, along with other materials such as chemicals and gases that are needed to transform silicon wafers into solar cells. For our solar panels, our cost of revenue includes the cost of solar cells and raw materials such as glass, frame, backing and other materials, as well as the assembly costs we pay to our third-party subcontractor in China.

Our components segment gross profit each quarter is affected by a number of factors, including average selling prices for our products, our product mix, our actual manufacturing costs, the utilization rate of our solar cell manufacturing facility and changes in amortization of intangible assets. Gross margin for the components segment was $71.0 million and $120.3 million for the three and nine months ended September 28, 2008, respectively, or 39% and 31% of components segment revenue, respectively. Gross margin for the components segment was $15.8 million and $49.5 million for the three and nine months ended September 30, 2007, respectively, or 21% and 24% of components segment revenue, respectively. Gross margin in our components segment increased eighteen percentage points in the three months ended September 28, 2008 as compared to the three months ended September 30, 2007 and seven percentage points in the nine months ended September 28, 2008 as compared to the nine months ended September 30, 2007 benefiting from higher average solar cell conversion efficiency and better silicon utilization, continued reduction in silicon costs, higher volume, and slightly higher average selling prices.

From time to time, we enter into agreements whereby the selling price for certain of our solar power products is fixed over a defined period. An increase in our manufacturing costs over such a defined period could have a negative impact on our overall gross profit. Our gross profit may also be impacted by fluctuations in manufacturing yield rates and certain adjustments for inventory reserves. We expect our gross profit to increase over time as we improve our manufacturing processes and as we grow our business and leverage certain of our fixed costs. An expected increase in gross profit based on manufacturing efficiencies, however, could be partially or completely offset by increased raw material costs or decreased revenue.

Total Cost of Revenue: Other factors contributing to cost of revenue include depreciation, provisions for estimated warranty, salaries, personnel-related costs, freight, royalties, facilities expenses and manufacturing supplies associated with contracting revenues and solar cell fabrication as well as factory pre-operating costs associated with our new solar cell manufacturing facility and solar panel assembly facility. Such pre-operating costs included compensation and training costs for factory workers as well as utilities and consumable materials associated with preproduction activities. Additionally, within our own solar panel assembly facility in the Philippines we incur personnel-related costs, depreciation, utilities and other occupancy costs. To date, demand for our solar power products has been robust and our production output has increased allowing us to spread a significant amount of our fixed costs over relatively high production volume, thereby reducing our per unit fixed cost. Our solar panel assembly facility began production in the first quarter of 2007 and our second solar cell manufacturing facility began production in the third quarter of 2007. We currently operate ten solar cell manufacturing lines with total production capacity of 334 megawatts per year with lines five through ten located in our second building in the Philippines that is expected to eventually house 12 solar cell production lines with a total factory output capacity of 466 megawatts per year. As we build additional manufacturing lines or facilities, our fixed costs will increase, and the overall utilization rate of our solar cell manufacturing and solar panel assembly facilities could decline, which could negatively impact our gross profit. This decline may continue until a line's manufacturing output reaches its rated practical capacity.

During the three and nine months ended September 28, 2008, our total cost of revenue was approximately $271.9 million and $782.0 million, respectively, which represented increases of 39% and 74%, respectively, compared to total cost of revenue reported in the comparable periods of 2007. The increase in total cost of revenue resulted from increased costs in all cost of revenue spending categories and corresponds with an increase of 61% and 88% in total revenue during the three and nine months ended September 28, 2008, respectively, from total revenue reported in the comparable periods of 2007. As a percentage of total revenue, our total cost of revenue decreased to 72% and 76% in the three and nine months ended September 28, 2008, respectively, compared to 84% and 82% for the three and nine months ended September 30, 2007, respectively. This decrease in total cost of revenue as a percentage of total revenue is reflective of decreased costs of polysilicon beginning in the second quarter of fiscal 2008 and improved manufacturing economies of scale associated with markedly higher production volume. This decrease in total cost of revenue as a percentage of total revenue in the nine months ended September 28, 2008 as compared to the nine months ended September 30, 2007 was partially offset by (i) a one-time asset impairment charge of $2.2 million in the nine months ended September 28, 2008 relating to the wind-down of our imaging detector product line (the $3.3 million write-down of certain solar product manufacturing equipment taken in the first quarter was reversed in the third quarter of fiscal 2008); (ii) a more favorable mix of business in our systems segment that benefited gross margin by approximately four percentage points during the nine months ended September 30, 2007; and (iii) the $2.7 million settlement received from one of our suppliers in the components segment during the nine months ended September 30, 2007 in connection with defective materials sold to us during 2006 that was reflected as a reduction to total cost of revenue.

Research and Development

Research and development expense as a percentage of revenue and the year-over-year change were as follows:

	Three Months Ended			Nine Months Ended		
(Dollars in thousands)	**September 28, 2008**	**September 30, 2007**	**Year-over-Year Change**	**September 28, 2008**	**September 30, 2007**	**Year-over-Year Change**
Research & development	$ 6,049	$ 3,902	55%	$ 15,504	$ 9,659	61%
Research & development as a percentage of revenue	2%	2%		1%	2%	

During the three and nine months ended September 28, 2008, our research and development expense was $6.0 million and $15.5 million, respectively, which represents an increase of 55% and 61%, respectively, from research and development expense reported in the comparable period of fiscal 2007. Research and development expense consists primarily of salaries and related personnel costs, depreciation and the cost of solar cell and solar panel materials and services used for the development of products, including experiment and testing. The increase in research and development spending during the three and nine months ended September 28, 2008 compared to the same period of fiscal 2007 resulted primarily from: (i) increases in salaries, benefits and stock-based compensation costs as a result of increased headcount; and (ii) additional material and equipment costs incurred for the development of our next generation of more efficient solar cells and thinner polysilicon wafers for solar cell manufacturing, as well as development of new processes to automate solar panel assembly operations. These increases were partially offset by cost reimbursements received from various government entities in the United States.

Research and development expense is reported net of any funding received under contracts with governmental agencies because such contracts are considered collaborative arrangements. In the third quarter of 2007, we signed a Solar America Initiative agreement with the U.S. Department of Energy in which we were awarded $8.5 million in the first budgetary period. Total funding for the three-year effort is estimated to be $24.7 million. Our cost share requirement under this program, including lower-tier subcontract awards, is anticipated to be $27.9 million. Subject to final negotiations and settlement with the government agencies involved, our existing governmental contracts are expected to offset approximately $7.0 million to $10.0 million of our research and development expense in each of 2007, 2008 and 2009. This contract replaced our three-year cost-sharing research and development project with the National Renewable Energy Laboratory, entered into in March 2005, to fund up to $3.0 million or half of the project costs to design our next generation solar panels. Funding from government contracts offset our research and development expense by approximately $1.6 million and $5.3 million in the three and nine months ended September 28, 2008, respectively, as compared to approximately $0.7 million and $1.1 million in the three and nine months ended September 30, 2007, respectively.

As a percentage of total revenue, research and development expense totaled two percent and one percent in the three and nine months ended September 28, 2008, respectively, compared to two percent in each of the three and nine months ended September 30, 2007, because these expenses increased at approximately the same rate of growth in our revenue. We expect our research and development expense to continually increase in absolute dollars as we continue to develop new processes to further improve the conversion efficiency of our solar cells and reduce their manufacturing cost, and as we develop new products to diversify our product offerings.

Sales, General and Administrative

Sales, general and administrative expense as a percentage of revenue and the year-over-year change were as follows:

	Three Months Ended			Nine Months Ended		
(Dollars in thousands)	September 28, 2008	September 30, 2007	Year-over-Year Change	September 28, 2008	September 30, 2007	Year-over-Year Change
Sales, general & administrative	$ 46,075	$ 27,708	66%	$ 123,141	$ 76,188	62%
Sales, general & administrative as a percentage of revenue	12%	12%		12%	14%	

During the three and nine months ended September 28, 2008, our sales, general and administrative expense was $46.1 million and $123.1 million, respectively, which represents an increase of 66% and 62%, respectively, from sales, general and administrative expense reported in the comparable period of fiscal 2007. Sales, general and administrative expense for our business consists primarily of salaries and related personnel costs, professional fees, insurance and other selling and marketing expenses. The increase in our sales, general and administrative expense during the three and nine months ended September 28, 2008 compared to the same period of fiscal 2007 resulted primarily from higher spending in all areas of sales, marketing, finance and information technology to support the growth of our business, particularly increased headcount and payroll related expenses, including stock-based compensation, as well as increased expenses associated with deployment of a new enterprise resource planning system, legal and accounting services. During the three and nine months ended September 28, 2008, stock-based compensation included in our sales, general and administrative expense was approximately $13.0 million and $35.5 million, respectively, as compared to approximately $9.4 million and $26.9 million in the three and nine months ended September 30, 2007, respectively. Also contributing to our increased sales, general and administrative expense in the three and nine months ended September 28, 2008 compared to the same period of fiscal 2007 are substantial increases in headcount and sales and marketing spending to expand our value added reseller channel primarily in Europe and global branding initiatives.

As a percentage of total revenue, sales, general and administrative expense totaled twelve percent in each of the three and nine months ended September 28, 2008, compared to twelve percent and fourteen percent in the three and nine months ended September 30, 2007, respectively, because these expenses increased at approximately the same rate of growth in our revenue. We expect our sales, general and administrative expense to increase in absolute dollars as we expand our sales and marketing efforts, hire additional personnel and improve our information technology infrastructure to support our growth. However, assuming our revenue increases as we expect, over time we anticipate that our sales, general and administrative expense will continue to decrease as a percentage of revenue.

Purchased In-Process Research and Development, or IPR&D

Purchased in-process research and development expense as a percentage of revenue and the year-over-year change were as follows:

	Three Months Ended			Nine Months Ended		
(Dollars in thousands)	September 28, 2008	September 30, 2007	Year-over-Year Change	September 28, 2008	September 30, 2007	Year-over-Year Change
Purchased in-process research and development	$ —	$ —	n.a.	$ —	$ 9,575	n.a.
Purchased in-process research and development as a percentage of revenue	n.a.	n.a.		n.a.	2%	

For the nine months ended September 30, 2007, we recorded an IPR&D charge of $9.6 million in connection with the acquisition of SP Systems in January 2007, as technological feasibility associated with the IPR&D projects had not been established and no alternative future use existed. No in-process research and development expense was recorded for the nine months ended September 28, 2008.

These IPR&D projects consisted of two components: design automation tool and tracking systems and other. In assessing the projects, we considered key characteristics of the technology as well as its future prospects, the rate technology changes in the industry, product life cycles and the various projects' stage of development.

The value of IPR&D was determined using the income approach method, which calculated the sum of the discounted future cash flows attributable to the projects once commercially viable using a 40% discount rate, which were derived from a weighted-average cost of capital analysis and adjusted to reflect the stage of completion and the level of risks associated with the projects. The percentage of completion for each project was determined by identifying the research and development expenses invested in the project as a ratio of the total estimated development costs required to bring the project to technical and commercial feasibility. The following table summarizes certain information related to each project:

	Stage of Completion	Total Cost Incurred to Date	Total Remaining Costs
Design Automation Tool			
As of January 10, 2007 (acquisition date)	8%	$ 0.2 million	$ 2.4 million
As of September 28, 2008	100%	$ 1.4 million	$ —
Tracking System and Other			
As of January 10, 2007 (acquisition date)	25%	$ 0.2 million	$ 0.6 million
As of September 28, 2008	100%	$ 0.8 million	$ —

Status of IPR&D Projects:

At the close of the first quarter in fiscal 2008, the first release of the design automation tool software was deployed to production. As of September 28, 2008, we have incurred total project costs of $1.4 million, of which $1.2 million was incurred after the acquisition, and total costs to complete the project was $1.2 million less than the original estimate of $2.6 million. We completed the design automation tool project approximately two years and three quarters earlier than the original estimated completion date of December 2010.

We completed the tracking systems project in June 2007 and incurred total project costs of $0.8 million, of which $0.6 million was incurred after the acquisition. Both the actual completion date and the total projects costs were in line with the original estimates.

Impairment of Acquisition-Related Intangible Assets

Impairment of acquisition-related intangible assets as a percentage of revenue and the year-over-year change were as follows:

	Three Months Ended			Nine Months Ended		
(Dollars in thousands)	**September 28, 2008**	**September 30, 2007**	**Year-over-Year Change**	**September 28, 2008**	**September 30, 2007**	**Year-over-Year Change**
Impairment of acquisition-related intangible assets	$ —	$ —	n.a.	$ —	$ 14,068	n.a.
Impairment of acquisition-related intangible assets as a percentage of revenue	n.a.	n.a.		n.a.	3%	

For the nine months ended September 30, 2007, we recognized a charge for the impairment of acquisition-related intangible assets of $14.1 million. In June 2007, we changed our branding strategy and consolidated all of our product and service offerings under the SunPower tradename. To reinforce the new branding strategy, we formally changed the name of PowerLight to SunPower Corporation, Systems. The fair value of PowerLight tradenames was valued at $15.5 million at the date of acquisition and ascribed a useful life of 5 years. The determination of the fair value and useful life of the tradename was based on our previous strategy of continuing to market our systems products and services under the PowerLight brand. As a result of the change in our branding strategy, during the quarter ended July 1, 2007, the net book value of the PowerLight tradename of $14.1 million was written off as an impairment of acquisition-related intangible assets. As a percentage of revenues, impairment of acquisition related intangible assets was three percent in the nine months ended September 30, 2007.

Other Income (Expense), Net

Interest income, interest expense, and other, net as a percentage of revenue and the year-over-year change were as follows:

(Dollars in thousands)	Three Months Ended September 28, 2008	Three Months Ended September 30, 2007	Year-over-Year Change	Nine Months Ended September 28, 2008	Nine Months Ended September 30, 2007	Year-over-Year Change
Interest income	$ 2,650	$ 4,609	(43%)	$ 9,086	$ 8,789	3%
Interest income as a percentage of revenue	1%	2%		1%	2%	
Interest expense	$ (1,411)	$ (1,372)	(3%)	$ (4,286)	$ (3,576)	(20%)
Interest expense as a percentage of revenue	—%	1%		—%	1%	
Other, net	$ (3,560)	$ (205)	(1,637%)	$ (5,513)	$ (448)	(1,131%)
Other, net as a percentage of revenue	1%	—%		1%	—%	

Interest income during the three and nine months ended September 28, 2008 and September 30, 2007, primarily represents interest income earned on our cash, cash equivalents, restricted cash and investments during these periods. The decrease in interest income of 43% during the three months ended September 28, 2008 compared to the same period of fiscal 2007 resulted primarily from the decrease in available-for-sale securities year-over-year used to fund our capital expenditures for our manufacturing capacity expansion. The increase in interest income of 3% during the nine months ended September 28, 2008 compared to the same period of fiscal 2007 is primarily the effect of interest earned on $581.5 million in net proceeds from our class A common stock and convertible debenture offerings in February and July 2007.

Interest expense during the three and nine months ended September 28, 2008 and September 30, 2007 relates to interest due on convertible debt and customer advance payments. The increase in our interest expense of 3% and 20% in the three and nine months ended September 28, 2008, respectively, compared to the same period of fiscal 2007 is primarily due to interest related to the aggregate of $425.0 million in convertible debentures issued in February and July 2007. Our convertible debt was used in part to fund our capital expenditures for our manufacturing capacity expansion.

In May 2008, the Financial Accounting Standards Board, or FASB, issued FASB Staff Position, or FSP, APB 14-1, which clarifies the accounting for convertible debt instruments that may be settled in cash upon conversion. FSP APB 14-1 significantly impacts the accounting for our convertible debt by requiring us to separately account for the liability and equity components of the convertible debt in a manner that reflects interest expense equal to our non-convertible debt borrowing rate. FSP APB 14-1 may result in significantly higher non-cash interest expense on our convertible debt. FSP APB 14-1 is effective for fiscal years and interim periods beginning after December 15, 2008, and retrospective application will be required for all periods presented.

The following table summarizes the components of other, net:

(Dollars in thousands)	Three Months Ended September 28, 2008	Three Months Ended September 30, 2007	Nine Months Ended September 28, 2008	Nine Months Ended September 30, 2007
Write-off of unamortized debt issuance costs	$ —	$ —	$ (972)	$ —
Amortization of debt issuance costs	—	(519)	—	(999)
Impairment of investments	(933)	—	(933)	—
Share in earnings of joint venture	2,131	(214)	4,005	(214)
Gain (loss) on derivatives and foreign exchange	(4,579)	400	(7,407)	570
Other income (expense), net	(179)	128	(206)	195
Total other, net	$ (3,560)	$ (205)	$ (5,513)	$ (448)

Other, net during the three and nine months ended September 28, 2008 consists primarily of losses from derivatives and foreign exchange, the write-off of unamortized debt issuance costs as a result of the market price conversion trigger on our senior convertible debentures being met in December 2007 and the impairment of certain money market securities, offset slightly by our share in the earnings of joint ventures. Other, net during the three and nine months ended September 30, 2007 consists primarily of amortization of debt issuance costs and our share in the net loss of Woongjin Energy Co., Ltd, a joint venture, offset slightly by gains from derivatives and foreign exchange.

Historically through December 30, 2007, intercompany accounts payable denominated in U.S. dollars and held by our Euro functional currency entities were not expected to be settled in the foreseeable future. In accordance with SFAS No. 52, “Foreign Currency Translation,” or SFAS No. 52, gains and losses on the foreign currency translation of the intercompany accounts payable were recorded in accumulated other comprehensive income in stockholders’ equity in the Condensed Consolidated Balance Sheets. Beginning in the first quarter of fiscal 2008, management has determined that intercompany accounts payable denominated in U.S. dollars and held by our Euro functional currency entities will be settled within the foreseeable future as a result of our new intercompany agreements. Therefore, gains and losses on the foreign currency translation of the intercompany accounts payable will be recognized as a component of other, net in the Condensed Consolidated Statements of Operations.

Income Taxes

Income tax provision (benefit) as a percentage of revenue and the year-over-year change were as follows:

	Three Months Ended			Nine Months Ended		
(Dollars in thousands)	September 28, 2008	September 30, 2007	Year-over-Year Change	September 28, 2008	September 30, 2007	Year-over-Year Change
Income tax provision (benefit)	$ 29,797	$ 1,396	2,034%	$ 49,869	$ (8,429)	692%
Income tax provision (benefit) as a percentage of revenue	8%	1%		5%	(2) %	

In the three and nine months ended September 28, 2008, our income tax expense was provided primarily for foreign income taxes in certain jurisdictions where our operations are profitable. Our interim period tax provision is estimated based on the expected annual worldwide tax rate and takes into account the tax effect of discrete items. In the three and nine months ended September 30, 2007, our income tax expense (benefit) was primarily the result of recognition of deferred tax assets to the extent of deferred tax liabilities created by the acquisition of SP Systems in January 2007, net of foreign income taxes in profitable jurisdictions where the tax rates are less than the U.S. statutory rate.

For financial reporting purposes, income tax expense and deferred income tax balances were calculated as if we were a separate entity and had prepared our own separate tax return. Deferred tax assets and liabilities are recognized for temporary differences between financial statement and income tax bases of assets and liabilities. We recorded a valuation allowance to the extent our net deferred tax asset on all items except comprehensive income exceeded our net deferred tax liability. We expect it is more likely than not that we will not realize our net deferred tax asset as of September 28, 2008. In assessing the need for a valuation allowance, we consider historical levels of income, expectations and risks associated with the estimates of future taxable income and ongoing prudent and feasible tax planning strategies. In the event we determine that we would be able to realize additional deferred tax assets in the future in excess of the net recorded amount, or if we subsequently determine that realization of an amount previously recorded is unlikely, we would record an adjustment to the deferred tax asset valuation allowance, which would change income in the period of adjustment.

As described in Note 2 of Notes to Condensed Consolidated Financial Statements, we will pay federal and state income taxes in accordance with the tax sharing agreement with Cypress. Effective with the closing of our public offering of common stock in June 2006, we are no longer eligible to file federal and most state consolidated tax returns with Cypress. As of September 29 2008, Cypress distributed the shares of SunPower to its shareholders, so we are no longer eligible to file any state combined returns. Accordingly, we will be required to pay Cypress for any federal income tax credit or net operating loss carryforwards utilized in our federal tax returns in subsequent periods. Any payments we make to Cypress when we utilize certain tax attributes will be accounted for as an equity transaction with Cypress. As of December 30, 2007, we had federal net operating loss carryforwards of approximately $147.6 million. These federal net operating loss carryforwards will expire at various dates from 2011 to 2027. We had California state net operating loss carryforwards of approximately $73.5 million as of December 30, 2007, which expire at various dates from 2011 to 2017. We also had research and development credit carryforwards of approximately $3.9 million for both federal and state tax purposes.

Liquidity and Capital Resources

In February 2007, we raised $194.0 million net proceeds from the issuance of 1.25% senior convertible debentures. In July 2007, we raised $220.1 million net proceeds from the issuance of 0.75% senior convertible debentures and $167.4 million net proceeds from the completion of a follow-on offering of 2.7 million shares of our class A common stock.

Cash Flows

A summary of the sources and uses of cash and cash equivalents is as follows:

	Nine Months Ended	
(In thousands)	**September 28, 2008**	**September 30, 2007**
Net cash provided by (used in) operating activities	$ 107,927	$ (26,447)
Net cash used in investing activities	(167,191)	(319,801)
Net cash provided by financing activities	31,832	584,742
Effect of exchange rate changes on cash and cash equivalents	(1,166)	3,087
Net increase (decrease) in cash and cash equivalents	$ (28,598)	$ 241,581

Operating Activities

Net cash provided by operating activities of $107.9 million for the nine months ended September 28, 2008 was primarily the result of net income of $62.7 million, plus non-cash charges totaling $104.3 million for depreciation, impairment of investments and long-lived assets, amortization, write-off of debt issuance costs and stock-based compensation expense, less non-cash income of $4.0 million for our equity share in earnings of joint ventures, as well as increases in accounts payable and other accrued liabilities, including accounts payable to Cypress, of $76.5 million and customer advances of $45.9 million, primarily for future polysilicon purchases by customers that manufacture ingots which are sold back to us under an ingot supply agreement. These items were partially offset by decreases in billings in excess of costs and estimated earnings of $60.1 million related to contractual timing of system project billings, as well as increases in accounts receivable of $55.3 million, inventories of $44.6 million and other changes in operating assets and liabilities totaling $17.5 million. The significant increases in substantially all of our current assets and current liabilities resulted from our substantial revenue increase in the nine months ended September 28, 2008 compared to previous quarters which impacted net income and working capital.

Net cash used in operating activities of $26.4 million for the nine months ended September 30, 2007 was primarily the result of increases in costs and estimated earnings in excess of billings of $69.8 million, inventories of $48.0 million, advance payments to suppliers of $33.6 million related to our existing supply agreements, as well as decreases in billings in excess of costs and estimated earnings of $17.5 million. These items were partially offset by net income of $4.3 million, plus non-cash charges totaling $101.2 million for depreciation, amortization, impairment of acquisition-related intangibles, purchased in-process research and development expense, stock-based compensation expense and equity share in loss of joint venture. In addition, these items were offset by increases in advances from customers of $29.8 million and other changes in operating assets and liabilities totaling $7.2 million. The significant increases in substantially all of our current assets and current liabilities resulted from the acquisition of SP Systems in January 2007, as well as our substantial revenue increase in the nine months ended September 30, 2007 compared to previous quarters which impacted net income and working capital.

Investing Activities

Net cash used in investing activities was $167.2 million for the nine months ended September 28, 2008, which primarily relates to capital expenditures of $150.3 million incurred during the nine months ended September 28, 2008. Capital expenditures were mainly associated with manufacturing capacity expansion in the Philippines. Also during the nine months ended September 28, 2008, (i) restricted cash increased by $42.2 million for advanced payments received from customers that we provided security in the form of cash collateralized bank standby letters of credit; (ii) we paid cash of $18.3 million for the acquisitions of SunPower Italia and SunPower Australia, net of cash acquired; and (iii) we invested an additional $24.6 million in joint ventures and other private companies. Cash used in investing activities was partially offset by $68.2 million in proceeds received from the sales of available-for-sale securities, net of available-for-sale securities purchased during the period and investment in the Reserve Funds re-designated from cash and cash equivalents to short-term investments at adjusted cost.

Net cash used in investing activities was $319.8 million for the nine months ended September 30, 2007, which primarily relates to (i) capital expenditures of $154.6 million; (ii) cash paid of $98.6 million for the acquisition of SP Systems, net of cash acquired; (iii) purchases of available-for-sale securities totaling $42.1 million, net of proceeds received from sales of available-for-sale securities during the period; and (iv) restricted cash increased by $24.5 million.

Financing Activities

Net cash provided by financing activities for the nine months ended September 28, 2008 reflects proceeds received of $3.8 million from stock option exercises and excess tax benefits totaling $33.9 million from the exercise of stock options, partially offset by cash paid of $5.9 million for treasury stock purchases that were used to pay withholding taxes on vested restricted stock. Net cash provided by financing activities for the nine months ended September 30, 2007 primarily reflects (i) $194.0 million in net proceeds from the issuance of $200.0 million in principal amount of 1.25% senior convertible debentures in February 2007; (ii) $220.1 million in net proceeds from the issuance of $225.0 million in principal amount of 0.75% senior convertible debentures in July 2007; and (iii) $167.4 million in net proceeds from our follow-on public offering of 2.7 million shares of our class A common stock in July 2007. Also during the nine months ended September 30, 2007, we paid $3.6 million on an outstanding line of credit and received $6.9 million in proceeds from stock option exercises.

Revision of Statement of Cash Flow Presentation Related to Purchases of Property, Plant and Equipment

We have changed our Condensed Consolidated Statements of Cash Flows for the nine months ended September 30, 2007 to exclude the impact of purchases of property, plant and equipment that remain unpaid and as such are included in “accounts payable and other accrued liabilities” at the end of the reporting period. Historically, changes in “accounts payable and other accrued liabilities” related to such purchases were included in cash flows from operations, while the investing activity caption "Purchase of property, plant and equipment" included these purchases. As these unpaid purchases do not reflect cash transactions, we have revised our cash flow presentations to exclude them. The correction resulted in an increase to the previously reported amount of cash used for operating activities of $7.9 million in the nine months ended September 30, 2007, resulting from a reduction in the amount of cash provided from the change in accounts payable and other accrued liabilities in that period. The corresponding correction in the investing section was to decrease cash used for investing activities by $7.9 million in the nine months ended September 30, 2007, as a result of the reduction in the amount of cash used for purchases of property, plant and equipment in that period. These corrections had no impact on our previously reported results of operations, working capital or stockholders’ equity. We concluded that these corrections were not material to any of our previously issued condensed consolidated financial statements, based on SEC Staff Accounting Bulletin No. 99-Materiality.

Debt and Credit Sources

In July 2007, we entered into a credit agreement with Wells Fargo Bank, National Association, or Wells Fargo, that was amended from time to time, providing for a $50.0 million unsecured revolving credit line, with a $50.0 million unsecured letter of credit subfeature, and a separate $150.0 million secured letter of credit facility as of September 28, 2008. We may borrow up to $50.0 million and request that Wells Fargo issue up to $50.0 million in letters of credit under the unsecured letter of credit subfeature through April 4, 2009. Letters of credit issued under the subfeature reduce our borrowing capacity under the revolving credit line. Additionally, we may request that Wells Fargo issue up to $150.0 million in letters of credit under the secured letter of credit facility through July 31, 2012. As detailed in the agreement, we will pay interest on outstanding borrowings and a fee for outstanding letters of credit. At any time, we can prepay outstanding loans. All borrowings must be repaid by April 4, 2009, and all letters of credit issued under the unsecured letter of credit subfeature expire on or before April 4, 2009 unless we provide by such date collateral in the form of cash or cash equivalents in the aggregate amount available to be drawn under letters of credit outstanding at such time. All letters of credit issued under the secured letter of credit facility expire no later than July 31, 2012. We concurrently entered into a security agreement with Wells Fargo, granting a security interest in a securities account and deposit account to secure our obligations in connection with any letters of credit that might be issued under the credit agreement. In connection with the credit agreement, SunPower North America, Inc., our wholly-owned subsidiary, SP Systems, an indirect wholly-owned subsidiary of ours, and SunPower Systems SA, another indirect wholly-owned subsidiary of ours, entered into an associated continuing guaranty with Wells Fargo. The terms of the credit agreement include certain conditions to borrowings, representations and covenants, and events of default customary for financing transactions of this type.

As of September 28, 2008 and December 30, 2007, nine letters of credit totaling $47.1 million and four letters of credit totaling $32.0 million, respectively, were issued by Wells Fargo under the unsecured letter of credit subfeature. In addition, 23 letters of credit totaling $68.7 million and 8 letters of credit totaling $47.9 million, were issued by Wells Fargo under the secured letter of credit facility as of September 28, 2008 and December 30, 2007, respectively. On September 28, 2008 and December 30, 2007, cash available to be borrowed under the unsecured revolving credit line was $2.9 million and $18.0 million, respectively, and includes letter of credit capacities available to be issued by Wells Fargo under the unsecured letter of credit subfeature of $2.9 million and $8.0 million, respectively. Letters of credit available under the secured letter of credit facility at September 28, 2008 and December 30, 2007 totaled $81.3 million and $2.1 million, respectively.

In February 2007, we issued $200.0 million in principal amount of our 1.25% senior convertible debentures, or the February 2007 debentures, and received net proceeds of $194.0 million. Interest on the February 2007 debentures is payable on February 15 and August 15 of each year, commencing August 15, 2007. The February 2007 debentures will mature on February 15, 2027. Holders may require us to repurchase all or a portion of their February 2007 debentures on each of February 15, 2012, February 15, 2017 and February 15, 2022, or if we experience certain types of corporate transactions constituting a fundamental change. Any repurchase of the February 2007 debentures pursuant to these provisions will be for cash at a price equal to 100% of the principal amount of the February 2007 debentures to be repurchased plus accrued and unpaid interest. In addition, we may redeem some or all of the February 2007 debentures on or after February 15, 2012 for cash at a redemption price equal to 100% of the principal amount of the February 2007 debentures to be redeemed plus accrued and unpaid interest. See Note 10 of Notes to our Condensed Consolidated Financial Statements.

In July 2007, we issued $225.0 million in principal amount of our 0.75% senior convertible debentures, or the July 2007 debentures, and received net proceeds of $220.1 million. Interest on the July 2007 debentures is payable on February 1 and August 1 of each year, commencing February 1, 2008. The July 2007 debentures will mature on August 1, 2027. Holders may require us to repurchase all or a portion of their July 2007 debentures on each of August 1, 2010, August 1, 2015, August 1, 2020 and August 1, 2025, or if we experience certain types of corporate transactions constituting a fundamental change. Any repurchase of the July 2007 debentures pursuant to these provisions will be for cash at a price equal to 100% of the principal amount of the July 2007 debentures to be repurchased plus accrued and unpaid interest. In addition, we may redeem some or all of the July 2007 debentures on or after August 1, 2010 for cash at a redemption price equal to 100% of the principal amount of the July 2007 debentures to be redeemed plus accrued and unpaid interest. See Note 10 of Notes to our Condensed Consolidated Financial Statements.

Liquidity

For the year ended December 30, 2007, the closing price of our class A common stock equaled or exceeded 125% of the $56.75 per share initial effective conversion price governing the February 2007 debentures and the closing price of our class A common stock equaled or exceeded 125% of the $82.24 per share initial effective conversion price governing the July 2007 debentures, for 20 out of 30 consecutive trading days ending on December 30, 2007, thus satisfying the market price conversion trigger pursuant to the terms of the debentures. As of the first trading day of the first quarter in fiscal 2008, holders of the February 2007 debentures and July 2007 debentures were able to exercise their right to convert the debentures any day in that fiscal quarter. Therefore, since holders of the February 2007 debentures and July 2007 debentures were able to exercise their right to convert the debentures in the first quarter of fiscal 2008, we classified the $425.0 million in aggregate convertible debt as short-term debt in our Condensed Consolidated Balance Sheets as of December 30, 2007. In addition, we wrote off $8.2 million and $1.0 million of unamortized debt issuance costs in the fourth fiscal quarter of 2007 and first fiscal quarter of 2008, respectively. No holders of the February 2007 debentures and July 2007 debentures exercised their right to convert the debentures in the first quarter of fiscal 2008.

For the quarter ended September 28, 2008, the closing price of our class A common stock equaled or exceeded 125% of the $56.75 per share initial effective conversion price governing the February 2007 debentures for 20 out of 30 consecutive trading days ending on September 28, 2008, thus satisfying the market price conversion trigger pursuant to the terms of the February 2007 debentures. As of the first trading day of the fourth quarter in fiscal 2008, holders of the February 2007 debentures are able to exercise their right to convert the debentures any day in that fiscal quarter. Therefore, since holders of the February 2007 debentures are able to exercise their right to convert the debentures in the fourth quarter of fiscal 2008, we classified the $200.0 million in aggregate convertible debt as short-term debt in our Condensed Consolidated Balance Sheets as of September 28, 2008.

As of October 31, 2008, we have received notices for the conversion of approximately $1.4 million of the February 2007 debentures which we have settled for approximately $1.2 million in cash and 1,000 shares of class A common stock. The current capital market conditions and credit environment could create incentives for additional holders to convert their debentures that did not exist in prior quarters. If the full $200.0 million in aggregate convertible debt was called for conversion prior to December 28, 2008, we would likely not have sufficient unrestricted cash and cash equivalents on hand to satisfy the conversion without additional liquidity. If necessary, we may seek to restructure our obligations under the convertible debt, or raise additional cash through sales of investments, assets or common stock, or from borrowings. However, there can be no assurance that we would be successful in these efforts in the current market conditions.

Because the closing stock price did not equal or exceed 125% of the initial effective conversion price governing the July 2007 debentures for 20 out of 30 consecutive trading days during the quarter ended September 28, 2008, holders of the debentures did not have the right to convert the debentures, based on the market price conversion trigger, any day in the fourth fiscal quarter beginning on September 29, 2008. Accordingly, we classified the $225.0 million in aggregate convertible debt as long-term debt in our Condensed Consolidated Balance Sheets as of September 28, 2008. This test is repeated each fiscal quarter; therefore, if the market price conversion trigger is satisfied in a subsequent quarter, the debentures may again be re-classified as short-term debt.

In addition, the holders of our February 2007 debentures and July 2007 debentures would be able to exercise their right to convert the debentures during the five consecutive business days immediately following any five consecutive trading days in which the trading price of our senior convertible debentures is less than 98% of the average of the closing sale price of a share of class A common stock during the five consecutive trading days, multiplied by the applicable conversion rate. On October 31, 2008, our February 2007 debentures and July 2007 debentures traded significantly below their historic trading prices, with our February 2007 debentures trading slightly above their conversion value. We believe the decline in trading prices is due primarily to the declining market price of our class A common stock, the lack of liquidity in the current market, a need for investors to raise capital by selling debentures, public concerns regarding the availability of credit, and the end of our share lending arrangement with Lehman Brothers International (Europe) Limited as a result of LBIE's administrative proceeding and the related Chapter 11 filing by Lehman Brothers Holdings Inc. and certain of its affiliates. If the trading prices of our debentures continue to decline, holders of the debentures may have the right to convert the debentures in the future.

As of September 28, 2008, we had cash and cash equivalents of $256.6 million as compared to $285.2 million as of December 30, 2007. In addition, we had short-term investments and long-term investments of $39.0 million and $25.0 million as of September 28, 2008, respectively, as compared to $105.4 million and $29.1 million as of December 30, 2007, respectively. Of these investments, we held $25.7 million in Reserve Funds at September 28, 2008. The net asset value for the Reserve Funds fell below $1.00 because the funds had investments in Lehman, which filed for bankruptcy on September 15, 2008. As a result of this event, the Reserve Funds wrote down their investments in Lehman to zero. We have estimated the loss on the Reserve Funds to be approximately $0.9 million based on an evaluation of the fair value of the securities held by the Reserve Funds and the net asset value that was last published by the Reserve Funds before the funds suspended redemptions. We recorded an impairment charge of $0.9 million in "Other, net" in our Condensed Consolidated Statements of Operations, thereby establishing a new cost basis for each fund.

On October 31, 2008, we received a distribution of $11.9 million from the Reserve Funds. We expect that the remaining distribution of $13.8 million from the Reserve Funds will occur over the remaining twelve months as the investments held in the funds mature. Therefore, we have changed the designation of our $13.8 million investment in the Reserve Funds that was not received in the subsequent period from cash and cash equivalents to short-term investments at the new cost basis on the Condensed Consolidated Balance Sheets. While we expect to receive substantially all of our current holdings in the Reserve Funds within the next twelve months, it is possible we may encounter difficulties in receiving distributions given the current credit market conditions. If market conditions were to deteriorate even further such that the current fair value were not achievable, we could realize additional losses in our holdings with the Reserve Funds and distributions could be further delayed.

In addition, we held five auction rate securities totaling $25.0 million as of September 28, 2008 as compared to ten auction rate securities totaling $50.8 million as of December 30, 2007. These auction rate securities are typically over-collateralized and secured by pools of student loans originated under the Federal Family Education Loan Program, or FFELP, and are guaranteed and insured by the U.S. Department of Education. In addition, all auction rate securities held are rated by one or more of the Nationally Recognized Statistical Rating Organizations, or NRSROs, as triple-A. Beginning in February 2008, the auction rate securities market experienced a significant increase in the number of failed auctions, resulting from a lack of liquidity, which occurs when sell orders exceed buy orders, and does not necessarily signify a default by the issuer. All auction rate securities invested in at September 28, 2008 have failed to clear at auctions. For failed auctions, we continue to earn interest on these investments at the maximum contractual rate as the issuer is obligated under contractual terms to pay penalty rates should auctions fail. Historically, failed auctions have rarely occurred, however, such failures could continue to occur in the future. In the event we need to access these funds, we will not be able to do so until a future auction is successful, the issuer redeems the securities, a buyer is found outside of the auction process or the securities mature. Accordingly, auction rate securities at September 28, 2008 and December 30, 2007 that were not sold in a subsequent period totaling $25.0 million and $29.1 million, respectively, are classified as long-term investments on the Condensed Consolidated Balance Sheets, because they are not expected to be used to fund current operations and consistent with the stated contractual maturities of the securities.

In the second quarter of fiscal 2008, we sold auction rate securities with a carrying value of $12.5 million for their stated par value of $13.0 million to the issuer of the securities outside of the auction process. We have concluded that no other-than-temporary impairment losses occurred in the three and nine months ended September 28, 2008 in regards to the auction rate securities because the lack of liquidity in the market is considered temporary in nature. If it is determined that the fair value of these auction rate securities is other-than-temporarily impaired, we would record a loss in our Condensed Consolidated Statements of Operations in the fourth quarter of 2008, which could be material.

We believe that our current cash and cash equivalents and funds available from the credit agreement with Wells Fargo will be sufficient to meet our working capital and capital expenditure commitments for at least the next 12 months. However, there can be no assurance that our liquidity will be adequate over time. For instance, we expect to continue to make significant capital expenditures in our manufacturing facilities, including through building purchases or long-term leases, and, in May 2008, we announced plans to construct our third solar cell manufacturing facility in Malaysia with an expected nameplate rating in excess of one gigawatt of annual generating capacity. The Malaysian Industrial Development Authority, or MIDA, is arranging an incentive package for us to promote our investment in the new manufacturing plant. The incentive package is conditional upon us meeting certain capital investment, employment, and research and development expenditure commitments. We expect total capital expenditures in the range of $250.0 million to $300.0 million in 2008 as we continue to increase our solar cell and solar panel manufacturing capacity. These expenditures would be greater if we decide to bring capacity on line more rapidly. If our capital resources are insufficient to satisfy our liquidity requirements, we may seek to sell additional equity securities or debt securities or obtain other debt financing. The sale of additional equity securities or convertible debt securities would result in additional dilution to our stockholders. Additional debt would result in increased expenses and would likely impose new restrictive covenants like the covenants under the credit agreement with Wells Fargo. Financing arrangements may not be available to us, or may not be available in amounts or on terms acceptable to us.

We expect to experience growth in our operating expenses, including our research and development, sales and marketing and general and administrative expenses, for the foreseeable future to execute our business strategy. We may also be required to purchase polysilicon in advance to secure our wafer supplies or purchase third-party solar modules and materials in advance to support systems projects. We intend to fund these activities with existing cash and cash equivalents, cash generated from operations and, if necessary, borrowings under our credit agreement with Wells Fargo. These anticipated increases in operating expenses may not result in an increase in our revenue and our anticipated revenue may not be sufficient to support these increased expenditures. We anticipate that operating expenses, working capital and capital expenditures will constitute a significant use of our cash resources.

Contractual Obligations

The following summarizes our contractual obligations at September 28, 2008:

	Payments Due by Period				
(In thousands)	**Total**	**2008 (remaining 3 months)**	**2009 – 2010**	**2011 – 2012**	**Beyond 2012**
Obligation to Cypress	$ 17,839	$ 17,839	$ —	$ —	$ —
Customer advances	116,572	11,980	32,181	16,411	56,000
Interest on customer advances	1,593	313	1,280	—	—
Convertible debt	425,000	—	—	—	425,000
Interest on convertible debt	77,712	1,047	8,375	8,375	59,915
Lease commitments	43,536	1,316	10,604	6,984	24,632
Utility obligations	750	—	—	—	750
Royalty obligations	321	321	—	—	—
Non-cancelable purchase orders	134,591	131,757	2,834	—	—
Purchase commitments under agreements	3,409,935	74,373	942,020	866,837	1,526,705
Total	$ 4,227,849	$ 238,946	$ 997,294	$ 898,607	$ 2,093,002

Customer advances and interest on customer advances relate to advance payments received from customers for future purchases of solar power products or supplies. Convertible debt and interest on convertible debt relate to the aggregate of $425.0 million in principal amount of our senior convertible debentures. For the purpose of the table above, we assume that (1) no holders of the February 2007 debentures will exercise their right to convert the debentures as a result of the market price conversion trigger being met in the third quarter of fiscal 2008 and (2) all holders of the convertible debt will hold the debentures through the date of maturity in fiscal 2027 and upon conversion, the values of the convertible debt are equal to the aggregate principal amount of $425.0 million with no premiums. Lease commitments primarily relate to our 5-year lease agreement with Cypress for our headquarters in San Jose, California, an 11-year lease agreement with an unaffiliated third party for our administrative, research and development offices in Richmond, California, a 5-year lease agreement with an unaffiliated third party for a solar panel assembly facility in the Philippines and other leases for various office space. Utility obligations relate to our 11-year lease agreement with an unaffiliated third party for our administrative, research and development offices in Richmond, California. Royalty obligations result from several of the systems segment government awards and existing agreements. Non-cancelable purchase orders relate to purchases of raw materials for inventory, services and manufacturing equipment from a variety of vendors. Purchase commitments under agreements relate to arrangements entered into with suppliers of polysilicon, ingots, wafers, solar cells and solar modules as well as agreements to purchase solar renewable energy certificates from solar installation owners in New Jersey. These agreements specify future quantities and pricing of products to be supplied by the vendors for periods up to 12 years and there are certain consequences, such as forfeiture of advanced deposits and liquidated damages relating to previous purchases, in the event that we terminate the arrangements.

As of September 28, 2008 and December 30, 2007, total liabilities associated with FASB Interpretation No. 48, “Accounting for Uncertainty in Income Taxes, and Related Implementation Issues,” or FIN 48, uncertain tax positions were $7.0 million and $4.1 million, respectively, and are included in other long-term liabilities on our Condensed Consolidated Balance Sheets at September 28, 2008 and December 30, 2007, respectively, as they are not expected to be paid within the next twelve months. Due to the complexity and uncertainty associated with our tax positions, we cannot make a reasonably reliable estimate of the period in which cash settlement will be made for our liabilities associated with uncertain tax positions in other long-term liabilities, therefore, they have been excluded from the table above.

Recent Accounting Pronouncements

See Note 1 of Notes to our Condensed Consolidated Financial Statements for a description of certain other recent accounting pronouncements including the expected dates of adoption and effects on our results of operations and financial condition.

Item 3. Quantitative and Qualitative Disclosure About Market Risk

Interest Rate Risk

We are exposed to interest rate risk because many of our customers depend on debt financing to purchase our solar power systems. An increase in interest rates could make it difficult for our customers to secure the financing necessary to purchase our solar power systems on favorable terms, or at all, and thus lower demand for our solar power products, reduce revenue and adversely impact our operating results. An increase in interest rates could lower an investor's return on investment in a system or make alternative investments more attractive relative to solar power systems, which, in each case, could cause our customers to seek alternative investments that promise higher returns or demand higher returns from our solar power systems, reduce gross margin and adversely impact our operating results. This risk is becoming more significant to our systems segment, which is placing increasing reliance upon direct sales to financial institutions which sell electricity to end customers under a power purchase agreement. This sales model is highly sensitive to interest rate fluctuations and the availability of liquidity, and would be adversely affected by increases in interest rates or liquidity constraints.

In addition, our investment portfolio consists of a variety of financial instruments that exposes us to interest rate risk, including, but not limited to, money market funds and corporate securities. These investments are generally classified as available-for-sale and, consequently, are recorded on our balance sheet at fair market value with their related unrealized gain or loss reflected as a component of accumulated other comprehensive income in stockholders' equity. Due to the relatively short-term nature of our investment portfolio, we do not believe that an immediate 10% increase in interest rates would have a material effect on the fair market value of our portfolio. Since we believe we have the ability to liquidate this portfolio, we do not expect our operating results or cash flows to be materially affected to any significant degree by a sudden change in market interest rates on our investment portfolio.

Reserve Funds

At September 28, 2008, we had $25.7 million invested in Reserve Funds. The net asset value for the Reserve Funds fell below $1.00 because the funds had investments in Lehman, which filed for bankruptcy on September 15, 2008. As a result of this event, the Reserve Funds wrote down their investments in Lehman to zero. We have estimated the loss on the Reserve Funds to be approximately $0.9 million based on an evaluation of the fair value of the securities held by the Reserve Funds and the net asset value that was last published by the Reserve Funds before the funds suspended redemptions. We recorded an impairment charge of $0.9 million in "Other, net" in our Condensed Consolidated Statements of Operations, thereby establishing a new cost basis for each fund.

On October 31, 2008, we received a distribution of $11.9 million from the Reserve Funds. We expect that the remaining distribution of $13.8 million from the Reserve Funds will occur over the remaining twelve months as the investments held in the funds mature. While we expect to receive substantially all of our current holdings in the Reserve Funds within the next twelve months, it is possible we may encounter difficulties in receiving distributions given the current credit market conditions. If market conditions were to deteriorate even further such that the current fair value were not achievable, we could realize additional losses in our holdings with the Reserve Funds and distributions could be further delayed.

Auction Rate Securities

At September 28, 2008, we had $25.0 million invested in auction rate securities. Auction rate securities are variable rate debt instruments with interest rates that, unless they fail to clear at auctions, are reset approximately every seven to 49 days. The "stated" or "contractual" maturities for these securities generally are between 20 to 30 years. The auction rate securities are classified as available for sale under SFAS No. 115, "Accounting for Certain Investments in Debt and Equity Securities," or SFAS No. 115, and are recorded at fair value. Typically, the carrying value of auction rate securities approximates fair value due to the frequent resetting of the interest rates. All auction rate securities invested in at September 28, 2008 have failed to clear at auctions. These auction rate securities are typically over-collateralized and secured by pools of student loans originated under the FFELP and are guaranteed and insured by the U.S. Department of Education. In addition, all auction rate securities held are rated by one or more of the NRSROs as triple-A. We continue to earn interest on these investments at the maximum contractual rate as the issuer is obligated under contractual terms to pay penalty rates should auctions fail. In the second quarter of fiscal 2008, we sold auction rate securities with a carrying value of $12.5 million for their stated par value of $13.0 million to the issuer of the securities outside of the auction process. We have concluded that no other-than-temporary impairment losses occurred in the three and nine months ended September 28, 2008 in regards to the auction rate securities because the lack of liquidity in the market is considered temporary in nature. We will continue to analyze our auction rate securities each reporting period for impairment and may be required to record an impairment charge if the issuer of the auction rate securities is unable to successfully close future auctions or does not redeem the securities.

Convertible Debt

The fair market value of our 1.25% senior convertible debentures issued in February 2007 and 0.75% senior convertible debentures issued in July 2007 is subject to interest rate risk, market price risk and other factors due to the convertible feature of the debentures. The fair market value of the senior convertible debentures will generally increase as interest rates fall and decrease as interest rates rise. In addition, the fair market value of the senior convertible debentures will generally increase as the market price of our common stock increases and decrease as the market price falls. The interest and market value changes affect the fair market value of the senior convertible debentures but do not impact our financial position, cash flows or results of operations due to the fixed nature of the debt obligations. As of September 28, 2008, the estimated fair value of the senior convertible debentures was approximately $625.1 million based on quoted market prices as reported by Bloomberg. A 10% increase in quoted market prices would increase the estimated fair value of the senior convertible debentures to approximately $687.6 million as of September 28, 2008 and a 10% decrease in the quoted market prices would decrease the estimated fair value of the senior convertible debentures to $562.6 million.

On October 31, 2008, our senior convertible debentures traded significantly below their historic trading prices, with our February 2007 debentures trading slightly above their conversion value. We believe the decline in trading prices is due primarily to the declining market price of our class A common stock, the lack of liquidity in the current market, a need for investors to raise capital by selling debentures, public concerns regarding the availability of credit, and the end of our share lending arrangement with Lehman Brothers International (Europe) Limited as a result of LBIE's administrative proceeding and the related Chapter 11 filing by Lehman Brothers Holdings Inc. and certain of its affiliates.

Investments in Privately Held Companies

Our investments held in private companies exposes us to equity price risk. As of September 28, 2008, nonpublicly traded investments of $5.0 million are accounted for using the cost method and $18.9 million are accounted under APB Opinion No. 18, "The Equity Method of Accounting for Investments in Common Stock." These strategic investments in third parties are subject to risk of changes in market value, which if determined to be other than temporary, could result in realized impairment losses. We generally do not attempt to reduce or eliminate our market exposure in these cost and equity method investments. We periodically review the carrying value of such investments to determine if any valuation adjustments are appropriate under the applicable accounting pronouncements. If the recent credit market conditions continue or worsen, we may be required to record an impairment charge in our Condensed Consolidated Statements of Operations, which could be material. There can be no assurance that our private investments, particularly in this unfavorable market and economic environment, will not face similar risks of loss as our public investments noted above.

Foreign Currency Exchange Risk

Our exposure to adverse movements in foreign currency exchange rates is primarily related to sales to European customers that are denominated in Euros. Revenue generated from European customers represented approximately 39% and 62% of our total revenue for the three and nine months ended September 28, 2008, respectively. A 10% change in the Euro exchange rate would have impacted our revenue by $60.4 million in the nine months ended September 28, 2008. In connection with our global tax planning we recently changed the functional currency of certain European subsidiaries from U.S. dollar to Euro, resulting in greater exposure to changes in the value of the Euro. Implementation of this tax strategy had, and will continue to have, the ancillary effect of limiting our ability to fully hedge certain Euro-denominated revenue. From September 28, 2008 to October 31, 2008, the exchange rate to convert one Euro to U.S. dollars decreased from approximately $1.46 to $1.31. This decrease in the value of the Euro relative to the U.S. dollar is expected to have an adverse impact on our revenue, gross margin and profitability in the foreseeable future.

In the past, we have experienced an adverse impact on our revenue, gross margin and profitability as a result of foreign currency fluctuations. For example, when foreign currencies appreciate against the U.S. dollar, inventory and expenses denominated in foreign currencies become more expensive. An increase in the value of the U.S. dollar relative to foreign currencies could make our solar power products more expensive for international customers, thus potentially leading to a reduction in demand, our sales and profitability. Furthermore, many of our competitors are foreign companies that could benefit from such a currency fluctuation, making it more difficult for us to compete with those companies. Historically, we have conducted, with varying degrees of success, hedging activities that involve the use of currency forward contracts and options to address our exposure to changes in the foreign exchange rate between the U.S. dollar and other currencies. We cannot predict the impact of future exchange rate fluctuations on our business and results of operations.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We maintain "disclosure controls and procedures," as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), that are designed to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in Securities and Exchange Commission rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating our disclosure controls and procedures, management recognized that disclosure controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the disclosure controls and procedures are met. Additionally, in designing disclosure controls and procedures, our management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible disclosure controls and procedures. The design of any disclosure controls and procedures also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions.

Based on their evaluation as of the end of the period covered by this Quarterly Report on Form 10-Q and subject to the foregoing, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were effective.

Changes in Internal Control over Financial Reporting

We maintain a system of internal control over financial reporting that is designed to provide reasonable assurance that our books and records accurately reflect our transactions and that our established policies and procedures are followed. There were no material changes in our internal control over financial reporting that occurred during the three and nine months ended September 28, 2008 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

In the third quarter of fiscal 2008, we implemented a new enterprise resource planning ("ERP") system in our subsidiaries around the world, which resulted in a material update to our system of internal control over financial reporting. Issues encountered subsequent to implementation caused us to further revise our internal control process and procedures in order to correct and supplement our processing capabilities within the new system in that quarter. Throughout the ERP system stabilization period, which we expect to last for the remainder of the year, we will continue to improve and enhance our system of internal control over financial reporting. We believe that the ERP system will simplify and strengthen our system of internal control over financial reporting. See also "Risk Factors - *We have implemented a new enterprise resource planning system, or ERP system, and disruptions of the system could adversely affect our operations and financial results.*"

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

From time to time we are a party to litigation matters and claims that are normal in the course of our operations. While we believe that the ultimate outcome of these matters will not have a material adverse effect on us, the outcome of these matters is not determinable and negative outcomes may adversely affect our financial position, liquidity or results of operations.

ITEM 1A: *RISK FACTORS*

The following discussion of risk factors contains "forward-looking statements" as discussed in "Item 2: Management's Discussion and Analysis of Financial Condition and Results of Operations." These risk factors may be important to understanding any statement in this Quarterly Report on Form 10-Q or elsewhere. The following information should be read in conjunction with "PART I. FINANCIAL INFORMATION, Item 2: Management's Discussion and Analysis of Financial Condition and Results of Operations" and "PART I. FINANCIAL INFORMATION, Item 1: Financial Statements" and the accompanying Notes to Condensed Consolidated Financial Statements included in this Quarterly Report on Form 10-Q.

Our operations and financial results are subject to various risks and uncertainties, including those described below, that could adversely affect our business, financial condition, results of operations, cash flows, and trading price of our common stock. Although we believe that we have identified and discussed below the key risk factors affecting our business, there may be additional risks and uncertainties that are not presently known or that are not currently believed to be significant that may also adversely affect our business, financial condition, results of operations, cash flows, and trading prices of our class A and class B common stock as well as our February 2007 debentures and July 2007 debentures.

Risks Related to Our Business

The solar power industry is currently experiencing an industry-wide shortage of polysilicon. This shortage poses several risks to our business, including possible constraints on revenue growth and possible decreases in our gross margins and profitability.

Polysilicon is an essential raw material in our production of solar cells. Polysilicon is created by refining quartz or sand. Polysilicon is melted and grown into crystalline ingots by companies specializing in ingot growth. We procure silicon ingots from these suppliers on a contractual basis and then slice the ingots into wafers. The ingots are sliced and the wafers are processed into solar cells in our Philippines manufacturing facility. We also purchase wafers and polysilicon from third-party vendors.

There is currently an industry-wide shortage of polysilicon, which has resulted in significant price increases. Increases in polysilicon prices have in the past increased our manufacturing costs and may impact our manufacturing costs and net income in the future. With these price increases, demand for solar cells has also increased, and many of our principal competitors have announced plans to add additional manufacturing capacity. As this additional solar cell manufacturing capacity becomes operational, it may increase the demand for polysilicon in the near-term and further exacerbate the current shortage of polysilicon. Polysilicon is also used in the semiconductor industry generally and any increase in demand from that sector will compound the shortage of polysilicon. The production of polysilicon is capital intensive and adding additional capacity requires significant lead time. We are aware that several new facilities for the manufacture of polysilicon are under construction, but we believe that the supply imbalance will not be remedied in the near-term. In addition, the current credit market crisis may undermine the ability of third parties to finance the construction or expansion of polysilicon manufacturing facilities. We expect that polysilicon demand will continue to outstrip supply through 2008 and potentially for a longer period, but we expect that the average market price of polysilicon will decrease over time as new manufacturers enter the market.

Although we have arrangements with vendors for the supply of what we believe will be an adequate amount of silicon ingots through 2010, our purchase orders are sometimes non-binding in nature. Our estimates regarding our supply needs may not be correct and our purchase orders or our contracts may be cancelled by our suppliers. Additionally, the volume and pricing associated with these purchase orders and contracts may be changed by our suppliers based on market conditions or for other reasons. If our suppliers were to cancel our purchase orders or change the volume or pricing associated with them, we may be unable to meet customer demand for our products, which could cause us to lose customers, market share and revenue. This would have a material negative impact on our business and operating results. If our manufacturing yields decrease significantly, we add manufacturing capacity faster than currently planned or our suppliers cancel or fail to deliver, we may not have made adequate provision for our polysilicon needs for our manufacturing plans through 2010.

In addition, since some of our silicon ingot and wafer arrangements are with suppliers who do not themselves manufacture polysilicon but instead purchase their requirements from other vendors, these suppliers may not be able to obtain sufficient polysilicon to satisfy their contractual obligations to us.

There are a limited number of polysilicon suppliers. Many of our competitors also purchase polysilicon from our suppliers. Some of them also have inter-locking board members with their polysilicon suppliers or have entered into joint ventures or binding supply contracts with their suppliers. Additionally, a substantial amount of our future polysilicon requirements are expected to be sourced by new suppliers that have not yet proven their ability to manufacture large volumes of polysilicon. In some cases we expect that new entrants will provide us with polysilicon, ingots and wafers. The failure of these new entrants to produce adequate supplies of polysilicon, ingots and/or wafers in the quantities and quality we require could adversely affect our ability to grow production volumes and revenues and could also result in a decline in our gross profit margins. Since we have committed to significantly increase our manufacturing output, an inadequate supply of polysilicon would harm us more than it would harm some of our competitors.

Additionally, the steps we have taken to further increase the efficiency of our polysilicon utilization are unproven at volume production levels and may not enable us to realize the cost reductions we anticipate. Given the current polysilicon shortage, we believe the efficient use of polysilicon will be critical to our ability to reduce our manufacturing costs. We continue to implement several measures to increase the efficient use of polysilicon in our manufacturing process. For example, we are developing processes to utilize thinner wafers which require less polysilicon and improved wafer-slicing technology to reduce the amount of material lost while slicing wafers, otherwise known as kerf loss. Although we have implemented production using thinner wafers and anticipate further reductions in wafer thickness, these methods may have unforeseen negative consequences on our yields or our solar cell efficiency or reliability once they are put into large-scale commercial production, or they may not enable us to realize the cost reductions we hope to achieve.

Our inability to obtain sufficient polysilicon, ingots or wafers at commercially reasonable prices or at all for any of the foregoing reasons, or otherwise, would adversely affect our ability to meet existing and future customer demand for our products and could cause us to make fewer shipments, lose customers and market share and generate lower than anticipated revenue, thereby seriously harming our business, financial condition and results of operations.

As polysilicon supply increases, the corresponding increase in the global supply of solar cells and panels may cause substantial downward pressure on the prices of SunPower products, resulting in lower revenues and earnings.

The scarcity of polysilicon has resulted in the underutilization of solar panel manufacturing capacity at many competitors or potential competitors to SunPower, particularly in China. If additional polysilicon becomes available over the next 3 to 24 months, we expect solar panel production globally to increase. Decreases in polysilicon pricing and increases in solar panel production could each result in substantial downward pressure on the price of solar cells and panels, including SunPower products. Such price reductions could have a negative impact on our revenue and earnings, and materially adversely affect our business and financial condition.

Long-term, firm commitment supply agreements with polysilicon, ingot or wafer suppliers could result in insufficient or excess inventory or place us at a competitive disadvantage.

We manufacture our solar cells utilizing ingots and wafers manufactured by third parties, which in turn use polysilicon for their manufacturing process. We are seeking to address the current polysilicon shortage by negotiating multi-year, binding contractual commitments directly with polysilicon suppliers, and supplying such polysilicon to third parties which provide us ingots and wafers. Under such polysilicon agreements, we may be required to purchase a specified quantity of polysilicon, ingots or wafers at fixed prices, in some cases subject to upward inflation-related adjustments over a set period of time, which is often a period of several years. We also may be required to make substantial prepayments to these suppliers against future deliveries. For example, in July 2007 we entered into a long-term supply agreement with Hemlock Semiconductor Corporation, or Hemlock, a manufacturer of polysilicon. The agreement requires us to purchase an amount of silicon that is expected to support more than two gigawatts of solar cell production at fixed prices from 2010 to 2019. We are also required to make material aggregate cash prepayments to Hemlock prior to 2010 in three equal installments. Such prepayments will be used to fund the expansion of Hemlock's polysilicon manufacturing capacity and will be credited against future deliveries of polysilicon to us. The Hemlock agreement, or any other "take or pay" agreement we enter into, allows the supplier to invoice us for the full purchase price of polysilicon we are under contract to purchase each year, whether or not we actually order the required volume. If for any reason we fail to order the required annual volume under the Hemlock or similar agreements, the resulting monetary damages could have a material adverse effect on our business and results of operations.

We do not obtain contracts or commitments from customers for all of the solar panels manufactured with the polysilicon purchased under such firm commitment contracts. Instead, we rely on our long-term internal forecasts to determine the timing of our production schedules and the volume and mix of products to be manufactured, including the estimated quantity of polysilicon, ingots and wafers needed. The level and timing of orders placed by customers may vary for many reasons. As a result, at any particular time, we may have insufficient or excess inventory, which could render us unable to fulfill customer orders or increase our cost of production. In addition, we have negotiated the fixed prices under these supply contracts based on our long-term projections of the future price of polysilicon. If the market price of polysilicon in future periods is less than the price we have committed to pay either because of new technological developments or any other reason, our cost of production could be comparatively higher than that of competitors who buy polysilicon on the open market. This would place us at a competitive disadvantage to these competitors, and could materially and adversely affect our business and results of operations.

Long-term contractual commitments also expose us to specific counter-party risk, which can be magnified when dealing with suppliers without a long, stable production and financial history. For example, if one or more of our contractual counterparties is unable or unwilling to provide us with the contracted amount of polysilicon, wafers or ingots, we could be required to attempt to obtain polysilicon in the open market, which could be unavailable at that time, or only available at prices in excess of our contracted prices. In addition, in the event any such supplier experiences financial difficulties, it may be difficult or impossible, or may require substantial time and expense, for us to recover any or all of our prepayments. Any of the foregoing could materially harm our financial condition and results of operations.

The reduction, modification or elimination of government and economic incentives could cause our revenue to decline and harm our financial results.

The market for on-grid applications, where solar power is used to supplement a customer's electricity purchased from the utility network or sold to a utility under tariff, depends in large part on the availability and size of government and economic incentives that vary by geographic market. Because our sales are into the on-grid market, the reduction, modification or elimination of government and economic incentives in one or more of these markets would adversely affect the growth of this market or result in increased price competition, either of which could cause our revenue to decline and harm our financial results.

Today, the cost of solar power exceeds retail electric rates in many locations. As a result, federal, state and local government bodies in many countries, most notably Spain, the United States, Germany, Italy, South Korea, Canada, Japan, Portugal, Greece and France, have provided incentives in the form of feed-in tariffs, rebates, tax credits and other incentives and mandates to end users, distributors, system integrators and manufacturers of solar power products to promote the use of solar energy in on-grid applications and to reduce dependency on other forms of energy. These government economic incentives could be reduced, expire or be eliminated altogether reducing demand for our products in the affected markets. In fact, some solar program incentives expire, decline over time, are limited in total funding or require renewal of authority.

In California, the California Solar Initiative is designed to lower the stated rebate level as market penetration increases. If system ASPs do not decline as the rebate levels decline, demand may decline in California. Net metering and other operational policies in California or other markets could limit the amount of solar power installed there.

Reductions in, or eliminations or expirations of, governmental incentives such as these could result in decreased demand for and lower revenue from our products. Changes in the level or structure of a renewable portfolio standard and similar mandates could also result in decreased demand for and lower revenue or revenue growth from our products.

Due to the general economic environment and other factors, we may be unable to generate sufficient cash flows or obtain access to external financing necessary to fund our operations and make adequate capital investments as planned.

We anticipate that our expenses will increase substantially in the foreseeable future. To develop new products, support future growth, achieve operating efficiencies and maintain product quality, we must make significant capital investments in manufacturing technology, facilities and capital equipment, research and development, and product and process technology. We also anticipate increased costs as we expand our manufacturing operations, hire additional personnel, pay more or make advance payments for raw material, especially polysilicon, increase our sales and marketing efforts, invest in joint ventures and acquisitions, and continue our research and development efforts with respect to our products and manufacturing technologies. For instance, we expect to continue to make significant capital expenditures in our manufacturing facilities, including through building purchases or long-term leases, and, on May 19, 2008, we announced plans to construct our third solar cell manufacturing facility in Malaysia with an expected nameplate rating in excess of one gigawatt of annual generating capacity. The Malaysian Industrial Development Authority, or MIDA, is arranging an incentive package for SunPower to promote SunPower's investment in the new manufacturing plant. The incentive package is conditional upon SunPower meeting certain capital investment, employment, and research and development expenditure commitments. We expect total capital expenditures in the range of $250.0 million to $300.0 million in 2008 as we continue to increase our solar cell and solar panel manufacturing capacity. These expenditures would be greater if we decide to bring capacity on line more rapidly.

We believe that our current cash and cash equivalents, cash generated from operations and, if necessary, borrowings under our credit agreement with Wells Fargo Bank, N.A., or Wells Fargo, and/or potential availability of future sources of funding will be sufficient to fund our capital and operating expenditures over the next 12 months. Our cash flows from operations depend primarily on the volume of components sold and systems installed, average selling prices, per unit manufacturing costs and other operating costs.

If our financial results or operating plans change from our current assumptions, or if the holders of our outstanding convertible debentures elect to convert the debentures, we may not have sufficient resources to support our business plan. The current economic environment and the adverse conditions in the credit markets could result in customers delaying purchases, difficulties in collecting revenues from customers facing liquidity challenges, and difficulties for our customers obtaining third-party financing, each of which could result in lower than anticipated sales volume and cash flows to support operations. For more information on our credit agreement with Wells Fargo and our outstanding convertible debentures, please see "Debt and Credit Sources" and "Liquidity" within "Item 2: Management's Discussion and Analysis of Financial Condition and Results of Operations." If our capital resources are insufficient to satisfy our liquidity requirements, we may seek to sell additional equity securities or debt securities or obtain other debt financing. However, the current economic environment could also limit our ability to raise capital by issuing new equity or debt securities on acceptable terms, and lenders may be unwilling to lend funds on acceptable terms that would be required to supplement cash flows to support operations. In addition, following the spin-off of our shares by Cypress on September 29, 2008, our ability to issue equity for financing purposes is subject to limits as described in "*Our agreements with Cypress require us to indemnify Cypress for certain tax liabilities. These indemnification obligations and related contractual restrictions may limit our ability to obtain additional financing, participate in future acquisitions or pursue other business initiatives*." Furthermore, additional debt would result in increased expenses and could require us to abide by covenants that would restrict our operations. Our credit facilities contain customary covenants and defaults, including, among others, limitations on dividends, incurrence of indebtedness and liens and mergers and acquisitions and may restrict our operating flexibility. In addition, the current economic environment and credit markets could limit our suppliers' ability to raise capital if required to expand their production or satisfy their operating capital requirements; as a result, they could be unable to supply necessary raw materials, inventory and capital equipment to us which we would require to support our planned sales operations which would in turn negatively impact our sales volumes and cash flows.

There can be no assurance that we will be able to generate sufficient cash flows or find other sources of capital to fund our operations, make adequate capital investments to remain competitive in terms of technology development and cost efficiency, or access capital markets. If adequate funds and alternative resources are not available on acceptable terms, our ability to fund our operations, develop and expand our manufacturing operations and distribution network, maintain our research and development efforts or otherwise respond to competitive pressures would be significantly impaired. Our inability to do the foregoing could have a material adverse effect on our business and results of operations. See also "Risk Factors - *We currently have a significant amount of debt outstanding. Our substantial indebtedness, along with our other contractual commitments, could adversely affect our business, financial condition and results of operations, as well as our ability to meet any of our payment obligations under the debentures and our other debt*."

The execution of our growth strategy for our systems segment is dependent upon the continued availability of third-party financing arrangements for our customers.

For many of our projects, our customers have entered into agreements to finance the power systems over an extended period of time based on energy savings generated by our solar power systems, rather than pay the full capital cost of purchasing the solar power systems up front. For these types of projects, many of our customers choose to purchase solar electricity under a power purchase agreement with a financing company that purchases the system from us. In the three and nine months ended September 28, 2008, approximately 22% and 41%, respectively, of our total revenue was derived from sales of systems to financing companies that engage in power purchase agreements with end-users of electricity, as compared to 51% and 34% of our total revenue for the three and nine months ended September 30, 2007, respectively.

Of such systems sales to financing companies that engage in power purchase agreements with end-users of electricity, 89% and 10% of systems sales were derived in the United States and Spain, respectively, in the three months ended September 28, 2008 as compared to 58% and 42%, respectively, of systems sales for the three months ended September 30, 2007. For the nine months ended September 28, 2008, 22% and 78% of systems sales to financing companies that engage in power purchase agreements with end-users of electricity were derived in the United States and Spain, respectively, as compared to 50% and 42%, respectively, of systems sales for the nine months ended September 30, 2007. These structured finance arrangements are complex and may not be feasible in many situations. In addition, customers opting to finance a solar power system may forgo certain tax advantages associated with an outright purchase on an accelerated basis which may make this alternative less attractive for certain potential customers. Due to the recent tightening of credit markets and concerns regarding the availability of credit, our customers may be delayed in obtaining, or may not be able to obtain, necessary financing for their purchases of solar power systems. Continued distress in the credit markets could materially adversely impact our results of operations and financial condition as sales of our solar systems to new homebuilders, residential and commercial customers are affected by the availability of credit financing and the general strength of the housing market and the overall economy. If customers are unwilling or unable to finance the cost of our products, or if the parties that have historically provided this financing cease to do so, or only do so on terms that are substantially less favorable for us or these customers, our revenue and growth will be adversely affected.

The success of our systems segment will depend in part on the continuing formation of such financing companies and the potential revenue source they represent. In deciding whether to form and invest in such financing companies, potential investors weigh a variety of considerations, including their projected return on investment. Such projections are based on current and proposed federal, state and local laws, particularly tax legislation and interest rates. Changes to these laws, including amendments to existing tax laws or the introduction of new tax laws, tax court rulings as well as changes in administrative guidelines, ordinances and similar rules and regulations could result in different tax consequences which may adversely affect an investor's projected return on investment, which could have a material adverse effect on our business and results of operations. In addition, increases in interest rates could make it difficult for our customers to secure the financing necessary to purchase our solar power systems on favorable terms, or at all, and thus lower demand for our solar power products, reduce revenue and adversely impact our operating results. An increase in interest rates could also lower an investor's return on investment in a system or make alternative investments more attractive relative to solar power systems, which, in each case, could cause our customers to seek alternative investments that promise higher returns or demand higher returns from our solar power systems, reduce gross margin and adversely impact our operating results.

For example, MMA Renewable Ventures (a subsidiary of MuniMae, or MMA), is a customer of our systems segment, accounting for less than 10% of our total revenue in the three and nine months ended September 28, 2008. MMA Renewable Ventures accounted for 30% and 17% of our total revenue for the three and nine months ended September 30, 2007, respectively. MMA Renewable Ventures is a financing company that purchases systems from us and engages in power purchase agreements with end-users of electricity. Effective February 6, 2008, the New York Stock Exchange, or NYSE, delisted the common stock of MMA because MMA did not expect to file its audited 2006 financial statements by March 3, 2008, the deadline imposed by the NYSE. In connection with completing the restatement and filing the Annual Report on Form 10-K for the year ended December 31, 2006, MMA has disclosed that it incurred substantial accounting costs. In addition, MMA has disclosed that recent credit market disruption has negatively affected many aspects of MMA's business.

We may be unable to achieve our goal of reducing the cost of installed solar systems by 50 percent by 2012, which may negatively impact our ability to sell our products in a competitive environment, resulting in lower revenues, gross margins and earnings.

To reduce the cost of installed solar systems by 50 percent by 2012, as compared against the cost in 2006, we will have to achieve cost savings across the entire value chain from designing to manufacturing to distributing to selling and ultimately to installing solar systems. We have identified specific areas of potential savings and are pursuing targeted goals. However, such cost savings are dependent upon decreasing silicon prices and lowering manufacturing costs. As part of our announced strategy, we have entered into long-term silicon supply agreements to promote an adequate supply of raw material as well as to reduce the overall cost of such raw material. Additionally, we are increasing production capacity at our existing manufacturing facilities while seeking to improve efficiencies. We also expect to develop additional manufacturing capacity. As a result, we expect these improvements will decrease our per unit production costs. However, if we are unsuccessful in our efforts to reduce the cost of installed solar systems by 50 percent by 2012, our revenues, gross margins and earnings may be negatively impacted in the competitive environment and particularly in the event that governmental and fiscal incentives are reduced or an increase in the global supply of solar cells and solar panels causes substantial downward pressure on prices of our products.

Currency fluctuations in the Euro, Philippine peso, South Korean won or the Australian dollar relative to the U.S. dollar could decrease revenue or increase expenses.

We presently have currency exposure arising from sales, capital equipment purchases, prepayments and customer advances denominated in foreign currencies. For example, our prepayments to Wacker-Chemie AG, a polysilicon supplier, and our customer advances from Solon are denominated in Euros. In addition, a portion of our costs are incurred and paid in Euros, Philippine pesos and Japanese yen. Changes in exchange rates between foreign currencies and the U.S. dollar may adversely affect our total revenue, gross margin and profitability. For example, when foreign currencies appreciate against the U.S. dollar, inventory and expenses denominated in foreign currencies become more expensive. An increase in the value of the U.S. dollar relative to foreign currencies could make our solar power products more expensive for international customers, thus potentially leading to a reduction in demand, our sales and profitability. Furthermore, many of our competitors are foreign companies that could benefit from such a currency fluctuation, making it more difficult for us to compete with those companies. Historically, we have conducted, with varying degrees of success, hedging activities that involve the use of currency forward contracts and options to address our exposure to changes in the foreign exchange rate between the U.S. dollar and other currencies. We cannot predict the impact of future exchange rate fluctuations on our business and results of operations.

Revenue generated from European customers represented approximately 39% and 62% of our total revenue for the three and nine months ended September 28, 2008, respectively. A 10% change in the Euro exchange rate would have impacted our revenue by $60.4 million in the nine months ended September 28, 2008. In connection with our global tax planning we recently changed the functional currency of certain European subsidiaries from U.S. dollar to Euro, resulting in greater exposure to changes in the value of the Euro. Implementation of this tax strategy had, and will continue to have, the ancillary effect of limiting our ability to fully hedge certain Euro-denominated revenue. From September 28, 2008 to October 31, 2008, the exchange rate to convert one Euro to U.S. dollars decreased from approximately $1.46 to $1.31. This decrease in the value of the Euro relative to the U.S. dollar is expected to have an adverse impact on our revenue, gross margin and profitability in the foreseeable future.

We may not be able to increase or sustain our recent growth rate, and we may not be able to manage our future growth effectively.

We may not be able to continue to expand our business or manage future growth. We plan to significantly increase our production capacity between 2008 and 2010. To do so will require successful execution of expanding our existing manufacturing facilities, developing new manufacturing facilities, ensuring delivery of adequate polysilicon and ingots, developing more efficient wafer-slicing methods, maintaining adequate liquidity and financial resources, and continuing to increase our revenues from operations. Expanding our manufacturing facilities or developing facilities may be delayed by difficulties such as unavailability of equipment or supplies or equipment malfunction. Ensuring delivery of adequate polysilicon and ingots is subject to many market risks including scarcity, significant price fluctuations and competition. Maintaining adequate liquidity is dependent upon a variety of factors including continued revenues from operations and compliance with our indentures and credit agreements. In addition, following the spin-off of our shares by Cypress on September 29, 2008, our ability to issue equity for financing purposes will be subject to limits as described in "*Our agreements with Cypress require us to indemnify Cypress for certain tax liabilities. These indemnification obligations and related contractual restrictions may limit our ability to obtain additional financing, participate in future acquisitions or pursue other business initiatives*." If we are unsuccessful in any of these areas, we may not be able to achieve our growth strategy and increase production capacity as planned during the foreseeable future.

Prior to our acquisition, SP Systems experienced significant revenue growth due primarily to the development and market acceptance of its PowerGuard® roof system, the acquisition and introduction of its PowerTracker® ground and elevated parking systems, its development of other technologies and increasing global interest and demand for renewable energy sources, including solar power generation. As a result, SP Systems increased its revenues in a relatively short period of time. Its annual revenue increased from $50.9 million in 2003 to $87.6 million in 2004 to $107.8 million in 2005 to $243.4 million in 2006. As a result of our acquisition involving SP Systems, our systems segment revenue for the year ended December 30, 2007 was $464.2 million and for the three and nine months ended September 28, 2008 was $193.3 million and $642.8 million, respectively. We may not experience similar growth of our total revenue or even similar growth of our systems segment revenue in future periods. Accordingly, investors should not rely on the results of any prior quarterly or annual period as an indication of our future operating performance.

Our recent expansion has placed, and our planned expansion and any other future expansion will continue to place, a significant strain on our management, personnel, systems and resources. We plan to purchase additional equipment to significantly expand our manufacturing capacity and to hire additional employees to support an increase in manufacturing, research and development and our sales and marketing efforts. We had approximately 5,450 full-time employees as of September 28, 2008, and we anticipate that we will need to hire a significant number of highly skilled technical, manufacturing, sales, marketing, administrative and accounting personnel. The competition for qualified personnel is intense in our industry. We may not be successful in attracting and retaining sufficient numbers of qualified personnel to support our anticipated growth. To successfully manage our growth and handle the responsibilities of being a public company, we believe we must effectively:

- hire, train, integrate and manage additional qualified engineers for research and development activities, sales and marketing personnel, and financial and information technology personnel;
- retain key management and augment our management team, particularly if we lose key members;
- continue to enhance our customer resource management and manufacturing management systems;
- implement and improve additional and existing administrative, financial and operations systems, procedures and controls, including the need to update and integrate our financial internal control systems in SP Systems and in our Philippines facility with those of our San Jose, California headquarters;
- expand and upgrade our technological capabilities; and
- manage multiple relationships with our customers, suppliers and other third parties.

We may encounter difficulties in effectively managing the budgeting, forecasting and other process control issues presented by rapid growth. If we are unable to manage our growth effectively, we may not be able to take advantage of market opportunities, develop new solar cells and other products, satisfy customer requirements, execute our business plan or respond to competitive pressures.

Since we cannot test our solar panels for the duration of our standard 25-year warranty period, we may be subject to unexpected warranty expense; if we are subject to warranty and product liability claims, such claims could adversely affect our business and results of operations.

The possibility of future product failures could cause us to incur substantial expense to repair or replace defective products. We have agreed to indemnify our customers and our distributors in some circumstances against liability from defects in our solar cells. A successful indemnification claim against us could require us to make significant damage payments, which would negatively affect our financial results.

In our components segment, our current standard product warranty for our solar panels includes a 10-year warranty period for defects in materials and workmanship and a 25-year warranty period for declines in power performance as well as a one-year warranty on the functionality of our solar cells. We believe our warranty periods are consistent with industry practice. Due to the long warranty period and our proprietary technology, we bear the risk of extensive warranty claims long after we have shipped product and recognized revenue. We have sold solar cells only since late 2004. Any increase in the defect rate of our products would cause us to increase the amount of warranty reserves and have a corresponding negative impact on our results. Although we conduct accelerated testing of our solar cells and have several years of experience with our all back contact cell architecture, our solar panels have not and cannot be tested in an environment simulating the 25-year warranty period. As a result, we may be subject to unexpected warranty expense, which in turn would harm our financial results.

Like other retailers, distributors and manufacturers of products that are used by consumers, we face an inherent risk of exposure to product liability claims in the event that the use of the solar power products into which our solar cells and solar panels are incorporated results in injury. We may be subject to warranty and product liability claims in the event that our solar power systems fail to perform as expected or if a failure of our solar power systems results, or is alleged to result, in bodily injury, property damage or other damages. Since our solar power products are electricity producing devices, it is possible that our products could result in injury, whether by product malfunctions, defects, improper installation or other causes. In addition, since we only began selling our solar cells and solar panels in late 2004 and the products we are developing incorporate new technologies and use new installation methods, we cannot predict whether or not product liability claims will be brought against us in the future or the effect of any resulting negative publicity on our business. Moreover, we may not have adequate resources in the event of a successful claim against us. We have evaluated the potential risks we face and believe that we have appropriate levels of insurance for product liability claims. We rely on our general liability insurance to cover product liability claims and have not obtained separate product liability insurance. However, a successful warranty or product liability claim against us that is not covered by insurance or is in excess of our available insurance limits could require us to make significant payments of damages. In addition, quality issues can have various other ramifications, including delays in the recognition of revenue, loss of revenue, loss of future sales opportunities, increased costs associated with repairing or replacing products, and a negative impact on our goodwill and reputation, which could also adversely affect our business and operating results.

Warranty and product liability claims may result from defects or quality issues in certain third-party technology and components that our systems segment incorporates into its solar power systems, particularly solar cells and panels, over which it has no control. While its agreements with its suppliers generally include warranties, such provisions may not fully compensate us for any loss associated with third-party claims caused by defects or quality issues in such products. In the event we seek recourse through warranties, we will also be dependent on the creditworthiness and continued existence of these suppliers.

Our current standard warranty for our solar power systems differs by geography and end-customer application and includes either a one, two or five year comprehensive parts and workmanship warranty, after which the customer may typically extend the period covered by its warranty for an additional fee. Due to the warranty period, we bear the risk of extensive warranty claims long after we have completed a project and recognized revenues. Future product failures could cause us to incur substantial expenses to repair or replace defective products. While we generally pass through manufacturer warranties we receive from our suppliers to our customers, we are responsible for repairing or replacing any defective parts during our warranty period, often including those covered by manufacturers' warranties. If the manufacturer disputes or otherwise fails to honor its warranty obligations, we may be required to incur substantial costs before we are compensated, if at all, by the manufacturer. Furthermore, our warranties may exceed the period of any warranties from our suppliers covering components included in our systems, such as inverters.

Prior to our acquisition of SP Systems, one of SP System's major panel suppliers at the time, AstroPower, Inc., filed for bankruptcy in February 2004. SP Systems had installed solar systems incorporating over 30,000 AstroPower panels, of which approximately 10,000 panels were still under warranty as of September 28, 2008. The majority of these warranties expire by 2022. While we have not experienced a significant number of warranty or other claims related to the installed AstroPower panels, we may in the future incur significant unreimbursable expenses in connection with the repair or replacement of these panels, which could have a material adverse effect on our business and results of operations. In addition, another major supplier of solar panels notified us of a product defect that may affect a substantial number of panels installed by SP Systems between 2002 and September 2006. If the supplier does not perform its contractual obligations to remediate the defective panels, we will be exposed to those costs it would incur under the warranty with SP Systems' customers.

The competitive environment in which our systems business operates often requires us to arrange financing for our customer's projects and/or undertake post-sale customer obligations. If we are unable to arrange adequate financing or if our post-sale customer obligations are more costly than expected, our revenue and financial results could be materially adversely affected.

We arrange third-party financing for most of our end customer's solar projects that we install through our systems segment. Additionally, we are often required as a condition of financing or at the request of our end customer to undertake certain post-sale obligations such as:

- System output performance guaranties;
- System maintenance;
- Liquidated damage payments or customer termination rights if the system we are constructing is not commissioned within specified timeframes;
- Guaranties of certain minimum residual value of the system at specified future dates; and

- System put-rights whereby we could be required buy-back a customer's system at fair value on specified future dates.

Such financing arrangements and post-sale obligations involve complex accounting analyses and judgments regarding the timing of revenue and expense recognition and in certain situations these factors may require us to defer revenue recognition until projects are completed, which could adversely affect revenue and profits in a particular period.

In addition, under our power purchase business model, we often execute power purchase agreements directly with the end-user customer purchasing solar electricity, with the expectation that we will later assign the power purchase agreement to a financier. Under such arrangements, the financier separately contracts with SunPower to build and acquire the solar system, and then sells the electricity to the end-user customer under the assigned power purchase agreement. When executing power purchase agreements with the end-user customers, SunPower seeks to mitigate the risk that a financier will not be available for the project by allowing termination of the power purchase agreement in such event without penalty. However, SunPower may not always be successful in negotiating for penalty-free termination rights for failure to secure financing, and certain end-user customers have required substantial financial penalties in exchange for such rights.

Due to the recent tightening of credit markets and concerns regarding the availability of credit, our customers may be delayed in obtaining, or may not be able to obtain, necessary financing for their purchases of solar power systems. If we are unable to arrange adequate financing or if our post-sale customer obligations are more costly than expected, our revenue and financial results could be materially adversely affected.

Our systems segment acts as the general contractor for our customers in connection with the installations of our solar power systems and is subject to risks associated with construction, cost overruns, delays and other contingencies tied to performance bonds and letters of credit, which could have a material adverse effect on our business and results of operations.

Our systems segment acts as the general contractor for our customers in connection with the installation of our solar power systems. All essential costs are estimated at the time of entering into the sales contract for a particular project, and these are reflected in the overall price that we charge our customers for the project. These cost estimates are preliminary and may or may not be covered by contracts between us or the other project developers, subcontractors, suppliers and other parties to the project. In addition, we require qualified, licensed subcontractors to install most of our systems. Shortages of such skilled labor could significantly delay a project or otherwise increase our costs. Should miscalculations in planning a project or defective or late execution occur, we may not achieve our expected margins or cover our costs. Also, some systems customers require performance bonds issued by a bonding agency or letters of credit issued by financial institutions. Due to the general performance risk inherent in construction activities, it has become increasingly difficult recently to secure suitable bonding agencies willing to provide performance bonding, and obtaining letters of credit requires adequate collateral because we have not obtained a credit rating. In the event we are unable to obtain bonding or sufficient letters of credit, we will be unable to bid on, or enter into, sales contracts requiring such bonding.

In addition, some of our larger systems customers require that we pay substantial liquidated damages for each day or other period its solar installation is not completed beyond an agreed target date, up to and including the return of the entire project sale price. This is particularly true in Europe, where long-term, fixed feed-in tariffs available to investors are typically set during a prescribed period of project completion, but the fixed amount declines over time for projects completed in subsequent periods. We face material financial penalties in the event we fail to meet the completion deadlines, including but not limited a full refund of the contract price paid by the customers. In certain cases we do not control all of the events which could give rise to these penalties, such as reliance on the local utility to timely complete electrical substation construction.

In addition, investors often require that the solar power system generate specified levels of electricity in order to maintain their investment returns, allocating substantial risk and financial penalties to us if those levels are not achieved, up to and including the return of the entire project sale price. Furthermore, our customers often require protections in the form of conditional payments, payment retentions or holdbacks, and similar arrangements that condition its future payments on performance. Delays in solar panel or other supply shipments, other construction delays, unexpected performance problems in electricity generation or other events could cause us to fail to meet these performance criteria, resulting in unanticipated and severe revenue and earnings losses and financial penalties. Construction delays are often caused by inclement weather, failure to timely receive necessary approvals and permits, or delays in obtaining necessary solar panels, inverters or other materials. All such risks could have a material adverse effect on our business and results of operations.

A limited number of components customers are expected to continue to comprise a significant portion of our revenues and any decrease in revenue from these customers could have a significant adverse effect on us.

Even though our customer base is expected to increase and our revenue streams to diversify, a substantial portion of our net revenues could continue to depend on sales to a limited number of customers and the loss of sales to these customers would have a significant negative impact on our business. Our agreements with these customers may be cancelled if we fail to meet certain product specifications or materially breach the agreement or in the event of bankruptcy, and our customers may seek to renegotiate the terms of current agreements or renewals. Most of the solar panels we sell to the European market in our components business are sold to small numbers of German customers, and this may continue into the foreseeable future.

Our operating results will be subject to fluctuations and are inherently unpredictable; if we fail to meet the expectations of securities analysts or investors, our stock price may decline significantly.

We have incurred net losses from inception through 2005 and for the quarter ended July 1, 2007. On September 28, 2008, we had accumulated earnings of approximately $39.9 million. To maintain our profitability, we will need to generate and sustain higher revenue while maintaining reasonable cost and expense levels. We do not know if our revenue will grow, or if it will grow sufficiently to outpace our expenses, which we expect to increase as we expand our manufacturing capacity. We may not be able to sustain or increase profitability on a quarterly or an annual basis. Our quarterly revenue and operating results will be difficult to predict and have in the past fluctuated from quarter to quarter. It is possible that our operating results in some quarters will be below market expectations. In particular, our systems segment is difficult to forecast and is susceptible to large fluctuations in financial results. The amount, timing and mix of sales of our systems segment, often for a single medium or large-scale project, may cause large fluctuations in our revenue and other financial results. Further, our revenue mix of high margin material sales versus lower margin projects in the systems business segment can fluctuate dramatically quarter to quarter, which may adversely affect our revenue and financial results in any given period. Finally, our ability to meet project completion schedules for an individual project and the corresponding revenue impact under the percentage-of-completion method of recognizing revenue, may similarly cause large fluctuations in our revenue and other financial results. This may cause us to miss analysts' guidance or any future guidance announced by us.

In addition, our quarterly operating results will also be affected by a number of other factors, including:

- the average selling price of our solar cells, solar panels and solar power systems;
- the availability and pricing of raw materials, particularly polysilicon;
- foreign currency fluctuations, particularly in the Euro, Philippine peso, South Korean won or Australian dollar;
- the availability, pricing and timeliness of delivery of raw materials and components, particularly solar panels and balance of systems components, including steel, necessary for our solar power systems to function;
- the rate and cost at which we are able to expand our manufacturing and product assembly capacity to meet customer demand, including costs and timing of adding personnel;
- construction cost overruns, including those associated with the introduction of new products;
- the impact of seasonal variations in demand and/or revenue recognition linked to construction cycles and weather conditions;
- timing, availability and changes in government incentive programs;
- unplanned additional expenses such as manufacturing failures, defects or downtime;
- acquisition and investment related costs;
- unpredictable volume and timing of customer orders, some of which are not fixed by contract but vary on a purchase order basis;
- the loss of one or more key customers or the significant reduction or postponement of orders from these customers;
- geopolitical turmoil within any of the countries in which we operate or sell products;
- the effect of currency hedging activities;
- our ability to establish and expand customer relationships;
- changes in our manufacturing costs;
- changes in the relative sales mix of our systems, solar cells and solar panels;
- the availability, pricing and timeliness of delivery of other products, such as inverters and other balance of systems materials necessary for our solar power products to function;
- our ability to successfully develop, introduce and sell new or enhanced solar power products in a timely manner, and the amount and timing of related research and development costs;

- the timing of new product or technology announcements or introductions by our competitors and other developments in the competitive environment;
- the willingness of competing solar cell and panel suppliers to continue product sales to our systems segment;
- increases or decreases in electric rates due to changes in fossil fuel prices or other factors; and
- shipping delays.

We base our planned operating expenses in part on our expectations of future revenue, and a significant portion of our expenses will be fixed in the short-term. If revenue for a particular quarter is lower than we expect, we likely will be unable to proportionately reduce our operating expenses for that quarter, which would harm our operating results for that quarter. This may cause us to miss analysts' guidance or any guidance announced by us. If we fail to meet or exceed analyst or investor expectations or our own future guidance, even by a small amount, our stock price could decline, perhaps substantially.

Our solar cell production lines are currently located in our manufacturing facilities in the Philippines, and if we experience interruptions in the operation of these production lines or are unable to add additional production lines, it would likely result in lower revenue and earnings than anticipated.

We currently have ten solar cell manufacturing lines in production which are located at our manufacturing facilities in the Philippines. If our current or future production lines were to experience any problems or downtime, we would be unable to meet our production targets and our business would suffer. If any piece of equipment were to break down or experience downtime, it could cause our production lines to go down. We have started operations in our second solar cell manufacturing facility nearby our existing facility in the Philippines. This expansion has required and will continue to require significant management attention, a significant investment of capital and substantial engineering expenditures and is subject to significant risks including:

- we may experience cost overruns, delays, equipment problems and other operating difficulties;
- we may experience difficulties expanding our processes to larger production capacity;
- our custom-built equipment may take longer and cost more to engineer than planned and may never operate as designed; and
- we are incorporating first-time equipment designs and technology improvements, which we expect to lower unit capital and operating costs, but this new technology may not be successful.

If we experience any of these or similar difficulties, we may be unable to complete the addition of new production lines on schedule in order to expand our manufacturing facilities and our manufacturing capacity could be substantially constrained. If this were to occur, our per-unit manufacturing costs would increase, we would be unable to increase sales or gross margins as planned and our earnings would likely be materially impaired.

Our systems segment recognizes revenue on a "percentage-of-completion" basis and upon the achievement of contractual milestones and any delay or cancellation of a project could adversely affect our business.

Our systems segment recognizes revenue on a "percentage-of-completion" basis and, as a result, the revenue from this segment is driven by the performance of our contractual obligations, which is generally driven by the timelines of installation of our solar power systems at customer sites. The percentage-of-completion method of accounting for revenue recognition is inherently subjective because it relies on management estimates of total project cost as a basis for recognizing revenue and profit. Accordingly, revenue and profit we have recognized under the percentage-of-completion method are potentially subject to adjustments in subsequent periods based on refinements in estimated costs of project completion that could materially impact our future revenue and profit.

In connection with our acquisition of SP Systems, we do not recognize revenue from intercompany sales by our components segment to our systems segment. Instead, the sale of our solar panels used for construction projects are included in system segment revenues. This could result in unpredictability of revenue and, in the near term, a revenue decrease. As with any project-related business, there is the potential for delays within any particular customer project. Variation of project timelines and estimates may impact our ability to recognize revenue in a particular period. Moreover, incurring penalties involving the return of the contract price to the customer for failure to timely install one project could negatively impact our ability to continue to recognize revenue on a "percentage-of-completion" basis generally for other projects. In addition, certain customer contracts may include payment milestones due at specified points during a project. Because our systems segment usually must invest substantial time and incur significant expense in advance of achieving milestones and the receipt of payment, failure to achieve such milestones could adversely affect our business and results of operations.

We established a captive solar panel assembly facility, and, if this panel manufacturing facility is unable to produce high quality solar panels at commercially reasonable costs, our revenue growth and gross margin could be adversely affected.

We currently run five solar panel assembly lines in the Philippines with 150 megawatts of production capacity. This factory commenced commercial production during the fourth quarter of 2006. Much of the manufacturing equipment and technology in this factory is new and ramping to achieve their full rated capacity. In the event that this factory is unable to ramp production with commercially reasonable yields and competitive production costs, our anticipated revenue growth and gross margin will be adversely affected.

Expansion of our manufacturing capacity has and will continue to increase our fixed costs, which increase may have a negative impact on our financial condition if demand for our products decreases.

We have recently expanded, and plan to continue to expand, our manufacturing facilities. For example, on May 19, 2008, we announced plans to construct our third solar cell manufacturing facility based in Malaysia. We plan to begin production as soon as the first quarter of 2010 on the first line of the solar cell manufacturing facility, which is expected to have an aggregate manufacturing capacity of more than 1 gigawatt per year when completed. As we build additional manufacturing lines or facilities, our fixed costs will increase. If the demand for our solar power products or our production output decreases, we may not be able to spread a significant amount of our fixed costs over the production volume, thereby increasing our per unit fixed cost, which would have a negative impact on our financial condition and results of operations.

We depend on a third-party subcontractor in China to assemble a significant portion of our solar cells into solar panels and any failure to obtain sufficient assembly and test capacity could significantly delay our ability to ship our solar panels and damage our customer relationships.

Historically, we have relied on Jiawei, a third-party subcontractor in China, to assemble a significant portion of our solar cells into solar panels and perform panel testing and to manage packaging, warehousing and shipping of our solar panels. We do not have a long-term agreement with Jiawei and we typically obtain its services based on short-term purchase orders that are generally aligned with timing specified by our customers' purchase orders and our sales forecasts. If the operations of Jiawei were disrupted or its financial stability impaired, or if it should choose not to devote capacity to our solar panels in a timely manner, our business would suffer as we may be unable to produce finished solar panels on a timely basis. In addition, we supply inventory to Jiawei and we bear the risk of loss, theft or damage to our inventory while it is held in its facilities.

As a result of outsourcing a significant portion of this final step in our production, we face several significant risks, including:

- limited assembly and testing capacity and potentially higher prices;
- limited control over delivery schedules, quality assurance and control, manufacturing yields and production costs; and
- delays resulting from an inability to move production to an alternate provider.

The ability of our subcontractor to perform assembly and test is limited by its available capacity. We do not have a guaranteed level of production capacity with our subcontractor, and our production needs for solar panels may differ from our forecasts provided to Jiawei. Other customers of Jiawei that are larger and better financed than we are, or that have long-term agreements in place, may induce Jiawei to reallocate capacity to them. Any reallocation could impair our ability to secure the supply of solar panels that we need for our customers. In addition, interruptions to the panel manufacturing processes caused by a natural or man-made disaster could result in partial or complete disruption in supply until we are able to shift manufacturing to another facility. It may not be possible to obtain sufficient capacity or comparable production costs at another facility. Migrating our design methodology to a new third-party subcontractor or to a captive panel assembly facility could involve increased costs, resources and development time. Utilizing additional third-party subcontractors could expose us to further risk of losing control over our intellectual property and the quality of our solar panels. Any reduction in the supply of solar panels could impair our revenue by significantly delaying our ability to ship products and potentially damage our relationships with existing customers.

If we do not achieve satisfactory yields or quality in manufacturing our solar cells, our sales could decrease and our relationships with our customers and our reputation may be harmed.

The manufacture of solar cells is a highly complex process. Minor deviations in the manufacturing process can cause substantial decreases in yield and in some cases, cause production to be suspended or yield no output. We have from time to time experienced lower than anticipated manufacturing yields. This often occurs during the production of new products or the installation and start-up of new process technologies or equipment. For example, we recently acquired a building to house our second solar cell manufacturing facility near our existing facility. As we expand our manufacturing capacity and bring additional lines or facilities into production, we may experience lower yields initially as is typical with any new equipment or process. We also expect to experience lower yields as we continue the initial migration of our manufacturing processes to thinner wafers. If we do not achieve planned yields, our product costs could increase, and product availability would decrease resulting in lower revenues than expected.

Additionally, products as complex as ours may contain undetected errors or defects, especially when first introduced. For example, our solar cells and solar panels may contain defects that are not detected until after they are shipped or are installed because we cannot test for all possible scenarios. These defects could cause us to incur significant re-engineering costs, divert the attention of our engineering personnel from product development efforts and significantly affect our customer relations and business reputation. If we deliver solar cells or solar panels with errors or defects, including cells or panels of third-party manufacturers, or if there is a perception that such solar cells or solar panels contain errors or defects, our credibility and the market acceptance and sales of our products could be harmed.

We have implemented a new enterprise resource planning system, or ERP system, and disruptions of the system could adversely affect our operations and financial results.

We prepared for the ERP system implementation for over a year and took appropriate measures to ensure the successful and timely implementation including but not limited to hiring qualified consultants and performing extensive testing. However, implementations of this scope have inherent risks including potential disruption of our internal control structure, substantial capital expenditures, additional administration expenses, demands on management's time and other risks of delays or difficulties in transitioning to the new ERP system. The new ERP system may not result in productivity improvements at a level that outweighs the costs of implementation, or at all, if issues encountered during the stabilization period results in decreased revenue or increased administration expenses. This and any other information technology system disruptions or our ability to mitigate existing and future disruptions, if not anticipated or appropriately mitigated, could have an adverse effect on our operations, financial results, as well as our ability to complete the evaluation of our internal control over financial reporting and attestation activities pursuant to Section 404 of the Sarbanes-Oxley Act of 2002. See also "Changes in Internal Control over Financial Reporting" within "Item 4: Controls and Procedures."

Existing regulations and policies and changes to these regulations and policies may present technical, regulatory and economic barriers to the purchase and use of solar power products, which may significantly reduce demand for our products and services.

The market for electricity generation products is heavily influenced by foreign, U.S. federal, state and local government regulations and policies concerning the electric utility industry, as well as policies promulgated by electric utilities. These regulations and policies often relate to electricity pricing and technical interconnection of customer-owned electricity generation. In the U.S. and in a number of other countries, these regulations and policies are being modified and may continue to be modified. Customer purchases of, or further investment in the research and development of, alternative energy sources, including solar power technology, could be deterred by these regulations and policies, which could result in a significant reduction in the potential demand for our solar power products. For example, without a regulatory mandated exception for solar power systems, utility customers are often charged interconnection or standby fees for putting distributed power generation on the electric utility network. These fees could increase the cost to our customers of using our solar power products and make them less desirable, thereby harming our business, prospects, results of operations and financial condition.

We anticipate that our solar power products and their installation will be subject to oversight and regulation in accordance with national and local ordinances relating to building codes, safety, environmental protection, utility interconnection and metering and related matters. It is difficult to track the requirements of individual states and design equipment to comply with the varying standards. Any new government regulations or utility policies pertaining to our solar power products may result in significant additional expenses to us and our resellers and their customers and, as a result, could cause a significant reduction in demand for our solar power products.

We will continue to be dependent on a limited number of third-party suppliers for key components for our solar systems products during the near-term, which could prevent us from delivering our products to our customers within required timeframes, which could result in installation delays, cancellations, liquidated damages and loss of market share.

In addition to our reliance on a small number of suppliers for our solar cells and panels, we rely on third-party suppliers for key components for our solar power systems, such as inverters that convert the direct current electricity generated by solar panels into alternating current electricity usable by the customer. For the nine months ended September 28, 2008, two suppliers accounted for most of our inverter purchases for domestic projects, two suppliers accounted for most of our inverter purchases for European projects and one supplier accounted for all of the inverter purchases for our Asia projects. In addition, one vendor supplies all of the foam required to manufacture our PowerGuard® roof system.

If we fail to develop or maintain our relationships with our limited suppliers, we may be unable to manufacture our products or our products may be available only at a higher cost or after a long delay, which could prevent us from delivering our products to our customers within required timeframes and we may experience order cancellation and loss of market share. To the extent the processes that our suppliers use to manufacture components are proprietary, we may be unable to obtain comparable components from alternative suppliers. The failure of a supplier to supply components in a timely manner, or to supply components that meet our quality, quantity and cost requirements, could impair our ability to manufacture our products or decrease their costs. If we cannot obtain substitute materials on a timely basis or on acceptable terms, we could be prevented from delivering our products to our customers within required timeframes, which could result in installation delays, cancellations, liquidated damages and loss of market share, any of which could have a material adverse effect on our business and results of operations.

We obtain capital equipment used in our manufacturing process from sole suppliers and if this equipment is damaged or otherwise unavailable, our ability to deliver products on time will suffer, which in turn could result in order cancellations and loss of revenue.

Some of the capital equipment used in the manufacture of our solar power products and in our wafer-slicing operations have been developed and made specifically for us, is not readily available from multiple vendors and would be difficult to repair or replace if it were to become damaged or stop working. In addition, we currently obtain the equipment for many of our manufacturing processes from sole suppliers and we obtain our wafer-slicing equipment from one supplier. If any of these suppliers were to experience financial difficulties or go out of business, or if there were any damage to or a breakdown of our manufacturing or wafer-slicing equipment at a time when we are manufacturing commercial quantities of our products, our business would suffer. In addition, a supplier's failure to supply this equipment in a timely manner, with adequate quality and on terms acceptable to us, could delay our capacity expansion of our manufacturing facility and otherwise disrupt our production schedule or increase our costs of production.

Acquisitions of other companies or investments in joint ventures with other companies could adversely affect our operating results, dilute our stockholders' equity, or cause us to incur additional debt or assume contingent liabilities.

To increase our business and maintain our competitive position, we may acquire other companies or engage in joint ventures in the future. Acquisitions and joint ventures involve a number of risks that could harm our business and result in the acquired business or joint venture not performing as expected, including:

- insufficient experience with technologies and markets in which the acquired business is involved, which may be necessary to successfully operate and integrate the business;
- problems integrating the acquired operations, personnel, technologies or products with the existing business and products;
- diversion of management time and attention from the core business to the acquired business or joint venture;
- potential failure to retain key technical, management, sales and other personnel of the acquired business or joint venture;
- difficulties in retaining relationships with suppliers and customers of the acquired business, particularly where such customers or suppliers compete with us;
- reliance upon joint ventures which we do not control;
- subsequent impairment of the acquired assets, including intangible assets; and
- assumption of liabilities including, but not limited to, lawsuits, tax examinations, warranty issues, etc.

We may decide that it is in our best interests to enter into acquisitions or joint ventures that are dilutive to earnings per share or that negatively impact margins as a whole. In addition, acquisitions or joint ventures could require investment of significant financial resources and require us to obtain additional equity financing, which may dilute our stockholders' equity, or require us to incur additional indebtedness.

To the extent that we invest in upstream suppliers or downstream channel capabilities, we may experience competition or channel conflict with certain of our existing and potential suppliers and customers. Specifically, existing and potential suppliers and customers may perceive that we are competing directly with them by virtue of such investments and may decide to reduce or eliminate their supply volume to us or order volume from us. In particular, any supply reductions from our polysilicon, ingot or wafer suppliers could materially reduce manufacturing volume.

For example, as a result of our acquisition of SP Systems, we now directly compete with some of our own suppliers of solar cells and panels. As a result, the acquisition could cause one or more solar cell and panel suppliers to reduce or terminate their business relationship with us. Since the acquisition closed, we have discontinued our purchasing relationship with certain suppliers of panels. Other reductions or terminations, which may be significant, could occur. Any such reductions or terminations could adversely affect our ability to meet customer demand for solar power systems, which would likely materially adversely affect our results of operations and financial condition. We will use commercially reasonable efforts to replace any lost solar cells or panels with our own inventory to mitigate the impact on us. However, such replacements may not be sufficient to fully address solar supply shortfalls, and in any event could negatively impact our revenue and earnings as we forego selling such inventory to third parties.

Similarly, in 2007, we entered into a joint venture agreement to form a new company in the Philippines named First Philec Solar Corporation, and, in 2006, we entered into a joint venture agreement to form a new company in South Korea named Woongjin Energy. First Philec Solar was formed to perform wafer-slicing operations for us, and Woongjin Energy was formed to convert polysilicon that we provide into silicon ingots that we will procure under a five-year agreement. First Philec Solar began manufacturing in the second quarter of fiscal 2008, and Woongjin Energy began manufacturing in the third quarter of fiscal 2007. Because these are not wholly owned subsidiaries, they have their own respective employees and management teams, and we do not control their operations. While we have long-term supply agreements with both First Philec Solar and Woongjin Energy, we significantly depend on their performing under the agreements. If they or our other third-party vendors increase their prices or decrease or discontinue their shipments to us, as a result of equipment malfunctions, competing purchasers or otherwise, and we are unable to obtain substitute wafers and ingots from other vendors on acceptable terms, or we are unable to increase our own wafer-slicing and develop our own ingot-pulling operations on a timely basis, our sales may decrease, our costs may increase or our business could otherwise be harmed.

Following the spin-off of our shares by Cypress on September 29, 2008, our ability to issue equity, including to acquire companies or assets, is subject to limits as described in "*Our agreements with Cypress require us to indemnify Cypress for certain tax liabilities. These indemnification obligations and related contractual restrictions may limit our ability to obtain additional financing, participate in future acquisitions or pursue other business initiatives*." To the extent these limits prevent us from pursuing acquisitions or investments that we would otherwise pursue, our growth and strategy could be impaired.

We could be adversely affected by violations of the U.S. Foreign Corrupt Practices Act and similar worldwide anti-bribery laws.

The U.S. Foreign Corrupt Practices Act, or FCPA, and similar anti-bribery laws in other jurisdictions generally prohibit companies and their intermediaries from making improper payments to non-U.S. officials for the purpose of obtaining or retaining business. Our policies mandate compliance with these anti-bribery laws. We operate in many parts of the world that have experienced governmental corruption to some degree and, in certain circumstances, strict compliance with anti-bribery laws may conflict with local customs and practices. We train our key staff concerning FCPA issues, and we also inform many of our partners, subcontractors, agents and others who work for us or on our behalf that they must comply with FCPA requirements. We cannot assure you that our internal controls and procedures always will protect us from the reckless or criminal acts committed by our employees, subcontractors or agents. If we are found to be liable for FCPA violations (either due to our own acts or our inadvertence, or due to the acts or inadvertence of others), we could suffer from criminal or civil penalties or other sanctions which could have a material adverse effect on our business.

We have significant international activities and customers, and plan to continue these efforts, which subject us to additional business risks, including logistical complexity and political instability.

For the nine months ended September 28, 2008, a substantial portion of our sales were made to customers outside of the United States. Historically, we have had significant sales in Spain, Germany, Austria, Italy and South Korea. We currently have ten solar cell production lines in operation, which are located at our manufacturing facilities in the Philippines. In addition, a majority of our assembly functions have historically been conducted by a third-party subcontractor in China. Risks we face in conducting business internationally include:

- multiple, conflicting and changing laws and regulations, export and import restrictions, employment laws, regulatory requirements and other government approvals, permits and licenses;
- difficulties and costs in staffing and managing foreign operations as well as cultural differences;
- difficulties and costs in recruiting and retaining individuals skilled in international business operations;
- increased costs associated with maintaining international marketing efforts;
- potentially adverse tax consequences associated with our permanent establishment of operations in more countries;
- inadequate local infrastructure;
- financial risks, such as longer sales and payment cycles and greater difficulty collecting accounts receivable; and
- political and economic instability, including wars, acts of terrorism, political unrest, boycotts, curtailments of trade and other business restrictions.

We particularly face risks associated with political and economic instability and civil unrest in the Philippines. In addition, in the Asia/Pacific region generally, we face risks associated with tensions between countries in that region, such as political tensions between China and Taiwan, the ongoing discussions with North Korea regarding its nuclear weapons program, potentially reduced protection for intellectual property rights, government-fixed foreign exchange rates, relatively uncertain legal systems and developing telecommunications infrastructures. In addition, some countries in this region, such as China, have adopted laws, regulations and policies which impose additional restrictions on the ability of foreign companies to conduct business in that country or otherwise place them at a competitive disadvantage in relation to domestic companies.

In addition, although base wages are lower in the Philippines than in the United States, wages for our employees in the Philippines are increasing, which could result in increased costs to employ our manufacturing engineers. As of September 28, 2008, approximately 84% of our employees were located in the Philippines. We also are faced with competition in the Philippines for employees, and we expect this competition to increase as additional manufacturing companies enter the market and expand their operations. In particular, there may be limited availability of qualified manufacturing engineers. We have benefited from an excess of supply over demand for college graduates in the field of engineering in the Philippines. If this favorable imbalance changes due to increased competition, it could affect the availability or cost of qualified employees, who are critical to our performance. This could increase our costs and turnover rates.

Our current tax holidays in the Philippines will expire within the next several years.

We currently benefit from income tax holiday incentives in the Philippines in accordance with our subsidiary's registration with the Philippine Economic Zone Authority, which provide that we pay no income tax in the Philippines. Our current income tax holidays expire between 2010 and 2011, and we intend to apply for extensions and renewals upon expiration. However, these tax holidays may or may not be extended. We believe that as our Philippine tax holidays expire, (a) gross income attributable to activities covered by our Philippine Economic Zone Authority registrations will be taxed at a 5% preferential rate, and (b) our Philippine net income attributable to all other activities will be taxed at the statutory Philippine corporate income tax rate of 32%. Fiscal 2007 was the first year for which profitable operations benefitted from the Philippine tax ruling.

Our systems segment sales cycles for projects can be longer than our components segment sales cycle for our solar cells and panels and may require significant upfront investment which may not ultimately result in signing of a sales contract and could have a material adverse effect on our business and results of operations.

Our systems segment sales cycles, which measure the time between its first contact with a customer and the signing of a sales contract for a particular project, vary substantially and average approximately eight months. Sales cycles for our systems segment are lengthy for a number of reasons, including:

- our customers often delay purchasing decisions until their eligibility for an installation rebate is confirmed, which generally takes several months;
- the long time required to secure adequate financing for system purchases on terms acceptable to customers; and
- the customer's review and approval processes for system purchases are lengthy and time consuming.

As a result of these long sales cycles, we must make significant upfront investments of resources in advance of the signing of sales contracts and the receipt of any revenues, most of which are not recognized for several additional months following contract signing. Accordingly, we must focus our limited resources on sales opportunities that we believe we can secure. Our inability to enter into sales contracts with potential customers after we make such an investment could have a material adverse effect on our business and results of operations.

We generally do not have long-term agreements with our customers and accordingly could lose customers without warning.

In our components segment, our solar cells and solar panel products are generally not sold pursuant to long-term agreements with customers, but instead are sold on a purchase order basis. In our systems segment, we typically contract to perform large projects with no assurance of repeat business from the same customers in the future. Although we believe that cancellations on our purchase orders to date have been insignificant, our customers may cancel or reschedule purchase orders with us on relatively short notice. Cancellations or rescheduling of customer orders could result in the delay or loss of anticipated sales without allowing us sufficient time to reduce, or delay the incurrence of, our corresponding inventory and operating expenses. In addition, changes in forecasts or the timing of orders from these or other customers expose us to the risks of inventory shortages or excess inventory. This, in addition to the completion and non-repetition of large systems projects, in turn could cause our operating results to fluctuate.

Our systems segment could be adversely affected by seasonal trends and construction cycles.

Our systems segment is subject to significant industry-specific seasonal fluctuations. Its sales have historically reflected these seasonal trends with the largest percentage of total revenues being realized during the last two calendar quarters. Low seasonal demand normally results in reduced shipments and revenues in the first two calendar quarters. There are various reasons for this seasonality, mostly related to economic incentives and weather patterns. For example, in European countries with feed-in tariffs, the construction of solar power systems may be concentrated during the second half of the calendar year, largely due to the annual reduction of the applicable minimum feed-in tariff and the fact that the coldest winter months are January through March. In the United States, customers will sometimes make purchasing decisions towards the end of the year in order to take advantage of tax credits or for other budgetary reasons.

In addition, to the extent we are successful in implementing our strategy to enter the new home development market, we expect the seasonality of our business and financial results to become more pronounced as sales in this market are often tied to construction market demands which tend to follow national trends in construction, including declining sales during cold weather months.

The new homebuilder residential market may increase our exposure to certain risks.

Our systems segment is active in the residential market by selling our systems to large production homebuilders. As part of this strategy, we developed SunTile®, a product that integrates a solar panel into a roof tile. The current credit crisis and demand decline in the housing market in the United States is adversely affecting sales of new homes and may have a negative impact on our near term ability to generate material revenue and earnings in this market.

The residential construction market has also characteristics that may increase our exposure to certain risks we currently face or expose us to new risks. These risks include increased seasonality, sensitivity to interest rates and other macroeconomic conditions, as well as enhanced legal exposure. In particular, new home developments often result in class action litigation when one or more homes within a development experiences construction problems. Unlike our systems segment commercial business, where we typically act as the general contractor, we will be generally acting as subcontractor to homebuilders overseeing the development projects. In many instances subcontractors may be held liable for work of the homebuilder or other subcontractors. In addition, homebuilders often require onerous indemnification obligations that effectively allocate most of the potential liability from homeowner or class action lawsuits to subcontractors, including us. Insurance policies for residential work have significant limitations on coverage that may render such policies inapplicable to these lawsuits. If we are not successful in entering the new residential construction market, or if as a result of the litigation and indemnification risks associated with such market, we incur significant costs, our business and results of operations could be materially adversely affected.

If we fail to successfully develop and introduce new products and services or increase the efficiency of our products, we will not be able to compete effectively, and our ability to generate revenues will suffer; technological changes in the solar power industry could render our solar power products uncompetitive or obsolete, which could reduce our market share and cause our sales to decline.

As we introduce new or enhanced products or integrate new technology into our products, we will face risks relating to such transitions including, among other things, technical challenges, disruption in customers' ordering patterns, insufficient supplies of new products to meet customers' demand, possible product and technology defects arising from the integration of new technology and a potentially different sales and support environment relating to any new technology. Our failure to manage the transition to newer products or the integration of newer technology into our products could adversely affect our business' operating results and financial results.

The solar power market is characterized by continually changing technology requiring improved features, such as increased efficiency and higher power output and improved aesthetics. This will require us to continuously develop new solar power products and enhancements for existing solar power products to keep pace with evolving industry standards and changing customer requirements. Technologies developed by our direct competitors, including thin film solar panels, concentrating solar cells, solar thermal electric and other solar technologies, may provide power at lower costs.

Our failure to further refine our technology and develop and introduce new solar power products could cause our products to become uncompetitive or obsolete, which could reduce our market share and cause our sales to decline. We will need to invest significant financial resources in research and development to maintain our market position, keep pace with technological advances in the solar power industry and effectively compete in the future.

Evaluating our business and future prospects may be difficult due to our limited history in producing and shipping solar cells and solar panels in commercial volumes.

There is limited historical information available about our company upon which investors can base their evaluation of our business and prospects. Although we began to develop and commercialize high-efficiency solar cell technology for use in solar concentrators in 1988 and began shipping product from our pilot manufacturing facility in 2003, we shipped our first commercial A-300 solar cells from our Philippines manufacturing facility in late 2004. Relative to the entire solar industry, we have shipped only a limited number of solar cells and solar panels and have recognized limited revenue. Our future success will require us to continue to scale our Philippines facilities significantly beyond their current capacity and successfully build and deploy our new solar cell manufacturing facility in Malaysia. In addition, our business model, technology and ability to achieve satisfactory manufacturing yields at higher volumes are unproven at a very large scale. As a result, investors should consider our business and prospects in light of the risks, expenses and challenges that we will face as we seek to develop and manufacture new products in a rapidly growing market.

Our reliance on government programs to partially fund our research and development programs could impair our ability to commercialize our solar power products and services and increase our research and development expenses.

We intend to continue our policy of selectively pursuing contract research, product development and market development programs funded by various agencies of the federal and state governments to complement and enhance our own resources. Funding from government grants is generally recorded as an offset to our research and development expense. During the nine months ended September 28, 2008 and September 30, 2007, funding from government grants, agreements and contracts offset approximately 25% and 10%, respectively, our total research and development expense, excluding in-process research and development. In addition, in the third quarter of 2007, we signed a Solar America Initiative agreement with the U.S. Department of Energy in which we were awarded $8.5 million in the first budgetary period. Total funding for the three-year effort is estimated to be $24.7 million. Our cost share requirement under this program, including lower-tier subcontract awards, is anticipated to be $27.9 million.

These government agencies may not continue their commitment to programs relevant to our development projects. Moreover, we may not be able to compete successfully to obtain funding through these or other programs. A reduction or discontinuance of these programs or of our participation in these programs would materially increase our research and development expenses, which would adversely affect our profitability and could impair our ability to develop our solar power products and services. In addition, contracts involving government agencies may be terminated or modified at the convenience of the agency. Many of our systems segment government awards also contain royalty provisions that require it to pay certain amounts based on specified formulas. Government awards are subject to audit and governmental agencies may dispute our royalty calculations. Any such dispute could result in fines, increased royalty payments, cancellation of the agreement or other penalties, which could have material adverse effect on our business and results of operations.

Our systems segment government-sponsored research contracts require that we provide regular written technical updates on a monthly, quarterly or annual basis, and, at the conclusion of the research contract, a final report on the results of our technical research. Because these reports are generally available to the public, third parties may obtain some aspects of its sensitive confidential information. Moreover, the failure to provide accurate or complete reports may provide the government with rights to any intellectual property arising from the related research. Funding from government awards also may limit when and how we can deploy our products and services developed under those contracts. For example, government awards may require that the manufacturing of products developed with federal funding be substantially conducted in the United States. In addition, technology and intellectual property that we develop with government funding provides the government with “march-in” rights. March-in rights refer to the right of the government or a government agency to require us to grant a license to the developed technology or products to a responsible applicant or, if it refuses, the government may grant the license itself. The government can exercise its march-in rights if it determines that action is necessary because we fail to achieve practical application of the technology or because action is necessary to alleviate health or safety needs, to meet requirements of federal regulations or to give the United States industry preference. In addition, government awards may include a provision providing the government with a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention developed under an award throughout the world by or on behalf of the government. Additional rights to technical data may be granted to the government in recognition of funding.

Because the markets in which we compete are highly competitive, we may not be able to compete successfully and we may lose or be unable to gain market share.

Our components solar products compete with a large number of competitors in the solar power market, including BP Solar International Inc., Evergreen Solar, Inc., First Solar, Inc., Kyocera Corporation, Mitsubishi Electric Corporation, Motech Industries, Inc., Q-Cells AG, Sanyo Corporation, Sharp Corporation, SolarWorld AG and Suntech Power Holdings Co., Ltd. In addition, universities, research institutions and other companies such as First Solar have brought to market alternative technologies such as thin films and concentrators, which compete with our technology in certain applications. We expect to face increased competition in the future. Further, many of our competitors are developing and are currently producing products based on new solar power technologies that may ultimately have costs similar to, or lower than, our projected costs.

Our systems solar power products and services also compete against other power generation sources including conventional fossil fuels supplied by utilities, other alternative energy sources such as wind, biomass, CSP and emerging distributed generation technologies such as micro-turbines, sterling engines and fuel cells. In the large-scale on-grid solar power systems market, we will face direct competition from a number of companies that manufacture, distribute, or install solar power systems. Many of these companies sell our products as well as their own or those of other manufacturers. Our systems segment's primary competitors in the United States include BP Solar International, Inc., a subsidiary of BP p.l.c., Conergy Inc., DT Solar, EI Solutions, Inc., First Solar, Inc., GE Energy, a subsidiary of General Electric Corporation, Schott Solar, Inc., Solar Integrated Technologies, Inc., SPG Solar, Inc., Sun Edison LLC, Sunlink Corporation, SunTechnics Installation & Services, Inc., Thompson Technology Industries, Inc. and WorldWater & Power Corporation. Our systems segment primary competitors in Europe include BP Solar, City Solar AG, Conergy (through its subsidiaries AET Alternitive Energie Technik GmbH, SunTechnics Solartechnik GmbH and voltwerk AG), PV-Systemtechnik Gbr, SAG Solarstrom AG, Solon AG and Taufer Solar GmbH. In addition, we will occasionally compete with distributed generation equipment suppliers such as Caterpillar, Inc. and Cummins, Inc. Other existing and potential competitors in the solar power market include universities and research institutions. We also expect that future competition will include new entrants to the solar power market offering new technological solutions. As we enter new markets and pursue additional applications for our systems products and services, we expect to face increased competition, which may result in price reductions, reduced margins or loss of market share.

Competition is intense, and many of our competitors have significantly greater access to financial, technical, manufacturing, marketing, management and other resources than we do. Many also have greater name recognition, a more established distribution network and a larger installed base of customers. In addition, many of our competitors have well-established relationships with our current and potential suppliers, resellers and their customers and have extensive knowledge of our target markets. As a result, these competitors may be able to devote greater resources to the research, development, promotion and sale of their products and respond more quickly to evolving industry standards and changing customer requirements than we will be able to. Consolidation or strategic alliances among such competitors may strengthen these advantages and may provide them greater access to customers or new technologies. We may also face competition from some of our systems segment resellers, who may develop products internally that compete with our systems product and service offerings, or who may enter into strategic relationships with or acquire other existing solar power system providers. To the extent that government funding for research and development grants, customer tax rebates and other programs that promote the use of solar and other renewable forms of energy are limited, we will compete for such funds, both directly and indirectly, with other renewable energy providers and their customers.

If we cannot compete successfully in the solar power industry, our operating results and financial condition will be adversely affected. Furthermore, we expect competition in systems markets to increase, which could result in lower prices or reduced demand for our systems services and have a material adverse effect on our business and results of operations.

The demand for products requiring significant initial capital expenditures such as our solar power products and services are affected by general economic conditions, such as increasing interest rates that may decrease the return on investment for certain customers or investors in projects, which could decrease demand for our systems products and services and which could have a material adverse effect on our business and results of operations.

The United States and international economies have recently experienced a period of slow economic growth. A sustained economic recovery is uncertain. In particular, terrorist acts and similar events, continued turmoil in the Middle East or war in general could contribute to a slowdown of the market demand for products that require significant initial capital expenditures, including demand for solar cells and solar power systems and new residential and commercial buildings. If the United States or global economy enters a recession or the economic recovery is slow as a result of the recent economic, political and social turmoil, or if there are further terrorist attacks in the United States or elsewhere, we may experience decreases in the demand for our solar power products, which may harm our operating results.

We have benefited from historically low interest rates in recent years, as these rates have made it more attractive for our customers to use debt financing to purchase our solar power systems. Interest rates have fluctuated recently and may eventually continue to rise, which will likely increase the cost of financing these systems and may reduce an operating company's profits and investors' expected returns on investment. This risk is becoming more significant to our systems segment, which is placing increasing reliance upon direct sales to financial institutions which sell electricity to end customers under a power purchase agreement. This sales model is highly sensitive to interest rate fluctuations and the availability of liquidity, and would be adversely affected by increases in interest rates or liquidity constraints. Rising interest rates may also make certain alternative investments more attractive to investors, and therefore lead to a decline in demand for our solar power systems, which could have a material adverse effect on our business and results of operations.

One of our key products, the PowerTracker®, now referred to as SunPower® tracker, was acquired through an assignment and acquisition of the patents associated with the product from a third-party individual, and if we are unable to continue to use this product, our business, prospects, operating results and financial condition would be materially harmed.

In September 2002, PowerLight entered into a Technology Assignment and Services Agreement and other ancillary agreements, subsequently amended in December 2005, with Jefferson Shingleton and MaxTracker Services, LLC, a New York limited liability company controlled by Mr. Shingleton. These agreements form the basis for its intellectual property rights in its PowerTracker products. Under such agreements, as later amended, Mr. Shingleton assigned to PowerLight all right, title and interest in his MaxTracker ™, MaxRack ™, MaxRack Ballast ™ and MaxClip ™ products and all related intellectual property rights. Mr. Shingleton is obligated to provide consulting services to PowerLight related to such technology until December 31, 2012 and is required to assign to PowerLight any enhancements he makes to the technology while providing such consulting services. Mr. Shingleton retains a first security interest in the patents and patent applications assigned until the earlier of the expiration of the patents, full payment by PowerLight to Mr. Shingleton of all of the royalty obligations under the Technology Assignment and Services Agreement, or the termination of the Technology Assignment and Services Agreement. In the event of PowerLight's' default under the Technology Assignment and Services Agreement, MaxTracker Services and Mr. Shingleton may terminate the agreements and the related assignments and cause the intellectual rights assigned to it to be returned to Mr. Shingleton or MaxTracker Services, including patents related to SunPower tracker. In addition, upon such termination, PowerLight must grant Mr. Shingleton a perpetual, non-exclusive, royalty-free right and license to use, sell, and otherwise exploit throughout the world any intellectual property MaxTracker Services or Mr. Shingleton developed during the provision of consulting services to PowerLight. Events of default by PowerLight which could enable Mr. Shingleton or Max Tracker Services to terminate the agreements and the related assignments and cause the intellectual rights assigned to it to be returned to Mr. Shingleton or MaxTracker Services include the following:

- if PowerLight files a petition in bankruptcy or equivalent order or petition under the laws of any jurisdiction;
- if a petition in bankruptcy or equivalent order or petition under the laws of any jurisdiction is filed against it which is not dismissed within 60 days of such filing;
- if PowerLight's assets are assigned for the benefit of creditors;
- if PowerLight voluntarily or involuntarily dissolves;
- if PowerLight fails to pay any amount due under the agreements when due and does not remedy such failure to pay within 10 days of written notice of such failure to pay; or
- if PowerLight defaults in the performance of any of its material obligations under the agreements when required (other than payment of amounts due under the agreements), and such failure is not remedied within 30 days of written notice to it of such default from Mr. Shingleton or MaxTracker Services. However, if such a default can reasonably be cured after the 30-day period, and PowerLight commences cure of such default within 30-day period and diligently prosecutes that cure to completion, such default does not trigger a termination right unless and until PowerLight ceases commercially reasonable efforts to cure such default.

If we are unable to continue to use and sell SunPower tracker as a result of the termination of the agreements and the related assignment or any other reason, our business, prospects, operating results and financial condition would be materially harmed.

We are dependent on our intellectual property, and we may face intellectual property infringement claims that could be time-consuming and costly to defend and could result in the loss of significant rights.

From time to time, we, our respective customers or third-parties with whom we work may receive letters, including letters from various industry participants, alleging infringement of their patents. Although we are not currently aware of any parties pursuing or intending to pursue infringement claims against us, we cannot assure investors that we will not be subject to such claims in the future. Additionally, we are required by contract to indemnify some of our customers and our third-party intellectual property providers for certain costs and damages of patent infringement in circumstances where our products are a factor creating the customer's or these third-party providers' infringement liability. This practice may subject us to significant indemnification claims by our customers and our third-party providers. We cannot assure investors that indemnification claims will not be made or that these claims will not harm our business, operating results or financial condition. Intellectual property litigation is very expensive and time-consuming and could divert management's attention from our business and could have a material adverse effect on our business, operating results or financial condition. If there is a successful claim of infringement against us, our customers or our third-party intellectual property providers, we may be required to pay substantial damages to the party claiming infringement, stop selling products or using technology that contains the allegedly infringing intellectual property, or enter into royalty or license agreements that may not be available on acceptable terms, if at all. Parties making infringement claims may also be able to bring an action before the International Trade Commission that could result in an order stopping the importation into the United States of our solar cells. Any of these judgments could materially damage our business. We may have to develop non-infringing technology, and our failure in doing so or in obtaining licenses to the proprietary rights on a timely basis could have a material adverse effect on our business.

We have filed, and, may continue to file claims against other parties for infringing our intellectual property that may be very costly and may not be resolved in our favor.

To protect our intellectual property rights and to maintain our competitive advantage, we have, and may continue to, file suits against parties who we believe infringe our intellectual property. Intellectual property litigation is expensive and time consuming and could divert management's attention from our business and could have a material adverse effect on our business, operating results or financial condition, and our enforcement efforts may not be successful. Our participation in intellectual property enforcement actions may negatively impact our financial results.

We may not be able to prevent others from using the term SunPower or similar terms in connection with their solar power products which could adversely affect the market recognition of our name and our revenue.

"SunPower" is our registered trademark in the United States and the European Community for use with solar cells and solar panels. We are seeking similar registration of the "SunPower" trademark in foreign countries but we may not be successful in some of these jurisdictions. In the foreign jurisdictions where we are unable to obtain this registration or have not tried, others may be able to sell their products using trademarks compromising or incorporating "SunPower," which could lead to customer confusion. In addition, if there are jurisdictions where another proprietor has already established trademark rights in marks containing "SunPower," we may face trademark disputes and may have to market our products with other trademarks, which also could hurt our marketing efforts. We may encounter trademark disputes with companies using marks which are confusingly similar to the SunPower mark which if not resolved favorably could cause our branding efforts to suffer. In addition, we may have difficulty in establishing strong brand recognition with consumers if others use similar marks for similar products.

We hold registered trademarks for SunPower®, PowerLight®, PowerGuard®, PowerTracker®, SunTile®, PowerTilt® and Smarter Solar® in certain countries. We have not registered, and may not be able to register, these trademarks in other key countries.

We rely substantially upon trade secret laws and contractual restrictions to protect our proprietary rights, and, if these rights are not sufficiently protected, our ability to compete and generate revenue could suffer.

We seek to protect our proprietary manufacturing processes, documentation and other written materials primarily under trade secret and copyright laws. We also typically require employees and consultants with access to our proprietary information to execute confidentiality agreements. The steps taken by us to protect our proprietary information may not be adequate to prevent misappropriation of our technology. In addition, our proprietary rights may not be adequately protected because:

- people may not be deterred from misappropriating our technologies despite the existence of laws or contracts prohibiting it;
- policing unauthorized use of our intellectual property may be difficult, expensive and time-consuming, and we may be unable to determine the extent of any unauthorized use; and
- the laws of other countries in which we market our solar cells, such as some countries in the Asia/Pacific region, may offer little or no protection for our proprietary technologies.

Reverse engineering, unauthorized copying or other misappropriation of our proprietary technologies could enable third parties to benefit from our technologies without paying us for doing so. Any inability to adequately protect our proprietary rights could harm our ability to compete, to generate revenue and to grow our business.

We may not obtain sufficient patent protection on the technology embodied in the solar cells or solar system components we currently manufacture and market, which could harm our competitive position and increase our expenses.

Although we substantially rely on trade secret laws and contractual restrictions to protect the technology in the solar cells and solar system components we currently manufacture and market, our success and ability to compete in the future may also depend to a significant degree upon obtaining patent protection for our proprietary technology. We currently own multiple patents and patent applications which cover aspects of the technology in the solar cells and mounting systems that we currently manufacture and market. Material patents that relate to our systems products and services primarily relate to our rooftop mounting products and ground-mounted tracking products. We intend to continue to seek patent protection for those aspects of our technology, designs, and methodologies and processes that we believe provide significant competitive advantages.

Our patent applications may not result in issued patents, and even if they result in issued patents, the patents may not have claims of the scope we seek. In addition, any issued patents may be challenged, invalidated or declared unenforceable. The term of any issued patents would be 20 years from their filing date and if our applications are pending for a long time period, we may have a correspondingly shorter term for any patent that may issue. Our present and future patents may provide only limited protection for our technology and may not be sufficient to provide competitive advantages to us. For example, competitors could be successful in challenging any issued patents or, alternatively, could develop similar or more advantageous technologies on their own or design around our patents. Also, patent protection in certain foreign countries may not be available or may be limited in scope and any patents obtained may not be as readily enforceable as in the United States, making it difficult for us to effectively protect our intellectual property from misuse or infringement by other companies in these countries. Our inability to obtain and enforce our intellectual property rights in some countries may harm our business. In addition, given the costs of obtaining patent protection, we may choose not to protect certain innovations that later turn out to be important.

If our ability to effectively obtain patents is decreased due to changes in patent laws or changes in the rules propagated by the US Patent and Trademark Office, or if we need to re-file some of our patent applications due to newly discovered prior art, the value of our patent portfolio and the revenue we derive from products protected by the patents may significantly decrease.

Current legislation is being considered which could make numerous changes to the patent laws, including forcing patent litigation to be filed in the defendant's home venue, reducing damage awards for infringement, limiting enhanced damages, an expanded post-grant opposition procedure, expanding rights for third parties to submit prior art and changing to a first-to-file system. Additionally, based on situations such as newly discovered prior art, we may need to seek re-examination some of our patent applications. If our ability to effectively obtain patents is decreased due to these or similar changes, or if we need to re-file some of our patent applications due to newly discovered prior art, the value of our patent portfolio and the revenue we derive from products protected by the patents may significantly decrease.

Our success depends on the continuing contributions of our key personnel.

We rely heavily on the services of our key executive officers and the loss of services of any principal member of our management team could adversely impact our operations. In addition, our technical personnel represent a significant asset and serve as the source of our technological and product innovations. We believe our future success will depend upon our ability to retain these key employees and our ability to attract and retain other skilled managerial, engineering and sales and marketing personnel. However, we cannot guarantee that any employee will remain employed with us for any definite period of time since all of our employees, including our key executive officers, serve at-will and may terminate their employment at any time for any reason.

In July 2008, Emmanuel Hernandez communicated his intent to retire as Chief Financial Officer. Mr. Hernandez was previously identified in our 2007 proxy statement as one of our named executive officers. In October 2008, we announced the appointment of Dennis V. Arriola, 47, as our next Chief Financial Officer. Mr. Arriola is expected to assume the role of Senior Vice President and Chief Financial Officer on November 10, 2008. In such role, he will serve as our principal financial officer and principal accounting officer. Emmanuel Hernandez, our current Chief Financial Officer, is expected to assist in the transition through January 2009.

On October 24, 2008, Daniel S. Shugar announced that he plans to take a personal leave of absence for 9 to 12 months to pursue personal interests commencing in March, 2009. Mr. Shugar currently serves as President of SP Systems. He joined SP Systems (formerly known as PowerLight) in 1996 prior to our acquisition of the subsidiary in January 2007.

We may be harmed by liabilities arising out of our acquisition of SP Systems and the indemnity the selling stockholders have agreed to provide may be insufficient to compensate us for these damages.

On January 10, 2007, we completed our acquisition of SP Systems, formerly known as PowerLight Corporation. SP Systems' former stockholders made representations and warranties to us in the acquisition agreement, including those relating to the accuracy of its financial statements, the absence of litigation and environmental matters and the consents needed to transfer permits, licenses and third-party contracts in connection with our acquisition of SP Systems. To the extent that we are harmed by a breach of these representations and warranties, SP Systems' former stockholders have agreed to indemnify us for monetary damages from an escrowed proceeds account. In most cases we are required to absorb approximately the first $2.4 million before we are entitled to indemnification.

As of December 30, 2007, the escrow proceeds account was comprised of approximately $23.7 million in cash and approximately 0.7 million shares of our class A common stock, with a total aggregate value of $118.1 million. Following the first anniversary of the closing date, we authorized the release of approximately one-half of the original escrow amount, leaving approximately $12.9 million in cash and approximately 0.4 million shares of our class A common stock, with a total aggregate value of $38.6 million as of September 28, 2008. Our rights to recover damages under several provisions of the acquisition agreement also expired on the first anniversary of the closing date. As a result, we are now entitled to recover only limited types of losses, and our recovery will be limited to the amount available in the escrow fund at the time of a claim. The amount available in the escrow fund will be progressively reduced to zero on each anniversary of the closing date over a period of five years since the date of acquisition. We may incur liabilities from this acquisition which are not covered by the representations and warranties set forth in the agreement or which are non-monetary in nature. Consequently, our acquisition of SP Systems may expose us to liabilities for which we are not entitled to indemnification or our indemnification rights are insufficient.

Charges to earnings resulting from the application of the purchase method of accounting to the acquisition may adversely affect the market value of our class A and class B common stock.

In accordance with Statement of Financial Accounting Standards, or SFAS, No. 141, "Business Combinations", or SFAS No. 141, we accounted for the acquisition using the purchase method of accounting. Further, a portion of the purchase price paid in the acquisition has been allocated to in-process research and development. Under the purchase method of accounting, we allocated the total purchase price to SP Systems' net tangible assets and intangible assets based on their fair values as of the date of completion of the acquisition and recorded the excess of the purchase price over those fair values as goodwill. We will incur amortization expense over the useful lives of amortizable intangible assets acquired in connection with the acquisition. In addition, to the extent the value of goodwill and long lived assets becomes impaired, we may be required to incur material charges relating to the impairment of those assets. Further, we may be impacted by nonrecurring charges related to reduced gross profit margins from the requirement to adjust SP Systems' inventory to fair value. Finally, we will incur ongoing compensation charges associated with assumed options, equity held by employees of SP Systems and subjected to equity restriction agreements, and restricted stock granted to employees of our SP Systems business. We estimate that these charges will be approximately $75.0 million in the aggregate, a majority of which will be recognized in the first two years beginning on January 10, 2007 and lesser amounts in the succeeding two years. Any of the foregoing charges could have a material impact on our results of operations.

In December 2007, the FASB issued SFAS No. 141 (revised 2007), “Business Combinations”, or SFAS No. 141(R), which replaces SFAS No. 141. SFAS No. 141(R) will significantly change the accounting for business combinations in a number of areas including the treatment of contingent consideration, contingencies, acquisition costs, in-process research and development and restructuring costs. In addition, under SFAS No. 141(R), changes in deferred tax asset valuation allowances and acquired income tax uncertainties in a business combination after the measurement period will impact income tax expense. SFAS No. 141(R) is effective for fiscal years beginning after December 15, 2008 and will be adopted for any purchase business combinations consummated subsequent to December 28, 2008.

Our headquarters and other facilities, as well as the facilities of certain of our key subcontractors, are located in regions that are subject to earthquakes and other natural disasters.

Our headquarters, including research and development operations, our manufacturing facilities and the facilities of our subcontractor upon which we rely to assemble and test our solar panels are located in countries that are subject to earthquakes and other natural disasters. Our headquarters and research and development operations are located in California, our manufacturing facilities are located in the Philippines, and the facilities of our subcontractor for assembly and test of solar panels are located in China. Since we do not have redundant facilities, any earthquake, tsunami or other natural disaster in these countries could materially disrupt our production capabilities and could result in our experiencing a significant delay in delivery, or substantial shortage, of our solar cells.

Compliance with environmental regulations can be expensive, and noncompliance with these regulations may result in adverse publicity and potentially significant monetary damages and fines.

We are required to comply with all foreign, U.S. federal, state and local laws and regulations regarding pollution control and protection of the environment. In addition, under some statutes and regulations, a government agency, or other parties, may seek recovery and response costs from operators of property where releases of hazardous substances have occurred or are ongoing, even if the operator was not responsible for such release or otherwise at fault. We use, generate and discharge toxic, volatile and otherwise hazardous chemicals and wastes in our research and development and manufacturing activities. Any failure by us to control the use of, or to restrict adequately the discharge of, hazardous substances could subject us to potentially significant monetary damages and fines or suspensions in our business operations. In addition, if more stringent laws and regulations are adopted in the future, the costs of compliance with these new laws and regulations could be substantial. To date such laws and regulations have not had a significant impact on our operations, and we believe that we have all necessary permits to conduct their respective operations as they are presently conducted. If we fail to comply with present or future environmental laws and regulations, however, we may be required to pay substantial fines, suspend production or cease operations. Under our agreement with Cypress, we will indemnify Cypress from any environmental liabilities associated with our operations and facilities in San Jose, California and the Philippines.

We maintain self-insurance for certain indemnities we have made to our officers and directors.

Our certificate of incorporation, by-laws and indemnification agreements require us to indemnify our officers and directors for certain liabilities that may arise in the course of their service to us. We primarily self-insure with respect to potential indemnifiable claims. Although we have insured our officers and directors against certain potential third-party claims for which we are legally or financially unable to indemnify them, we intend to primarily self-insure with respect to potential third-party claims which give rise to direct liability to such third-party or an indemnification duty on our part. We previously pooled our resources with those of Cypress for self-insurance purposes. Following the separation of our company from Cypress this is no longer possible and we are subject to heightened self-insurance risk. If we were required to pay a significant amount on account of these liabilities for which we self-insure, our business, financial condition and results of operations could be seriously harmed.

Changes to financial accounting standards may affect our combined results of operations and cause us to change our business practices.

We prepare our financial statements to conform with U.S. GAAP. These accounting principles are subject to interpretation by the American Institute of Certified Public Accountants, the SEC and various bodies formed to interpret and create appropriate accounting policies. A change in those policies can have a significant effect on our combined reported results and may affect our reporting of transactions completed before a change is announced. Changes to those rules or the questioning of current practices may adversely affect our reported financial results or the way we conducts our business. For example, accounting policies affecting many aspects of our business, including rules relating to employee stock option grants and existing joint ventures, have recently been revised, or new guidance relating to outstanding convertible debt are being proposed.

The Financial Accounting Standards Board, or the FASB, and other agencies have made changes to U.S. GAAP that required U.S. companies, starting in the first quarter of fiscal 2006, to record a charge to earnings for employee stock option grants and other equity incentives. We may have significant and ongoing accounting charges resulting from option grant and other equity awards that could reduce our net income or increase our net loss. In addition, since we have historically used equity-related compensation as a component of our total employee compensation program, the accounting change could make the use of equity-related compensation less attractive to us and therefore make it more difficult to attract and retain employees. In December 2003, the FASB issued the FASB Staff Position FASB Interpretation No. 46 "Consolidation of Variable Interest Entities", or FSP FIN 46(R). The accounting method under FSP FIN 46(R) may impact our accounting for certain existing or future joint ventures or project companies for which we retain an ownership interest. In the event that we are deemed the primary beneficiary of a Variable Interest Entity (VIE) subject to the accounting of FSP FIN 46(R), we may have to consolidate the assets, liabilities and financial results of the joint venture. This could have an adverse impact on our financial position, gross margin and operating results.

With respect to our existing debt securities, we are not required under U.S. GAAP as presently in effect to record any interest or other expense in connection with our obligation to deliver upon conversion a number of shares (or an equivalent amount of cash) having a value in excess of the outstanding principal amount of the debentures. We refer to this obligation as our "net share obligation". The accounting method for net share settled convertible securities such as ours is currently under consideration by the FASB. In May 2008, the FASB issued FASB Staff Position APB 14-1, which clarifies the accounting for convertible debt instruments that may be settled in cash upon conversion. FSP APB 14-1 significantly impacts the accounting for our existing debt securities by requiring us to separately account for the liability and equity components of our existing debt securities in a manner that reflects interest expense equal to our non-convertible debt borrowing rate. The new guidance is expected to cause us to incur additional interest expense and potentially increase our cost of capital equipment and future depreciation expense due to capitalized interest, thereby reducing our operating results. FSP APB 14-1 is effective for fiscal years and interim periods beginning after December 15, 2008, and retrospective application will be required for all periods presented.

In addition, because the approximately 1.8 million shares of class A common stock loaned to Credit Suisse International, an affiliate of Credit Suisse Securities (USA) LLC, or Credit Suisse, in July 2007 must be returned to us prior to August 1, 2027, we believe that under U.S. GAAP as presently in effect, the borrowed shares will not be considered outstanding for the purpose of computing and reporting our earnings per share. However, on September 15, 2008, Lehman Brothers Holdings Inc., or Lehman, filed a petition for protection under Chapter 11 of the U.S. bankruptcy code, and Lehman Brothers International (Europe) Limited, or LBIE, commenced administration proceedings (analogous to bankruptcy) in the United Kingdom. After reviewing the circumstances of the Lehman bankruptcy and LBIE administration proceedings, we have determined that we will record the loaned shares as issued and outstanding starting on September 15, 2008, the date on which LBIE commenced administration proceedings, for the purpose of computing and reporting our basic and diluted weighted average shares and earnings per share. This accounting method is also subject to change. If Credit Suisse or its affiliates, including Credit Suisse International, were to file bankruptcy or commence similar administrative, liquidating, restructuring or other proceedings, we may have to consider approximately 1.8 million shares lent to Credit Suisse International as issued and outstanding for purposes of calculating earnings per share which would further dilute our results of operations. Any reduction in our earnings per share could cause our stock price to decrease, possibly significantly.

If we fail to maintain an effective system of internal controls, we may not be able to accurately report our financial results or prevent fraud. As a result, current and potential stockholders could lose confidence in our financial reporting, which could harm our business and the trading price of our common stock.

Section 404 of the Sarbanes-Oxley Act of 2002 requires us to evaluate and report on our internal control over financial reporting and have our independent registered public accounting firm annually attest to the effectiveness of our internal control over financial reporting. We have in the past discovered, and may in the future discover, areas of our internal controls that need improvement. We are complying with Section 404 by strengthening, assessing and testing our system of internal controls to provide the basis for our report. However, the continuous process of strengthening our internal controls and complying with Section 404 is expensive and time consuming, and requires significant management attention. We cannot be certain that these measures will ensure that we will maintain adequate control over our financial processes and reporting, or that we or our independent registered public accounting firm will be able to provide the attestation and opinion required under Section 404 in our Annual Reports on Form 10-K. If we or our independent registered public accounting firm discover a material weakness, the disclosure of that fact, even if quickly remedied, could reduce the market's confidence in our financial statements and harm our stock price. In addition, future non-compliance with Section 404 could subject us to a variety of administrative sanctions, including the suspension or delisting of our common stock from The Nasdaq Global Select Market and the inability of registered broker-dealers to make a market in our common stock, which would further reduce our stock price.

The development of a unified system of control over financial reporting may take a significant amount of management's time and attention and, if not completed in a timely manner, could negatively impact us.

Prior to our acquisition of SP Systems in January 2007, SP Systems was not required to report on the effectiveness of its internal control over financial reporting because it was not subject to the requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act. In August 2006, the audit committee of SP Systems received a letter from that company's independent auditors identifying certain material weaknesses in that company's internal control over financial reporting relating to that company's audits of its Consolidated Financial Statements for 2005, 2004 and 2003. These material weaknesses included problems with financial statement close processes and procedures, inadequate accounting resources, unsatisfactory application of the percentage-of-completion accounting method, inaccurate physical inventory counts, incorrect accounting for complex capital transactions and inadequate disclosure of related party transactions. In addition, SP Systems had to restate its 2004 and 2003 financial statements to correct previously reported amounts primarily related to its contract revenue, contract costs, accrued warranty, California state sales taxes and inventory items. In July 2007, subsequent to our acquisition of SP Systems, its independent auditors completed their audit of SP Systems' 2006 financial statements. In connection with that audit, our audit committee received a letter from the independent auditors of SP Systems identifying significant deficiencies in SP Systems' internal control over financial reporting.

As we would for any other significant deficiencies identified by our external auditors from time to time, we have begun remediation efforts with respect to the significant deficiencies identified by SP Systems' independent auditors. Although initiated, our plans to improve these internal controls and processes are not complete. While we expect to complete this remediation process as quickly as possible, doing so depends on several factors beyond our control, including the hiring of additional qualified personnel and, as a result, we cannot at this time estimate how long it will take to complete the steps identified above. Our management will continue to evaluate the effectiveness of the control environment in our systems segment as well our company overall and will continue to develop and enhance internal controls. We cannot assure investors that the measures we have taken to date or any future measures will remediate the significant deficiencies reported by our independent auditors. Any failure to develop or maintain effective controls, or any difficulties encountered in their implementation or improvement, could harm our operating results or cause us to fail to meet our reporting obligations and may result in a restatement of our prior period financial statements. Ineffective internal controls could also cause investors to lose confidence in our reported financial information, which would likely have a negative effect on the trading price of our securities.

Our report on internal control over financial reporting in our annual reports on Form 10-K for the fiscal years ended December 30, 2007 and December 31, 2006 did not include an assessment of SP Systems' internal controls. We are required to include SP Systems, which now makes up our systems segment, in management's report on internal controls in our annual report on Form 10-K for the fiscal year ending December 28, 2008. Unanticipated factors may hinder the effectiveness over financial reporting or delay the integration of our combined internal control systems post-acquisition. We cannot be certain as to whether we will be able to establish an effective, unified system of internal control over financial reporting in a timely manner, or at all.

Our credit agreement with Wells Fargo contains covenant restrictions that may limit our ability to operate our business.

Our Credit Agreement with Wells Fargo contains, and any of our other future debt agreements may contain, covenant restrictions that limit our ability to operate our business, including restrictions on our ability to:

- incur additional debt or issue guarantees;
- create liens;
- make certain investments or acquisitions;
- enter into transactions with our affiliates;
- sell certain assets;
- redeem capital stock or make other restricted payments;
- declare or pay dividends or make other distributions to stockholders; and
- merge or consolidate with any person.

In addition, our credit agreement contains additional affirmative and negative covenants that are more restrictive than those contained in the indenture governing the debentures. Our ability to comply with these covenants is dependent on our future performance, which will be subject to many factors, some of which are beyond our control, including prevailing economic conditions.

As a result of these covenants, our ability to respond to changes in business and economic conditions and to obtain additional financing, if needed, may be significantly restricted, and we may be prevented from engaging in transactions that might otherwise be beneficial to us. In addition, our failure to comply with these covenants could result in a default under the debentures and our other debt, which could permit the holders to accelerate such debt. If any of our debt is accelerated, we may not have sufficient funds available to repay such debt.

If the recent credit market conditions continue or worsen, they could have a material adverse impact on our investment portfolio.

Recent U.S. sub-prime mortgage defaults have had a significant impact across various sectors of the financial markets, causing global credit and liquidity issues. During the third quarter of fiscal 2008, the net asset value of the Reserve Primary Fund and the Reserve International Liquidity Fund fell below $1.00 because the funds had investments in Lehman, which filed for bankruptcy on September 15, 2008. As a result of this event, the Reserve Funds wrote down their investments in Lehman to zero. Of $26.7 million invested in the Reserve Funds on September 28, 2008, we have estimated the loss to be approximately $0.9 million based on an evaluation of the fair value of the securities held by the Reserve Funds and the net asset value that was last published by the Reserve Funds before the funds suspended redemptions. We recorded an impairment charge of $0.9 million in “Other, net” in our Condensed Consolidated Statements of Operations thereby establishing a new cost basis of $25.7 million for the Reserve Funds.

On October 31, 2008, we received a distribution of $11.9 million from the Reserve Funds. We expect that the remaining distribution of $13.8 million from the Reserve Funds will occur over the remaining twelve months as the investments held in the funds mature. While we expect to receive substantially all of our current holdings in the Reserve Funds within the next twelve months, it is possible we may encounter difficulties in receiving distributions given the current credit market conditions. If market conditions were to deteriorate even further such that the current fair value were not achievable, we could realize additional losses in our holdings with the Reserve Funds and distributions could be further delayed. There can be no assurance that our other investments, particularly in this unfavorable market and economic environment, will not face similar risks of loss.

Beginning in February 2008, the auction rate securities market experienced a significant increase in the number of failed auctions, resulting from a lack of liquidity, which occurs when sell orders exceed buy orders, and does not necessarily signify a default by the issuer. As of September 28, 2008, we held five auction rate securities totaling $25.0 million. All auction rate securities invested in at September 28, 2008 have failed to clear at auctions. These auction rate securities are typically over-collateralized and secured by pools of student loans originated under the Federal Family Education Loan Program, or FFELP, and are guaranteed and insured by the U.S. Department of Education. In addition, all auction rate securities held are rated by one or more of the Nationally Recognized Statistical Rating Organizations, or NRSRO, as triple-A. For failed auctions, we continue to earn interest on these investments at the maximum contractual rate as the issuer is obligated under contractual terms to pay penalty rates should auctions fail. In the event we need to access these funds, we will not be able to do so until a future auction is successful, the issuer redeems the securities, a buyer is found outside of the auction process or the securities mature. If these auction rate securities are unable to successfully clear at future auctions or issuers do not redeem the securities, we may be required to adjust the carrying value of the securities and record an impairment charge. If we determine that the fair value of these auction rate securities is temporarily impaired, we would record a temporary impairment within Condensed Consolidated Statements of Comprehensive Income, a component of stockholders' equity. If it is determined that the fair value of these auction rate securities is other-than-temporarily impaired, we would record a loss in our Condensed Consolidated Statements of Operations, which could materially adversely impact our results of operations and financial condition.

Risks Related to Our Debentures and Class A and Class B Common Stock

Conversion of our outstanding debentures will dilute the ownership interest of existing stockholders, including holders who had previously converted their debentures.

To the extent we issue class A common stock upon conversion of debentures, the conversion of some or all of such debentures will dilute the ownership interests of existing stockholders, including holders who had previously converted their debentures. Any sales in the public market of the class A and class B common stock issuable upon such conversion could adversely affect prevailing market prices of our class A and class B common stock. In addition, the existence of our outstanding debentures may encourage short selling of our common stock by market participants who expect that the conversion of the debentures could depress the prices of our class A and class B common stock.

As of the first trading day of the fourth quarter in fiscal 2008, holders of the 1.25% outstanding debentures, or February 2007 debentures, were able to exercise their right to convert the debentures any day in that fiscal quarter because the closing price of our class A common stock on at least 20 of the last 30 trading days during the fiscal quarter ending September 28, 2008 has equaled or exceeded $70.94, which represents more than 125% of the applicable conversion price for our February 2007 debentures. Because the closing price of our class A common stock on at least 20 of the last 30 trading days during the fiscal quarter ending September 28, 2008 did not equal or exceed $102.80, or 125% of the applicable conversion price governing the 0.75% outstanding debentures, or July 2007 debentures, holders of the July 2007 debentures are unable to exercise their right to convert the debentures, based on the stock trading price trigger, any day in the fourth fiscal quarter beginning on September 29, 2008. This test is repeated each fiscal quarter, and prior to August 1, 2025, holders of our outstanding debentures may only exercise their right to convert during a fiscal quarter in which this test is met. After August 1, 2025, the debentures are convertible at any time.

In the event of conversion by holders of the outstanding debentures, the principal amount must be settled in cash and to the extent that the conversion obligation exceeds the principal amount of any debentures converted, we must satisfy the remaining conversion obligation of the February 2007 debentures in shares of our class A common stock, and we maintain the right to satisfy the remaining conversion obligation of the July 2007 debentures in shares of our class A common stock or cash. We intend to fund such obligations, if any, through existing cash and cash equivalents, cash generated from operations and, if necessary, borrowings under our credit agreement with Wells Fargo and/or potential availability of future sources of funding.

As of October 31, 2008, we have received notices for the conversion of approximately $1.4 million of the February 2007 debentures which we have settled for approximately $1.2 million in cash and 1,000 shares of class A common stock. The current capital market conditions and credit environment could create incentives for additional holders to convert their debentures that did not exist in prior quarters. If the full $200.0 million in aggregate convertible debt was called for conversion prior to December 28, 2008, we would likely not have sufficient unrestricted cash and cash equivalents on hand to satisfy the conversion without additional liquidity. If necessary, we may seek to restructure our obligations under the convertible debt, or raise additional cash through sales of investments, assets or common stock, or from borrowings. However, there can be no assurance that we would be successful in these efforts in the current market conditions.

In addition, the holders of our February 2007 debentures and July 2007 debentures would be able to exercise their right to convert the debentures during the five consecutive business days immediately following any five consecutive trading days in which the trading price of our senior convertible debentures is less than 98% of the average of the closing sale price of a share of class A common stock during the five consecutive trading days, multiplied by the applicable conversion rate. On October 31, 2008, our February debentures and July 2007 debentures traded significantly below their historic trading prices, with our February 2007 debentures trading slightly above their conversion value. We believe the decline in trading prices is due primarily to the declining market price of our class A common stock, the lack of liquidity in the current market, a need for investors to raise capital by selling debentures, public concerns regarding the availability of credit, and the end of our share lending arrangement with Lehman Brothers International (Europe) Limited as a result of LBIE's administrative proceeding and the related Chapter 11 filing by Lehman Brothers Holdings Inc. and certain of its affiliates. If the trading prices of our debentures continue to decline, holders of the debentures may have the right to convert the debentures in the future.

As of September 28, 2008, we had cash and cash equivalents of $256.6 million, while the aggregate outstanding principal balance due under the debentures was $425.0 million. For more information about our convertible debentures, please see *"Liquidity" within "Item 2: Management's Discussion and Analysis of Financial Condition and Results of Operations."*

Substantial future sales or other dispositions of our class A or class B common stock or other securities, or short selling activity, could cause our stock price to fall and dilute earnings per share.

Sales of our class A or class B common stock in the public market or sales of any of our other securities, or the perception that such sales could occur, could cause the market prices of our class A and class B common stock to decline. As of September 28, 2008, we had approximately 43.8 million shares of class A common stock outstanding, and Cypress owned the 42.0 million outstanding shares of our class B common stock, representing approximately 50.1% of the total outstanding shares of our common stock. After the close of trading on September 29, 2008, Cypress completed a spin-off of all of its shares of our class B common stock, in the form of a pro rata dividend to the holders of record as of September 17, 2008 of Cypress common stock. As a result, our class B common stock now trades publicly and is listed on the Nasdaq Global Select Market, along with our class A common stock.

Some of the aggregate of approximately 4.7 million shares of class A common stock that we lent to underwriters of our debenture offerings, including potentially the approximately 2.9 million shares lent to LBIE, are being held by such underwriters to facilitate later hedging arrangements of future purchases for debentures in the after-market. These shares may be freely sold into the market by the underwriters at any time, and such sales could depress our stock price. In addition, any hedging activity facilitated by our debenture underwriters would involve short sales or privately negotiated derivatives transactions. These or other similar transactions could further negatively affect our stock price.

In addition, if we issue additional shares of class A or class B common stock or other securities, our earnings per share would be further diluted. Similarly, if Credit Suisse Securities (USA) LLC or its affiliates, including Credit Suisse International to which we lent shares of our class A common stock in connection with the issuance of our July 2007 debentures, were to file bankruptcy or commence similar administrative, liquidating, restructuring or other proceedings, we may have to consider approximately 1.8 million shares lent to Credit Suisse International as issued and outstanding for purposes of calculating earnings per share which would further dilute our results of operations.

If securities or industry analysts do not publish research or reports about us, our business or our market, or if they change their recommendations regarding our stock adversely, our securities prices and trading volumes could decline.

The trading markets for our class A and class B common stock and debentures are influenced by the research and reports that industry or securities analysts publish about us, our business or our market. If one or more of the analysts who cover us change their recommendation regarding our stock adversely, our stock and debenture prices would likely decline. If one or more of these analysts cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause our securities prices or trading volumes to decline.

The price of our class A common stock, and therefore of our outstanding debentures, as well as our class B common stock may fluctuate significantly, and a liquid trading market for our class A and class B common stock may not be sustained.

Our class A and class B common stock has a limited trading history in the public markets, and during that period has experienced extreme price and volume fluctuations. The trading price of our class A and class B common stock could be subject to wide fluctuations due to the factors discussed in this risk factors section. In addition, the stock market in general, and The Nasdaq Global Select Market and the securities of technology companies and solar companies in particular, have experienced severe price and volume fluctuations. These trading prices and valuations, including our own market valuation and those of companies in our industry generally, may not be sustainable. These broad market and industry factors may decrease the market price of our class A and class B common stock, regardless of our actual operating performance. Because the debentures are convertible into our class A common stock, volatility or depressed prices of our class A common stock could have a similar effect on the trading price of these debentures. In addition, in the past, following periods of volatility in the overall market and the market price of a company's securities, securities class action litigation has often been instituted against these companies. This litigation, if instituted against us, could result in substantial costs and a diversion of our management's attention and resources.

The difference in the voting rights and liquidity could result in different market values for shares of our class A and our class B common stock.

The rights of class A and class B common stock are substantially similar, except with respect to voting. The class B common stock is entitled to eight votes per share and the class A common stock is entitled to one vote per share. Following the tax-free spin-off of our shares by Cypress, our class B common stock is freely tradable in the market. The difference in the voting rights of our class A and class B common stock could reduce the value of our class A common stock to the extent that any investor or potential future purchaser of our common stock ascribes value to the right of our class B common stock to eight votes per share. In addition, the lack of a long trading history and lower trading volume of the class B common stock, compared to the class A common stock, could result in lower trading prices for the class B common stock.

Delaware law and our certificate of incorporation and bylaws contain anti-takeover provisions, and our board of directors entered into a rights agreement and declared a rights dividend, that could delay or discourage takeover attempts that stockholders may consider favorable.

Provisions in our restated certificate of incorporation and bylaws may have the effect of delaying or preventing a change of control or changes in our management. These provisions include the following:

- the right of the board of directors to elect a director to fill a vacancy created by the expansion of the board of directors;
- the prohibition of cumulative voting in the election of directors, which would otherwise allow less than a majority of stockholders to elect director candidates;
- the requirement for advance notice for nominations for election to the board of directors or for proposing matters that can be acted upon at a stockholders' meeting;
- the ability of the board of directors to issue, without stockholder approval, up to approximately 10.0 million shares of preferred stock with terms set by the board of directors, which rights could be senior to those of common stock; and
- our board of directors following our spin-off from Cypress has been divided into three classes of directors, with the classes to be as nearly equal in number as possible;
- no action can be taken by stockholders except at an annual or special meeting of the stockholders called in accordance with our bylaws, and stockholders may not act by written consent;
- stockholders may not call special meetings of the stockholders;
- limitations on the voting rights of our stockholders with more than 15% of our class B common stock subject to receipt by Cypress of a supplemental ruling from the IRS that the effectiveness of the restriction will not prevent the favorable rulings received by Cypress with respect to certain tax issues arising under Section 355 of the Code in connection with the spin-off from having full force and effect; and
- our board of directors is able to alter our bylaws without obtaining stockholder approval.

In addition, on August 12, 2008, we entered into a Rights Agreement with Computershare Trust Company, N.A. and our board of directors declared an accompanying rights dividend. The Rights Agreement became effective upon completion of Cypress' spin-off of our shares of class B common stock to the holders of Cypress common stock. The Rights Agreement contains specific features designed to the address the potential for an acquiror or significant investor to take advantage of our capital structure and unfairly discriminate between classes of our common stock. Specifically, the Rights Agreement is designed to address the inequities that could result if an investor, by acquiring 20% or more of the outstanding shares of class B common stock, were able to gain significant voting influence over our company without making a correspondingly significant economic investment. Our board of directors determined that the rights dividend became payable to the holders of record of our common stock as of the close of business on September 29, 2008. The rights dividend and Rights Agreement, commonly referred to as a "poison pill," could delay or discourage takeover attempts that stockholders may consider favorable.

In addition, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, or the DGCL. These provisions may prohibit large stockholders, in particular those owning 15% or more of our outstanding voting stock, from merging or combining with us. These provisions in our restated certificate of incorporation, bylaws and under Delaware law could discourage potential takeover attempts and could reduce the price that investors might be willing to pay for shares of our common stock in the future and result in the market price being lower than they would without these provisions.

Provisions of our outstanding debentures could discourage an acquisition of us by a third party.

Certain provisions of our outstanding debentures could make it more difficult or more expensive for a third party to acquire us. Upon the occurrence of certain transactions constituting a fundamental change, holders of our outstanding debentures will have the right, at their option, to require us to repurchase, at a cash repurchase price equal to 100% of the principal amount plus accrued and unpaid interest on the debentures, all of their debentures or any portion of the principal amount of such debentures in integral multiples of $1,000. We may also be required to issue additional shares of our class A common stock upon conversion of such debentures in the event of certain fundamental changes.

We currently have a significant amount of debt outstanding. Our substantial indebtedness, along with our other contractual commitments, could adversely affect our business, financial condition and results of operations, as well as our ability to meet any of our payment obligations under the debentures and our other debt.

We currently have a significant amount of debt and debt service requirements. As of September 28, 2008, after giving effect to our July 2007 offering of debentures, we had $425.0 million of outstanding debt for borrowed money.

This level of debt could have significant consequences on our future operations, including:

- making it more difficult for us to meet our payment and other obligations under the debentures and our other outstanding debt;
- resulting in an event of default if we fail to comply with the financial and other restrictive covenants contained in our debt agreements, which event of default could result in all of our debt becoming immediately due and payable;
- reducing the availability of our cash flow to fund working capital, capital expenditures, acquisitions and other general corporate purposes, and limiting our ability to obtain additional financing for these purposes;
- subjecting us to the risk of increased sensitivity to interest rate increases on our indebtedness with variable interest rates, including borrowings under our new credit facility;
- limiting our flexibility in planning for, or reacting to, and increasing our vulnerability to, changes in our business, the industry in which we operate and the general economy; and
- placing us at a competitive disadvantage compared to our competitors that have less debt or are less leveraged.

Any of the above-listed factors could have an adverse effect on our business, financial condition and results of operations and our ability to meet our payment obligations under the debentures and our other debt.

In addition, we also have significant contractual commitments for the purchase of polysilicon, some of which involve prepayments, and we may enter into additional, similar agreements in the future. These commitments could have an adverse effect on our liquidity and our ability to meet our payment obligations under the debentures and our other debt.

Our ability to meet our payment and other obligations under our debt instruments depends on our ability to generate significant cash flow in the future. This, to some extent, is subject to general economic, financial, competitive, legislative and regulatory factors as well as other factors that are beyond our control. We cannot assure investors that our business will generate cash flow from operations, or that future borrowings will be available to us under our existing or any future credit facilities or otherwise, in an amount sufficient to enable us to meet our payment obligations under our outstanding debentures and our other debt and to fund other liquidity needs. If we are not able to generate sufficient cash flow to service our debt obligations, we may need to refinance or restructure our debt, including our outstanding debentures, sell assets, reduce or delay capital investments, or seek to raise additional capital. If we are unable to implement one or more of these alternatives, we may not be able to meet our payment obligations under the debentures and our other debt and other obligations.

As of the first trading day of the fourth quarter in fiscal 2008, holders of the February 2007 debentures were able to exercise their right to convert the debentures any day in that fiscal quarter because the closing price of our class A common stock on at least 20 of the last 30 trading days during the fiscal quarter ending September 28, 2008 has equaled or exceeded $70.94, which represents more than 125% of the applicable conversion price for our February 2007 debentures. Because the closing price of our class A common stock on at least 20 of the last 30 trading days during the fiscal quarter ending September 28, 2008 did not equal or exceed $102.80, or 125% of the applicable conversion price governing the July 2007 debentures, holders of the July 2007 debentures are unable to exercise their right to convert the debentures, based on the stock trading price trigger, any day in the fourth fiscal quarter beginning on September 29, 2008. This test is repeated each fiscal quarter, and prior to August 1, 2025, holders of our outstanding debentures may only exercise their right to convert during a fiscal quarter in which this test is met. After August 1, 2025, the debentures are convertible at any time.

In the event of conversion by holders of the outstanding debentures, the principal amount must be settled in cash and to the extent that the conversion obligation exceeds the principal amount of any debentures converted, we must satisfy the remaining conversion obligation of the February 2007 debentures in shares of our class A common stock, and we maintain the right to satisfy the remaining conversion obligation of the July 2007 debentures in shares of our class A common stock or cash. We intend to fund such obligations, if any, through existing cash and cash equivalents, cash generated from operations and, if necessary, borrowings under our credit agreement with Wells Fargo and/or potential availability of future sources of funding.

As of October 31, 2008, we have received notices for the conversion of approximately $1.4 million of the February 2007 debentures which we have settled for approximately $1.2 million in cash and 1,000 shares of class A common stock. The current capital market conditions and credit environment could create incentives for additional holders to convert their debentures that did not exist in prior quarters. If the full $200.0 million in aggregate convertible debt was called for conversion prior to December 28, 2008, we would likely not have sufficient unrestricted cash and cash equivalents on hand to satisfy the conversion without additional liquidity. If necessary, we may seek to restructure our obligations under the convertible debt, or raise additional cash through sales of investments, assets or common stock, or from borrowings. However, there can be no assurance that we would be successful in these efforts in the current market conditions.

In addition, the holders of our February 2007 debentures and July 2007 debentures would be able to exercise their right to convert the debentures during the five consecutive business days immediately following any five consecutive trading days in which the trading price of our senior convertible debentures is less than 98% of the average of the closing sale price of a share of class A common stock during the five consecutive trading days, multiplied by the applicable conversion rate. On October 31, 2008, our February debentures and July 2007 debentures traded significantly below their historic trading prices, with our February 2007 debentures trading slightly above their conversion value. We believe the decline in trading prices is due primarily to the declining market price of our class A common stock, the lack of liquidity in the current market, a need for investors to raise capital by selling debentures, public concerns regarding the availability of credit, and the end of our share lending arrangement with Lehman Brothers International (Europe) Limited as a result of LBIE's administrative proceeding and the related Chapter 11 filing by Lehman Brothers Holdings Inc. and certain of its affiliates. If the trading prices of our debentures continue to decline, holders of the debentures may have the right to convert the debentures in the future.

As of September 28, 2008, we had cash and cash equivalents of $256.6 million, while the aggregate outstanding principal balance due under the debentures was $425.0 million. For more information about our convertible debentures, please see *"Liquidity"* within *"Item 2: Management's Discussion and Analysis of Financial Condition and Results of Operations."* See also *"Risk Factors - We expect to continue to make significant capital expenditures, particularly in our manufacturing facilities, and if adequate funds are not available or if the covenants in our credit agreements impair our ability to raise capital when needed, our ability to expand our manufacturing capacity and our business will suffer."*

Our outstanding debentures are effectively subordinated to any existing and future secured indebtedness and structurally subordinated to existing and future liabilities and other indebtedness of our subsidiaries.

Our outstanding debentures are our general, unsecured obligations and rank equally in right of payment with all of our existing and future unsubordinated, unsecured indebtedness. All of our $425.0 million in outstanding principal amount of debentures rate equally in right of payment. Our outstanding debentures are effectively subordinated to our existing and any future secured indebtedness we may have to the extent of the value of the assets securing such indebtedness, and structurally subordinated to any existing and future liabilities and other indebtedness of our subsidiaries. These liabilities may include indebtedness, trade payables, guarantees, lease obligations and letter of credit obligations. The debentures do not restrict us or our subsidiaries from incurring indebtedness, including senior secured indebtedness in the future, nor do they limit the amount of indebtedness we can issue that is equal in right of payment.

The terms of our outstanding debentures do not contain restrictive covenants and provide only limited protection in the event of a change of control.

The indentures under which our outstanding debentures were issued do not contain restrictive covenants that would protect holders from several kinds of transactions that may adversely affect them. In particular, the indentures do not contain covenants that will limit our ability to pay dividends or make distributions on or redeem our capital stock or limit our ability to incur additional indebtedness and, therefore, may not protect holders of our debentures in the event of a highly leveraged transaction or other similar transaction. The requirement that we offer to repurchase our outstanding debentures upon a change of control is limited to the transactions specified in the definitions of a "fundamental change" in the indentures. Similarly, the circumstances under which we are required to adjust the conversion rate upon the occurrence of a "non-stock change of control" are limited to circumstances where a debenture is converted in connection with such a transaction as set forth in the indentures.

Accordingly, subject to restrictions contained in our other debt agreements, we could enter into certain transactions, such as acquisitions, refinancings or recapitalizations, that could affect our capital structure and the value of the debentures and our class A common stock but would not constitute a fundamental change under the debentures.

We may be unable to repurchase the debentures for cash when required by the holders, including following a fundamental change.

Holders of our outstanding debentures have the right to require us to repurchase such debentures on specified dates or upon the occurrence of a fundamental change prior to maturity as described in the indentures governing such debentures. We may not have sufficient funds to make the required repurchase in cash at such time or the ability to arrange necessary financing on acceptable terms. In addition, our ability to repurchase the debentures in cash may be limited by law or the terms of other agreements relating to our debt outstanding at the time, including our current credit facility which limits our ability to purchase the debentures for cash in certain circumstances. If we fail to repurchase the debentures in cash as required by the indenture governing the debentures, it would constitute an event of default under each indenture governing our outstanding debentures, which, in turn, would constitute an event of default under our credit facility and the other indenture.

Some significant restructuring transactions may not constitute a fundamental change, in which case we would not be obligated to offer to repurchase our outstanding debentures.

Upon the occurrence of a fundamental change, holders of our debentures will have the right to require us to repurchase their debentures. However, the fundamental change provisions of our indentures will not afford protection to holders of debentures in the event of certain transactions. For example, transactions such as leveraged recapitalizations, refinancings, restructurings or acquisitions initiated by us, as well as stock acquisitions by certain companies, would not constitute a fundamental change requiring us to repurchase the debentures. In the event of any such transaction, holders of debentures would not have the right to require us to repurchase their debentures, even though each of these transactions could increase the amount of our indebtedness, or otherwise adversely affect our capital structure or any credit ratings, thereby adversely affecting the holders of our debentures.

The adjustment to the conversion rates of our outstanding debentures upon the occurrence of certain types of fundamental changes may not adequately compensate holders for the lost option time value of their debentures as a result of such fundamental change.

If certain types of fundamental changes occur prior to August 1, 2010 with respect to our July 2007 debentures or prior to February 13, 2012 with respect to our February 2007 debentures, we may adjust the conversion rate of the debentures to increase the number of shares issuable upon conversion. The number of additional shares to be added to the conversion rate will be determined based on the date on which the fundamental change becomes effective and the price paid per share of our class A common stock in the fundamental change as described in the indentures for such debentures. Although this adjustment is designed to compensate holders for the lost option value of their debentures as a result of certain types of fundamental changes, the adjustment is only an approximation of such lost value based upon assumptions made at the time when their debentures were issued and may not adequately compensate them for such loss. In addition, with respect to our July 2007 debentures, if the price paid per share of our class A common stock in the fundamental change is less than $64.50 or more than $155.00 (subject to adjustment), or if such transaction occurs on or after August 1, 2010, there will be no such adjustment. Moreover, in no event will the total number of shares issuable upon conversion as a result of this adjustment exceed 15.5039 per $1,000 principal amount of the July 2007 debentures, subject to adjustment for stock splits, combinations and the like. With respect to our February 2007 debentures, if the price paid per share of our class A common stock in the fundamental change is less than $44.51 or more than $135.00 (subject to adjustment), or if such transaction occurs on or after February 15, 2012, there will be no such adjustment. Moreover, in no event will the total number of shares issuable upon conversion as a result of this adjustment exceed 22.4668 per $1,000 principal amount of the February 2007 debentures, subject to adjustment for stock splits, combinations and the like.

There is currently no public market for our outstanding debentures, and an active trading market may not develop for these debentures. The failure of a market to develop for our debentures could adversely affect the liquidity and value of our debentures.

We do not intend to apply for listing of the debentures on any securities exchange or for quotation of the debentures on any automated dealer quotation system. Although we have been advised by the underwriters that the underwriters intend to make a market in the debentures, none of the underwriters is obligated to do so and may discontinue market making at any time without notice. No assurance can be given as to the liquidity of the trading market, if any, for the debentures.

An active market may not develop for any of our outstanding debentures, and there can be no assurance as to the liquidity of any market that may develop for the debentures. If active, liquid markets do not develop for our debentures, the market price and liquidity of the affected debentures may be adversely affected. Any of the debentures may trade at a discount from their initial offering price.

The liquidity of the trading market and future trading prices of our debentures will depend on many factors, including, among other things, the market price of our class A common stock, prevailing interest rates, our operating results, financial performance and prospects, the market for similar securities and the overall securities market, and may be adversely affected by unfavorable changes in these factors. Historically, the market for convertible debt has been subject to disruptions that have caused volatility in prices. It is possible that the market for our debentures will be subject to disruptions which may have a negative effect on the holders of these debentures, regardless of our operating results, financial performance or prospects.

Upon any conversion of our outstanding debentures, we will pay cash in lieu of issuing shares of our class A common stock with respect to an amount up to the principal amount of debentures converted. We retain the right to satisfy any remaining conversion obligation, in whole or part, in additional shares of class A common stock or, in the case of our July 2007 debentures, in cash, based upon a predetermined formula. Therefore, upon conversion, holders of our debentures may not receive any shares of our class A common stock, or may receive fewer shares than the number into which their debentures would otherwise be convertible.

Upon any conversion of debentures, we will pay cash in lieu of issuing shares of our common stock with respect to an amount up to the principal amount of debentures converted. We retain the right to satisfy any remaining conversion obligation, in whole or part, in additional shares of our class A common stock or, in the case of our July 2007 debentures, in cash, with respect to the conversion value in excess thereof, based on a daily conversion value (as defined herein) calculated based on a proportionate basis for each day of the 20 trading day conversion period. Accordingly, upon conversion of debentures, holders may not receive any shares of our class A common stock. In addition, because of the 20 trading day calculation period, in certain cases, settlement will be delayed until at least the 26th trading day following the related conversion date. Moreover, upon conversion of debentures, holders may receive less proceeds than expected because the price of our class A common stock may decrease (or not appreciate as much as they may expect) between the conversion date and the day the settlement amount of their debentures is determined. Further, as a result of cash payments, our liquidity may be reduced upon conversion of the debentures. In addition, in the event of our bankruptcy, insolvency or certain similar proceedings during the conversion period, there is a risk that a bankruptcy court may decide a holder's claim to receive such cash and/or shares could be subordinated to the claims of our creditors as a result of such holder's claim being treated as an equity claim in bankruptcy.

As of the first trading day of the fourth quarter in fiscal 2008, holders of the February 2007 debentures were able to exercise their right to convert the debentures any day in that fiscal quarter because the closing price of our class A common stock on at least 20 of the last 30 trading days during the fiscal quarter ending September 28, 2008 has equaled or exceeded $70.94, which represents more than 125% of the applicable conversion price for our February 2007 debentures. Because the closing price of our class A common stock on at least 20 of the last 30 trading days during the fiscal quarter ending September 28, 2008 did not equal or exceed $102.80, or 125% of the applicable conversion price governing the July 2007 debentures, holders of the July 2007 debentures are unable to exercise their right to convert the debentures, based on the stock trading price trigger, any day in the fourth fiscal quarter beginning on September 29, 2008. This test is repeated each fiscal quarter, and prior to August 1, 2025, holders of our outstanding debentures may only exercise their right to convert during a fiscal quarter in which the test was met. After August 1, 2025, the debentures are convertible at any time.

In the event of conversion by holders of the outstanding debentures, the principal amount must be settled in cash and to the extent that the conversion obligation exceeds the principal amount of any debentures converted, we must satisfy the remaining conversion obligation of the February 2007 debentures in shares of our class A common stock, and we maintain the right to satisfy the remaining conversion obligation of the July 2007 debentures in shares of our class A common stock or cash. We intend to fund such obligations, if any, through existing cash and cash equivalents, cash generated from operations and, if necessary, borrowings under our credit agreement with Wells Fargo and/or potential availability of future sources of funding.

As of October 31, 2008, we have received notices for the conversion of approximately $1.4 million of the February 2007 debentures which we have settled for approximately $1.2 million in cash and 1,000 shares of class A common stock. The current capital market conditions and credit environment could create incentives for additional holders to convert their debentures that did not exist in prior quarters. If the full $200.0 million in aggregate convertible debt was called for conversion prior to December 28, 2008, we would likely not have sufficient unrestricted cash and cash equivalents on hand to satisfy the conversion without additional liquidity. If necessary, we may seek to restructure our obligations under the convertible debt, or raise additional cash through sales of investments, assets or common stock, or from borrowings. However, there can be no assurance that we would be successful in these efforts in the current market conditions.

In addition, the holders of our February 2007 debentures and July 2007 debentures would be able to exercise their right to convert the debentures during the five consecutive business days immediately following any five consecutive trading days in which the trading price of our senior convertible debentures is less than 98% of the average of the closing sale price of a share of class A common stock during the five consecutive trading days, multiplied by the applicable conversion rate. On October 31, 2008, our February debentures and July 2007 debentures traded significantly below their historic trading prices, with our February 2007 debentures trading slightly above their conversion value. We believe the decline in trading prices is due primarily to the declining market price of our class A common stock, the lack of liquidity in the current market, a need for investors to raise capital by selling debentures, public concerns regarding the availability of credit, and the end of our share lending arrangement with Lehman Brothers International (Europe) Limited as a result of LBIE's administrative proceeding and the related Chapter 11 filing by Lehman Brothers Holdings Inc. and certain of its affiliates. If the trading prices of our debentures continue to decline, holders of the debentures may have the right to convert the debentures in the future.

As of September 28, 2008, we had cash and cash equivalents of $256.6 million, while the aggregate outstanding principal balance due under the debentures was $425.0 million. For more information about our convertible debentures, please see *"Liquidity"* within *"Item 2: Management's Discussion and Analysis of Financial Condition and Results of Operations."*

The conditional conversion features of our outstanding debentures could result in holders receiving less than the value of the class A common stock into which a debenture would otherwise be convertible.

At certain times, the debentures are convertible into cash and, if applicable, shares of our class A common stock only if specified conditions are met. If these conditions are not met, holders will not be able to convert their debentures at that time, and, upon a later conversion, holders may not be able to receive the value of the class A common stock into which the debentures would otherwise have been convertible had such conditions been met.

The conversion rate of our outstanding debentures may not be adjusted for all dilutive events that may adversely affect their trading prices or the class A common stock issuable upon conversion of these debentures.

The conversion rates of our outstanding debentures are subject to adjustment upon certain events, including the issuance of stock dividends on our class A common stock, the issuance of rights or warrants, subdivisions, combinations, distributions of capital stock, indebtedness or assets, cash dividends and issuer tender or exchange offers. The conversion rates will not be adjusted for certain other events, including, for example, upon the issuance of additional shares of stock for cash, any of which may adversely affect the trading price of our debentures or the class A common stock issuable upon conversion of the debentures. Even if the conversion price is adjusted for a dilutive event, such as a leveraged recapitalization, it may not fully compensate holders for their economic loss.

Holders of our debentures will not be entitled to any rights with respect to our class A common stock, but they will be subject to all changes made with respect to our class A common stock.

Holders of our debentures will not be entitled to any rights with respect to our class A common stock (including, without limitation, voting rights and rights to receive any dividends or other distributions on our class A common stock), but they will be subject to all changes affecting our class A common stock. Holders will have rights with respect to our class A common stock only if they convert their debentures, which they are permitted to do only in limited circumstances. For example, in the event that an amendment is proposed to our certificate of incorporation or bylaws requiring stockholder approval and the record date for determining the stockholders of record entitled to vote on the amendment occurs prior to delivery of our class A common stock to holders, they will not be entitled to vote on the amendment, although they will nevertheless be subject to any changes in the powers, preferences or rights of our class A common stock.

Our outstanding debentures may not be rated or may receive lower ratings than anticipated.

We do not intend to seek a rating on any of our outstanding debentures. However, if one or more rating agencies rates these debentures and assigns them a rating lower than the rating expected by investors, or reduces their ratings in the future, the market price of the affected debentures and our class A common stock could be reduced.

Risks Related to Our Relationship with Cypress Semiconductor Corporation

Our agreements with Cypress require us to indemnify Cypress for certain tax liabilities. These indemnification obligations and related contractual restrictions may limit our ability to obtain additional financing, participate in future acquisitions or pursue other business initiatives.

We have entered into a tax sharing agreement with Cypress, under which we and Cypress agree to indemnify one another for certain taxes and similar obligations that the other party could incur under certain circumstances. In general, we will be responsible for taxes relating to our business. Furthermore, we may be held jointly and severally liable for taxes determined on a consolidated basis for the entire Cypress group for any particular taxable year that we are a member of the group even though Cypress is required to indemnify us for its taxes pursuant to the tax sharing agreement. As of June 2006, we ceased to be a member of the Cypress consolidated group for federal income tax purposes and certain state income tax purposes. As of September 29 2008, Cypress distributed the shares of SunPower to its shareholders, so we are no longer eligible to file any state combined returns. Thus, to the extent that we become entitled to utilize on our separate tax returns portions of those credit or loss carryforwards existing as of such date, we will distribute to Cypress the tax effect (estimated to be 40% for federal and state income tax purposes) of the amount of such tax loss carryforwards so utilized and the amount of any credit carryforwards so utilized. We will distribute these amounts to Cypress in cash or in our shares, at Cypress's option. Accordingly, we will be subject to the obligations payable to Cypress for any federal income tax credit or loss carryforwards utilized in our federal tax returns. As of December 30, 2007, we had $44.0 million of federal net operating loss carryforwards and approximately $73.5 million of California net operating loss carryforwards, meaning that such potential future payments to Cypress, which would be made over a period of several years, would therefore aggregate to approximately $19.1 million. The majority of these net operating loss carryforwards were created by employee stock transactions. Because there is uncertainty as to the realizability of these loss carryforwards, the portion created by employee stock transactions are not reflected on our Condensed Consolidated Balance Sheets. If these losses were reflected on the Condensed Consolidated Balance Sheets, to the extent the deductions were not matched against previous stock-based compensation charges, the loss carryforwards would be accounted for as an increase to deferred tax assets and stockholders' equity.

Subject to certain caveats, Cypress has obtained a ruling from the Internal Revenue Service, or IRS, to the effect that the distribution by Cypress of the our class B common stock to Cypress stockholders qualified as a tax-free distribution under Section 355 of the Internal Revenue Code (the "Code"). Despite such ruling, the distribution may nonetheless be taxable to Cypress under Section 355(e) of the Code if 50% or more of our voting power or economic value is acquired as part of a plan or series of related transactions that includes the distribution of our stock. The tax sharing agreement includes our obligation to indemnify Cypress for any liability incurred as a result of issuances or dispositions of our stock after the distribution, other than liability attributable solely to certain dispositions of our stock by Cypress, that cause Cypress's distribution of shares of our stock to its stockholders to be taxable to Cypress under Section 355(e) of the Code. Under current law, following a distribution by Cypress and for up to two years thereafter (or possibly longer if we are acting pursuant to a preexisting plan), our obligation to indemnify Cypress will be triggered only if we issue stock or otherwise participate in one or more transactions other than the distribution in which 50% or more of our voting power or economic value is acquired in financing or acquisition transactions that are part of a plan or series of related transactions that includes the distribution. If such an indemnification obligation is triggered, the extent of our liability to Cypress will generally equal the product of (a) Cypress's top marginal federal and state income tax rate for the year of the distribution, and (b) the difference between the fair market value of our class B common stock distributed to Cypress stockholders and Cypress's tax basis in such stock as determined on the date of the distribution.

In connection with Cypress' spin-off of its shares of our class B common stock, on August 12, 2008, we and Cypress entered into an Amendment No. 1 to the Tax Sharing Agreement (the "Amended Tax Sharing Agreement") to address certain transactions that may affect the tax treatment of the spin-off and certain other matters.

Under the Amended Tax Sharing Agreement, we are required to provide notice to Cypress of certain transactions that could give rise to our indemnification obligation relating to taxes resulting from the application of Section 355(e) of the Code or similar provision of other applicable law to the spin-off as a result of one or more acquisitions (within the meaning of Section 355(e)) of our stock after the spin-off. An acquisition for these purposes includes any such acquisition attributable to a conversion of any or all of our class B common stock to class A common stock or any similar recapitalization transaction or series of related transactions (a "Recapitalization"). We are not required to indemnify Cypress for any taxes which would result solely from (A) issuances and dispositions of our stock prior to the spin-off and (B) any acquisition of our stock by Cypress after the spin-off.

Under the Amended Tax Sharing Agreement, we also agreed that, for a period of 25 months following the spin-off, we will not (i) effect a Recapitalization or (ii) enter into or facilitate any other transaction resulting in an acquisition (within the meaning of Section 355(e) of the Code) of our stock without first obtaining the written consent of Cypress; provided, we are not required to obtain Cypress's consent unless such transaction (either alone or when taken together with one or more other transactions entered into or facilitated by us consummated after August 4, 2008 and during the 25-month period following the spin-off) would involve the acquisition for purposes of Section 355(e) of the Code after August 4, 2008 of more than 25% of our outstanding shares of common stock. In addition, the requirement to obtain Cypress's consent does not apply to (A) any acquisition of our stock that will qualify under Treasury Regulation Section 1.355-7(d)(8) in connection with the performance of services, (B) any acquisition of our stock for which we furnish to Cypress prior to such acquisition an opinion of counsel and supporting documentation, in form and substance reasonably satisfactory to Cypress (a "Tax Opinion"), that such acquisition will qualify under Treasury Regulation Section 1.355-7(d)(9), (C) an acquisition of our stock (other than involving a public offering) for which we furnish to Cypress prior to such acquisition a Tax Opinion to the effect that such acquisition will qualify under the so-called "super safe harbor" contained in Treasury Regulation Section 1.355-7(b)(2) or (D) the adoption by us of a standard stockholder rights plan. We further agreed that we will not (i) effect a Recapitalization during the 36 month period following the spin-off without first obtaining a Tax Opinion to the effect that such Recapitalization (either alone or when taken together with any other transaction or transactions) will not cause the spin-off to become taxable under Section 355(e), or (ii) seek any private ruling, including any supplemental private ruling, from the IRS with regard to the spin-off, or any transaction having any bearing on the tax treatment of the spin-off, without the prior written consent of Cypress.

Cypress made a complete distribution of its shares of our class B common stock on September 29, 2008 when our total outstanding capital stock was 85.8 million shares. Unless we qualified for one of several safe harbor exemptions available under the Treasury Regulations, in order to avoid our indemnification obligation to Cypress, we could not, for up two years (or possibly longer if we are acting pursuant to a preexisting plan) from the date of Cypress's distribution, issue 85.8 million or more shares of our class A common stock, nor could we participate in one or more transactions (excluding the distribution itself) in which 42 million or more shares of our then-existing class A common stock were to be acquired in connection with a plan or series of related transactions that includes the distribution. In addition, these limits could be lower depending on certain actions that we or Cypress might take before or after a distribution. If we were to participate in such a transaction, assuming Cypress distributed 42 million shares, Cypress's top marginal income tax rate was 40% for federal and state income tax purposes, the fair market value of our class B common stock was $80.00 per share and Cypress's tax basis in such stock was $5.00 per share on the date of their distribution, then our liability under our indemnification obligation to Cypress would be approximately $1.3 billion.

Our ability to use our equity to obtain additional financing or to engage in acquisition transactions for a period of time after the tax-free distribution of our shares by Cypress will be restricted if we can only sell or issue a limited amount of our stock before triggering our obligation to indemnify Cypress for taxes it incurs under Section 355(e) of the Code.

Our ability to operate our business effectively may suffer if we are unable to cost-effectively establish our own administrative and other support functions in order to operate as a stand-alone company after the termination or expiration of our services agreements with Cypress.

As a subsidiary of Cypress, we relied on administrative and other resources of Cypress to operate our business. In connection with our initial public offering, we entered into various service agreements to retain the ability for specified periods to use these Cypress resources. After the close of trading on September 29, 2008, Cypress completed a spin-off of all of its shares of our class B common stock, in the form of a pro rata dividend to the holders of record as of September 17, 2008 of Cypress common stock, and, in connection with Cypress' spin-off, we and Cypress agreed to terminate certain transition agreements and implemented others. We will need to operate our own administrative and other support systems or contract with third parties to replace Cypress's systems. These services may not be provided at the same level as when we were a wholly owned subsidiary of Cypress, and we may not be able to obtain the same benefits that we received prior to the separation. Any failure or significant downtime in our own administrative systems or in Cypress's administrative systems during the transitional period could result in unexpected costs, impact our results and/or prevent us from paying our suppliers or employees and performing other administrative services on a timely basis.

ITEM 2. RECENT SALES OF UNREGISTERED SECURITIES; USES OF PROCEEDS FROM REGISTERED SECURITIES.

In connection with our acquisition of SunPower Corporation Australia Party Limited, on July 23, 2008, we issued 40,000 shares of class A common stock to the then-current stockholders of the Australian business as partial consideration for all the outstanding equity interests in the Australian business.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS.

As described in the Information Statement mailed to stockholders on or about September 3, 2008, Cypress Semiconductor Corporation, the then-holder of a majority of the voting power of our issued and outstanding voting securities, approved by written consent dated September 3, 2008, the adoption of an amended and restated certificate of incorporation. As of August 29, 2008, the record date for determining stockholders entitled to vote on the adoption of the amendment and restatement of our certificate of incorporation, we had 43,705,713 shares of class A common stock and 42,033,287 shares of class B common stock issued and outstanding and entitled to vote. Cypress owned all the issued and outstanding shares of our class B common stock, representing approximately 88.5% of the combined voting power of our class A and class B common stock. Accordingly, the written consent executed by Cypress was sufficient to approve the adoption of the amended and restated certificate of incorporation and no further stockholder action was required. The amendments to our certificate of incorporation accomplished the following changes principally:

(i) clarified that, following the spin-off, the shares of our class B common stock would remain outstanding as a separate class from our class A shares and would be transferable by holders of class B common stock as a separate class;

(ii) eliminated the ability of holders of shares of class B common stock to voluntarily convert class B shares into shares of our class A common stock following the spin-off;

(iii) restricted the voting power of a holder of more than 15% of our outstanding shares of class B common stock with respect to the election or removal of directors to 15% of the outstanding shares of class B common stock. However, if such holder also owns in excess of 15% of our outstanding shares of class A common stock, then the holder may exercise the voting power of our class B common stock in excess of 15% to the extent that such holder has an equivalent percentage of outstanding class A common stock. For example, a holder of 20% of our outstanding class B common stock, and none of our class A common stock, would be limited to 15% of the voting power of our outstanding class B common stock in the election or removal of directors. On the other hand, if this person owned both 20% of our outstanding class B common stock and 17% of our outstanding class A common stock, then the person would be able to exercise 17% of the voting power of our outstanding class B common stock in the election or removal of directors. Any shares of class B common stock as to which voting power is restricted as described above would automatically be voted in proportion to the shares of class B common stock held by holders of less than 15% of such stock; and

(iv) facilitated adoption of a stockholder rights plan by allowing for dividends payable in rights to holders of class B common stock that, under certain circumstances, entitle such holders to purchase shares of our class B common stock or rights relating to the class B common stock and permitting the issuance of shares of class B common stock upon exercise of such rights. Our certificate incorporation previously allowed for the issuance of class A common stock upon the exercise of similar rights relating to our class A common stock.

The effectiveness of the restriction on the voting power of a holder of more than 15% of our class B shares is subject to receipt by Cypress of a supplemental ruling from the IRS that the effectiveness of the restriction will not prevent the favorable rulings received by Cypress with respect to certain tax issues arising under Section 355 of the Code in connection with the spin-off from having full force and effect.

Item 6. Exhibits

Exhibit Number	Description
3.1	Form of Restated Certificate of Incorporation of SunPower Corporation (incorporated by reference to Exhibit 99.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 12, 2008).
3.2	Form of By-laws of SunPower Corporation (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 7, 2008).
4.1	Rights Agreement, dated August 12, 2008, by and between SunPower Corporation and Computershare Trust Company, N.A. (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 12, 2008).
10.1†	Turnkey Engineering, Procurement and Construction Agreement, dated July 3, 2008, by and between SunPower Corporation, Systems and Florida Power & Light Company.
10.2†	Amendment No. 1 to Ingot Supply Agreement, dated August 4, 2008, by and between SunPower Corporation and Woongjin Energy Co., Ltd.
10.3†	Amendment No. 2 to Polysilicon Supply Agreement, dated August 4, 2008, by and between SunPower Philippines Manufacturing, Ltd. and Woognjin Energy Co., Ltd.
10.4	Fourth Amendment to Lease, effective August 12, 2008, by and between SunPower Corporation and Cypress Semiconductor Corporation.
10.5	Amendment No. 1 to Tax Sharing Agreement, dated August 12, 2008, by and between SunPower Corporation and Cypress Semiconductor Corporation (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 12, 2008).
10.6	SunPower Corporation Management Career Transition Plan.
10.7	Form of Employment Agreement for Executive Officers, including Messrs. Werner, Hernandez, Dinwoodie, Ledesma, Wenger, Shugar, Neese, Richards and Swanson.
10.8	Form of Indemnification Agreement for Directors and Officers.
31.1	Certification by Chief Executive Officer Pursuant to Rule 13a-14(a)/15d-14(a).
31.2	Certification by Chief Financial Officer Pursuant to Rule 13a-14(a)/15d-14(a).
32.1	Certification Furnished Pursuant to 18 U.S.C. Section 1350 as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

A cross (†) indicates that confidential treatment has been requested for portions of the marked exhibits.

SIGNATURE

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

SUNPOWER CORPORATION

Dated: November 7, 2008

By: /s/ EMMANUEL T. HERNANDEZ

Emmanuel T. Hernandez
Chief Financial Officer

Index to Exhibits

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A cross (†) indicates that confidential treatment has been requested for portions of the marked exhibits.

EXHIBIT 10.1

CONFIDENTIAL TREATMENT REQUESTED
--
CONFIDENTIAL PORTIONS OF THIS DOCUMENT HAVE BEEN REDACTED AND HAVE BEEN SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION

TURNKEY

ENGINEERING, PROCUREMENT AND CONSTRUCTION

AGREEMENT

FOR

SOLAR PHOTOVOLTAIC GENERATING FACILITY

BETWEEN

FLORIDA POWER & LIGHT COMPANY,
as FPL

AND

SUNPOWER CORPORATION, SYSTEMS,
as Contractor

Dated as of July 3, 2008

TURNKEY ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT FOR SOLAR PHOTOVOLTAIC GENERATING FACILITY

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Appendices

*** CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

TURNKEY ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT FOR SOLAR PHOTOVOLTAIC GENERATING FACILITY

THIS TURNKEY ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT FOR SOLAR PHOTOVOLTAIC GENERATING FACILITY (this "Agreement"), dated as of July 3, 2008, is by and between FLORIDA POWER & LIGHT COMPANY, a Florida corporation (hereinafter called "FPL") and SunPower Corporation, Systems, a Delaware corporation (hereinafter called "Contractor").

W I T N E S S E T H:

WHEREAS, FPL wishes to construct and operate a solar photovoltaic generation facility with a minimum nominal capacity of 25 MW (net), and all services and utilities related thereto, all to be built on the Property Site (as hereinafter defined) located in DeSoto County, Florida;

WHEREAS, Contractor has represented that it is experienced and qualified in providing technical assistance, licensing, engineering, procurement, supply, construction management, construction, commissioning, start-up and testing services, and that it possesses the requisite expertise and resources to complete the Work (as hereinafter defined);

WHEREAS, Contractor has agreed to provide, through itself or through Subcontractors and Vendors (as such terms are hereinafter defined), such Work on a "turn-key" basis for the Contract Price (as hereinafter defined); and

WHEREAS, Contractor has agreed to guarantee the timely and proper completion of the Work in strict accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, FPL and Contractor hereby agree as follows:

ARTICLE I.
GENERAL MATTERS

1.1 Defined Terms

As used in this Agreement, including the appendices, exhibits and other attachments hereto, each of the following terms shall have the meaning assigned to such term as set forth below:

1.1.1 "Affiliate" means, in relation to any Person, any other Person:

(a) Which directly or indirectly controls, or is controlled by, or is under common control with, such Person; or

(b) Which directly or indirectly beneficially owns or holds fifty percent (50%) or more of any class of voting stock or other equity interests of such Person; or

(c) Which has fifty percent (50%) or more of any class of voting stock or other equity interests that is directly or indirectly beneficially owned or held by such Person, or

(d) Who either holds a general partnership interest in such Person or such Person holds a general partnership interest in the other Person.

For purposes of this definition, the word "controls" means possession, directly or indirectly of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or otherwise.

1.1.2 "After-Tax Basis" means, with respect to any indemnity payment to be received by any Person, the amount of such payment (the base payment) supplemented by a further payment (the additional payment) to that Person so that the sum of the base payment plus the additional payment shall, after deduction of the amount of all Federal, state, and local income Taxes required to be paid by such Person in respect of the receipt or accrual of the base payment and the additional payment (taking into account any reduction in such income Taxes resulting from Tax benefits realized by the recipient as a result of the payment or the event giving rise to the payment), be equal to the amount required to be received. Such calculations shall be made on the basis of the highest generally applicable Federal, state, and local income tax rates applicable to the corporation for whom the calculation is being made for all relevant periods, and shall take into account the deductibility of state and local income taxes for Federal income tax purposes. The foregoing calculations shall be made by the recipient Person's third party tax advisors.

1.1.3 "Agreement" has the meaning set forth in the first paragraph hereof, as same may be amended, supplemented or modified from time to time in accordance with the terms hereof.

1.1.4 "Applicable Laws" means any act, statute, law, regulation, permit, license, ordinance, rule, judgment, order, decree, directive, guideline or policy (to the extent mandatory) or any similar form of decision or determination by, or any interpretation or administration of, any of the foregoing by any Government Authority with jurisdiction over the Plant, the Job Site, the performance of the Work or other services to be performed under the Contract Documents.

1.1.5 "Applicable Permits" means any and all permits, clearances, licenses, authorizations, consents, filings, exemptions, rulings or approvals from or required by any Government Authority that are necessary for the performance of the Work or ownership or use of the Work.

1.1.6 "Applicable Standards" means those sound and prudent practices, acts, methods, specifications, codes and standards of design, engineering, assembly, erection, installation, construction, performance, safety and workmanship prudently and generally engaged in or observed by the majority of the professional engineering and construction contractors performing engineering and construction services for major, grid-connected solar electric generating facilities in the United States that, in the exercise of good judgment, would have been expected to accomplish the desired result in a manner consistent with Applicable Laws, Applicable Permits, reliability, safety, environmental protection, local conditions, economy and efficiency. Notwithstanding the foregoing, the Work or any portion thereof shall meet specifications that are at least as stringent as those set forth in Appendix A, Scope of Work, and any other specifications set forth in this Agreement.

1.1.7 "Builder's Risk Policy" has the meaning set forth in Section 9.9.4, All Risk Installation and Builder's Risk Insurance, of Article IX, INSURANCE.

1.1.8 "Business Day" means any day other than a Saturday, Sunday or a legal holiday in Florida, United States.

1.1.9 "Capability Verification Test" means the test further described in Appendix HH, Performance Testing.

1.1.10 "Change In Law" means the (A) enactment, adoption, promulgation, modification, or repeal (in each case, after the date of this Agreement but before the date of Provisional Acceptance) of any Applicable Law of any Government Authority of (i) the State of Florida (or any city, county or municipality therein) or (ii) the Federal Government of the United States to the extent such federal law, directly affects the Work performed at the Property Site or (B) the modification after the date of this Agreement of any FPL Permit, and as to both (A) and (B) that establishes requirements that materially and adversely affect Contractor's costs or schedule for performing the Work; provided, however, a change in (x) any federal, state or local Tax law or any other law imposing a Tax, duty, levy, impost, fee, royalty, or charge for which Contractor is responsible hereunder, or (y) any Applicable Law affecting the cost of Contractor's or any Subcontractor's or Vendor's Labor, including increases in worker's compensation rates, shall not be a Change In Law pursuant to this Agreement.

1.1.11 "Change Order" has the meaning set forth in Section 6.1, Change Order at FPL's Request, of Article VI, CHANGE ORDERS.

1.1.12 "Changes" has the meaning set forth in Section 6.1, Change Order at FPL's Request, of Article VI, CHANGE ORDERS.

1.1.13 "Commencement Date" means the date Contractor anticipates it will construct improvements at, or deliver materials to, the Job Site that may be insured pursuant to a builder's risk policy, as set forth in a written Notice delivered by Contractor to FPL pursuant to Section 5.1.1.

1.1.14 "Confidential Information" has the meaning set forth in Section 18.3, Confidentiality, of Article XVIII, MISCELLANEOUS.

1.1.15 "Construction and Milestone Payment Schedule" means the schedule of construction/milestone completion installment payments of the Contract Price attached hereto as Appendix D.

1.1.16 "Contract Documents" means this Agreement and all appendices, exhibits incorporated into the Agreement (as set forth in Section 1.3, Appendices), as same may be amended, supplemented or modified from time to time in accordance with the terms hereof.

1.1.17 "Contract Price" means the total sum payable by FPL as stated in Section 7.1, Contract Price, for all labor, all materials, and all equipment, which sum shall be due in accordance with the terms of the Contract Documents as consideration for the timely performance of the Scope of Work to be performed by or through Contractor on a "turn-key" basis in order to complete the Project, all in strict accordance with the terms of the Contract Documents, which sum shall only be subject to adjustment in accordance with the Contract Documents, including but not limited to the adjustments contemplated in Appendix J, Option Pricing.

1.1.18 "Contractor" means SunPower Corporation, Systems, a Delaware corporation (as referenced in the opening paragraph hereof), and includes its legal successors and permitted assignees as may be accepted by FPL, in writing, pursuant to the terms of the Contract Documents.

1.1.19 "Contractor Deliverables" means each of the design criteria, system descriptions, manuals, Drawings, Final Plans, design calculations, quality assurance reports and all other material documents relating to the Project to be delivered to FPL in accordance with the requirements of the Contract Documents.

1.1.20 "Contractor Equipment" means all of the equipment, materials, apparatus, structures, tools, supplies and other goods provided and used by Contractor and its Subcontractors and Vendors for performance of the Work but which is not intended to be incorporated into the Plant.

1.1.21 "Contractor Event of Default" has the meaning set forth in Section 15.1, Contractor Events of Default, of Article XV, TERMINATION.

1.1.22 "Contractor Insurance Policies" has the meaning set forth in Section 9.1, Contractor Insurance Policies, of Article IX, INSURANCE.

1.1.23 ***

1.1.24 ***

1.1.25 "Contractor Permits" means the Applicable Permits, other than FPL Permits, to be obtained by Contractor as described in Appendix A, Scope of Work, or otherwise required pursuant to the Contract Documents.

1.1.26 "Contractor Project Engineering Manager" means the person designated by Contractor as having the responsibility, authority and supervisory power of Contractor for the engineering and design of the Plant.

1.1.27 "Contractor Project Manager" means the person designated by Contractor as having the centralized responsibility, authority and supervisory power of Contractor for design, procurement, construction, testing and start-up of the Plant, as well as all matters relating to the administration of the provisions of the Contract Documents.

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1.1.28 "Contractor Site Manager" means an employee of Contractor, working under the supervision of the Contractor Project Manager, located at the Property Site on a daily basis.

1.1.29 "Contractor Taxes" has the meaning set forth in Section 3.24, Contractor Taxes, of Article III, CERTAIN OBLIGATIONS AND RESPONSIBILITIES OF CONTRACTOR.

1.1.30 "Contractor's Representative" has the meaning given in Section 3.12, Project Management and Contractor's Representative, of Article III, CERTAIN OBLIGATIONS AND RESPONSIBILITIES OF CONTRACTOR.

1.1.31 ***

1.1.32 ***

1.1.33 "Credit Rating" means, on the date such rating is determined, the LC Issuing Bank's latest: (i) unsecured debt rating; (ii) corporate credit rating; or (iii) issuer rating.

1.1.34 "Critical Milestones" means the Milestones set forth in Appendix C, Critical Milestones and Milestones.

1.1.35 "Critical Parameters" has the meaning set forth in Section 3.19.7, Quality Assurance Program, of Article III, CERTAIN OBLIGATIONS AND RESPONSIBILITIES OF CONTRACTOR.

1.1.36 "Critical Path" means a determination of the Project Schedule specifically illustrating those unique activities and durations that must be completed in sequence to complete the Work, which sequence shall be determined using critical path method precedence networking techniques applied by Contractor.

1.1.37 "Damages" has the meaning set forth in Section 16.1, Contractor Indemnification, of Article XVI, INDEMNIFICATION.

1.1.38 "Day" or "day" means a period of twenty-four (24) consecutive hours from 12:00 midnight (Eastern time), and shall include Saturdays, Sundays and all holidays except that in the event a time period set forth in the Contract Documents expires on a Day that is not a Business Day, such period shall be deemed to expire on the next Business Day thereafter.

1.1.39 "Defect" means, any designs, engineering, software, drawings, components, tools, Equipment, installation, construction, workmanship or Work that, in FPL's reasonable judgment:

(a) Do not conform to the terms or requirements of the Contract Documents;

(b) Are not of uniform good quality, free from defects or deficiencies in design, application, manufacture or workmanship, or that contain improper or inferior workmanship; or

(c) Would adversely affect the:

(i) Performance of the Plant under anticipated operating conditions;

(ii) Continuous safe operation of the Plant during the Plant's design life;

(iii) Structural integrity of the Plant;

(iv) Economic value of FPL's investment in the Plant, all as determined by reference to Prudent Utility Practices.

Anything to the contrary notwithstanding, the Parties agree that Work shall be considered to be defective if it does not conform to Applicable Standards.

1.1.40 "Dispute" has the meaning set forth in Section 17.1, Friendly Consultation, of Article XVII, DISPUTE RESOLUTION.

1.1.41 "Drawings" means all:

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(a) Specifications, calculations, designs, plans, drawings, engineering and analyses, and other documents which determine, establish, define or otherwise describe the scope, quantity, and relationship of the components of the Plant, including the structure and foundation thereof; and

(b) Technical drawings, operating drawings, specifications, shop drawings, diagrams, illustrations, schedules and performance charts, calculations, samples, patterns, models, operation and maintenance manuals, piping and instrumentation diagrams, underground structure drawings, conduit and grounding drawings, lighting drawings, conduit and cable drawings, electric one-line's, electric schematics, connection diagrams and technical information of a like nature,

prepared or modified by Contractor or any of its Subcontractors or Vendors all of which are required to be delivered by Contractor, or any Subcontractor or Vendor, from time to time under the Contract Documents or at FPL's request which illustrates any of the Equipment or any other portion of the Work, either in components or as completed.

1.1.42 *** has the meaning set forth in Section 11.4.

1.1.43 "Environmental Control Program" means the environmental control program provided by FPL to Contractor.

1.1.44 "Environmental Plan" has the meaning set forth in Section 3.19.4, Health Plan, Safety Plan, and Environmental Plan, of Article III, CERTAIN OBLIGATIONS AND RESPONSIBILITIES OF CONTRACTOR.

1.1.45 "Environmental Resource Plan" means the environmental resource plan prepared by FPL, which has been provided to Contractor prior to the date of the Agreement.

1.1.46 "Equipment" means all of the equipment, materials, apparatus, structures, tools, supplies, goods and other items provided by Contractor and its Subcontractors and Vendors that are installed or incorporated into the Plant or otherwise form or are intended to form part of the Work or the Plant (other than Contractor Equipment).

1.1.47 "Exempt Equipment" has the meaning set forth in Section 3.24.2, Exempt Equipment, of Article III, CERTAIN OBLIGATIONS AND RESPONSIBILITIES OF CONTRACTOR.

1.1.48 "Expected Energy Output" has the meaning set forth in Section 2.1.2 of Appendix HH.

1.1.49 "Final Acceptance" means that all of the following have occurred as of the most recent applicable Tests:

(a) Provisional Acceptance has been achieved;

(b) The Tests, mechanical calibrations, electrical continuity and ground fault tests have been successfully completed and any Defects found have been corrected;

(c) Either the:

(i) Final Acceptance Performance Level specified in Section 11.3, Final Acceptance Performance level; Guaranteed Performance Level, of Article XI, CONTRACTOR GUARANTEES AND LIQUIDATED DAMAGES, has been met or exceeded as determined pursuant to Section 11.6, Determination of Performance, of Article XI, CONTRACTOR GUARANTEES AND LIQUIDATED DAMAGES; or

(ii) Plant has achieved at a minimum the Minimum Performance Level as determined pursuant to Section 11.6, Determination of Performance, of Article XI, CONTRACTOR GUARANTEES AND LIQUIDATED DAMAGES, and (A) the Contract Price has been reduced in accordance with Section 10.5 for the percentage of the Final Acceptance Performance Level that has not been achieved and (B) Contractor has performed all Remediation Work requested by FPL related to any Work not associated with the percentage of the Final Acceptance Performance Level that has been achieved;

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(d) The Plant has been constructed in accordance with the Contract Documents and the Drawings;

(e) The Final Plans accurately reflect the Plant as constructed;

(f) The Plant is capable of being operated in a safe, normal, reliable and continuous manner in accordance with Applicable Laws and Applicable Permits (excluding for this purpose all variances or waivers of any Applicable Permits) and the Contract Documents at all operating conditions and modes specified in the Scope of Work;

(g) Contractor shall have delivered to FPL all operation and maintenance manuals and Final Plans in accordance with the Scope of Work;

(h) No defective or incomplete portions of the Work exist;

(i) Either:

(i) All items on the Punch List have been completed; or

(ii) The Parties have reached an agreement pursuant to Section 10.6, Punch List, of Article X, SYNCHRONIZATION, TESTS, MECHANICAL COMPLETION, PROVISIONAL ACCEPTANCE AND FINAL ACCEPTANCE, and Contractor has paid all amounts due to FPL pursuant thereto;

(j) All of Contractor's cleanup and related obligations have been completed;

(k) Any and all Liens in respect to the Plant, the Contract Documents, the Equipment, the Job Site or any fixtures, personal property or Equipment included in the Work created by, through or under, or as a result of any act or omission of, Contractor or any Subcontractor, Vendor or other Person providing labor or materials in connection with the Work shall have been released or bonded in form reasonably satisfactory to FPL;

(l) Contractor has delivered to FPL a Contractor's Lien Waiver and Release, in substantially the form of Appendix R, Form of Contractor Certificate for Final Waiver of Liens, from Contractor and Subcontractor's Certificate for Final Waiver of Liens in the form of Appendix R-1, Form of Subcontractor Certificate for Final Waiver of Liens, from each Substantial Subcontractor and Substantial Vendor;

(m) Contractor shall have paid all Schedule Liquidated Damages due under the Contract Documents, if any;

(n) All other outstanding obligations of Contractor hereunder that FPL has notified Contractor of shall have been satisfied; and

(o) FPL has approved of and signed the Final Acceptance Certificate pursuant to Section 10.8.

1.1.50 "Final Acceptance Certificate" means the certificate issued by FPL indicating that Final Acceptance has been achieved by Contractor.

1.1.51 "Final Acceptance Date" means the date of achievement of Final Acceptance as indicated in the Final Acceptance Certificate pursuant to Section 10.8, Final acceptance of the plant, of Article X, SYNCHRONIZATION, TESTS, MECHANICAL COMPLETION, PROVISIONAL ACCEPTANCE AND FINAL ACCEPTANCE.

1.1.52 "Final Acceptance Performance Level" means that, at a minimum, the Actual Energy Output is equal to or greater than *** percent (***%) of the Net Energy Output Guarantee when corrected to Guarantee Design Conditions, calculated as follows: ***

Where "Actual Energy Output" has the meaning given in Section 2.1.2 of Appendix HH.

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1.1.53 "Final Acceptance Performance Level Date" has the meaning set forth in Section 11.4.1.

1.1.54 "Final Plans" means final Drawings and final specifications, as revised to reflect the changes during construction, and shall include as-built drawings, piping and instrumentation diagrams, underground structure drawings (including buried piping, all utilities, and critical hidden items), electric one-lines, electric schematics and connection diagrams.

1.1.55 "Financial Closing" means that all of the following events shall have occurred (which events may occur over a period of time) with respect to the Plant: (i) the Financing Documents have been fully executed (which documents may be executed over a period of time) which together provide for financing for the Plant in an amount and on the terms acceptable to FPL; (ii) all conditions precedent to the initial availability of funds under the Financing Documents referred to in the preceding clause (i) have been fulfilled or waived and the first draw thereunder has been made by FPL; and (iii) FPL has received commitments for such equity as is required by FPL and satisfies the requirements of the Financing Parties.

1.1.56 "Financing Documents" means all the loan agreements, notes, indentures, securities, debt instruments, bonds, security agreements, swap agreements, letters of credit and other documents or agreements with a Financing Party or relating to a financing (including refinancing) by a Financing Party.

1.1.57 "Financing Parties" means the lenders, security holders, investors, export credit agencies, multilateral institutions, equity providers and others providing debt or equity financing or refinancing to or on behalf of FPL or any Affiliate of FPL or for the Project or any portion thereof, or any trustee or agent acting on behalf of any of the foregoing.

1.1.58 "Force Majeure Event" has the meaning set forth in Section 14.1, Definition of Force Majeure Event, of Article XIV, FORCE MAJEURE AND FPL CAUSED DELAY.

1.1.59 "FPL" means Florida Power & Light Company, a Florida corporation (as referenced in the opening paragraph hereof) and it includes its legal successors and those assignees as may be designated by FPL, in writing, pursuant to the terms of this Agreement.

1.1.60 "FPL Caused Delay" means a material delay in Contractor's performance of any Critical Milestone, to the extent Contractor demonstrates that such delay was actually and demonstrably caused by FPL's failure to perform any covenant of FPL hereunder (other than by exercise of rights under this Agreement, including the exercise by FPL of the right to have defective or nonconforming Work corrected or re-executed), including, without limitation, FPL's failure to timely obtain any FPL Permit, and which actually, demonstrably and adversely affects the Critical Path. Contractor expressly acknowledges and agrees that any delay, to the extent caused by Contractor's action or inaction (other than by exercise of rights under this Agreement), is not an FPL Caused Delay.

1.1.61 "FPL Event of Default" has the meaning set forth in Section 15.6, FPL Events of Default, of Article XV, TERMINATION

1.1.62 "FPL Interconnection Facilities" shall have the meaning ascribed thereto in Section 2.3 of Appendix A, Scope of Work.

1.1.63 "FPL Permits" means the Applicable Permits to be obtained by FPL as set forth in Appendix A, Scope of Work.

1.1.64 "FPL Taxes" has the meaning set forth in Section 4.9, FPL Taxes, of Article IV, CERTAIN OBLIGATIONS OF FPL.

1.1.65 "GAAP" shall mean generally accepted accounting principles in the United States of America, consistently applied throughout the specified period.

1.1.66 "Government Authority" means any and all foreign, national, federal, state, county, city, municipal, local or regional (or equivalent) authorities, departments, bodies, commissions, corporations, branches, directorates, agencies, ministries, courts, tribunals, judicial authorities, legislative bodies, administrative bodies,

regulatory bodies, autonomous or quasi-autonomous entities or taxing authorities or any department, municipality or other political subdivision thereof.

1.1.67 "Grid" means the interconnected high voltage transmission facilities being a part of the FPL transmission system.

1.1.68 "Guarantee Design Conditions" means Standard Test Conditions as such term is defined in the Scope of Work and Appendix HH.

1.1.69 "Guaranteed Performance Level" means the Net Energy Output Guarantee, as guaranteed by Contractor pursuant to Section 11.3, Final Acceptance Performance Level; Guaranteed Performance Level, of Article XI, CONTRACTOR GUARANTEES AND LIQUIDATED DAMAGES.

1.1.70 "Guaranteed Performance Test" means the test performed by Contractor in order to determine the Net Energy Output of the Plant, as more particularly described in Section 2.0 of Appendix HH, Acceptance Testing.

1.1.71 "Guaranteed Provisional Acceptance Date" means ***, the date which Contractor guarantees that the Project shall achieve Provisional Acceptance, as such date may be extended in accordance with the terms hereof.

1.1.72 "Hazardous Material" means any hazardous or toxic chemicals, hazardous materials, hazardous waste, hazardous constituents, hazardous or toxic or radioactive substances or petroleum products (including crude oil or any fraction thereof) defined or regulated as such under any Applicable Laws.

1.1.73 "Health Plan" has the meaning set forth in Section 3.19.4, Health Plan, Safety Plan, and Environmental Plan, of Article III, CERTAIN OBLIGATIONS AND RESPONSIBILITIES OF CONTRACTOR.

1.1.74 "Indemnified Person" has the meaning set forth in Section 16.3, Conditions of indemnification, of Article XVI, INDEMNIFICATION.

1.1.75 "Indemnifying Party" has the meaning set forth in Section 16.3, Conditions of indemnification, of Article XVI, INDEMNIFICATION.

1.1.76 "Independent Engineer" means the Person appointed by the Financing Parties and approved by FPL to ensure that the Work is completed in accordance with the Contract Documents.

1.1.77 "Initial LC Amount Expiration Date" has the meaning set forth in Section 7.5.1.

1.1.78 "Initial Site Mobilization" means the first instance when any of Contractor or its Subcontractors' or Vendors' Labor or other representatives is present on the Property Site after the date of this Agreement.

1.1.79 "Intangible Asset" means any asset that is treated as an intangible asset according to GAAP, including:

(a) goodwill, including any amounts (however designated on the balance sheet) representing the cost of acquisitions of subsidiaries in excess of underlying tangible assets;

(b) patents, trademarks and copyrights;

(c) leasehold improvements not recoverable at the expiration of a lease; and

(d) deferred charges (including, but not limited to, unamortized debt discount and expense, organization expenses and experimental and development expenses, but excluding prepaid expenses).

1.1.80 "Intellectual Property Rights" has the meaning set forth in Section 3.32, Intellectual Property Rights, of Article III, CERTAIN OBLIGATIONS AND RESPONSIBILITIES OF CONTRACTOR.

1.1.81 "Job Site" means the Property Site (other than the area designated as Protected Areas, if any, and not constituting a part of the Job Site on the survey provided by FPL pursuant to Section 4.7, Description of Property Site, of Article IV, CERTAIN OBLIGATIONS OF FPL) and any other areas where Contractor

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may temporarily obtain care, custody and control, use, easement or license for purposes directly, indirectly or incidentally related to performance of, or as an accommodation to, the Work.

1.1.82 "Labor" means the workforce of the relevant Person, including its staff and employee and non-employee and skilled and unskilled workers.

1.1.83 "Latest Limited Notice to Proceed Date" has the meaning set forth in Section 5.2.2.

1.1.84 "Latest Notice to Proceed Date" has the meaning set forth in Section 5.2.4.

1.1.85 "LC Issuing Bank" means the domestic financial institution, acceptable to FPL and the Financing Parties and satisfying the requirements set forth in Section 7.5.3, LC Issuing Bank, of Article VII, CONTRACT PRICE; PAYMENTS TO CONTRACTOR, which institution will issue the Letter of Credit on behalf of Contractor in connection with the Project, as more particularly described in Section 7.5, Letters of Credit, of Article VII, CONTRACT PRICE; PAYMENTS TO CONTRACTOR.

1.1.86 "Letter of Credit" has the meaning set forth in Section 7.5, Letters of Credit, of Article VII, CONTRACT PRICE; PAYMENTS TO CONTRACTOR.

1.1.87 "Lien" means any lien, security interest, mortgage, hypothecation, encumbrance or other restriction on title or property interest.

1.1.88 "Lift Stay Order" has the meaning set forth in Section 18.20, Acceptance or Rejection in Bankruptcy, of Article XVIII, MISCELLANEOUS.

1.1.89 "Limited Notice to Proceed" means each notice given by FPL to Contractor directing Contractor to commence a limited portion of the Work.

1.1.90 "Major Equipment" means any item or component, or set of items of components, of the Project with a value in excess of $***, the proper or efficient function of which materially affects the Plant's output or reliability.

1.1.91 "Major Manufacturers" means the manufacturers of the Major Equipment.

1.1.92 "Mechanical Completion" means that:

(a) The Equipment for the Project has been installed, including with the required connections and controls to produce electrical power;

(b) All Equipment related to the solar tracking system, if any, has been installed and checked for alignment, lubrication and rotation;

(c) All remaining electrical systems have been checked out and are ready for operation;

(d) All electrical continuity and ground fault tests and all mechanical tests and calibrations have been completed; and

(e) All instrumentation is operational and has been calibrated in accordance with manufacturers' standards and guidelines and, where possible, loop checked.

1.1.93 "Milestones" means the activities, events and targets, or combination thereof, set forth in Appendix C, Critical Milestones and Milestones, attached hereto.

1.1.94 "Minimum Performance Level" means that, at a minimum and as determined in Section 11.6, Determination of Performance, of Article XI, CONTRACTOR GUARANTEES AND LIQUIDATED DAMAGES, the Net Energy Output is equal to or greater than *** percent (***%) of the Net Energy Output Guarantee when corrected to Guarantee Design Conditions.

1.1.95 "Module Warranty Period" has the meaning set forth in Section 12.1.4(c).

1.1.96 "Moody's" means Moody's Investor Services, Inc.

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1.1.97 "Net Energy Output" means electrical energy of the Plant, in kWh, measured at the revenue quality meters at the FPL Interconnection Facilities.

1.1.98 "Net Energy Output Guarantee" has the meaning set forth in Section 11.3, Guaranteed Performance Level, of Article XI, CONTRACTOR GUARANTEES AND LIQUIDATED DAMAGES.

1.1.99 "Noise Guarantee" means that the Project will function at a noise level that is equal to or less than the lower of the noise limitations set forth in Appendix A, Scope of Work, or the noise limitations contained in the Applicable Permits and Applicable Laws (as demonstrated by the Noise Test and excluding for purposes of determining compliance with the Applicable Permits and Applicable Laws all variances and waivers that may be applicable thereto).

1.1.100 "Noise Test" means the tests more particularly described in Appendix A, Scope of Work, which shall be performed simultaneously with the testing of the Minimum Performance Level and the Guaranteed Performance Level in order to evidence satisfaction of the Noise Guarantee for the Plant.

1.1.101 "Notice to Proceed" means the written notice given from FPL to Contractor directing Contractor to commence performance of the entire Work.

1.1.102 "Notice to Proceed Date" has the meaning set forth in Section 5.2.4.

1.1.103 "O&M Contractor" means the Person selected by FPL for the operation and maintenance of the Plant.

1.1.104 "O&M Personnel" has the meaning set forth in Section 3.22, Training of O&M Personnel, of Article III, CERTAIN OBLIGATIONS AND RESPONSIBILITIES OF CONTRACTOR

1.1.105 "Operating Guidelines" means the guidelines or requirements specified in the Utility interconnection agreement applicable to the Project.

1.1.106 "Operating Mode Test" means the test further described in Appendix A, Scope of Work.

1.1.107 "Parties" means collectively, FPL and Contractor.

1.1.108 "Party" means individually, FPL or Contractor.

1.1.109 "Payment Output Percentage" means the percentage determined in accordance with the following formula:

***

Where:

Output Percentage = the percentage of the Guaranteed Performance Level achieved up to ***% (for purposes of Section 10.5.1) and ***% (for purposes of Section 11.4.3).

1.1.110 "Person" means an individual, partnership, corporation, limited liability company, company, business trust, joint stock company, trust, unincorporated association, joint venture, Government Authority or other entity of whatever nature.

1.1.111 "Plant" means the nominal 25 MW (net) solar photovoltaic, electrical generating facility, to be located on the Property Site, including the solar photovoltaic panels, the solar tracking system, if any, and all structures, facilities, appliances, lines, conductors, instruments, apparatus, components, roads and other equipment comprising and integrating the entire facility as more particularly described in Appendix A, SCOPE OF WORK.

1.1.112 "Plant Warranty Period" has the meaning set forth in Section 12.1.4(b).

1.1.113 "Pre-Existing Hazardous Material" means Hazardous Material that existed on or in the Property Site prior to Initial Site Mobilization by Contractor.

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1.1.114 "Procedures Manual" has the meaning set forth in Section 3.19.3, Procedures Manual, of Article III, CERTAIN OBLIGATIONS AND RESPONSIBILITIES OF CONTRACTOR.

1.1.115 "Project" means the Plant and all equipment, services and utilities related thereto which must be designed, constructed, assembled, erected, commissioned, started, tested and otherwise completed by, or through, Contractor as part of the Scope of Work and in strict accordance with the provisions of the Contract Documents.

1.1.116 "Project Loss Manual" means the project loss manual prepared by FPL which has been provided to Contractor prior to the date of this Agreement.

1.1.117 "Project Schedule" means the schedule for completion of the Work attached hereto as Appendix B, Project Schedule.

1.1.118 "Property Site" means that certain piece of property located in DeSoto County, Florida, as more particularly described in Appendix P, Legal Description of Property Site.

1.1.119 "Protected Areas" has the meaning set forth in Section 3.16.4, *Protected Areas*, of Article III, CERTAIN OBLIGATIONS AND RESPONSIBILITIES OF CONTRACTOR.

1.1.120 "Provisional Acceptance" means that all of the following have occurred for the Project:

(a) Mechanical Completion has been achieved;

(b) The Plant has been synchronized with the Grid in accordance with the Scope of Work and the Utility's interconnection requirements;

(c) The Plant is capable of being operated safely, normally, reliably and continuously in accordance with the requirements of all Applicable Laws, Applicable Permits and the Contract Documents at all operating conditions and modes specified in the Scope of Work;

(d) The Project has achieved at a minimum the Minimum Performance Level as determined pursuant to Section 11.6, Determination of Performance, of Article XI, CONTRACTOR GUARANTEES AND LIQUIDATED DAMAGES;

(e) The Project has achieved the Noise Guarantee simultaneously with the Minimum Performance Level;

(f) The Operating Mode Tests and the Capability Verification Tests have been successfully completed and all criteria for passing such tests have achieved;

(g) Contractor has provided FPL with copies of all Contractor Permits;

(h) The training of O&M Personnel has been completed;

(i) All spare parts required under the Contract Documents have been delivered by Contractor to the Property Site in accordance with Section 3.26, Spare Parts Availability, of Article III, CERTAIN OBLIGATIONS AND RESPONSIBILITIES OF CONTRACTOR;

(j) All Work has been completed in accordance with the requirements of the Contract Documents (other than items on the Punch List); and

(k) Contractor shall have paid all Schedule Liquidated Damages due under the Contract Documents, if any.

For the avoidance of doubt, it is expressly acknowledged and agreed that the commencement or completion of any stormwater system to be built in connection with the Project shall not be a condition to achieving Provisional Acceptance.

1.1.121 "Provisional Acceptance Date" means the actual date of achieving Provisional Acceptance as determined pursuant to Section 10.7, Provisional Acceptance, of Article X, SYNCHRONIZATION, TESTS, MECHANICAL COMPLETION, PROVISIONAL ACCEPTANCE AND FINAL ACCEPTANCE.

1.1.122 "Prudent Utility Practices" means those sound and prudent practices, acts, methods, specifications, codes and standards generally followed by the United States electric utility industry with respect to design, construction, operation, and maintenance of first class, major electric generating, transmission, and distribution facilities (including but not limited to, the engineering, operating and safety practices generally followed by the electric utility industry) that, in the exercise of good judgment, would have been expected to accomplish the desired result in a manner consistent with Applicable Laws, Applicable Permits, reliability, safety, environmental protection, local conditions, economy and efficiency.

1.1.123 "Punch List" has the meaning set forth in Section 10.6, Punch List, of Article X, SYNCHRONIZATION, TESTS, MECHANICAL COMPLETION, PROVISIONAL ACCEPTANCE AND FINAL ACCEPTANCE.

1.1.124 "Qualified Insurer" has the meaning set forth in Section 9.3, Qualified Insurers, of Article IX, INSURANCE.

1.1.125 "Quality Assurance Program" has the meaning set forth in Section 3.19.7, Quality Assurance Program, of Article III, CERTAIN OBLIGATIONS AND RESPONSIBILITIES OF CONTRACTOR.

1.1.126 "Quality Control Manual" has the meaning set forth in Section 3.19.7, Quality Assurance Program, of Article III, CERTAIN OBLIGATIONS AND RESPONSIBILITIES OF CONTRACTOR.

1.1.127 "Remediation Work" means work required by FPL to remove all Work and Contractor Equipment from the Property Site and restore the Property Site to the condition of the Property Site immediately prior to Initial Site Mobilization.

1.1.128 "Remedial Plan" means a plan of corrective action, submitted by Contractor pursuant to Section 10.5, Performance Shortfalls, of Article X, SYNCHRONIZATION, TESTS, MECHANICAL COMPLETION, PROVISIONAL ACCEPTANCE AND FINAL ACCEPTANCE, that specifies in reasonable detail the actions Contractor proposes to undertake to cause the Project to satisfy the Final Acceptance Performance Level, and the period of time in which Contractor proposes to complete the corrective action; provided that such corrective action is reasonably likely to cause the Project to satisfy the Final Acceptance Performance Level as determined by root cause analysis of the deficiencies identified by previous testing.

1.1.129 "Request for Payment" means the written requests from Contractor to FPL for payment hereunder, which requests shall be in substantially the form of Appendix F, Form of Request for Payment.

1.1.130 "S&P" means Standard and Poor's Ratings Group (a division of McGraw Hill Companies).

1.1.131 "Safe and Secure Workplace Policy" means the safe and secure workplace policy of FPL which is attached hereto as Appendix Z-1, Safe and Secure Workplace Policy, as same may be amended or modified by FPL from time to time.

1.1.132 "Safety Plan" has the meaning set forth in Section 3.19.4, Health Plan, Safety Plan and Environmental Plan, of Article III, CERTAIN OBLIGATIONS AND RESPONSIBILITIES OF CONTRACTOR.

1.1.133 "Schedule Liquidated Damages" has the meaning set forth in Section 11.2, Schedule Liquidated Damages, of Article XI, CONTRACTOR GUARANTEES AND LIQUIDATED DAMAGES.

1.1.134 "Scheduled Synchronization Date(s)" means the date identified by Contractor in a notice received by FPL at least one hundred forty (140) days prior to such date as being the date on which Contractor will first attempt to cause the generating equipment of the Project to be electrically synchronized and connected to the Grid.

1.1.135 "Scope of Work" means the services and work to be provided, or caused to be provided, by or through Contractor under the Contract Documents for the Contract Price, as more particularly described in Appendix A, Scope of Work, as the same may be amended from time to time in accordance with the terms hereof, and which Scope of Work includes, without limitation, all licenses, Contractor Permits, technical assistance, engineering, assembly, construction management, construction, services, labor, materials,

equipment, Contractor Equipment, operations and management that are indicated on, inferable from, or incidental to, the Contract Documents or the Drawings prepared in connection with the Contract Documents or that are likely to be required in accordance with Applicable Law, or that are properly and customarily included within the general scope and magnitude of the work incorporated into similar projects having similar output and performance requirements, all in order to produce a Project that complies with the requirements of the Contract Documents.

1.1.136 "Subcontractor" means any contractor, constructor or material man who performs any portion of the Scope of Work other than Contractor.

1.1.137 "Substantial Subcontractor" means a Subcontractor whose contract or contracts (in the aggregate) with Contractor require payments by Contractor totaling at least *** Dollars ($***).

1.1.138 "Substantial Vendor" means a Vendor whose contract or purchase orders (in the aggregate) with Contractor require payments by Contractor of at least *** Dollars ($***).

1.1.139 "Switchyard Facilities" means the area adjacent to the Plant designated by FPL for the 23 kV voltage equipment and apparatus used for connecting the Plant to the FPL Interconnection Facilities, all as more particularly described in Appendix A, Scope of Work.

1.1.140 "Tangible Net Worth" with respect to any Person means such Person's total stockholder's equity minus its Intangible Assets, each as would be reflected on a balance sheet prepared in accordance with GAAP.

1.1.141 "Tax" or "Taxes" means all fees, taxes, including sales taxes, use taxes, stamp taxes, value-added taxes, ad valorem taxes and property taxes (personal and real, tangible and intangible), customs, duties, tariffs, levies, assessments, withholdings and other charges and impositions of any nature, plus all related interest, penalties, fines and additions to tax, now or hereafter imposed by any Applicable Law or Government Authority (including penalties or other amounts payable pursuant to subtitle B of Title I of ERISA).

1.1.142 "Termination Payment" has the meaning set forth in Section 15.3.2, Termination Payment, of Article XV, TERMINATION.

1.1.143 "Termination Payment Schedule" means Appendix N hereto.

1.1.144 "Test Notice" has the meaning set forth in Section 10.1.2, Test Notice, of Article X, SYNCHRONIZATION, TESTS, MECHANICAL COMPLETION, PROVISIONAL ACCEPTANCE AND FINAL ACCEPTANCE

1.1.145 "Tests" means the Operating Mode Test, the Capability Verification Test, the Guaranteed Performance Test and the Noise Test.

1.1.146 "Utility" means FPL.

1.1.147 "Vendor" means any supplier, manufacturer or vendor of Equipment to Contractor or any Subcontractor.

1.1.148 "Warranty Period" and "Warranty Periods" have the meanings set forth in Section 12.1.4, Warranty Period, of Article XII, CONTRACTOR'S WARRANTIES.

1.1.149 "Work" has the meaning set forth in Section 3.1, Scope of Work; Applicable Standards, of Article III, CERTAIN OBLIGATIONS AND RESPONSIBILITIES OF CONTRACTOR, and includes the Plant, the Equipment, the Contractor Deliverables and any other product or result of the Work, but excludes any storm water system at or related to the Project Site.

1.2 INTERPRETATION

Unless the context of the Contract Documents otherwise requires:

1.2.1 The headings contained in this Agreement are used solely for convenience and do not constitute a part of this Agreement between the Parties, nor should they be used to aid in any manner to construe or interpret this Agreement;

*** CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

1.2.2 The gender of all words used herein shall include the masculine, feminine and neuter and the number of all words shall include the singular and plural words;

1.2.3 The terms “hereof”, “herein” “hereto” and similar words refer to this entire Agreement and not to any particular Article, Section, Appendix or any other subdivision of this Agreement;

1.2.4 References to “Article,” “Section” or “Exhibit” are to this Agreement unless specified otherwise;

1.2.5 Reference to “this Agreement” (including any Appendix hereto) or any other agreement, Exhibit, permit or document shall be construed as a reference to such agreement or document as the same may be amended, modified, supplemented or restated, and shall include a reference to any document which amends, modifies, supplements or restates, or is entered into, made or given pursuant to or in accordance with its terms;

1.2.6 References to any law, statute, rule, regulation, notification or statutory provision (including Applicable Laws, Applicable Permits and the Operating Guidelines) shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;

1.2.7 References to any Person shall be construed as a reference to such Person’s successors and permitted assigns; and

1.2.8 References to “includes,” “including” and similar phrases means “including, without limitation.”

1.3 APPENDICES

The following Appendices are attached to and incorporated into and made a part of this Agreement:

1.3.1	Appendix A	Scope of Work
1.3.2	Appendix B	Project Controls Requirements
1.3.3	Appendix C	Critical Milestones and Milestones
1.3.4	Appendix D	Construction and Milestone Payment Schedule
1.3.5	Appendix E	***
1.3.6	Appendix F	Form of Request for Payment
1.3.7	Appendix G	Form of Final Acceptance Certificate
1.3.8	Appendix H	Form of Contractor Certificate for Partial Waiver of Liens
1.3.9	Appendix H-1	Form of Subcontractor Certificate for Partial Waiver of Liens
1.3.10	Appendix I	***
1.3.11	Appendix J	Option Pricing
1.3.12	Appendix K	Module Warranty
1.3.13	Appendix L	Operating and Maintenance Manuals
1.3.14	Appendix M	FPL Permits
1.3.15	Appendix N	Termination Payment Schedule
1.3.16	Appendix O	Project Management Team
1.3.17	Appendix P	Legal Description of Property Site
1.3.18	Appendix Q	Intentionally Deleted
1.3.19	Appendix R	Form of Contractor Certificate for Final Waiver of Liens
1.3.20	Appendix R-I	Form of Subcontractor Certificate for Final Waiver of Liens

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1.3.21	Appendix S	Form of Request for Change Order
1.3.22	Appendix T	Intentionally Deleted
1.3.23	Appendix U	Form of Letter of Credit
1.3.24	Appendix V	Contractor's Exclusions
1.3.25	Appendix W	Intentionally Deleted
1.3.26	Appendix X	Intentionally Deleted
1.3.27	Appendix Y	Form of Quality Assurance Programs
1.3.28	Appendix Z	Form of Safety Plan
1.3.29	Appendix Z-1	Safe and Secure Workplace Policy
1.3.30	Appendix HH	Acceptance Testing
1.3.31	Appendix II	***

1.4 ORDER OF PRECEDENCE

1.4.1 In the event of conflicts among the terms of the Contract Documents, interpretations shall be based upon the following Contract Documents which are set forth in ranked order of precedence:

(a) Amendments, addenda or other modifications to the Contract Documents (including Change Orders) duly signed and issued after the signing of this Agreement and effected in accordance with the terms hereof, with those of a later date having precedence over those of an earlier date;

(b) The Agreement; and

(c) The Appendices to the Agreement.

(d) In the event of a conflict among, or within, any other Contract Document(s) within any one of the levels set forth in the foregoing order of precedence, or between the Contract Documents and Applicable Laws or Applicable Permits, or among Applicable Laws or Applicable Permits themselves, the more stringent or higher quality requirements shall control. All obligations imposed on Contractor and each Subcontractor under the Agreement or under Applicable Laws, Applicable Permits or Applicable Standards and not expressly imposed or addressed in the Contract Documents shall be in addition to and supplement the obligations imposed on Contractor under the Contract Documents, and shall not be construed to create an "irreconcilable conflict."

1.5 LANGUAGE

1.5.1 The Contract Documents and all documentation to be supplied hereunder (including, without limitation, all Contractor Deliverables and all warranties provided hereunder) shall be in the English language.

ARTICLE II.
RETENTION OF CONTRACTOR

2.1 RETENTION OF CONTRACTOR

FPL hereby engages Contractor, and Contractor hereby agrees to be engaged by FPL to perform the Work in accordance with the terms and conditions set forth herein.

2.2 STATUS OF CONTRACTOR; NO PARTNERSHIP

Contractor shall be an independent contractor with respect to any and all Work performed and to be performed under the Contract Documents. The Contract Documents shall not be interpreted or construed to create an association, joint venture or partnership relationship among or between the Parties or any similar relationship, obligations or liabilities. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, act on behalf of, or to act as or be an agent or representative of, or to otherwise bind or obligate the other Party.

*** CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

2.3 SUBCONTRACTORS AND VENDORS.

2.3.1 Subject to the terms hereof, Contractor shall have the right to have any portion of the Work performed by a Subcontractor or Vendor qualified to perform such Work pursuant to written subcontracts or written purchase orders; provided that Contractor shall not be relieved from any liability or obligation under the Contract Documents. Except as otherwise expressly provided in the Contract Documents, Contractor shall be solely responsible for engaging, managing, supervising and paying all such Subcontractors and Vendors. Contractor shall require that all Work performed, and all Equipment provided by Subcontractors and Vendors are received, inspected and otherwise furnished in accordance with the Contract Documents, and Contractor shall be solely liable for all acts, omissions, liabilities and Work (including Defects therein) of such Subcontractors and Vendors. FPL shall not have any obligation or liability to any Subcontractor or Vendor. Nothing in any contract, subcontract or purchase order with any Subcontractor or Vendor shall in any way diminish or relieve Contractor from any duties and obligations under the Contract Documents; and each such contract, subcontract and purchase order must provide that the rights thereunder are assignable to FPL and the Financing Parties or their designees at any time without the prior consent of the applicable Subcontractor or Vendor. No Subcontractor or Vendor is intended to be or shall be deemed a third-party beneficiary of the Contract Documents.

2.3.2 FPL shall have the right to approve, in advance in writing, each Substantial Subcontractor and Substantial Vendor in accordance with the terms hereof. Prior to retaining any Substantial Subcontractors or Substantial Vendors, Contractor shall notify FPL in writing and provide it with such information as necessary to enable FPL to evaluate each such proposed Substantial Subcontractor or Substantial Vendor for the portion of the Work proposed to be performed by it. Within fifteen (15) days after receipt of such information, FPL shall advise Contractor if any proposed Substantial Subcontractor or Substantial Vendor is unacceptable. If FPL fails to object to any proposed Substantial Subcontractor or Substantial Vendor within such fifteen (15) day period, Contractor may retain such Substantial Subcontractor or Substantial Vendor for the portion of the Work proposed. If FPL objects in writing (stating with reasonable detail the basis for such objection) within such fifteen (15) day period to such proposed Substantial Subcontractor or Substantial Vendor, Contractor shall not retain such proposed Substantial Subcontractor or Substantial Vendor. Approval of any Substantial Subcontractor or Substantial Vendor under this paragraph shall only be for the portion of the Work so approved. Contractor hereby acknowledges and agrees that the review and/or acceptance of any subcontract by FPL and the acceptance of the approved Substantial Subcontractors and Substantial Vendors shall not: (i) modify, in any way, the obligations of Contractor pursuant to the Contract Documents; or (ii) be raised as a claim or as a defense or counterclaim to any claim in connection with the Contract Documents.

2.3.3 Contractor shall submit to FPL a copy of each purchase order or agreement entered into with a Substantial Subcontractor or Substantial Vendor for Major Equipment. Each purchase order or agreement shall show, where applicable, the Vendor's or Subcontractor's name, manufacturer's name, materials type, model number, size, quantity and lists of the Major Equipment ordered, and shall be submitted to FPL when issued for purchase. For purposes of clarity, it is understood and agreed that no document required to be submitted to FPL pursuant to this Section 2.3.3 shall be required to contain any economic terms, all of which economic terms may be redacted prior to submission to FPL.

2.3.4 Each subcontract and purchase order shall require such Subcontractor and Vendor to assume toward Contractor those terms and conditions of contracting which Contractor customarily includes in its subcontracts. At a minimum, all subcontracts shall require the Subcontractors to comply with Applicable Laws and Applicable Permits, shall provide that FPL has the right of inspection as provided hereunder and require such Subcontractors and Vendors to:

(a) Be subject to the labor obligations hereunder as well as the safety and security provisions of the Contract Documents;

(b) Provide guarantees and warranties with respect to its portion of the Work and the Equipment,

(c) Provide certificates of insurance as set forth herein;

(d) Be subject to the dispute resolution procedures as required herein; and

(e) Have such terms and conditions as are reasonably and customarily obtained.

All subcontracts shall preserve and protect the rights of FPL, shall not prejudice such rights and shall require each Subcontractor to enter into similar agreements with other Subcontractors.

2.3.5 In addition to the requirements set forth in Section 2.3.4, above, Contractor shall include in each subcontract and purchase order the following language to make FPL an express third-party beneficiary of such subcontract or purchase order:

> "The parties hereto agree and acknowledge that the services/work/equipment to be provided hereunder by [subcontractor] will be incorporated into the power station being developed by [FPL]. As such, the parties expressly agree that FPL is a third party beneficiary of this [Agreement] entitled, in its own name or in the name of [Contractor], to enforce this [Agreement] against [subcontractor]."

ARTICLE III.
CERTAIN OBLIGATIONS AND RESPONSIBILITIES OF CONTRACTOR

3.1 SCOPE OF WORK; APPLICABLE STANDARDS.

3.1.1 Contractor shall, at its own cost and expense:

(a) Design, engineer, procure, construct, start up, and carry out the Tests for the Plant, and perform its other obligations hereunder, including completion of the Scope of Work and any warranty work hereunder; and

(b) Manage, supervise, inspect and furnish all Labor, Equipment, Contractor Equipment, temporary structures, temporary utilities, products and services for the foregoing,

all on a turnkey basis, in accordance with the Contract Documents, including, without limitation, the Project Schedule and the Scope of Work, as the same may be modified from time to time in accordance with the terms hereof by a Change Order or other amendment hereto (all of the foregoing being collectively referred to in this Agreement as the "Work").

3.1.2 Subject to the remedies provided for herein, Contractor shall perform the Work and turn the Plant over to FPL in a manner that is:

(a) Sufficient, complete and adequate in all respects necessary for the Project to successfully achieve Provisional Acceptance by the Guaranteed Provisional Acceptance Date;

(b) In conformance with professional standards and skill, expertise and diligence of design and construction professionals regularly involved in first class, major grid-connected solar power projects in the United States;

(c) In compliance with the terms of the Contract Documents, the Operating Guidelines, the Utility's interconnection requirements, all Applicable Laws, Applicable Standards and Applicable Permits; and

(d) Approved as to form, use and content by all Government Authorities and private entities authorized to administer or enforce any building or construction code or standard whose approval of the final design of the Plant, or any portion thereof, is necessary for the construction, operation or interconnection of the Plant.

3.1.3 *Contractor's Exclusions*. In light of the foregoing, Contractor has included within the Contract Price the cost to complete the entire Scope of Work. Items need not be specifically listed in the Contract Documents or in Appendix A, Scope of Work, in order to be deemed to be items within the Scope of Work. It is understood that Contractor is better qualified to list exclusions than FPL is to list inclusions. Therefore,

any item indicated on the Contract Documents, inferable therefrom, incidental thereto or required in accordance with any Applicable Law, Applicable Standards, Applicable Permits or Prudent Utility Practices, that is not specifically excluded from the Scope of Work in Contractor's exclusions set forth on Appendix V, Contractor's Exclusions, is to be considered as part of the Scope of Work. In addition, theScope of Work includes all that should be properly included and all that would be customarily included within the general scope and magnitude of the Work in order to achieve the Guaranteed Performance Level applicable to the Project. As a result, except for Contractor's exclusions set forth on Appendix V, Contractor's Exclusions, Contractor hereby waives any and all claims for an increase in the Contract Price or an extension of the Guaranteed Provisional Acceptance Date based, in whole or in part, upon an assertion that any certain license, technical assistance, engineering, assembly, construction, service, labor, material, equipment, operation or management is beyond the Scope of Work when such license, technical assistance, engineering, assembly, construction, service, labor, material, equipment, operation or management is indicated in the Contract Documents, the Drawings or other instruments of service prepared in connection with the Contract Documents, inferable therefrom, incidental thereto, required in accordance with any Applicable Law, Applicable Standards, Applicable Permits, Prudent Utility Practices or otherwise necessary in order to complete a Project in accordance with and subject to the requirements of the Contract Documents.

3.1.4 Contractor shall perform the Work in conformance with professional standards and skill, expertise and diligence of design and construction professionals regularly involved in first class, major, grid-connected solar power projects for public utilities in the United States. Without limiting the generality of the foregoing, Contractor shall:

(a) Comply with, and shall cause the Work and all components thereof to comply with, the Operating Guidelines, Applicable Laws, Applicable Standards, Applicable Permits, Prudent Utility Practices, the requirements of the Contract Documents and the generally accepted standard of care, skill and diligence as would be provided by, in the case of engineering services, a prudent engineering firm, and in the case of construction or procurement services, by a prudent construction firm, in each case experienced in supplying such services in the United States to power-producing entities for first class, major power projects;

(b) Cause the Work to be performed with Contractor's best skill and judgment, in a safe, expeditious, good and workmanlike manner in accordance with the preceding paragraph (a);

(c) Cause the Work to be approved as to form, use and content by all Government Authorities and private entities authorized to administer or enforce any building or construction code or standard whose approval of the final design of the Project, or any portion thereof, is necessary for the construction or operation of the Project;

(d) Cause the Plant to be designed to operate, and shall cause the Plant to be capable of being operated, at all levels and operating modes in accordance with the Operating Guidelines, Applicable Laws, Applicable Standards, Applicable Permits, Prudent Utility Practices and the requirements of the Contract Documents; and

(e) Cause the Plant and all items of Equipment and improvements comprising the Plant to be designed, manufactured, installed, calibrated and tested where applicable in accordance with the published standards (as of the dates specified) of the organizations listed in the Scope of Work and Contractor shall notify FPL of any standards of such organizations that are inconsistent with each other and advise FPL of the manner in which it intends to resolve such inconsistency in accordance with the published standard.

Contractor shall inspect or cause to be inspected all items to be incorporated into or used in the performance of the Work and shall reject those items determined not to be in compliance with the requirements of the Contract Documents. Except as otherwise expressly provided in this Agreement, the standard of performance set forth in this Section 3.1.4, shall apply to all aspects of the Work, and this Section 3.1.4, shall be deemed to be incorporated by reference into each provision of the Contract Documents describing the Work, Contractor's obligations hereunder, or referring to the "requirements of

the Contract Documents", "in accordance with the Contract Documents" or words of similar effect. In no event will references in any provision of Contract Documents to one or more of the standards, guidelines, practices, regulations, laws, or permits contained in this Section 3.1.4, be interpreted to limit in the applicability of all such standards, guidelines, practices, regulations, laws, and permits to such provision. Additionally, as a condition to meeting Provisional Acceptance and Final Acceptance, the Work for such milestone must be completed in accordance with all of the standards, guidelines, practices, regulations, laws, and permits contained in this Section 3.1.4.

3.1.5 Contractor acknowledges that this Agreement constitutes, subject to the terms hereof, a fixed price obligation to:

(a) Engineer, design, procure, construct, test and start up through Provisional Acceptance a turnkey Project, complete in every detail, within the time and for the purpose designated herein;

(b) Achieve Final Acceptance within the time designated herein;

(c) Comply with all of the warranty obligations set forth in this Agreement; and

(d) Perform Contractor's other obligations hereunder.

(e) References to the obligations of Contractor under this Agreement as being "turnkey" and performing the Work on a "turnkey basis" means that Contractor is obligated to supply all of the Equipment and design services, install all of the Equipment and supply all labor and to supply and perform all of the Work, in each case as may reasonably be required, necessary, incidental, or appropriate (whether or not specifically set forth in this Agreement) to complete the Work such that the Project satisfies the applicable terms, conditions, and Contractor's obligations concerning the Guaranteed Performance Level and other guarantees and requirements set forth in this Contract Documents, all for the Contract Price.

3.2 CONTROL AND METHOD OF THE WORK.

3.2.1 Subject to the terms hereof, Contractor shall be solely responsible for performing or causing to be performed the Work in accordance with the terms of the Contract Documents, and for all means, methods, techniques, sequences, procedures, and safety and security programs in connection with such performance. Contractor shall inform FPL in advance concerning its plans for carrying out the Work.

3.2.2 Whenever the words "as ordered," "as directed," "as required," "as permitted," "as allowed," "approved," "reasonable," "suitable," "acceptable," "properly," "satisfactory," or words or phrases of similar effect and import are used, it shall be understood that none of such terms shall imply that FPL has any authority over, right to control or responsibility for supervision of Contractor or its Subcontractors or Vendors, such supervision (including sole control over and responsibility therefor) being strictly reserved for Contractor. Any method of Work suggested by FPL that is used by Contractor will be used at the risk and responsibility of Contractor, and FPL will assume no responsibility therefor.

3.3 COMPLIANCE WITH LAW

Contractor shall comply, and shall cause all of its Subcontractors, Vendors and Persons that it has a right to direct who are engaged in the performance of any of the Work to comply with, all Applicable Laws and Applicable Permits. Contractor shall perform the Work in a manner designed to protect the environment on and off the Job Site and minimize damage or nuisance to Persons and property of the public or others, including damage or nuisance resulting from pollution, noise or other causes arising as a consequence of methods of construction or operation of the Plant. The foregoing shall not be construed as to limit Contractor's obligations and liabilities under Section 3.15, Protection and Safety, below.

3.4 CERTAIN MATTERS PERTAINING TO JOB SITE.

3.4.1 *Project Inspection*. Contractor acknowledges that, prior to the date of this Agreement, Contractor:

(a) Has made a complete and careful examination of the Job Site and the surrounding areas, drawings and specifications and other information set forth in the Contract Documents;

(b) Has made a complete and careful examination to determine the difficulties and hazards incident to the performance of the Work, including:

(i) The location of the Project;

(ii) The proximity of the Project to adjacent facilities and structures;

(iii) The conditions of the roads and waterways in the vicinity of the Job Site, including the conditions affecting shipping and transportation, access, disposal, handling and storage of materials;

(iv) The nature and character of the soil, terrain, surface and subsurface conditions of the Job Site;

(v) The labor conditions in the region of the Job Site;

(vi) Applicable Laws and Applicable Permits;

(vii) Rights of FPL regarding the Job Site as set forth herein;

(viii) The local weather conditions based upon previous weather data;

(ix) The qualifications of all Subcontractors and Vendors;

(x) The Safe and Secure Workplace Policy, the Project Loss Manual and Environmental Control Program; and

(xi) All other known matters and other matters that Contractor should know under Applicable Standards that might affect Contractor's performance under this Agreement or the design, engineering, procurement, construction, start-up, demonstration and testing of the Plant; and

(c) Has determined to Contractor's satisfaction the nature and extent of such difficulties and hazards.

3.4.2 *Responsibility for Interpreting Sub-Surface Data*. Notwithstanding the above, where FPL has made investigations of subsurface conditions in areas where Work is to be performed under this Agreement, such investigations are made by FPL for the purpose of study and design. To the extent the records of such investigation are included in this Agreement, the interpretation of such records shall be the sole responsibility of Contractor. FPL assumes no responsibility whatsoever with respect to the sufficiency or accuracy of such investigations, the records thereof, or of the interpretations set forth and there is no warranty or guarantee, either express or implied, that the conditions indicated by such investigations or records thereof are representative of those existing throughout such areas, or any part thereof, or that unforeseen developments may not occur, or that materials other than or in proportions different from those indicated may not be encountered.

3.4.3 In light of the foregoing and subject to Section 3.4.4, Differing Condition, Contractor accepts the Job Site in its existing condition and waives any right to additional compensation beyond the Contract Price or an extension of the Guaranteed Provisional Acceptance Date, and any other claims that may arise due, in whole or in part, to errors or omissions in, or inconsistencies among, the Contract Documents and any information provided in connection with the Project. Contractor shall be solely responsible for performing any preliminary Work on the Job Site necessary for the commencement of construction to occur, including removal of all physical impediments to performing Work on the Job Site, above and below ground.

3.4.4 *Differing Condition*. Notwithstanding the acknowledgments set forth in Section 3.4.1, no less than sixty (60) days prior to commencement of Contractor's mobilization on the Job Site (the "Geotechnical Investigation Completion Date"), Contractor may conduct a geotechnical investigation in the location of the Job Site or any portion thereof as Contractor reasonably deems necessary to confirm the site conditions referred to in Sections 3.4.1, and 3.4.2, above. If as a result of the geotechnical investigation, Contractor:

(a) Encounters any concealed subsurface conditions which a reasonable, experienced Contractor would not foresee existing at the Job Site and which vary materially from the conditions shown in the Contract Documents; and

(b) Any such condition causes a material increase or decrease in the Contract Price or time required for performance of the Work or otherwise materially affects any provision of this Agreement,

then Contractor shall notify FPL thereof and FPL may either:

(i) Issue a Change Order to address such condition; or

(ii) Terminate this Agreement pursuant to Section 15.3.

Contractor specifically waives the right to make any such claims after the Geotechnical Investigation Completion Date. Except as set forth in this Section 3.4.4, Contractor assumes the risk of surface and subsurface conditions at the Job Site and shall not be entitled to an extension of the Project Schedule or an increase in the Contract Price.

3.5 FPL Access to Job Site

Subject to Contractor's reasonable safety policies, FPL shall have the right to have representatives on the Job Site full time. In addition, Contractor shall provide reasonable access to the Job Site and the Work at all times to FPL, FPL's other contractors, the Independent Engineer and the Financing Parties and their respective employees, representatives, agents and consultants, subject to Contractor's reasonable safety policies.

3.6 Inspection and Testing of Work in Progress.

3.6.1 Each item of Equipment to be supplied by Contractor shall be subject to inspection and testing during and upon completion of its fabrication and installation in accordance with the provisions of the Scope of Work. Without limiting the foregoing, Contractor shall be responsible for inspection and testing of the Equipment in accordance with Applicable Standards.

3.6.2 Contractor shall perform inspection, expediting, quality surveillance and traffic services as are required for performance of the Scope of Work. Contractor shall perform such detailed inspection of Work in progress at intervals appropriate to the stage of construction or fabrication of the Project as is necessary to ensure that such Work is proceeding in accordance with this Agreement and the Contract Documents and to protect FPL against Defects and deficiencies in such Work. At least fifteen (15) Business Days prior to the time Contractor or its representative intends to inspect any item of Major Equipment, Contractor shall notify FPL in writing of such inspection which notice shall state the date, time and place where such inspection is to be conducted (provided that, if the inspection will occur at a location outside of the United States of America, Contractor shall provide such notice as soon as possible but in no event less than fifteen (15) Business Days prior to such inspection). FPL and/or its designated agent may, at FPL's option, accompany Contractor to the inspection by notifying Contractor in writing within five (5) Business Days of receipt of notice of the inspection. FPL's failure to notify Contractor within the permitted time period shall be deemed to be a decision by FPL not to attend the inspection. Contractor shall arrange for access to the manufacturer's facilities to permit any such inspection to be conducted smoothly. Contractor shall reimburse FPL for any costs necessarily and reasonably incurred by FPL due to Contractor's failure to prepare any portion of the Work for inspection or testing after having provided notice to FPL of any such inspection or test. With respect to any inspection that FPL chooses not to attend, Contractor shall:

(a) Keep FPL informed in all material respects of the progress and quality of all work;

(b) Advise FPL of any deficiencies revealed through such inspections and of the measures proposed by Contractor to remedy such deficiencies in order to avoid any delay in the completion of the Work and Contractor's performance of the Work; provided that, any such notice provided pursuant to this Section 3.6.2, shall not constitute a request for adjustment, extension or modification of the Project Schedule or FPL's consent to any of the same; and

(c) Upon FPL's request, provide FPL with a reasonable opportunity to review Contractor's records with respect to such inspections. Contractor shall include the right to inspection by FPL or its representative in all subcontracts and purchase orders.

3.6.3 Contractor shall permit FPL and, as authorized by FPL, any Person designated by FPL, and the Financing Parties to inspect, test and observe the Work from time to time; provided, however, that none of such Persons shall have any authority or responsibility for such Work. Contractor shall provide FPL each month during performance of the Work with a schedule of all testing proposed for the following three (3) month period in compliance with the requirements of the Scope of Work.

3.7 NO WAIVER OF RESPONSIBILITY

No inspection made, acceptance of Work, payment of money or approval given by FPL, the Financing Parties or the Independent Engineer shall relieve Contractor of its obligations for the proper performance of the Work in accordance with the terms hereof. Subject to the limitations of Article XII, Contractor's Warranties, FPL may reject any Work with Defects or which is not in accordance with the requirements of the Contract Documents, regardless of the stage of completion, the time or place of discovery of error, and whether FPL previously accepted any or all of such Work through oversight or otherwise. Except with respect to the achievement of Provisional Acceptance and Final Acceptance, no approval given by FPL, in and of itself, shall be considered as an assumption of risk or liability by any such Person. Any such approval shall mean that the Person giving the approval has no objection to the adoption or use by Contractor of the matter approved at Contractor's own risk and responsibility. Contractor shall have no claim relating to any such matter approved, including any claims relating to the failure or inefficiency of any method approved.

3.8 DEFECTIVE WORK

3.8.1 Prior to Provisional Acceptance, Contractor shall at its own cost and expense correct or replace any Work that contains a Defect, or is not otherwise in accordance with the Contract Documents. Equipment that has been replaced, if situated on the Job Site, shall be removed by Contractor from the Job Site at Contractor's own cost and expense.

3.8.2 If Contractor or any Subcontractor defaults or neglects to carry out the Scope of Work in accordance with the Contract Documents and Contractor fails within a reasonable period of time (as reasonably determined by FPL) after it knows or should have known of such default or neglects to commence and continue correction of such default or neglect with diligence and promptness, FPL may, without prejudice to other remedies FPL may have under this Agreement, correct such deficiencies. In such event, an appropriate Change Order shall be issued deducting from payments then or thereafter due to Contractor the reasonable cost of correcting such deficiencies, including reasonable compensation for the costs to enforce this provision (including reasonable attorneys' fees) and any consultant's additional services and reasonable expenses made necessary by such default, neglect or failure. If payments then or thereafter due to Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to FPL within three (3) days from FPL's request therefor.

3.8.3 Contractor shall correct any and all deficiencies as required by the Contract Documents notwithstanding any actual or possible legal obligation or duty of a Subcontractor concerning same and nothing contained in this Section shall modify Contractor's obligation to achieve Final Acceptance in accordance with the Contract Documents.

3.9 CLEAN-UP.

3.9.1 Without limiting the provisions of Section 3.16, Environmental Matters, Contractor shall at all times keep the Job Site reasonably free from waste, rubbish and Hazardous Material, other than Pre-Existing Hazardous Material, relating to its Work. Contractor shall maintain the Job Site in a neat and orderly condition throughout the performance of the Work. Contractor shall employ sufficient personnel to clean its office and FPL's office at the Job Site and work areas each working day and shall cooperate with the other Persons working at the Job Site to keep the Job Site clean.

3.9.2 Prior to the Final Acceptance Date or as soon as practicable after the termination of this Agreement by FPL in accordance with the provisions of Article XV, TERMINATION, Contractor shall:

(a) Remove all Contractor Equipment from the Job Site (other than equipment, supplies and materials necessary or useful to the operation or maintenance of the Plant and Equipment and equipment, supplies and materials directed by FPL to remain at the Job Site until completion of the Plant);

(b) Clean out all pits, pipes, chambers and conduits;

(c) Tear down and remove all temporary structures on the Job Site built by it or its Subcontractors and restore such areas to a condition consistent with that of a newly constructed photovoltaic solar power plant, except as required by Applicable Law, Section 3.16.4, Protected Areas, or any other provision of this Agreement; and

(d) Remove all waste, rubbish and Hazardous Material from and around the Job Site, except that Contractor shall not be required to excavate, remove, transport or otherwise dispose of:

(i) Pre-Existing Hazardous Material on the Job Site, other than as set forth in Section 3.16.1(d); and

(ii) Any waste, rubbish or Hazardous Material caused by FPL or its representatives.

3.10 OBTAINING, MAINTAINING AND IDENTIFYING PERMITS

3.10.1 Contractor shall, and shall cause its Subcontractors to comply with, all Applicable Permits, including FPL Permits and Contractor Permits. Contractor shall timely obtain and maintain all Contractor Permits. In addition, Contractor shall timely prepare and submit to the applicable Government Authority all engineering and construction related submittals, reports and other items (including those set forth in Appendix A, Scope of Work) required to maintain and comply with any FPL Permit and provide all assistance reasonably requested by FPL in connection with FPL's efforts to obtain the FPL Permits, including, without limitation, witnesses testimony, depositions, preparation and submission of exhibits, reports or submittals, technical calculations and attending meetings; provided that FPL shall provide Contractor, at no cost to FPL, with all information, documentation and assistance reasonably requested by Contractor to permit Contractor to comply with the provisions of this Section 3.10.1. In the event that any Applicable Permit is required for the Plant or to perform the Work that is not identified in the Contract Documents, Contractor or FPL, as applicable, shall promptly, after it becomes aware of the need for such Applicable Permit, notify the other Party that such Applicable Permit is required. If such permit is of a nature typically obtained by contractors in power projects, Contractor shall, at its sole cost and expense, be obligated to obtain and maintain such Applicable Permit on behalf of FPL. Otherwise, FPL shall obtain and maintain such Applicable Permit.

3.10.2 All Applicable Permits (other than any building permits (but excluding any applicable occupancy certificates) or other Applicable Permits designated as either "To be issued in the name of Contractor" or "To be issued in the name of FPL and Contractor" on Appendix A, Scope of Work, or Appendix M, FPL Permits) shall be issued in the name of FPL unless otherwise required by Applicable Law or such Applicable Permit. If any Contractor Permit (or application therefor) is in the name of FPL or otherwise requires action by FPL, FPL shall, upon the request of Contractor, sign such application or take such action as reasonably appropriate.

3.10.3 FPL reserves the right to review any such application of Contractor; provided, however, that FPL's exercise of such right shall not under any circumstances be considered an approval of the necessity, effect or contents of such application or related permit. Contractor shall deliver to FPL true and complete copies of all Applicable Permits obtained by Contractor upon its receipt thereof. Contractor shall use best efforts to identify in writing to FPL all Applicable Permits and other government requirements for performance of the Work not identified in the Contract Documents, or shall confirm in writing that, to the best of Contractor's knowledge, there are no such Applicable Permits or other government requirements other than as identified in the Contract Documents prior to the date of this Agreement.

3.11 LABOR.

3.11.1 *General.* Contractor shall be responsible for retaining all Labor necessary for it to perform its obligations hereunder and comply with the provisions hereof, all in accordance with Applicable Laws. Contractor shall be responsible for all costs incurred in complying with this Section 3.11, or otherwise associated with its Labor, including, without limitation, costs incurred by any member of its Labor, whether by direct contract or subcontract, for medical treatment, transport and accommodation as a result of injuries or illness arising from engagement or employment in the execution of the Work.

3.11.2 *Engagement of Labor*. Contractor shall make its own arrangements for the engagement of all Labor in connection with the Contract Documents and the performance of the Work. Contractor shall employ in the performance of the Work only Labor, whether supervisors, skilled workers or laborers, who are competent to perform their assigned duties in a safe and secure manner and shall use all reasonable efforts to cause its Subcontractors and Vendors to adhere to the same standard with respect to their Labor. Contractor agrees, where required by Applicable Law, to employ only licensed personnel in good standing with their respective trades and licensing authorities to perform engineering, design, architectural and other professional services in the performance of the Work. All such professional services shall be performed with the degree of care, safety, skill and responsibility customary among such licensed personnel. All Labor shall have received formal documented training, to the extent required by Applicable Standards, in their area of expertise and, if applicable, certification.

3.11.3 *Identification*. Contractor shall identify each member of its and its Subcontractor's and Vendor's Labor in accordance with the standards and procedures that are mutually acceptable to the Parties.

3.11.4 *Supply of Services for Labor*. Contractor shall provide and maintain at the Job Site, in accordance with Applicable Laws and Applicable Permits, such accommodations, services and amenities as necessary for all Labor employed for the purpose of or in connection with the Contract Documents, including all water supply (both for drinking and other purposes), electricity supply, sanitation, safety, security, fire prevention and fire-fighting equipment, refuse disposal systems and other requirements in connection with such accommodations or amenities.

3.11.5 *Alcohol and Drugs*. Contractor shall not possess, consume, import, sell, give, barter or otherwise dispose of any alcoholic beverages or drugs (excluding drugs for proper medical purposes and then only in accordance with Applicable Law) at the Job Site, or permit or suffer any such possession, consumption, importation, sale, gift, barter or disposal by its Subcontractors, agents or Labor and shall at all times assure that the Job Site is kept free of all such substances. Contractor shall immediately identify and remove from its or its Subcontractors' employment at the Job Site any person (whether in the charge of Contractor or any Subcontractor) who is in possession of or under the influence of any dangerous or controlled drug, alcohol or other such substance at any time during such person's performance of any portion of the Work, excluding any person using a prescription drug under supervision and approval from a medical doctor, or any other person who does or whose actions may create any unsafe condition or other situation that may cause damage or harm to any person or property.

3.11.6 *Arms and Ammunition*. Except as required for Job Site security, Contractor shall not possess, give, barter or otherwise dispose of, to any person or persons, any arms or ammunition of any kind at the Job Site, or permit or suffer the same as aforesaid and shall at all times assure that the Job Site is kept free from arms and ammunition.

3.11.7 *Disorderly Conduct*. Contractor shall be responsible for the conduct and deeds of its Labor and its Subcontractors' Labor relating to the Contract Documents and the consequences thereof. Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or among such Labor and for the preservation of peace, protection and safety of Persons and property in the area of the Job Site against the same. Contractor shall not interfere with any members of any authorized police, military or security force in the execution of their duties.

3.11.8 *General Management of Employees*. Subject to FPL's rights as set forth in Section 3.11.11, Replacement at FPL's Request, Contractor shall preserve its rights to exercise and shall exercise its management rights in

performing the Work. Such management rights shall include the rights to hire, discharge, promote and transfer employees; to select and remove foremen or other persons at other levels of supervision; to establish and enforce reasonable standards of production; to introduce, to the extent feasible, labor saving equipment and materials; to determine the number of craftsmen necessary to perform a task, job or project; and to establish, maintain and enforce rules and regulations conducive to efficient and productive operations.

3.11.9 *Labor Disputes*. Contractor shall use reasonable efforts to minimize the risk of labor-related delays or disruption of the progress of the Work. Contractor shall promptly take any and all reasonable steps that may be available in connection with the resolution of violations of collective bargaining agreements or labor jurisdictional disputes, including the filing of appropriate processes with any court or administrative agency having jurisdiction to settle, enjoin or award damages resulting from violations of collective bargaining agreements or labor jurisdictional disputes. Contractor shall advise FPL promptly, in writing, of any actual or threatened labor dispute of which Contractor has knowledge that might materially affect the performance of the Work by Contractor or by any of its Subcontractors or Vendors. Notwithstanding the foregoing, the settlement of strikes, walkouts, lockouts or other labor disputes shall be at the discretion of the Party having the difficulty, except as expressly provided for in Section 14.1, Definition of Force Majeure Event.

3.11.10 *Personnel Documents*. Contractor shall ensure that all its personnel and personnel of any Subcontractors or Vendors performing the Work are, and at all times shall be, in possession of all such documents (including, without limitation, visas, driver's licenses and work permits) as may be required by any and all Applicable Laws.

3.11.11 *Replacement at FPL's Request*. Within one (1) day after request by FPL, Contractor shall remove from the Job Site and performance of the Work, and shall cause any Subcontractor or Vendor to remove from the Job Site and performance of the Work, any Person performing the Work whom FPL determines, in its sole discretion, to be creating a safety hazard or a material risk of either: (i) non-achievement of Mechanical Completion or Provisional Acceptance; or (ii) material non-performance by Contractor in accordance with this Agreement. In addition, Contractor shall include in each subcontract a provision that requires each Subcontractor and Vendor to remove any employee or independent contractor of such Subcontractor or Vendor used in the Work or in such Subcontractor's and Vendor's warranty obligations within one (1) day after receiving notice from FPL to remove such employee or independent contractor.

3.12 PROJECT MANAGEMENT AND CONTRACTOR'S REPRESENTATIVE.

3.12.1 *Project Management*. Contractor has designated a management team as set forth on Appendix O, Project Management Team, and any future members of the management team must be approved by FPL in writing prior to his/her designation, which approval shall not be unreasonably withheld. During the performance of the Work from the Initial Site Mobilization and thereafter, Contractor shall maintain continuously at the Job Site adequate management, supervisory, administrative, security and technical personnel, including the Contractor Site Manager, to ensure expeditious and competent handling of all matters related to the Work, according to its determination of the staffing required for this purpose. Contractor will not re-assign, remove or replace the Contractor Project Manager, Contractor Project Engineering Manager or Contractor Site Manager without FPL's prior written consent, which consent shall not be unreasonably withheld. Contractor shall promptly replace its Contractor Project Manager, Contractor Project Engineering Manager or Contractor Site Manager, upon written request of FPL, if such individual is disorderly or if in FPL's opinion, such individual is otherwise incompetent for his position and responsibilities.

3.12.2 *Contractor's Representative*. Contractor shall appoint one individual (the "Contractor's Representative"), with the prior written consent of FPL, which shall not be unreasonably withheld, who shall be authorized to act on behalf of Contractor and with whom FPL may consult at all reasonable times, and whose instructions, requests and decisions in writing will be binding upon Contractor. Contractor shall not remove or replace such representative without prior written notice to FPL.

3.13 TEMPORARY OFFICE QUARTERS.

3.13.1 During the performance of the Work from the Initial Site Mobilization and thereafter, Contractor shall maintain, at a reasonable location designated by FPL, a suitable office at the Property Site at or near the site of the Work which shall be the headquarters of Contractor's Representative designated pursuant to Section 3.12, Project Management and Contractor's Representative, above.

3.13.2 Contractor shall provide FPL's representatives with office space, including all utilities, heating, ventilation and air conditioning, contemporaneously with the existence of Contractor's site office specified in paragraph (a) above, which office space shall be subject to the approval of FPL and be in compliance with the requirements therefore in Appendix A, SCOPE OF WORK. Contractor shall properly maintain such offices and shall employ sufficient personnel to clean such office each working day that such offices are used. Contractor shall be responsible for paying all utility deposits and charges, other than long distance telephone charges related to calls made by FPL and its representatives, related to such offices for FPL.

3.14 COOPERATION WITH OTHER CONTRACTORS/COMMUNITY.

3.14.1 Contractor acknowledges that work may be performed by others at the Job Site during the execution of Work under this Agreement. Contractor further acknowledges that FPL, through itself or through its employees, subcontractors or agents, will continue to work and perform activities in connection therewith at and around the Job Site during the execution of the Work under this Agreement. Contractor shall cooperate and cause its Subcontractors and Vendors to cooperate with FPL and other unrelated contractors who may be working at or near the Job Site in order to assure that neither Contractor, nor any of its Subcontractors or Vendors unreasonably hinders or increases, or makes more difficult than necessary the work being done by FPL and other unrelated contractors. Contractor agrees to perform the Work in full cooperation with such others and to permit, without charge, reasonable access to, and use of, the Job Site and the Work, by said others or by FPL, whether such Work is partially or entirely complete, when, in the judgment of FPL, such access or use is necessary for the performance and completion of the work of others. All material and labor shall be furnished, and the Work performed, at such time or times as shall be for the best interest of all contractors concerned, to the end that all Work, and the work of any separate contractor, will be properly coordinated and completed in accordance with the applicable schedules and the times of completion required by the Contract Documents.

3.14.2 In addition to complying with all Applicable Laws and Applicable Permits, Contractor shall use reasonable efforts, and cause its Subcontractors and Vendors to use their reasonable efforts, to assist FPL in creating, assessing and carrying out programs which shall, during all phases of the Work, minimize the impacts upon the host community caused by the construction of the Project. Such programs shall include: (i) sequencing of the Work so as to minimize the impacts of noise and dust at and around the Job Site; and (ii) using local labor and other resources whenever possible and cost effective.

3.15 PROTECTION AND SAFETY.

3.15.1 Prior to the Provisional Acceptance Date, Contractor shall be responsible for the security, protection and safety of all Persons (including members of the public and the employees, agents, contractors, consultants and representatives of FPL, the Financing Parties, Contractor and its Subcontractors and Vendors, and other contractors and subcontractors) and all public and private property (including structures, sewers and service facilities above and below ground, along, beneath, above, across or near the Job Site) that are at or near the Job Site or that are in any manner affected by the performance of the Work. As of the Provisional Acceptance Date, FPL shall have operational control over the Project. Notwithstanding the foregoing, Contractor shall remain responsible for the security, protection and safety of all Persons performing any portion of the Work at the direction of Contractor as well as any damage to property caused directly or indirectly by Contractor's negligent acts or omissions and/or failure to comply with the provisions of the Contract Documents while on the Job Site.

3.15.2 Contractor shall initiate and maintain reasonable safety precautions and accident prevention programs for the Job Site and in the performance of the Work, which shall be in compliance with all Applicable Laws and Applicable Permits, to prevent injury to persons or damage to property on, about or adjacent to the Job

Site and in the performance of the Work. Without limiting the generality of the foregoing, Contractor shall furnish and maintain all necessary safety equipment such as barriers, signs, warning lights and guards as required to provide adequate protection to persons and property. In addition, Contractor shall give reasonable notice to owners of public and private property and utilities when such property is susceptible to injury or damage through the performance of the Work and shall make all necessary arrangements with such owners relative to the removal and replacement of protection of such property or utilities.

3.15.3 Contractor shall provide FPL, within five (5) Days following its occurrence, with written:

(a) Notification of all Occupational Safety and Health Act recordable events;

(b) Notifications and copies of all citations by Government Authorities concerning accidents or safety violations at the Job Site;

(c) Reports of near misses at the Job Site; and

(d) Copies of written accident reports for lost time accidents.

Contractor shall promptly deliver to FPL any written communication with any Government Authority or insurance company (including any notices) with respect to accidents that occur at the Job Site.

3.16 ENVIRONMENTAL MATTERS.

3.16.1 *Hazardous Material*. Contractor shall, and shall cause its Subcontractors and Vendors to, comply with all Applicable Laws relating to Hazardous Material and all Applicable Permits. Without limiting the generality of the foregoing:

(a) Contractor shall, and shall cause its Subcontractors and Vendors to, apply for, obtain, maintain and renew all Contractor Permits, and comply with all Applicable Permits, in any case, as required by Applicable Laws regarding Hazardous Material that are necessary, customary or advisable for the performance of the Work. Contractor shall, and shall cause its Subcontractors and Vendors to, have an independent Environmental Protection Agency identification number for disposal of Hazardous Material under the Contract Documents if and as required under Applicable Laws or Applicable Permits.

(b) Contractor shall conduct its activities under the Contract Documents, and shall cause each of its Subcontractors to conduct its activities, in a manner designed to prevent pollution of the environment or any other release of any Hazardous Material by Contractor and its Subcontractors and Vendors in a manner or at a level requiring remediation pursuant to any Applicable Law.

(c) Contractor shall not cause or allow the release or disposal of Hazardous Material at the Job Site, bring Hazardous Material to the Job Site, or transport Hazardous Material from the Job Site, except in accordance with Applicable Law and Applicable Permits. Contractor shall be responsible for the management of and proper disposal of all Hazardous Material brought onto or generated at the Job Site by it or its Subcontractors or Vendors, if any. Contractor shall cause all such Hazardous Material brought onto or generated at the Job Site by it or its Subcontractors or Vendors, if any, to be:

(i) Transported only by carriers maintaining valid permits and operating in compliance with such permits and laws regarding Hazardous Material pursuant to manifest and shipping documents identifying only Contractor as the generator of waste or person who arranged for waste disposal; and

(ii) Treated and disposed of only at treatment, storage and disposal facilities maintaining valid permits operating in compliance with such permits and laws regarding Hazardous Material, from which, to the best of Contractor's knowledge, there has been and will be no release of Hazardous Material.

(iii) Contractor shall submit to FPL a list of all Hazardous Material to be brought onto or generated at the Job Site prior to bringing or generating such Hazardous Material onto or

at the Job Site. Contractor shall keep FPL informed as to the status of all Hazardous Material on the Job Site and disposal of all Hazardous Material from the Job Site.

(d) If Contractor or any of its Subcontractors or Vendors releases any Hazardous Material on, at, or from the Job Site, or becomes aware of any Person who has stored, released or disposed of Hazardous Material on, at, or from the Job Site during the Work, Contractor shall immediately notify FPL in writing. If Contractor's Work involved the area where such release occurred, Contractor shall immediately stop any Work affecting the area. Contractor shall, at its sole cost and expense, diligently proceed to take all necessary or desirable remedial action to clean up fully the contamination caused by any:

(i) Release by Contractor or any of its Subcontractors or Vendors of any Pre-Existing Hazardous Material; and

(ii) Hazardous Material that was brought onto or generated at the Job Site by Contractor or any of its Subcontractors or Vendors, whether on or off the Job Site.

(e) If Contractor discovers any Pre-Existing Hazardous Material that has been stored, released or disposed of at the Property Site, Contractor shall immediately notify FPL in writing. If Contractor's Work involves the area where such a discovery was made, Contractor shall immediately stop any Work affecting the area and FPL shall determine a reasonable course of action. Contractor shall not, and shall cause its Subcontractors and Vendors to not, take any action that may exacerbate any such contamination.

(f) Contractor shall be solely responsible for remedial action to clean up fully the contamination referenced in Section 3.16.1(d). If so requested by FPL, Contractor shall cooperate with and assist FPL in making the Job Site available for taking necessary remedial steps to clean up any such contamination at FPL's expense as determined in accordance with Section 6.3, Changes to Contract Price; Disputes, of Article VI, CHANGE ORDERS. Contractor shall promptly deliver to FPL any notice or violation, letter of non-compliance or similar communication from any Government Authority.

3.16.2 *Waste Treatment and Disposal*. Without limiting the foregoing:

(a) *Toxic Waste and Industrial Hazards:* Contractor shall be responsible for the proper management and disposal of all toxic waste and industrial hazards brought onto or generated at the Job Site by it or its Subcontractors or Vendors, if any. Contractor shall, and shall cause its Subcontractors and Vendors to, comply with all Applicable Laws, Applicable Permits and applicable safety standards related to the treatment, storage, disposal, transportation and handling of toxic wastes and industrial hazards. Contractor shall not store or dispose of toxic wastes and industrial hazards near groundwater, surface water or drainage systems. Liquid wastes shall not be dumped onto the ground or in any groundwater, surface water or drainage systems. All waste oil and grease resulting from construction activities shall be collected and disposed of in a manner that prevents contamination to soil, ground water, and surface water, and incinerated if possible. Vehicle maintenance shall be conducted in safe areas away from watercourses and oil or fluid runoff shall be collected in grease traps. Toxic waste and industrial hazard storage containers shall be well-labeled.

(b) *Sanitary and Solid Waste:* Contractor shall take appropriate measures in accordance with the Applicable Law and Applicable Permits for the treatment and disposal of sanitary and solid waste, and in particular, Contractor shall perform the Work in such a manner so as to protect environmentally sensitive areas and water supplies. Run-off from disposal sites shall be curtailed.

3.16.3 *Fuel Storage*. The location, facilities, safety measures and environmental and pollution control in connection with storage of fuel or like substances shall comply with all Applicable Laws and Applicable Permits.

3.16.4 *Protected Areas*. Contractor acknowledges that portions of the Property Site may be wetlands or other protected areas ("Protected Areas") as indicated on the survey to be provided by FPL pursuant to Section 4.7, Description of Property Site, of Article IV, CERTAIN OBLIGATIONS OF FPL. Certain of these Protected Areas, if designated on such survey, do not constitute a part of the Job Site. Contractor shall erect a temporary barrier or other blockade to isolate Protected Areas and protect such areas from impact by any Work. Contractor shall not allow any Work to be conducted in or otherwise interfere with or impact such Protected Areas. Contractor shall, and shall cause its Subcontractors and Vendors to, comply with the Environmental Resource Plan and all permits, rules, regulations and all other Applicable Laws and Applicable Permits in connection with the Protected Areas on or adjacent to the Property Site.

3.17 FIRE PREVENTION.

3.17.1 Contractor shall be responsible for providing adequate fire prevention and protection at the Job Site and shall take all reasonable precautions to minimize the risk of fire at the Job Site. Contractor shall provide instruction to the Labor in fire prevention control and shall provide appropriate fire-fighting and fire protection equipment and systems at the Job Site.

3.17.2 Contractor shall promptly collect and remove combustible debris and waste material from the Job Site in accordance with Applicable Laws and Applicable Permits, and shall not permit such debris and material to accumulate. Contractor shall control the usage of fires for any purpose in the vicinity of the Work and shall agree upon the appropriateness of any such fires with FPL. Any areas of vegetation damaged by fire which are reasonably determined by FPL to have been initiated by Contractor's or Subcontractors' Labor shall be recultivated and otherwise rehabilitated by Contractor, at Contractor's expense.

3.17.3 Contractor will complete all systems, procedures and Equipment constituting the Plant fire protection system as necessary during construction to protect Work in progress, in particular with regard to fuel and other flammable materials.

3.18 RELIGIOUS AND ARCHAEOLOGICAL RESOURCES

In the event any archaeological or religious sites, places, monuments or areas are discovered or identified by Contractor during the performance of Work under the Contract Documents, Contractor shall leave such sites untouched and protected by fencing and shall immediately stop any Work affecting the area. Contractor shall notify FPL of any such discovery as soon as practicable, and Contractor shall carry out FPL's instructions for dealing with the same. All fossils, coins, articles of value or antiquity and structures and other remains or things of geological, archaeological, historical, religious, cultural or similar interest discovered on the Job Site shall, as between FPL and Contractor, be deemed to be the absolute property of FPL. Contractor shall prevent its and its Subcontractors' and Vendors' Labor and any other Persons from removing or damaging any such article or thing.

3.19 REPORTS, PLANS AND MANUALS.

3.19.1 *Status Reports*. Within ten (10) days after the beginning of each month, commencing with the month following the date of this Agreement, Contractor shall prepare and submit to FPL written progress reports, in accordance with the requirements of Appendix B, Project Schedule and Reporting Requirements, which include a description of the progress and status of the Work compared to the Project Schedule, the status of Equipment and other scheduled deliveries, the Subcontractors' activities and engineering, procurement and construction progress. In addition, each such progress report will provide cost information regarding backcharges and a summary of any Changes executed by the Parties as of the date of such report. A reasonable number of photographs shall also be included reasonably documenting the construction progress. Each photograph shall show the date, Contractor's name and description of the view taken. In accordance with Section 5.3, Project Schedule, of Article V, PROJECT SCHEDULE, Contractor shall also report any events which may affect the Project Schedule, including any Force Majeure Events, liens on the Property Site or the Project, or any asserted violations of Applicable Laws.

3.19.2 *Reporting of Accidents*. Contractor shall report in writing to FPL (and, to the extent required by any Applicable Law or Applicable Permit, the appropriate Government Authority) details of any significant safety event or accident required to be reported under U.S. Department of Labor Occupational Safety &

Health Administration standards that is on or about the Job Site as soon as possible after its occurrence, but in any event not later than forty-eight (48) hours after such accident occurs. In the case of any fatality or serious injury or accident, Contractor shall, in addition, notify FPL (and, to the extent required by any Applicable Law or Applicable Permit, the appropriate Government Authority) immediately.

3.19.3 *Procedures Manual*. No later than forty-five (45) days following the date hereof, Contractor shall prepare and submit to FPL a procedures manual that describes the administrative procedures to be used by Contractor and FPL for interfacing during the performance of the Work (the "Procedures Manual"). Contractor shall either promptly make changes to the Procedures Manual suggested by FPL or negotiate and resolve in good faith with FPL such changes. Upon approval of the Procedures Manual by the Parties, the Parties shall comply with the provisions thereof. The Procedures Manual may be changed from time to time with the approval of the Parties. Contractor shall provide six (6) copies, as well as an electronic copy, of the Procedures Manual to FPL.

3.19.4 *Health Plan, Safety Plan and Environmental Plan*. No later than thirty (30) days prior to Initial Site Mobilization, Contractor shall prepare and submit to FPL:

(a) A health plan that includes health, first aid facility/area with qualified attendant and emergency procedures to be used at the Job Site (the "Health Plan");

(b) An environmental plan (the "Environmental Plan" as more particularly described in Appendix A, Scope of Work) that includes:

(i) A Hazardous Material, waste and industrial hazards management and disposal program which details the controlled usage and treatment of all Hazardous Material, toxic wastes, industrial hazards, sanitary waste, solid waste and other waste brought onto, used or produced at the Job Site or in relation to the Work and outlines a management structure for carrying out the specific provisions of such program;

(ii) An environmental protection and management program, including, without limitation, a sediment and erosion control program

(iii) A revegetation program, with a Change Order related thereto; and

(iv) The description, location and drawings of construction facilities and temporary works; and

(c) A safety plan substantially in the form of Appendix Z, Form of Safety Plan, which shall include an acknowledgement by Contractor that Contractor shall at all times remain in compliance with all federal, state and local safety codes (the "Safety Plan").

Each of the Health Plan, Environmental Plan and Safety Plan shall be consistent with all Applicable Laws and Applicable Permits and shall be submitted to FPL for review and comment. Contractor shall either promptly make changes to such Health Plan, Environmental Plan or Safety Plan incorporating the comments of FPL or negotiate and resolve in good faith with FPL any such changes. Contractor shall comply and ensure that its Subcontractors comply with the Health Plan, Environmental Plan, Safety Plan, the Safe and Secure Workplace Policy, the Project Loss Manual and the Environmental Control Program.

3.19.5 *Meetings*. During the performance of the Scope of Work, Contractor and FPL shall, at a minimum, conduct meetings each month at a mutually convenient time and date for the purpose of reviewing the progress of the Scope of Work, the latest progress reports, the Health Plan, the Environmental Plan, the Safety Plan, Quality Assurance Program, Contractor's and Subcontractors' adherence to the Scope of Work and the Project Schedule as well as the status of any claims on the Project and claims submitted pursuant to the terms of the Contract Documents. Contractor shall prepare detailed minutes of each such meeting, in form and content acceptable to FPL, and shall distribute same to FPL within five (5) days after such meeting.

3.19.6 *Contractor Not Relieved of Duties or Responsibilities*. Neither the submission to or approval by FPL of progress and other reports, plans and manuals, nor the provision of general descriptions shall relieve Contractor of any of its duties or responsibilities under the Contract Documents.

3.19.7 *Quality Assurance Program*.

(a) Contractor shall use effective quality assurance programs (collectively, the "Quality Assurance Program"), which such programs:

(i) Propose the manner in which Contractor intends to achieve the highest standards in the performance of the entire Scope of Work;

(ii) Shall be acceptable to FPL; and

(iii) Shall be consistent with the requirements of Appendix Y, Form of Quality Assurance Programs, and Appendix A, Scope of Work, in performing the Work.

(b) Within thirty (30) days after the date of this Agreement, Contractor shall provide to FPL a description of the Quality Assurance Program, which shall be substantially in the form of Appendix Y, Form of Quality Assurance Programs, (the "Quality Control Manual"), to be used by Contractor in the performance of the Work. The Quality Control Manual shall also include all proposed types of Critical Parameters that Contractor shall define as the Scope of Work progresses. "Critical Parameters" are defined as construction critical dimensions, commissioning critical set-points, critical alignments and process critical set-ups for Equipment, sub-systems, systems and the Plant, as mutually agreed to by the Parties.

(c) As soon as the Critical Parameters have been finalized, Contractor shall include the same in the Project Schedule. Contractor shall provide FPL with tentative dates for the performance of Critical Parameters, which dates shall be updated monthly, and shall also provide FPL with twenty-four (24) hour written notice prior to performance of any Critical Parameters. FPL will review and provide comments to such programs in writing within thirty (30) days after submission by Contractor.

(d) If FPL's comments are reasonable changes to the quality assurance programs submitted by Contractor, Contractor will effect such changes at no additional cost to FPL and resubmit such programs to FPL within ten (10) days after Contractor receives FPL's comments. FPL will have ten (10) days after such resubmission to review and provide comments to such programs resubmitted by Contractor. Such procedure shall continue with the same ten (10) day time periods until FPL accepts such programs. If FPL fails to respond within any of the applicable periods specified above, FPL shall be deemed to have agreed to the last such programs submitted by Contractor. If applicable, Contractor shall also submit verification of ISO 9001 qualification.

(e) Contractor's program shall address how improvement actions will be applied on the Project's processes, products and services. Contractor shall also have in place a formal system of collecting, reviewing and evaluating corrective and preventive actions from a lessons learned process that will ensure desirable changes regarding engineering, procurement, construction, start-up, turnover or operation feedback from recently completed (or in process projects) are incorporated.

(f) A post award (pre-production) meeting shall be held at Contractor's facility to demonstrate Contractor's understanding of the quality and quality assurance requirements, and present their methods of complying with these requirements.

3.20 DRAWINGS, ENGINEERING DATA AND OTHER MATERIALS.

3.20.1 All Drawings, Final Plans, reports and other information (except financial, accounting and payroll records) furnished to Contractor, or prepared by it, its Subcontractors or others in connection with the performance of the Work, whenever provided, shall be kept by Contractor in an orderly and catalogued fashion for reference by FPL during the performance by Contractor of the Work. Contractor shall maintain at the Property Site at least one (1) copy of all Drawings, Final Plans, Change Orders and other modifications in good order and marked to record all changes made during performance of the Work, including, without limitation, all field deviations from the construction drawings. As a condition precedent to Final

Acceptance, or upon the earlier termination of this Agreement, Contractor shall transfer the Final Plans to FPL and they shall become the sole property of FPL.

3.20.2 Final Plans (in both hard copy and magnetic media at no extra charge to FPL), if not furnished earlier, shall be furnished to FPL upon Contractor's request for a Final Acceptance Certificate or upon the earlier termination of this Agreement. Contractor and any of its Subcontractors, as applicable, may retain copies all such documents for their records, subject to the confidentiality provisions of this Agreement.

3.20.3 Within ninety (90) days after the date of this Agreement, Contractor shall furnish FPL (in electronic format whenever available) with conceptual engineering drawings and the specifications pertaining to the electric generators and step-up transformers of the Plant, including demonstrations that the:

(a) Requirements for reactive supply facilities at the Plant will be met; and

(b) Plant will meet the guidelines and performance standards set forth in the Contract Documents and the Operating Guidelines.

3.20.4 Contractor shall submit all Drawings in electronic format to FPL in accordance with Appendix A, Scope of Work, for review and comment as provided in the Scope of Work. Based upon FPL's comments, if any, Contractor shall resolve FPL's comments. Contractor shall revise such Drawings from time to time, as required to reflect any changes, in the actual installation of any individual Equipment or system or the Plant as a whole. Notwithstanding anything contained herein to the contrary, FPL's review and/or acceptance of the Drawings, or any portion thereof, shall not in any way relieve Contractor of any of its obligations or warranties set forth herein, including, but not limited to, its full responsibility for the accuracy of the dimensions, details, integrity and quality of the Drawings.

3.21 OPERATING AND MAINTENANCE MANUALS

Contractor shall supply FPL with manuals and/or handbooks (in electronic format) which provide, either in a single manual or handbook or collectively, complete operating and maintenance instructions (including inventories of spare parts and tools and parts lists with ordering instructions) for each major piece of Equipment and system of the Plant. Each such manual and handbook shall comply with the requirements of the Scope of Work and the guidelines contained in Appendix L, including with respect to matters such as quantity, content and the time when such manuals are to be supplied to FPL, and shall be substantially complete and delivered to FPL prior to Mechanical Completion in order to support training of personnel and start-up and testing of the Plant.

3.22 TRAINING OF O&M PERSONNEL.

3.22.1 During the construction of the Plant, and at least ninety (90) days prior to the Provisional Acceptance Date, Contractor shall provide, at its own expense, a training program in Plant operation and maintenance for FPL's Plant personnel and the O&M Contractor's Plant personnel (collectively, "O&M Personnel"). The training program provided by Contractor shall be subject to FPL's prior written approval and shall:

(a) Include classroom and field training;

(b) Include all manuals, drawings, and other educational materials necessary or desirable for the adequate training of O&M Personnel; and

(c) Establish quality controls so that O&M Personnel are suitably trained and capable of operating and maintaining the Plant after Provisional Acceptance.

Representatives of manufacturers of Equipment shall be utilized to provide specialized training for such Equipment where deemed necessary by the Parties. All training programs conducted in accordance with this Section 3.22, shall be videotaped and made available to FPL in electronic format.

3.22.2 Contractor shall make every reasonable effort to use the O&M Personnel during Plant start-up and initial operation; however, neither FPL nor O&M Contractor shall be obligated to:

(a) Supply personnel for the construction of the Plant; nor

(b) Provide during Plant start-up and initial operation more O&M Personnel than the number of O&M Personnel FPL and O&M Contractor would use during normal Plant operation as determined by FPL. Contractor shall have complete responsibility for directing, coordinating, monitoring and supervising O&M Personnel during Plant start-up and initial Plant operations.

3.22.3 In addition, Contractor shall:

(a) Remain solely responsible for performing the Work in accordance with this Agreement, including Contractor's obligation to achieve Mechanical Completion, achieve Provisional Acceptance by the Guaranteed Provisional Acceptance Date and achieve Final Acceptance, regardless of any act, omission, failure, non-achievement, or non-performance of the O&M Personnel;

(b) Remain fully responsible for all acts and omissions of the O&M Personnel in connection with the commissioning and operation of the Plant until the Provisional Acceptance Date as fully as if Contractor had independently engaged such O&M Personnel; and

(c) Be responsible for all acts and omissions of the O&M Personnel after the Provisional Acceptance Date if such acts or omissions are taken at the direction of Contractor.

3.22.4 The cost of the O&M Personnel's travel, lodging, food and other living expenses shall be borne by FPL. Contractor shall have the right to require FPL to remove O&M Personnel from the Job Site if Contractor reasonably believes that any such O&M Personnel is unable to properly perform its obligations in connection with the commissioning and operation of the Plant and Contractor provides FPL a written explanation of its reasons for exercising the removal rights granted to it hereunder; provided that the failure of such O&M Personnel to perform their obligations or the removal of any O&M Personnel pursuant to this Section 3.22, shall not relieve Contractor of any of its obligations hereunder.

3.23 ACCOUNTING INFORMATION; FINANCIAL REPORTING REQUIREMENTS

3.23.1 During the term of this Agreement and continuing for five (5) years after the Final Acceptance Date, Contractor will provide FPL with any reasonably necessary assistance, including providing all documents, cost information and other information that FPL believes necessary, in a form reasonably acceptable to FPL, for FPL's federal, state or local tax filings, exemptions or positions advocated by FPL, including, without limitation, sales, use and property taxes; provided, however, that such access to cost information not otherwise made available to FPL pursuant to the terms hereof shall be disclosed to an independent auditor of FPL's choice that agrees to keep secret from FPL, Contractor's cost and other competitively sensitive information.

3.23.2 Unless otherwise publicly available, Contractor shall as soon as available, but in any event within sixty (60) days after each of the first three (3) quarters of each calendar year, deliver to FPL a copy of the complete unaudited balance sheet for such quarter for the *** prepared in accordance with generally accepted accounting principles and certified by the Chief Financial Officer of ***. Unless otherwise publicly available, Contractor shall as soon as available, but in any event within ninety (90) days after December 31 of each year, deliver to FPL a copy of the complete audited financial statements for such year with an unqualified opinion for the *** prepared in accordance with generally accepted accounting principles.

3.24 CONTRACTOR TAXES.

3.24.1 Except for FPL Taxes, Contractor shall, as required by applicable law, pay and administer any and all Taxes and duties incurred or payable in connection with the Work, including, without limitation, taxes based on or related to the income, receipts, capital or net worth of Contractor, Contractor's or its Subcontractors' or Vendors' Labor or income, except for FPL Taxes (collectively, "Contractor Taxes"); provided, however, that if Contractor is responsible for payment of FPL Taxes under Applicable Law, unless otherwise instructed by FPL or FPL is contesting such FPL Taxes, Contractor shall pay such FPL Taxes and any penalties and interest due thereon, and FPL shall reimburse Contractor for such FPL Taxes and any penalties and interest due thereon resulting from instructions provided by FPL upon submission of evidence of payment. Contractor shall promptly provide FPL with reports or other evidence reasonably

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acceptable to FPL showing the payment of Contractor Taxes by Contractor and any FPL Taxes required to be paid by Contractor pursuant to this Section 3.24. Contractor shall use commercially reasonable efforts to cooperate with FPL to endeavor to minimize any FPL Taxes. Notwithstanding the foregoing, Contractor agrees to purchase for resale to FPL any machinery or equipment in connection with the Work that would be the type of property that would qualify as manufacturing machinery and equipment entitled to the exemption from the Florida sales and use tax provided under Applicable Laws and, at the direction of FPL, Contractor agrees to take such action as may be reasonably required to allow such property, to the extent possible to qualify for any sales or use tax exemption. If required in connection with the purchase of any such property from its Vendors, to the extent permitted by applicable law, Contractor agrees to provide its Vendors a resale certificate or applicable affidavit as approved by the State of Florida reflecting the fact that Contractor is purchasing such property for resale to FPL. Contractor agrees to take any other action reasonably necessary to ensure that the purchase of qualifying machinery with respect to the Work is exempt from sales and use tax under Florida (or other applicable) law. To the extent Contractor is required by Applicable Law to collect sales tax from FPL, Contractor shall collect sales tax from FPL on all materials physically incorporated in the Plant that are not subject to exemption unless FPL has elected to provide Contractor with a direct pay certificate issued to FPL by the State of Florida, in which case, FPL shall pay such sales tax directly to the State of Florida. In the event that an assessment for sales and/or use or excise taxes are levied against Contractor, any Subcontractor or Vendor, Contractor shall promptly notify FPL and furnish to FPL a copy of such assessment. In the event that FPL determines that the assessment should be contested and so notifies Contractor in writing, FPL may, at FPL's sole cost and expense, file such documents as are necessary to contest such assessment. FPL shall exclusively control any contest, assessment or other action regarding any such taxes or assessments, or any penalties or interest in respect thereof. In addition to Contractor's other obligations as set forth herein, Contractor shall cooperate with and assist FPL, at FPL's expense, in any contest or proceeding relating to Taxes payable by FPL hereunder.

3.24.2 Exempt Equipment. Some of the machinery, equipment, parts or other items of tangible personal property to be incorporated into the Plant may be exempt from certain taxes (such exempt items, the "Exempt Equipment"). FPL and Contractor will work together to determine which purchases constitute purchases of Exempt Equipment, and Contractor and FPL will take reasonably necessary actions to ensure that such Exempt Equipment qualifies for applicable tax exemptions.

3.25 CLAIMS AND LIENS FOR LABOR AND MATERIALS

If FPL is paying when due all undisputed amounts in accordance with the Contract Documents, Contractor shall, at Contractor's sole expense, discharge and cause to be released, whether by payment or posting of an appropriate surety bond in accordance with Applicable Law, within ten (10) days after receipt of a written demand from FPL, any Lien in respect to the Plant, the Contract Documents, the Equipment, the Job Site or any fixtures or personal property included in the Work (whether or not any such Lien is valid or enforceable) created by, through or under, or as a result of any act or omission (or alleged act or omission) of, Contractor or any Subcontractor, Vendor or other Person providing labor or materials within the scope of Contractor's Work. Notwithstanding the foregoing provision, as long as FPL, in its sole discretion, determines that the Job Site and the improvements thereon will not be subject to any liability, penalty or forfeiture, upon the written request of Contractor, FPL may permit Contractor to contest the validity, enforceability or applicability of any such Lien, in which event FPL shall provide, at no cost to FPL, such cooperation as Contractor may reasonably request in connection therewith.

3.26 SPARE PARTS AVAILABILITY.

3.26.1 *Start-up Spare Parts*. Prior to Mechanical Completion, Contractor shall obtain all spare parts required for Plant start-up and testing. All spare parts not used during Plant start-up and testing shall become the property of FPL, it being understood and agreed that additional photovoltaic panels held by Contractor at the Project Site but not incorporated into the Project shall not be deemed to be spare parts.

3.26.2 *Operating Spare Parts*. At least ten (10) days prior to the Provisional Acceptance Date, Contractor shall provide FPL with each manufacturer's recommended spare parts list for the Equipment, which list shall

include part numbers, recommended quantities, price, mean times to failure, mean times to repair and a description of lead times necessary for orders of such spare parts, in each case to the extent reasonably available to Contractor. Contractor agrees to:

(a) Obtain from each Major Manufacturer an assignable guaranty that such Major Manufacturer will have available for purchase by FPL for a period of *** (***) years after the Provisional Acceptance Date, all spare parts for the Major Equipment supplied by such Major Manufacturer required to keep the Plant in good operating condition, it being understood that some of such parts are not "shelf items" and will have to be manufactured by the Major Manufacturer after it receives an order for them;

(b) Make spare parts (other than spare parts for the Major Equipment) available for purchase by FPL for a period of *** (***) years after the Provisional Acceptance Date to the extent that Contractor is able to obtain them from the manufacturer who supplied them for the Plant as originally built;

(c) Find another source that can supply such spare parts if Contractor is unable to obtain such spare parts from such manufacturer; and

(d) Obtain a firm price for such spare parts reasonably acceptable to FPL for a period of *** (***) years after the Provisional Acceptance Date.

3.26.3 With regard to the spare parts described in paragraph (b) above, upon written notice from FPL at any time prior to the Provisional Acceptance Date, Contractor shall, at FPL's expense but without mark-up or multiplier, purchase and have delivered to the Job Site as soon as possible permanent plant spares. Contractor will pay for and replace such spares if used during start-up and commissioning of the Plant.

3.27 CONTRACTOR'S OBLIGATION TO NOTIFY

Contractor shall keep FPL advised as to the status of the Equipment and Work and shall promptly inform FPL in writing upon the occurrence of any of the following, any:

3.27.1 Occurrence or event that may be expected to impact the schedule for delivery and/or installation of Equipment;

3.27.2 Technical problem not anticipated at the start of the Work or of significant magnitude that may impact the Plant or any component thereof or the Project Schedule;

3.27.3 Defect; and

3.27.4 Material changes to previously submitted information. FPL shall have the right to verify the information provided by Contractor. In connection therewith, Contractor shall identify those items provided to FPL that would enable FPL to verify such information in an expedient manner.

3.28 CONSTRUCTION UTILITIES

Contractor shall be responsible for the cost, supply and availability of electric power and distribution requirements for the performance of the Work at the Job Site for the construction and up to Provisional Acceptance; provided, however, Contractor shall be responsible for the cost of any such items to the extent required in order to reperform any Tests. Contractor shall provide its own telephone, facsimile, radio and other communication facilities at the Job Site as necessary for the performance of the Work. If FPL determines that any Test performed or to be performed by Contractor will result in financial harm to FPL, Contractor will accommodate FPL's reasonable requests to mitigate or alleviate such harm to FPL. In addition, Contractor shall provide, at its sole cost and expense, all chemicals for commissioning, start-up and testing and its own temporary lighting, water and sewer facilities at the Job Site.

3.29 LINES AND GRADES

Contractor shall provide for the proper laying out of the construction Work, for making measurements and for establishing temporary or permanent reference marks in connection with the construction Work and Plant. Contractor shall ensure that all improvements constructed in connection with the Work are constructed within the boundaries of the Property Site as delineated in Appendix P, Legal Description of Property Site,

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and do not encroach on any easements, rights of way or other improvements existing on the Property Site as delineated in Appendix P, Legal Description of Property Site. FPL may at its sole discretion and cost, check the reference marks, lines, grades and measurements so established. Contractor shall carefully preserve all monuments, bench marks and reference points. In case of its destruction thereof, Contractor will be responsible for all damages, costs and expenses related to their replacement and for any mistake or loss of time that may result therefrom. Permanent monuments or bench marks which must be removed or disturbed shall be protected until they can be properly referenced for relocation. Contractor shall furnish materials and assistance for the proper replacement of such monuments or bench marks.

3.30 TEMPORARY STRUCTURES

Temporary structures for offices, quarters, storage and other uses for Contractor, its Subcontractors and Vendors and FPL shall be constructed only in locations approved by FPL. Contractor shall erect temporary walls, bulkheads or fences where required to isolate the construction area from adjacent property in order to increase safety and security and to minimize noise, dust and dirt from affecting the property surrounding the Job Site.

3.31 WEATHERPROOF COVERINGS

Contractor shall provide adequate and sufficient weatherproof and flame resistant coverings for outdoor storage at the Job Site. The cover or sheeting shall be tied down to prevent moisture from damaging the Equipment.

3.32 INTELLECTUAL PROPERTY RIGHTS.

3.32.1 Contractor agrees to grant and hereby grants to FPL an irrevocable, permanent, non-exclusive, royalty-free license to utilize all of Contractor's trade secrets, patents, copyrights, trademarks, proprietary rights or information, licenses and other intellectual property rights (collectively, the "Intellectual Property Rights") and the Intellectual Property Rights of third parties (to the extent of Contractor's rights thereto which can be transferred without violation of obligations owed to such third parties), to the extent now existing or developed primarily for the Project, related to the Work, to the extent reasonably necessary for completion, design, construction, installation, operation, maintenance, repair, or replacement of the Project, or Contractor's expansion, modification, or alteration of the Project (or any subsystem or component thereof designed, specified, or constructed by Contractor under this Agreement).

3.32.2 FPL shall have the right to assign the benefit of such license to any Financing Party in connection with granting a security interest in the Project or any portion thereof, to a purchaser in connection with a transfer of the Project, or to any subsequent purchaser or assignee of same. Any such purchaser or assignee shall acquire such license subject to the same terms and restrictions as stated in this Section 3.32.

3.32.3 Contractor shall, prior to directing any Subcontractor to produce any design or engineering work in connection with the Project, obtain a valid written assignment of all applicable Intellectual Property Rights from such Subcontractor in terms identical to those that obligate Contractor to FPL as expressed in this Section 3.32, which Intellectual Property Rights Contractor hereby assigns to FPL.

3.32.4 Should Contractor or any employee or agent of Contractor make any invention or discovery in connection with performing the Work, such invention or discovery shall be deemed to be the sole and exclusive property of Contractor. To the extent FPL has any right or title thereto or interest therein, FPL hereby assigns (and shall cause the assignment of) all such right and title to, and interest in, any such invention or discovery to Contractor. FPL shall, at Contractor's expense and request, cooperate in pursuing and effecting the transfer to Contractor of all of FPL's right and title to and interest in any such invention or discovery, including, without limitation, executing or causing the execution of assignments and applications, and assign with prosecution and enforcement of rights with respect to any such invention or discovery, including, without limitation, executing patent applications and powers of attorney with respect thereto. ***.

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3.32.5 This Section 3.32, shall survive the expiration or termination of this Agreement.

3.33 EMERGENCIES

In the event of any emergency that endangers or could endanger life or property, Contractor shall take such action as may be reasonable and necessary to prevent, avoid or mitigate injury, damage or loss and shall, as soon as possible, report any such incidents, including Contractor's response and actions with respect thereto, to FPL.

3.34 [INTENTIONALLY DELETED]

3.35 WASTEWATER, POTABLE WATER

Contractor shall supply at its expense all raw, potable and other water at the Job Site as necessary in connection with the installation, start-up and testing of the Plant. Contractor shall dispose of all wastewater in conformance with Applicable Law and Applicable Permits.

3.36 [INTENTIONALLY DELETED]

3.37 START UP PROCESS

Contractor shall perform the Plant start-up in accordance with the process set forth in Appendix A, Scope of Work. Whenever FPL's staffing situation permits, FPL and Contractor shall mutually agree upon and utilize qualified FPL seconded personnel for start-up leadership positions, including the technical start-up manager and key start-up supervision positions; provided, however, Contractor shall remain fully responsible for all acts and omissions of such personnel in connection with the commissioning and operation of the Plant until the Provisional Acceptance Date as if Contractor had independently engaged such personnel, and be responsible for all acts and omissions of such personnel after the Provisional Acceptance Date if such acts or omissions are taken at the direction of Contractor.

3.38 ACCOMMODATIONS REGARDING TESTING

Contractor shall (excluding any action which will affect Contractor's ability to complete the Work within the time required pursuant to this Agreement or increase Contractor's cost to complete the Work) coordinate with FPL the scheduling of any Test, which efforts may include modification of Contractor's planned test program to maximize the value of energy sold. Contractor shall coordinate such Test with the dispatch schedule for the Plant, so as not to interfere with FPL's or its Affiliates' obligations with respect thereto.

3.39 ACCESS

Contractor shall use only the entrance(s) to the Job Site specified by FPL for ingress and egress of all personnel, equipment, vehicles, and materials. Contractor shall perform the Work consistent and in accordance with FPL's ownership, license and easement rights in and to the Job Site.

3.40 NATURE OF OBLIGATIONS

Except as expressly stated to the contrary herein, the Contract Price includes the cost of completion of all the foregoing obligations. Contractor hereby agrees that it shall be ultimately responsible for the performance of all activities, which may be necessary and desirable for the full performance of the Scope of Work, all in accordance with the Contract Documents.

ARTICLE IV.
CERTAIN OBLIGATIONS OF FPL

4.1 PERMITS

FPL shall, with Contractor's reasonable assistance (to be provided at no cost to FPL), timely obtain and maintain, at its own cost and expense, all FPL Permits. In addition, FPL shall execute such applications as Contractor may reasonably request in connection with obtaining any of the Contractor Permits; provided, that FPL shall provide Contractor with such information and documentation, at no cost to FPL, as Contractor shall reasonably request in order to execute such applications. FPL shall deliver to Contractor evidence that the FPL Permits necessary to begin construction of the Plant have been received by FPL or, if any such

required FPL Permit has not actually been issued, that it has been approved for issuance, or in the opinion of FPL, will be approved for issuance.

4.2 INTERCONNECTION FACILITIES

At least thirty (30) days prior to the Provisional Acceptance Date, FPL shall give Contractor reasonable access to the FPL Interconnection Facilities.

4.3 FPL OBLIGATIONS IN SCOPE OF WORK

FPL shall comply with each and every obligation and duty assigned to FPL in the Scope of Work.

4.4 [INTENTIONALLY DELETED]

4.5 ACCESS TO PROPERTY SITE

Subject to Section 3.37, Start Up Process, of Article III, CERTAIN OBLIGATIONS AND RESPONSIBILITIES OF CONTRACTOR, and consistent with the terms of the Applicable Permits and FPL's ownership, license, and easement rights in and to the Job Site, FPL shall make the Job Site reasonably available to Contractor and its Subcontractors and Vendors and assure reasonable rights of ingress and egress to and from the Job Site for Contractor and its Subcontractors and Vendors for performance of the Work; provided, however, that Contractor shall coordinate with FPL regarding: (i) initial entry onto the Job Site or any part thereof; and (ii) contact with the Persons who own property on or near, or have granted license or easement rights in and to, the Job Site. During the period commencing on the Final Acceptance Date and ending at the expiration of the Warranty Period provided in Section 12.1.4(c), FPL shall make the Job Site reasonably available to Contractor for the sole purpose of monitoring FPL's compliance with operation and maintenance manuals and manufacturers' guidelines applicable to the Equipment in connection with Contractor's satisfaction of its warranty obligations under Article 12, Contractor's Warranties.

4.6 [INTENTIONALLY DELETED]

4.7 DESCRIPTION OF PROPERTY SITE

On or before thirty (30) days after the date of the Agreement, FPL shall deliver to Contractor a boundary survey of the Property Site. Contractor may rely on such boundary survey for the sole purpose of establishing the boundaries of the Property Site.

4.8 NOTICE OF FINANCIAL CLOSING

FPL shall give Contractor prompt written notice of the scheduled and actual date of Financial Closing.

4.9 FPL TAXES

FPL shall pay all real property taxes assessed against the Property Site and any permanent use charges (but excluding charges and taxes for utilities and fuel to be supplied by Contractor as required hereunder, which shall be Contractor's responsibility), and, subject to Section 3.24, Contractor Taxes, of Article III, CERTAIN OBLIGATIONS AND RESPONSIBILITIES OF CONTRACTOR FPL, shall be responsible for the payment of, or reimbursement to Contractor of, state or local sales and/or use taxes assessed by the State of Florida (or any city, county or municipality therein) in connection with the purchase of all Equipment, except for such taxes FPL contests in good faith, in each case including any such taxes resulting from a Change In Law (collectively, "FPL Taxes"). In the event that FPL is required to pay additional Taxes, penalties or interest because Contractor failed to follow written instructions of FPL appropriately or to comply with its obligations under Section 3.24, Contractor Taxes, of Article III, CERTAIN OBLIGATIONS AND RESPONSIBILITIES OF CONTRACTOR FPL, Contractor shall be responsible for the cost of such additional Taxes, penalties or interest within thirty (30) days of FPL's request therefor.

4.10 FPL'S COOPERATION

At no additional cost to FPL, FPL shall make reasonable efforts to supply to Contractor, in a timely manner, either directly or indirectly, material information and data that is available to FPL and that is required for the performance of the Work; provided, however, FPL does not warrant the correctness of the information and

documentation provided hereunder. Although FPL may provide or may have provided Contractor with copies of certain studies, reports or other information (including oral statements), Contractor acknowledges and agrees that:

4.10.1 All such documents or information have been or will be provided as background information and as an accommodation to Contractor;

4.10.2 FPL makes no representations or warranties with respect to the accuracy of such documents or the information (including oral statements) or opinions therein contained or expressed; and

4.10.3 It is not relying on FPL for any information, data, inferences, conclusions, or other information with respect to the Job Site (other than the boundary survey referred to in Section 4.7, Description of Property Site), including the surface and subsurface conditions of the Job Site and the surrounding areas.

4.11 FPL'S REPRESENTATIVE

No later than the date of this Agreement, FPL shall designate in writing one or more representatives at the Property Site (at least one of whom shall be at the Job Site during normal business hours) who shall act as the point of contact for both Contractor and the Independent Engineer with respect to the prosecution of the Work, administration of the Contract Documents on behalf of FPL, approval of Contractor's submissions hereunder and inspection of the Work, as reasonably necessary for Contractor's performance of the Work; provided that such representative(s) shall not be authorized to execute or make any amendments to, authorize Change Orders in respect of, or provide waivers under, this Agreement. FPL shall provide Contractor with prior written notice in the event that it designates any additional representatives or removes any existing representatives.

4.12 [INTENTIONALLY DELETED]

4.13 OPERATION AND MAINTENANCE

Subject to Contractor's removal rights set forth in Section 3.22, Training of O&M Personnel, of Article III, CERTAIN OBLIGATIONS AND RESPONSIBILITIES OF CONTRACTOR, FPL shall, commencing fifteen (15) days prior to the anticipated Provisional Acceptance Date (as determined by FPL based on the circumstances existing at the time of determination), provide O&M Personnel with skills and training appropriate for the operation of a photovoltaic solar power plant reasonably required for training by Contractor as provided in accordance with Section 3.22, Training of O&M Personnel, of Article III, CERTAIN OBLIGATIONS AND RESPONSIBILITIES OF CONTRACTOR, and for testing, start-up, operation, commissioning, and maintenance of the Project; provided, however, that Contractor shall remain solely responsible for performing the Work in accordance with this Agreement, including Contractor's obligation to achieve Mechanical Completion and Provisional Acceptance on or before the Guaranteed Provisional Acceptance Date, regardless of any act, omission, failure, non-achievement, negligence or non-performance of such O&M Personnel.

ARTICLE V.
PROJECT SCHEDULE

5.1 COMMENCEMENT OF WORK

Prior to the issuance of the Notice to Proceed, Contractor shall commence and diligently pursue completion of the Work only to the extent provided in a Limited Notice to Proceed issued pursuant to Section 5.2.2.

5.2 NOTICE TO PROCEED

5.2.1 *Commencement Date.* Between two to eight (2-8) weeks before Contractor will construct improvements at, or deliver materials to, the Job Site that may be insured pursuant to a Builder's Risk Policy, Contractor shall deliver in writing to FPL a notice setting forth the Commencement Date.

5.2.2 *Limited Notice to Proceed.* Prior to the issuance of the Notice to Proceed, FPL may issue one or more Limited Notices to Proceed; provided, however, if the Limited Notice to Proceed has not been issued by FPL pursuant to Section 5.2.3 below, on or before August 1, 2008 (the "Latest Limited Notice to Proceed Date"), Contractor shall be entitled to a day-for-day extension of the Guaranteed Provisional Acceptance

Date and all Critical Milestone Dates related thereto for each day after August 1, 2008, that FPL has failed to issue a Limited Notice to Proceed, in each case extension shall be Contractor's sole and exclusive remedy for such failure and Contractor shall not be entitled to claim an FPL Caused Delay with respect to such failure. The date on which FPL provides Contractor with a Limited Notice to Proceed, if at all, pursuant to Section 5.2.3 below, shall be the "Limited Notice to Proceed Date". Any Work described in a Limited Notice to Proceed shall be subject to the terms of this Agreement and Contractor shall commence such portion of the Work after the Limited Notice to Proceed Date set forth therein and thereafter diligently pursue that portion of such Work. Any payment by FPL with respect to such portions of the Work shall be determined and applied to the Contract Price in accordance with Article VII hereof.

5.2.3 *Limitation on Work Prior to Notice to Proceed.* A Limited Notice to Proceed, issued pursuant to this Section 5.2.3, if any, shall authorize Contractor to commence performance of the Work; provided, however, Contractor may not perform any construction activities at the Job Site; and further provided, Contractor shall not enter into any contract, agreement or purchase order (or any obligation or commitment with respect thereto) with a Subcontractor or Vendor without the prior written consent of FPL (which consent may be granted or withheld in FPL's sole discretion).

5.2.4 *Notice to Proceed.* The Business Day after which FPL provides Contractor with the Notice to Proceed shall be the "Notice to Proceed Date"; provided, however, that the Notice to Proceed Date shall not be later than January 1, 2009 (the "Latest Notice to Proceed Date"). On the Notice to Proceed Date, Contractor shall commence and shall thereafter diligently pursue all of the Work assigning to it a priority that should reasonably permit the attainment of Provisional Acceptance on or before the Guaranteed Provisional Acceptance Date. Contractor shall proceed with the performance of the Work in accordance with the Project Schedule.

5.2.5 *Delay in Notice to Proceed.* If a Notice to Proceed has not been issued by the Latest Notice to Proceed Date, and such failure causes an increase in the Contract Price or time required for performance of the Work, then Contractor shall promptly notify FPL thereof in writing and FPL may either (i) issue a Change Order to address such failure in which event the Latest Notice to Proceed Date shall be extended for thirty (30) days and the procedure set forth herein shall be repeated upon the expiration of each additional thirty (30) day period; or (ii) terminate this Agreement pursuant to Section 15.3,and FPL shall only be obligated to pay Contractor an amount equal to any applicable Termination Payment. If this Agreement is terminated pursuant to this Section 5.2.5, then except as set forth in Section 15.3, neither Party shall have any further rights or obligations hereunder (other than such rights and obligations that by the express terms of this Agreement survive the expiration or earlier termination of this Agreement or as otherwise set forth in a Limited Notice to Proceed).

5.3 PROJECT SCHEDULE.

5.3.1 Contractor shall perform the Work in compliance with the Project Schedule, including completing the Work required by the Guaranteed Provisional Acceptance Date and the Final Acceptance Date. Contractor hereby covenants and warrants to FPL that in undertaking to complete the Work in accordance with the terms hereof, Contractor has taken into consideration and made reasonable allowances for hindrances and delays incident to such Work not caused by FPL. Contractor shall provide the reports as required herein, and provide any further information required by FPL as FPL, the Financing Parties or the Independent Engineer may reasonably request to verify actual progress and forecast future progress of the Work. Contractor shall promptly notify FPL in writing of any occurrence that Contractor has reason to believe will adversely affect the completion of the Work by the Guaranteed Provisional Acceptance Date or materially adversely affect completion of the Work in accordance with the Project Schedule. Contractor will specify in said notice the corrective action planned by Contractor to overcome the effect of the delay or potential delay.

5.3.2 Without limiting the obligations of Contractor under Section 5.3.1, above, Contractor shall provide, together with its monthly status reports required hereunder, a project schedule and any updates thereto that provide for the orderly, practicable and expeditious completion of the Work in accordance with the requirements of the Contract Documents. The project schedule and any update shall be presented

electronically on a monthly basis and in such reasonable detail as FPL and the Independent Engineer may require and shall address all material elements of the Work. Additionally, the updated project schedule shall be made available to FPL monthly, and as otherwise reasonably requested by FPL, in MS Project format on a computer located at the Property Site. Contractor shall consult with FPL in connection with each update provided under this paragraph. Notwithstanding anything contained herein to the contrary, in the absence of a Change Order, no update to the project schedule shall in any way amend, alter or otherwise change the Project Schedule or the Guaranteed Provisional Acceptance Date.

5.3.3 *Adequate Assurance*. In the event FPL reasonably believes Contractor's completion of any Critical Milestone set forth in Appendix C, Critical Milestones and Milestones, will not be completed by the date required therein, FPL shall notify Contractor in writing, and Contractor shall, within seven (7) days of receipt of FPL's notice, provide to FPL a written plan detailing the activities or sequence of events Contractor will implement to assure completion of the Critical Milestone by the date required in Appendix C, Critical Milestones and Milestones, and Contractor shall promptly implement such activities and sequence of events. In the event Contractor fails to complete any of the Critical Milestones by the date required in Appendix C, Critical Milestones and Milestones, Contractor shall provide to FPL a written recovery plan that will demonstrate achievement of the Critical Milestone at the earliest possible date to minimize delay of the Project Schedule and Contractor shall promptly implement any such recovery plan. Such recovery plan shall include, without limitation, reasonable evidence of increases in Contractor's work force, increases in the number of shifts, overtime operations, additional days of Work per week, and such other evidence (including Critical Path schedule analysis) as necessary for the timely completion of the Work in accordance with the Contract Documents. Approval by FPL and the Independent Engineer of such plan shall not:

(a) Be deemed in any way to have relieved Contractor of its obligations under this Agreement relating to the failure to achieve Mechanical Completion or Provisional Acceptance by the Guaranteed Provisional Acceptance Date;

(b) Be a basis for an increase in the Contract Price; or

(c) Limit the rights of FPL under Section 11.2, Schedule Liquidated Damages, of Article XI, CONTRACTOR GUARANTEES AND LIQUIDATED DAMAGES.

Further, Contractor acknowledges that the implementation of any such recovery plan may result in material additional costs and expenditures for Contractor (including by way of overtime, additional crews and/or additional shifts). Contractor agrees that it shall not be entitled to a Change Order or any other compensation or increase in the Contract Price in connection with the implementation of any such recovery plan.

5.3.4 No later than fifteen (15) days following the date hereof, Contractor shall prepare and submit to FPL for review and comment a preliminary draft of the Critical Path, in form and content acceptable to FPL. Upon receipt of comment from FPL, Contractor shall either promptly make changes to the Critical Path as suggested by FPL or negotiate and resolve in good faith with FPL such changes. Upon approval of the Critical Path by the Parties, Contractor shall comply with the provisions thereof. Contractor shall provide five (5) copies, as well as an electronic copy, of the Critical Path to FPL. Contractor shall not revise or modify the Critical Path, except pursuant to a Scope Change Order mutually agreed by the Parties.

5.3.5 In no event will Contractor's failure to complete one or more Milestones by the date required for such Milestone change, delay or otherwise affect the required completion date for any other Milestone.

5.4 ACCELERATION OF WORK

In addition to the provisions of Sections 5.3.3, above, relating to delays in the Work, in the event of delay, including any event which causes the prosecution of the Work to fail to conform to the Project Schedule, FPL may, by notice to Contractor, direct that the Work be accelerated by means of overtime, additional crews or additional shifts or resequencing of the Work. If:

(a) Such delay arises from any FPL Caused Delay or Force Majeure Event; or

(b) Contractor provides reasonable evidence to FPL that such delay results from a suspension pursuant to Section 15.4, Suspension by FPL for Convenience, of Article XV, TERMINATION.

then Contractor shall be entitled to reimbursement of increased cost as a result of such acceleration (i.e., premium portion of overtime pay, additional crew, shift or Equipment cost and such other items of incremental cost requested in advance by Contractor and approved by FPL which approval will not be unreasonably withheld) less savings or costs not incurred due to such acceleration, but expressly waives any other compensation therefor. CONTRACTOR SHALL RECEIVE NO SUCH REIMBURSEMENT FOR COSTS ARISING OUT OF, AND CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR ANY COSTS INCURRED BY CONTRACTOR AS A RESULT OF, ACCELERATION RELATED TO ANY EVENT OTHER THAN THE EVENTS SPECIFICALLY DESCRIBED IN THIS SECTION 5.4, PARAGRAPHS (a) AND (b), ABOVE. Contractor shall cause prosecution of the Work to conform to the Project Schedule within thirty (30) days after receiving written notice from FPL to accelerate the Work.

5.5 LIQUIDATED DAMAGES

Nothing contained in this Article shall relieve Contractor of its obligation to pay Schedule Liquidated Damages in the event that Provisional Acceptance is not achieved by the Guaranteed Provisional Acceptance Date.

ARTICLE VI.
CHANGE ORDERS

6.1 CHANGE ORDER AT FPL'S REQUEST.

6.1.1 FPL may at any time, by written notice to Contractor, request an addition to or deletion from or other changes in the Work or schedule therefor (together with any necessary or requested amendments to this Agreement with respect thereto) (hereinafter "Change" or "Changes") by submitting a Request for Change Order in the form attached hereto as Appendix S, Form of Request for Change Order. Contractor shall review and consider such requested Change and shall make a written response thereto within ten (10) days after receiving such request. If Contractor believes that giving effect to any Change requested by FPL will increase or decrease its cost of performing the Work, shorten or lengthen the time needed for completion of the Work, require modification of its warranties in Article XII, CONTRACTOR'S WARRANTIES, or require a modification of any other provisions of the Contract Documents, its response to the Change request shall set forth such changes (including any amendments to the Contract Documents) that Contractor deems necessary as a result of the requested Change and its justification therefor. If Contractor accepts the Changes requested by FPL (together with any amendments to the Contract Documents specified therein) or if the Parties agree upon a modification of such requested Changes, the Parties shall set forth the agreed upon Change in the Work and agreed upon amendments to the Contract Documents, if any, in a written change order signed by all Parties (a "Change Order"). Each Change Order shall constitute a final settlement of all items covered therein, including any compensation for impact on, or delay or acceleration in, performing the Work. If the Parties do not agree upon all terms of the Change Order, Contractor shall proceed with such Work and the dispute shall be resolved in accordance with Article XVII, DISPUTE RESOLUTION; provided that if the Parties are unable to reach agreement on the cost of a requested Change, Contractor shall perform the requested Change in accordance with Section 6.3, Changes to Contract Price, below.

6.1.2 FPL may at any time, by written notice to Contractor, propose Changes in the Work or the Project Schedule due to a Force Majeure Event or an FPL Caused Delay. If there is a material impact that will actually, demonstrably, adversely and materially affect Contractor's ability to complete one or more Critical Milestones by the required date as a result of such Force Majeure Event or an FPL Caused Delay, then the Parties agree to bargain reasonably and in good-faith for the execution of a mutually acceptable Change Order. Force Majeure Events will only entitle Contractor to extensions of the Project Schedule.

6.2 CHANGE ORDERS REQUESTED BY CONTRACTOR.

6.2.1 It is the intent of FPL and Contractor that the Scope of Work attached hereto as Appendix A, Scope of Work, includes all items necessary for the proper execution and completion of the Work. As more particularly described in Section 3.1.3, Contractor's Exclusions, of Article III, CERTAIN OBLIGATIONS AND RESPONSIBILITIES OF CONTRACTOR work not described in the Scope of Work attached hereto as Appendix A, Scope of Work, shall not require a Change Order if such work is consistent with and reasonably inferable from the Scope of Work, so that an engineering, procurement and construction contractor of Contractor's experience and expertise should have anticipated that the work would have been required.

6.2.2 Subject to Section 6.2.3, below, Contractor may at any time, by written notice to FPL, request a Change in the Work (together with any necessary or requested amendments to the Contract Documents) and FPL may accept or reject such request in its sole discretion. If Contractor believes that such requested Change will increase or decrease its cost of performing the Work, lengthen or shorten the time needed for completion of the Work, require modification of its warranties in Article XII, CONTRACTOR'S WARRANTIES, or require a modification of any other provisions of the Contract Documents, it shall notify FPL of such, setting forth its justification for and effect of such changes, within ten (10) days after making a request for a Change. If FPL accepts the Changes requested by Contractor (together with amendments to the Contract Documents specified therein, if any), or if the Parties agree upon a modification of such requested Changes, the Parties shall set forth the agreed upon Change in the Work and agreed upon amendments to the Contract Documents, if any, in a written Change Order signed by all Parties. For the avoidance of doubt, the Parties agree that FPL's representative referred to in Section 4.11 shall not have authority to approve Change Orders. The Parties acknowledge and agree that one or more of the documents and agreements, including agreements with Subcontractors, may not be amended orally or through course of conduct. The Parties hereby express their intention that this Agreement will not be modified orally, through course of conduct or otherwise (regardless of whether any other agreements or documents relating to this Project have been so amended or modified).

6.2.3 Contractor may at any time, by written notice to FPL, propose Changes in the Work or the Critical Milestones due to:

(a) A Force Majeure Event, provided that such Force Majeure Event has an impact that will actually, demonstrably, adversely and materially affect Contractor's ability to complete one or more Critical Milestones by the required dates and further provided that Contractor complies with requirements provided in Article XIV, FORCE MAJEURE EVENT AND FPL CAUSED DELAY, and Section 6.2.2, above;

(b) An FPL Caused Delay, provided that such FPL Caused Delay has a demonstrable material cost increase to Contractor and/or schedule impact that will actually, demonstrably, adversely and materially affect Contractor's ability to complete one or more Critical Milestones by the required dates and further provided that Contractor complies with the requirements set forth in Article XIV, FORCE MAJEURE EVENT AND FPL CAUSED DELAY;

(c) A Change In Law, provided that such Change In Law prevents Contractor from performing all or a portion of the Work, has a demonstrable material cost increase to Contractor and/or has a schedule impact that will actually, demonstrably, adversely and materially affect Contractor's ability to complete one or more Critical Milestones by the required dates, and further provided that Contractor shall diligently make adjustments to minimize the effect of such Change In Law on the Project; or

(d) Certain unforeseeable subsurface conditions but only to the extent provided in Section 3.4.4, Differing Condition, of Article III, CERTAIN OBLIGATIONS AND RESPONSIBILITIES OF CONTRACTOR.

Unless the foregoing conditions are met, Contractor may not request a Change in the Work or Critical Milestones due to a Force Majeure Event, FPL Caused Delay, Change In Law or unforeseeable subsurface conditions.

6.2.4 If FPL agrees that Contractor has met all of the applicable conditions precedent for a requested Change, then the Parties agree to bargain reasonably and in good faith for the execution of a mutually acceptable Change Order. Force Majeure Events will only entitle Contractor to extensions of the Project Schedule. If in such event the Parties are unable to agree on a mutually acceptable Change Order, then the dispute shall be resolved in accordance with Article XVII, DISPUTE RESOLUTION. Any extension permitted under this Section shall be of an equitable duration designed to reflect the delay actually caused by the relevant event despite Contractor's reasonable efforts to mitigate the same.

6.2.5 Intentionally Deleted.

6.2.6 If Contractor knows of circumstances or events that do or may require a Change in the Work or Project Schedule, and Contractor does not provide written notification to FPL of such within fifteen (15) days after the date Contractor knows or should have known (in the exercise of due diligence) of such circumstances or events, then Contractor shall not have any right to request or require any additional consideration or other changes as to cost, schedule, warranty obligations or other provisions hereof, and Contractor shall have waived any claims or offsets against FPL, with respect to any Change Order or any necessary Change in the Work or Project Schedule arising out of such circumstances or events.

6.3 CHANGES TO CONTRACT PRICE; DISPUTES

A Change Order initiated by either Party may have the effect of either increasing or decreasing the Contract Price. Any Contractor response to a Change Order under Section 6.1, Change Order at FPL's Request, above, and any Contractor request for Changes under Section 6.2, Change Orders Requested by Contractor, above, shall be accompanied by a proposed all inclusive final lump sum cost (separating materials and labor) to FPL. ***.

6.4 INFORMATION REQUESTS

FPL may request that Contractor provide written information (prior to the issuance of a request for Changes) regarding the effect of a contemplated Change on pricing, scheduling, warranty obligations or on other terms of the Contract Documents. The purpose of such a request will be to determine whether or not a Change will be implemented. Contractor shall provide the requested information within fourteen (14) days after the receipt of said request. Contractor will be allowed to reasonably delay its response to such request to the extent that fulfilling such request would significantly delay progress on the Work, unless FPL agrees to extend the required completion date for the affected Milestone. Such an information request is not a Change Order and does not authorize Contractor to commence performance of the contemplated change in Scope of Work.

6.5 MINOR CHANGES

FPL shall have the direct authority to issue clarifications and order minor changes in the Work, effected by written order, which do not involve any adjustment to the Contract Price or the Guaranteed Provisional Acceptance Date and do not require Contractor to incur any additional material cost or expense; provided that such clarifications and changes are consistent with the intent of the Contract Documents. Such clarifications and changes shall be binding on FPL and Contractor. Contractor shall carry out such written

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orders promptly and Contractor shall receive no additional compensation therefor, nor shall there be any change to the Contract Documents.

ARTICLE VII.
CONTRACT PRICE; PAYMENTS TO CONTRACTOR

7.1 CONTRACT PRICE

Subject to the following provisions of this Section 7.1, FPL shall pay Contractor the Contract Price, equal to *** Dollars ($***), as full payment for all Work to be performed by Contractor under the Contract Documents. Except as expressly set forth in this Agreement, no amounts in addition to the Contract Price will be payable to Contractor with the exception of sales tax reimbursement, if any, pursuant to Section 4.9, FPL Taxes, of Article IV, CERTAIN OBLIGATIONS OF FPL. FPL shall pay to Contractor the Contract Price in accordance with the Construction and Milestone Payment Schedule, subject to retention as provided in the following sentence. Subject to the terms and conditions of this Agreement, (i) an amount equal to *** percent (***%) of each completion payment set forth in the Construction and Milestone Payment Schedule shall be paid in accordance with the Construction and Milestone Payment Schedule, (ii) *** percent (***%) of the remainder of each completion payment set forth in the Construction and Milestone Payment Schedule (subject to reductions to the Contract Price in accordance with the following paragraph of this Section 7.1 and Section 10.5), except for the final payment due and payable at Final Acceptance, as set forth on the Construction and Milestone Payment Schedule, shall be paid upon Provisional Acceptance and (iii) the remainder of each completion payment set forth in the Construction and Milestone Payment Schedule (subject to reductions to the Contract Price in accordance with the following paragraph of this Section 7.1 and Section 10.5) not previously paid shall be paid upon Final Acceptance. Payments owing by FPL hereunder not paid by the end of the cure period provided for in Section 15.6.1 shall bear interest from the date due until the date paid at a rate per annum equal to ***.

Notwithstanding the foregoing, the Contract Price may be increased as follows:

(a) Contractor shall use good faith efforts to assess the feasibility of, and obtain a recommendation from a structural engineer licensed in the State of Florida to, construct the interior portion of the Plant on driven piers acceptable to FPL, as more particularly described in Section 6.3 of Appendix A, Scope of Work (the "Driven Pier Design") and in the event that the structural engineer determines that the Driven Pier Design is not feasible, Contractor shall provide written notice thereof to FPL and Contractor shall submit, and the Parties shall agree upon, a Change Order to (i) effect the foundation option described in Section 6.3 of Appendix A, Scope of Work and (ii) increase the Contract Price by the additional amount necessary to effect such option, which in no event shall exceed $***.

(b) Upon completion of the procurement and installation of switchgear for the Work provided for in Section 2.3 of Appendix A, Scope of Work and the final determination of the actual cost thereof, Contractor shall submit and the Parties shall agree upon a Change Order to increase the Contract Price by *** percent (***%) of such actual cost, but in no event shall such increase exceed $***.

7.2 REQUESTS FOR PAYMENT

FPL shall pay the relevant portion of the Contract Price as set forth in Section 7.1 within *** (***) days after its receipt of a Request for Payment, provided that Contractor has delivered the Letter of Credit required pursuant to Section 7.5, Letter of Credit, below, and all Lien waivers in accordance with Section 7.6, Liens, below. FPL shall deduct from the amount requested in the applicable Request for Payment the following amounts, if any:

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(a) Schedule Liquidated Damages payable by Contractor;

(b) Amounts withheld pursuant to:

(i) Section 7.3.3, Protect FPL From Loss;

(ii) Section 7.6.1, Satisfaction of Liens, below; and

(c) Reasonable costs incurred by FPL in enforcing:

(i) Section 6.2.2, of Article VI, CHANGE ORDERS;

(ii) Section 14.5, Notice of FPL Caused Delay, of Article XIV, FORCE MAJEURE AND FPL CAUSED DELAY; or

(iii) Any other provision hereof (including attorneys' and other consultants' fees) regardless of whether such provisions expressly provide for withholding or set-off.

7.3 GENERAL PROVISIONS FOR PAYMENTS.

7.3.1 If applicable, any payment by FPL shall be accompanied by a notice to Contractor specifying the amount of each deduction and setting forth the reason(s) why the deduction is justified; provided that FPL's failure to provide any such notice shall not result in a breach hereof or be deemed a waiver of any right to deduct any amount hereunder. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, FAILURE BY FPL TO PAY ANY AMOUNT DISPUTED IN GOOD FAITH UNTIL RESOLUTION OF SUCH DISPUTE IN ACCORDANCE WITH THIS AGREEMENT SHALL NOT ALLEVIATE, DIMINISH, OR MODIFY IN ANY RESPECT CONTRACTOR'S OBLIGATIONS TO PERFORM HEREUNDER, INCLUDING CONTRACTOR'S OBLIGATION TO MEET THE GUARANTEED PROVISIONAL ACCEPTANCE DATE.

7.3.2 Failure or forbearance on the part of FPL in withholding any amounts due under a Request for Payment or invoice shall not be construed as accepting or acquiescing to any disputed claims. In addition, the making of any payment by FPL shall not constitute an admission by it that the Work covered by such payment (or any Work previously performed) is satisfactory or timely performed, and FPL shall have the same right to challenge the satisfactoriness and timeliness of such Work as if it had not made such payment. If, after any such payment has been made, it is subsequently determined by FPL, acting reasonably, that Contractor was not entitled to all or a portion of any such payment, Contractor shall promptly refund all or a portion of such payment to FPL.

7.3.3 *Protect FPL From Loss*. Notwithstanding any other provision to the contrary contained herein, FPL, in addition to its rights set forth in Section 7.5, Letters of Credit, shall have no obligation to make payments to Contractor hereunder and FPL may decide not to certify payment or may nullify the whole or a part of a certification for payment made pursuant to a previous Request for Payment to such extent as may be necessary in FPL's opinion to protect FPL from loss because of:

(a) Defective Work not remedied;

(b) Third party claims filed (including Liens), or reasonable evidence indicating probable filing of such claims;

(c) Failure of Contractor to make payments when due to Subcontractors or Vendors;

(d) Damage to FPL or another contractor, including damage to the property of FPL or any of its Affiliates but only to the extent Contractor may be liable for such damage pursuant to this Agreement;

(e) Contractor's, or any Subcontractor's or Vendor's failure to carry out the Scope of Work in accordance with the Contract Documents;

(f) The occurrence of a Contractor Event of Default;

(g) A good faith determination by FPL that Contractor cannot, with prompt and reasonable acceleration of the Work, achieve Provisional Acceptance before the Guaranteed Provisional Acceptance Date; provided, however, the amount withheld or retained on account of this paragraph, shall not exceed the amount of Schedule Liquidated Damages which would be payable under Section 11.2, Schedule Liquidated Damages, of Article XI, CONTRACTOR GUARANTEES AND LIQUIDATED DAMAGES, on account of the then estimated delay in Provisional Acceptance;

(h) Contractor's failure to deliver a recovery plan acceptable to FPL as set forth in:

(i) Section 5.3.3, Adequate Assurance, of Article V, PROJECT SCHEDULE, or

(ii) the failure of Contractor to cause the prosecution of the Work to conform to any such recovery plan accepted by FPL;

(i) Contractor's failure to deliver any Contractor Deliverable to FPL on or before the date such item is scheduled to be delivered; or

(j) Contractor's failure to remove and replace, or cause any Subcontractor or Vendor to remove and replace, within ten (10) days after receiving notice pursuant to Section 3.11.11, Replacement at FPL's Request, of Article III, CERTAIN OBLIGATIONS AND RESPONSIBILITIES OF CONTRACTOR, any employee of Contractor or such Subcontractor or Vendor who is employed in the Work or the warranty obligations of Contractor or such Subcontractor or Vendor.

Notwithstanding the provisions of Section 15.7, Termination by Contractor Due to FPL Default, of Article XV, TERMINATION, and 17.3, Continuing Obligations and Rights, of Article XVII, DISPUTE RESOLUTION, Contractor shall not have any rights of termination or suspension under such Sections as a result of FPL's exercise or attempted exercise of its rights under this Section 7.3. FPL shall release payments withheld pursuant to this Section 7.3.3 within *** (***) days from the date when Contractor cures all such breaches to the satisfaction of FPL.

7.3.4 Each payment made pursuant to this Article shall be paid directly to Contractor. Such payment shall be wire-transferred to an account or accounts designated by Contractor in its Request for Payment.

7.4 INTENTIONALLY DELETED.

7.5 LETTERS OF CREDIT

Simultaneously with the execution of this Agreement, Contractor shall, at its own expense, cause the LC Issuing Bank to issue and maintain, by renewal or replacement, for the periods specified herein, an irrevocable, unconditional, transferable, standby, revolving letter of credit in favor of FPL meeting the requirements of this Section 7.5, and in form and substance as set forth on Appendix U, Form of Letter of Credit, (the "Letter of Credit") and such Letter of Credit must provide for draws in the United States. The Letter of Credit shall constitute security for Contractor's obligations hereunder. All fees and charges, including, without limitation, issuing, commitment and operation fees and charges, relating to the Letter of Credit shall be borne by Contractor. The Letter of Credit shall comply with and be subject to the following terms and conditions:

7.5.1 Upon issuance, the Letter of Credit shall have a face amount equal to *** Dollars ($***). On the date (the "Initial LC Amount Expiration Date") sixty (60) days after either Contractor satisfies the *** or the Contract Price is reduced, in each case, in accordance with Section 11.4.3,, and thereafter so long as the Letter of Credit is required to be provided hereunder, the face amount shall automatically be reduced to (or the LC Issuing Bank may issue a replacement Letter of Credit with a face amount equal to) *** Dollars ($***); provided, if Contractor elects to cause the LC Issuing Bank to issue a replacement Letter of Credit to FPL, upon receipt of such replacement Letter of Credit by FPL, FPL shall, as promptly as practicable thereafter, mark the replaced Letter of Credit "canceled" and return it to the LC Issuing Bank for cancellation. ***

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***. Thirty (30) days after the later of (a) *** and (b) the date that Contractor has satisfied all warranty obligations related to breaches of warranty for which Contractor was notified prior to *** (such later date, the "Letter of Credit Expiration Date"), FPL shall return the Letter of Credit to the LC Issuing Bank with instructions for cancellation.

7.5.2 FPL shall have the right to draw upon the Letter of Credit by presenting to the LC Issuing Bank a draw certificate pursuant to the Letter of Credit attached hereto as Appendix U, Form of Letter of Credit. FPL may draw upon the Letter of Credit for payment for ***. The Letter of Credit shall allow FPL to immediately draw up to the full amount then available for drawing thereunder in the event of any delay or failure by Contractor to restore the Letter of Credit as so required or if Contractor fails to renew the Letter of Credit within sixty (60) Days prior to the expiration thereof for renewals prior to ***.

7.5.3 LC Issuing Bank. The LC Issuing Bank shall be a commercial bank or trust company organized under the laws of the United States having total assets of at least *** US Dollars ($***) and having:

(a) Credit Ratings of at least "***" by S&P and "***" by Moody's; or

(b) If such entity is rated by either Moody's or S&P, but not both, Credit Ratings of at least "***" by S&P or "***" by Moody's.

7.6 LIENS.

7.6.1 *Satisfaction of Liens*. Provided FPL has paid Contractor as required in this Agreement: (a) within ten (10) days of receiving any notice of any Lien filed by any Subcontractor, or any Person working for, or through, Contractor or any Subcontractor, Contractor shall promptly commence to cause such Lien to be discharged or satisfied by bond or otherwise including, without limitation, by raising valid counterclaims against such Subcontractor; (b) the expense of discharging or satisfying by bond any such Lien shall be paid by Contractor at its sole cost and expense and shall not be a part of the Contract Price payable to Contractor; and.(c) Contractor shall indemnify, defend and hold harmless FPL, its Affiliates and all Persons acting for any of them, from and against any such Lien against the property of FPL (except to the extent of FPL's failure to make any payment in breach of this Agreement). If FPL receives notice of any such Lien, FPL shall provide notice thereof to Contractor. Contractor shall promptly commence all necessary proceedings to discharge or satisfy by bond any such Lien as soon as possible, bearing all the relevant costs thereof. FPL shall have the right to retain and withhold amounts on account of the Contract Price or draw upon the Letter of Credit in an amount sufficient to indemnify FPL against any such Lien until such time as FPL becomes satisfied that such Lien is discharged or satisfied by bond.

7.6.2 As a condition precedent to the making of any payment hereunder, Contractor and each of its Substantial Subcontractors and Substantial Vendors shall provide FPL with a certificate in the form attached hereto as Appendix H, Form of Contractor Certificate for Partial Waiver of Liens, and Appendix H-1, Form of Subcontractor Certificate for Partial Waiver of Liens. Contractor shall provide such certificates simultaneously with each Request for Payment.

7.6.3 Acceptance by Contractor of the final payment shall constitute a release by Contractor of FPL, Affiliates, Financing Parties and every officer and agent thereof from all liens (whether statutory or otherwise and including mechanics' or suppliers' liens), claims and liability hereunder with respect to any Work performed or furnished in connection with this Agreement, or for any act or omission of FPL or of any

*** CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

person relating to or affecting this Agreement, except claims for which Contractor has delivered a dispute notice to FPL. No payment by FPL shall be deemed a waiver by FPL of any obligation of Contractor under this Agreement.

ARTICLE VIII.
TITLE, RISK OF LOSS AND POSSESSION

8.1 **Clear Title**

8.1.1 Contractor warrants and guarantees that legal title to and the ownership of the Work (including, without limitation, all Equipment, patents, licenses, Contractor Deliverables, operation and maintenance manuals and any spare parts purchased by Contractor on behalf of FPL at FPL's request in connection with the construction, operation and maintenance of the Plant) shall pass to FPL, free and clear of any and all Liens, upon Provisional Acceptance.

8.1.2 Notwithstanding anything to the contrary, the costs of unloading and transporting to the Job Site are included in the Contract Price.

8.2 **Risk of Loss**

8.2.1 From the date hereof until the Provisional Acceptance Date, Contractor hereby assumes the risk of loss for the Project and the Work, including:

(a) Any Equipment whether on or off the Job Site;

(b) All other Work completed on or off the Job Site; and

(c) All Work in progress.

8.2.2 All Equipment not yet incorporated into the Plant shall be stored in secured areas. Contractor shall bear the responsibility of preserving, safeguarding, and maintaining such Equipment and any other completed Work and Work in progress (including spare parts provided by FPL). If any loss, damage, theft or destruction occurs to the Work, on or off the Job Site, for which Contractor has so assumed the risk of loss, Contractor shall, at FPL's option and at Contractor's cost, promptly repair or replace the property affected thereby. If FPL elects not to repair or replace the affected property, Contractor shall pay to FPL any proceeds received from the insurance required to be maintained by Contractor pursuant to Section 9.1.8 or 9.1.9 due to such loss, damage, theft or destruction. Risk of loss for the Project and the Work shall pass to FPL (excluding Contractor Equipment and other items to be removed by Contractor, which shall remain the responsibility of Contractor) on the Provisional Acceptance Date. Subject to the foregoing , from and after the date of the transfer of risk of loss, FPL shall assume all risk of physical loss or damage thereto; provided, however, Contractor shall, subject to the provisions of Article XII, Contractor's Warranties, continue to be responsible after Provisional Acceptance Date for claims, physical loss or damage to the Work to the extent resulting from (a) the acts or omissions of Contractor or any Affiliate thereof, any Subcontractor or Vendor, or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable and/or (b) any failure to comply with the requirements of the Contract Documents.

ARTICLE IX.
INSURANCE

9.1 **Contractor Insurance Policies**

Upon execution of the Agreement and continuing through the Final Acceptance Date, Contractor shall, at its sole cost and expense, obtain and maintain and cause its Subcontractors to obtain and maintain in force insurance policies satisfying the requirements of this Article, providing the following coverages of the types and in the amounts as follows (the "Contractor Insurance Policies"):

9.1.1 *Workers' Compensation Insurance*. Workers' Compensation that complies with the laws of the State of Florida and such other jurisdictions as may be applicable to its operations and includes an alternate employer endorsement. The amount of coverage of the insurance policy shall be the statutory amount required by the laws of the State of Florida. Where applicable, coverage shall include protection under the U.S. Longshoreman's and Harbor Worker's Act, Outer Continental Shelf Lands Act and Maritime Law, including the Jones Act and Death on the High Seas Act. Contractor expressly agrees to comply with all provisions of the Workers' Compensation Laws or similar employee benefit laws of the United States, or wherein said Work is to be performed, or of the countries from which its personnel are employed, where required, if applicable.

9.1.2 *Employers' Liability Insurance*. Employers' Liability Insurance including Occupational Disease in the amount of One Million Dollars ($1,000,000).

9.1.3 *Comprehensive or Commercial General Liability Insurance*. Comprehensive or Commercial General Liability insurance shall be on a broad form occurrence basis which shall be in the amount of One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) in the aggregate for this Project including, but not limited to coverage for the following:

(a) Premises and Construction Operations;

(b) Independent Contractors;

(c) Products and Completed Operations, maintained for a period of two (2) years from the Final Acceptance Date;

(d) Explosion, Collapse and Underground Hazards;

(e) Broad Form Contractual Liability Coverage, applicable to damages and indemnities set forth in this Agreement;

(f) Personal Injury Coverage;

(g) Non-Owned Watercraft, if applicable;

(h) Broad Form Property Damage;

(i) Cross Liability coverage or Severability of Interest clause;

(j) Broad Form Named Insured Endorsement; and

(k) Action over coverage.

9.1.4 *Automobile Liability Insurance*. Automobile Liability Insurance, on an occurrence basis including coverage for all owned, leased, hired or non-owned automotive equipment (and containing appropriate no fault insurance provisions or other endorsements as are required under jurisdictional law or requirements), in the amount of One Million Dollars ($1,000,000) per occurrence or the amount required by Applicable Law, whichever is greater.

9.1.5 *Umbrella Excess Liability Insurance*. Umbrella Excess Liability to be provided on a following form basis with coverage as broad as the primary policies in the amount of Twenty Million Dollars ($20,000,000) each occurrence and in the aggregate.

9.1.6 *All Risk Equipment Insurance*. All Risk Equipment Insurance covering all risk of physical damage to equipment owned by Contractor and/or provided for use at the Job Site by Contractor.

9.1.7 *Professional Liability Insurance*. Professional Liability Insurance on a claims made basis with limits of $1,000,000 each occurrence and, at execution of this Agreement, $2,000,000, and upon the Commencement Date, $3,000,000, aggregate for liability arising out of any negligent act, error, mistake or omission resulting from Contractor's engineering, procurement, construction, design, commissioning, start-up and testing services, such coverage to remain in effect for not less than four (4) years following Provisional Acceptance.

9.1.8 *Inland and Marine Cargo Insurance*. Inland and Marine Cargo Insurance, if applicable - replacement value, which coverage may be included as part of the Builder's Risk Policy.

9.2 FORM OF CONTRACTOR INSURANCE POLICIES.

9.2.1 Each Contractor Insurance Policy shall be written on an occurrence basis. Subject to the limits and coverages specified in Section 9.1, Contractor Insurance Policies, and except for Workers' Compensation, Contractor shall name FPL, designated Affiliates of FPL, the Utility, the Financing Parties and any other Person designated by FPL (including their respective officers, directors and employees) as additional insureds on Contractor's liability policies as required to be carried by Contractor by the provisions of Section 9.1, Contractor Insurance Policies, for liabilities of Contractor under the Contract Documents. Each Contractor Insurance Policy shall provide, either in its printed text or by endorsement, that:

(a) It shall be primary with respect to the interest of FPL, designated Affiliates of FPL and the Financing Parties (including their respective officers, directors and employees); and

(b) Any other insurance maintained by FPL, designated Affiliates of FPL or the Financing Parties is in excess and not contributory to Contractor Insurance Policies in all instances regardless of any like insurance coverage that FPL, designated Affiliates of FPL and the Financing Parties may have.

9.2.2 Contractor shall require the issuers of the coverages specified in 9.1, Contractor Insurance Policies, to amend such Contractor Insurance Policies to:

(a) Include a waiver of all rights of subrogation against the Financing Parties, FPL and designated Affiliates of FPL and any other Person designated by FPL and their respective directors, officers and employees;

(b) Contain a severability of interest provision;

(c) Provide that none of the Financing Parties, FPL or designated Affiliates of FPL or their respective directors, officers or employees shall be liable for the payment of premiums under such policy;

(d) Provide that complete copies of all inspection or other reports required or performed for the insurer shall be provided to both FPL and the Financing Parties within thirty (30) days of delivery to Contractor;

(e) Provide that FPL and the Financing Parties must be given at least sixty (60) days' prior written notice of any change in, non-renewal or cancellation of such coverages that are initiated by insurer, except ten (10) days for non-payment of premium, and

(f) Provide that FPL and the Financing Parties must be given at least sixty (60) days' prior written notice of any change in, non-renewal or cancellation of such coverages that are initiated by Contractor, except ten (10) days for non-payment of premium.

9.2.3 Contractor shall be responsible for additional costs associated with modifying inadequate coverage, terms and conditions to meet the requirements of this Agreement. Contractor shall comply with all the conditions stipulated in each of the insurance policies. Contractor shall make no material alteration to the terms of any insurance required herein without the prior written approval of FPL. If an insurer makes (or purports to make) any such alteration, Contractor shall notify FPL immediately. If any such notice is sent from an office outside the United States, it will be sent by international courier. Contractor shall be responsible to insure against risk of loss or damage to any Contractor Equipment and other equipment and tools that will not be incorporated into or become part of the Project.

9.3 QUALIFIED INSURERS

All Contractor Insurance Policies shall be written by insurers reasonably acceptable to FPL and the Financing Parties and that are rated "A-" or higher by A.M. Best's Key Rating Guide, or as may be approved in writing

by FPL and the Financing Parties from time to time (a "Qualified Insurer"). In addition, if required by the Financing Parties, the Qualified Insurer must be able to provide a non-vitiation endorsement.

9.4 CERTIFICATES OF INSURANCE

Contractor shall require all insurers under Contractor Insurance Policies to provide the Financing Parties, FPL and such other interested Persons as may be designated by FPL with certificates of insurance, in form and substance acceptable to the Financing Parties and FPL, evidencing and describing the insurance policies and endorsements maintained hereunder prior to commencement of the Work, or upon issuance of such policies, if earlier, and on each issuance anniversary while such insurance is in effect. The certificates of insurance shall evidence and describe the insurance policies and endorsements, including, without limitation, the requirements for the additional insured and waiver of subrogation as described in Section 9.2, Form of Contractor Insurance Policies. Notwithstanding anything to the contrary contained herein, evidence of such coverage shall be provided to FPL as a condition precedent to Initial Site Mobilization.

9.5 INSPECTION OF CONTRACTOR INSURANCE POLICIES

In respect of all Contractor Insurance Policies, Contractor shall, when so requested by FPL, produce Contractor's policies of insurance and confirmation of premium payment for such policies. If policies have not been secured on a project specific basis, Contractor may delete proprietary information not relevant to Contractor/FPL project prior to transmission.

9.6 SUBCONTRACTORS' INSURANCE

Before permitting any of its Subcontractors to perform any Work at the Job Site, Contractor shall obtain a certificate of insurance from each such Subcontractor evidencing that such Subcontractor has obtained the insurance required of Subcontractors by Contractor and in the case of Substantial Subcontractors, as required by FPL. All policies of Substantial Subcontractors shall include, and Contractor shall use reasonable efforts to require all other Subcontractors to include, a waiver of any right of subrogation of the insurers thereunder against FPL, the Financing Parties and Contractor, and any right of the insurers to set-off or counterclaim, offset or any other deduction, whether by attachment or otherwise, in respect of any liability or any such Person insured under such policy. Policies provided by Substantial Subcontractors and Substantial Vendors shall be in amounts and upon conditions as are customarily and normally provided in the major, grid-connected solar power generation industry.

9.7 REMEDY ON FAILURE TO INSURE

If Contractor shall fail to obtain and keep in force Contractor Insurance Policies, FPL may, without limiting any other remedy it may have, obtain and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and recover from Contractor whether by way of deduction, offset or otherwise the cost of obtaining and maintaining such insurance.

9.8 MANAGEMENT OF INSURANCE POLICIES

Except as directed by FPL, Contractor shall be responsible for managing and administering all Contractor Insurance Policies, including the payment of all deductibles and self-insured retention amounts, the filing of all claims and the taking of all necessary and proper steps to collect any proceeds on behalf of the relevant insured Person. Contractor shall at all times keep FPL informed of the filing and progress of any claim. If Contractor shall fail to perform these responsibilities, FPL may take such action as it determines appropriate under the circumstances. In the event Contractor collects proceeds on behalf of other Persons, it shall ensure that these are paid directly from the insurers to the relevant Person and, in the event that it receives any such proceeds, it shall, unless otherwise directed by FPL, pay such proceed to such Party forthwith and prior thereto, hold the same in trust for the recipient.

9.9 FPL INSURANCE POLICIES

Subject to Section 9.9.3, prior to the Initial Site Mobilization by Contractor and continuing through the Final Acceptance Date, FPL shall obtain and maintain in force with responsible and reputable insurance carriers, subject to usual and customary terms, exclusions and limitations and deductible provisions the following insurance of the types set forth below:

9.9.1 *Workers' Compensation Insurance*. Workers' Compensation covering all of FPL's employees - statutory limit;

9.9.2 *Employers' Liability Insurance*. Employers' Liability covering all of FPL's employees;

9.9.3 *Property Insurance*. After Provisional Acceptance and through the end of all of the Warranty Periods, FPL shall provide property insurance for the Plant and the Property Site in an amount and on terms that FPL deems reasonable.

9.9.4 *All Risk Installation and Builder's Risk Insurance*. No later than the Commencement Date, FPL shall obtain and maintain in force an All Risk Installation and Builder's Risk Insurance Policy (the "Builder's Risk Policy"). The Builder's Risk Policy shall be in an amount at least equal to the maximum foreseeable loss that could reasonably be sustained with respect to the Project or, if such amount is unavailable, such lower amount as may be commercially available at the time FPL procures such policy. A certificate of insurance evidencing the Builder's Risk Policy shall be furnished to the Contractor within thirty days after Contractor notifies FPL in writing that it will construct improvements at, or deliver materials to, the Job Site that may be insured pursuant to a builder's risk policy. Contractor shall be named as an additional insured on any Project-specific Builder's Risk Policy. The Builder's Risk Policy may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines, provided the per occurrence deductible shall not exceed the amounts which are available to FPL on a commercially reasonable basis, as determined by FPL in its sole discretion. The Builder's Risk Policy will be maintained in accordance with terms reasonably available in the insurance market for the construction of major solar electric generating facilities and shall cover physical loss to property at the Job Site which results from a Defect but will not cover the Defect, including the cost to remedy the Defect. FPL shall cause the underwriter of the Builder's Risk Policy to waive all rights of subrogation against Contractor and its Subcontractors for damages covered by the Builder's Risk Policy. If a loss is insured under the Builder's Risk Policy, FPL will prepare and submit to the insurer any claim and proof of loss in accordance with the terms of the Builder's Risk Policy, and Contractor shall provide FPL with such documentation as FPL may reasonably require in connection with the preparation of such claim and proof of loss. FPL shall use commercially reasonable efforts for the benefit of the Parties in pursuing any claim under the Builder's Risk Policy, including, if permitted by the Builder's Risk Policy, pursuit of partial payment for partial proof of loss and payment of undisputed amounts due under the Builder's Risk Policy, provided Contractor acknowledges and agrees that the Builder's Risk Policy may not require such partial payments. FPL shall keep the Contractor reasonably informed of the status of claims negotiations between FPL and the insurer under the Builder's Risk Policy and if Contractor is not satisfied with the progress of such negotiations, it shall have the right to address such dissatisfaction with FPL's management and FPL shall use reasonable efforts to address Contractor's concerns. Notwithstanding the foregoing and subject to FPL's obligation to use commercially reasonable efforts in pursuing claims under the Builder's Risk Policy, any decisions made in the settlement or negotiation of any claim under the Builder's Risk Policy shall be in FPL's sole discretion. Upon availability and reasonable prior notice, Contractor's authorized representative shall be entitled to receive a copy of the Builder's Risk Policy. Contractor is responsible for the deductible under the Builder's Risk Policy; provided, however, Contractor's responsibility therefor shall in no event exceed $500,000 per occurrence.

9.10 FORM OF FPL'S POLICIES

9.10.1 FPL shall provide Contractor with a certificate of insurance evidencing those policies set forth in Section 9.9, FPL Insurance Policies. As it applies to this Agreement, FPL shall provide that the insurance required pursuant to Section 9.9, FPL Insurance Policies, shall, except for Workers' Compensation, name Contractor and its Subcontractors as additional insureds thereunder only as their respective interests may appear but only with respect to Work performed pursuant to the Agreement.

9.10.2 Contractor shall be responsible for the payment of all deductibles for such claims caused, directly or indirectly, through the acts or omissions of Contractor, any Affiliate thereof, any Subcontractor or Vendor, or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable.

9.11 CONTRACTOR'S ASSISTANCE

In the event a loss is sustained under any of FPL's policies, such loss will be adjusted by FPL and/or the Financing Parties with the insurance companies. Contractor will assist FPL and the Financing Parties in the adjustment of losses. In the event a loss is sustained under the Builder's Risk Policy, such loss will be adjusted by Contractor and FPL with the insurance companies. FPL and Contractor agree to waive all rights of recovery against each other, and shall cause their respective underwriters to waive all rights of subrogation, for damages caused by fire and/or other perils to the extent covered and paid for by the Cargo Insurance. Contractor shall cooperate with FPL in obtaining and maintaining the insurance policies of FPL and shall provide all Drawings, Final Plans, certificates and other information that FPL or its insurers may reasonably require. Upon FPL's reasonable request, Contractor shall with all due diligence comply with the conditions of FPL's insurance polices and all reasonable requirements of the insurers in connection with the settlement of claims, the recovery of losses and the prevention of accidents and shall bear at its own cost the consequences of any failure to do so.

9.12 RESPONSIBILITY FOR SAFE DELIVERY OF MATERIALS OF CONTRACTOR

In addition to Section 8.2., Risk of Loss, of Article VIII, RISK OF LOSS AND POSSESSION, Contractor shall comply with all warranty requirements or other requirements set forth in all policies, including transport or marine/inland marine cargo insurance policies.

9.13 NO LIMITATION ON LIABILITY

Nothing in this Article shall be deemed to limit Contractor's liability under the Contract Documents regardless of the insurance coverages required by this Article. Except for the coverage limits of liability for insurance companies set forth in Section 9.1, Contractor Insurance Policies, no limitation of liability provided to Contractor under the Contract Documents is intended nor shall run to the benefit of any insurance company or in any way prejudice, alter, diminish, abridge or reduce, in any respect, the amount of proceeds of insurance otherwise payable to FPL or the Financing Parties under coverage required to be carried by Contractor under the Contract Documents, it being the intent of the Parties that the full amount of insurance coverage bargained for be actually available notwithstanding any limitation of liability contained in the Contract Documents, if any. FPL assumes no responsibility for the solvency of any insurer or the failure of any insurer to settle any claim.

9.14 FPL CONTROLLED INSURANCE PROGRAM

FPL and Contractor agree that FPL may substitute its own Owner's Controlled Insurance Program ("OCIP") for the purpose of providing during the term of the Agreement Worker's Compensation insurance, Commercial General Liability insurance and other insurance requested by FPL that is typically covered by OCIPs. In such event, FPL shall procure and pay the costs for certain insurance coverages on behalf of Contractor and Subcontractors.

ARTICLE X.
SYNCHRONIZATION, TESTS, MECHANICAL COMPLETION, PROVISIONAL ACCEPTANCE AND FINAL ACCEPTANCE

10.1 GENERAL.

10.1.1 All start-up, synchronization, operation and testing conducted by Contractor shall be in accordance with the Contract Documents, applicable manufacturers' instructions and warranty requirements, Applicable Laws, Applicable Standards, Applicable Permits, Prudent Utility Practices and any and all applicable rules as agreed to by FPL and Contractor. Contractor shall provide FPL with at least thirty (30) days' advance written notice of the first Test that involves delivering energy to the Grid. In addition, no Test of the Plant that delivers electrical output shall be conducted unless Contractor gives prior written notice thereof as provided in Section 10.1.2, Test Notice. FPL, Financing Parties, the Utility, the Independent Engineer, all relevant Government Authorities and their respective authorized representatives shall have the right to inspect the Work and to be present during the start-up, synchronization, operation and testing of the Project pursuant to this Article.

10.1.2 Test Notice.

(a) Prior to performing any Test, Contractor shall deliver to FPL a written notice thereof (a "Test Notice") specifying a date for commencement of any or all of the Tests. Contractor shall

coordinate with FPL the scheduling of any Test and FPL shall coordinate such Test with the dispatch schedule for the Plant, so as not to interfere with FPL's or its Affiliates' obligations with respect thereto. Contractor shall deliver a Test Notice at least ten (10) Business Days prior to the commencement of any Test. FPL shall, within five (5) Business Days after its receipt of such Test Notice, deliver to Contractor a written notice:

(i) Accepting such Test Notice; or

(ii) Denying that the prerequisites for performing such Test have been completed and stating the facts upon which such reasonable denial is based.

(b) Upon receipt of notice denying that the prerequisites for performing such Test have been completed, Contractor shall take such action as is appropriate to remedy the conditions described in such notice from FPL. Following any such remedial action, Contractor shall deliver to FPL a new Test Notice conforming to the requirements of this Section 10.1.2, and the provisions of this Section 10.1.2, shall apply with respect to such new Test Notice in the same manner as they applied with respect to the original Test Notice.

(c) The foregoing procedure shall be repeated as often as necessary until FPL no longer rejects the Test Notice; provided, however, if Contractor is required to notify following receipt of FPL's written notice in which FPL denies that the prerequisites for performing a task have been completed, such renotification may be given within five (5) Business Days of such notice by FPL, and FPL shall have three (3) Business Days following the receipt of such resubmitted notice to file written objections as described above. Contractor shall reschedule Tests as requested by FPL to reasonably accommodate the schedules of Persons whom FPL deems necessary to attend the Tests. Contractor shall promptly notify FPL of any proposed change in the schedule of Tests and may not conduct any such test under such proposed changed schedule unless FPL receives reasonable advance notice of the actual date of commencement of such rescheduled test. FPL shall be responsible for notifying the Utility, the Financing Parties and the Independent Engineer for witnessing Tests. Contractor shall reimburse FPL for all additional direct costs reasonably and necessarily incurred by FPL due to Contractor's failure to provide written notice in accordance with this Section 10.2, or due to Contractor's failure to prepare any portion of the Work for inspections or testing after having provided notice to FPL of any such inspection or test.

10.2 SYNCHRONIZATION

Together with the notice of the Scheduled Synchronization Date, Contractor shall provide FPL a start-up and test schedule for the Project and copies of all manufacturers' specifications, schedules of protection schemes, and protection relay settings. Contractor shall promptly give FPL notice of any expected change in the Scheduled Synchronization Date or other information provided with the notice as described above (or any modifications thereto); provided that Contractor shall provide at least ten (10) days prior written notice of the actual synchronization date. Contractor shall perform the synchronization procedures in accordance with the Scope of Work and FPL's direction regarding Utility's requirements. Utility and its authorized representatives shall have the right to be present during the synchronization.

10.3 MECHANICAL COMPLETION

Upon satisfaction of all requirements for Mechanical Completion, Contractor shall provide FPL with a notice of Mechanical Completion. Within three (3) Business Days of receipt of such notice, FPL shall notify Contractor in writing whether or not Contractor has fulfilled the requirements of Mechanical Completion. If Contractor has not fulfilled such requirements for Mechanical Completion, FPL shall specify in such notice to Contractor in reasonable detail the reasons that the requirements for Mechanical Completion have not been met. Contractor shall promptly act to correct such deficiencies so as to achieve Mechanical Completion as soon as possible (and no later than by the applicable date set forth in Appendix C, Critical Milestones and

Milestones, if such date has not already passed). Following any such remedial action, Contractor shall deliver to FPL a new notice of Mechanical Completion and the provisions of this Section 10.3, shall apply with respect to such new Mechanical Completion notice in the same manner as they applied to the original Mechanical Completion notice so long as, if the Guaranteed Provisional Acceptance Date shall have passed, Contractor is paying Schedule Liquidated Damages when due in accordance with Article XI, CONTRACTOR GUARANTEES AND LIQUIDATED DAMAGES.

10.4 PERFORMANCE TESTS

10.4.1 Contractor is responsible for conducting the Tests and any required re-tests for the purposes of determining achievement of the Minimum Performance Level and the Final Acceptance Performance Level. Only after the Project:

(a) Has achieved Mechanical Completion;

(b) Has been synchronized with the Grid in accordance with the Scope of Work and Utility's requirements;

(c) Is capable of being operated safely, normally, reliably and continuously in accordance with the requirements of the Contract Documents at all operating conditions and modes specified in the Scope of Work (although minor portions of the Project not essential to its safe, continuous and reliable operation may remain to be completed); and

(d) Is ready for the Tests to be performed in accordance with the Contract Documents,

(e) shall Contractor conduct the Tests.

10.4.2 Each Test shall be conducted in accordance with the terms of the Contract Documents, including the Scope of Work and Appendix HH, after complying with the notice provisions of Section 10.1.2, Test Notice. If the Project achieves the Minimum Performance Level, Contractor shall, upon satisfaction of the other requirements to Provisional Acceptance, submit a notice of Provisional Acceptance in accordance with Section 10.7, Provisional Acceptance. If the Project fails all or any part of the Tests, including, without limitation, the failure to achieve the Minimum Performance Level, Contractor shall take appropriate corrective action and the Tests shall be performed again. If the Project fails all or any part of the retest, Contractor shall take appropriate corrective action and the Tests shall be repeated. If Contractor fails to achieve the Minimum Performance Level and satisfy all of the other requirements of Provisional Acceptance on or prior to the Guaranteed Provisional Acceptance Date, Contractor shall pay Schedule Liquidated Damages in accordance with Section 11.2, Schedule Liquidated Damages, of Article XI, CONTRACTOR GUARANTEES AND LIQUIDATED DAMAGES. In addition, Contractor shall repeat the Tests in accordance with Section 11.6.1 during the applicable time periods set forth in Section 11.1, Completion Guarantee, of Article XI, CONTRACTOR GUARANTEES AND LIQUIDATED DAMAGES. Contractor shall provide a written report of the results of each Test to FPL.

10.5 PERFORMANCE SHORTFALLS.

10.5.1 Prior to the Guaranteed Provisional Acceptance Date, if the Project has achieved the Minimum Performance Level necessary for Provisional Acceptance, as determined pursuant to Section 11.6, Determination of Performance, of Article XI, CONTRACTOR GUARANTEES AND LIQUIDATED DAMAGES (but not the Final Acceptance Performance Level), and the Project is capable of being operated safely, normally and continuously in accordance with the requirements of the Contract Documents at all operating levels specified in the Scope of Work (although minor portions of the Project not essential to its safe, continuous and reliable operation may remain to be completed), and after complying with the notice provisions of Section 10.1.2, Test Notice, Contractor may conduct the Tests again in accordance with the terms of the Contract Documents, including the Scope of Work, in order to attempt to achieve the Final Acceptance Performance Level. If the Project fails to achieve all or any part of the Final Acceptance Performance Level after the Guaranteed Provisional Acceptance Date, Contractor shall, subject to Contractor's rights set forth in the following sentence, submit a Remedial Plan reasonably acceptable to FPL and take appropriate corrective action and repeat the Tests. If the Project fails all or any part of the

Final Acceptance Performance Level after the Guaranteed Provisional Acceptance Date but all other requirements for Final Acceptance have been met, including the achievement of the Minimum Performance Level, Contractor shall have the option of:

(a) Submitting a Remedial Plan reasonably acceptable to FPL and take appropriate corrective action and repeat the Tests; or

(b) Giving notice to FPL of its declaration of Final Acceptance and reducing the Contract Price based on the results of the last Guaranteed Performance Test performed (and during which the Noise Guarantee was simultaneously satisfied) prior to the issuance of such notice.

If Contractor selects option (b), above, (i) the Contract Price will be reduced to an amount equal to *** and (ii) Contractor shall perform all Remediation Work requested by FPL related to Work not associated with the percentage of the Final Acceptance Performance Level that has been achieved. For example, if 75% of the Final Acceptance Performance Level is achieved, to the extent requested by FPL, Work not associated with achieving such 75% of the Final Acceptance Performance Level (such Work being referred to as the "Non-Accepted Work") shall be removed from the Property Site and the Property Site on which such Non-Accepted Work is located or performed shall be restored to the condition of the Property Site immediately prior to Initial Site Mobilization to the extent requested by FPL.

10.5.2 Notwithstanding the foregoing and subject to the terms and conditions contained herein, Contractor may repeat the Tests until the earliest of the:

(a) Date that is *** (***) days after the Guaranteed Provisional Acceptance Date;

(b) Achievement by Contractor of the Final Acceptance Performance Level; or

(c) Delivery by Contractor to FPL of Contractor's notice of declaration of Final Acceptance and reduction of the Contract Price in accordance with Section 10.5.1.

Contractor shall provide a written report of the results of each Test to FPL. The Minimum Performance Level, the Final Acceptance Performance Level and any other Net Energy Output used to calculate any reduction of Contract Price shall be achieved only while the Plant is operating in compliance with the Noise Guarantee (excluding for this purpose all waivers and variances permitted under Applicable Permits).

10.5.3 If the Final Acceptance Performance Level is not achieved within *** (***) days after the Guaranteed Provisional Acceptance Date and Contractor has not selected option (b) of Section 10.5.1, then the Contract Price will be automatically reduced to an amount equal to the Contract Price multiplied by the Payment Output Percentage, which Payment Output Percentage shall be based on the results of the last Guaranteed Performance Test performed (and during which the Noise Guarantee was simultaneously satisfied) prior to one hundred and eighty (180) days after the Guaranteed Provisional Acceptance Date.

10.5.4 At no time between the Provisional Acceptance Date and Final Acceptance shall the performance of the Project fall below the Minimum Performance Level, for reasons not due to FPL's operation of the Project or a Force Majeure Event.

10.6 PUNCH LIST.

10.6.1 At all times during performance of the Work, Contractor shall maintain a list setting forth parts of the Work which remain to be performed in order to confirm that the Work fully complies with the terms of the Contract Documents. Contractor shall promptly provide a copy of such list to FPL upon request. Contractor shall make such revisions to such list as and when requested by FPL from time to time.

10.6.2 No later than thirty (30) days before the Provisional Acceptance Date, Contractor shall prepare and submit to FPL a comprehensive list (the "Punch List") of items to be completed for the Project to reach Final Acceptance. The Punch List shall not include any item that affects the safety, reliability or operability of the Equipment, the Plant or any portion thereof or requires a shut-down or reduced operation of the

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Equipment, the Project or any portion thereof to be completed. Contractor shall make such revisions to the Punch List as and when reasonably requested by FPL from time to time.

10.6.3 The Parties agree that with respect to Punch List items that remain uncompleted and which are preventing Final Acceptance, it may be more expedient for FPL to complete such Punch List items, at its election and option. If the Parties are able to agree upon the commercial value of all items on the Punch List, and FPL so elects, at its sole discretion, FPL may, in lieu of requiring Contractor to complete any item on the Punch List, require Contractor to pay to FPL an amount equal to *** percent (***%) of the commercial value of such Punch List item as reasonably determined by FPL. FPL shall have the right to offset such amount owed by Contractor against any amounts owed by FPL to Contractor at Final Acceptance, or otherwise under the Contract Documents.

10.7 PROVISIONAL ACCEPTANCE.

10.7.1 After completing the Tests in accordance with Section 10.4, Tests, and Contractor determines that all of the requirements for Provisional Acceptance have been completed, Contractor shall provide written notice thereof to FPL.

10.7.2 Within three (3) Business Days following receipt by FPL of such notice of Provisional Acceptance, FPL shall notify Contractor in writing whether or not Contractor has fulfilled the requirements of Provisional Acceptance. If Contractor has fulfilled the requirements of Provisional Acceptance, FPL shall notify Contractor that it has achieved Provisional Acceptance. If Contractor has not fulfilled such requirements for Provisional Acceptance, FPL shall specify in such notice to Contractor in reasonable detail the reasons for determining that the requirements for Provisional Acceptance have not been met. Contractor shall promptly act to correct such deficiencies so as to achieve Provisional Acceptance as soon as possible (and no later than by the Guaranteed Provisional Acceptance Date if such date has not already passed). Following any such remedial action, Contractor shall deliver to FPL a new notice of Provisional Acceptance and the provisions of this Section 10.7.2, shall apply with respect to such new Provisional Acceptance notice in the same manner as they applied to the original Provisional Acceptance notice. The foregoing procedure shall be repeated as often as necessary, so long as Contractor is paying when due Schedule Liquidated Damages (if applicable), until acceptance by FPL of Contractor's Provisional Acceptance notice and delivery by FPL of its own notice to Contractor that Provisional Acceptance has been achieved. The date on which Provisional Acceptance is achieved by Contractor shall be the "Provisional Acceptance Date."

10.8 FINAL ACCEPTANCE OF THE PLANT

After achieving Provisional Acceptance in accordance with Section 10.7, Provisional Acceptance, when Contractor determines that all of the requirements for Final Acceptance have been completed (other than execution of the Final Acceptance Certificate by FPL), or when Contractor has elected to or is required to declare Final Acceptance pursuant to Section 10.5, Performance Shortfalls, Contractor shall submit a proposed Final Acceptance Certificate, in substantially the form attached hereto as Appendix G, Form of Final Acceptance Certificate, to FPL. As soon thereafter as reasonably practicable, a team consisting of representatives of FPL, the Financing Parties, the Independent Engineer and Contractor shall make a final inspection of the Plant. Within ten (10) Business Days following such final inspection, FPL, with the consent of the Financing Parties, if applicable, shall notify Contractor in writing whether Contractor has fulfilled the requirements of the Contract Documents to reach Final Acceptance (other than execution of the Final Acceptance Certificate by FPL). If such requirements have been fulfilled, FPL will execute the proposed Final Acceptance Certificate. If the requirements for Final Acceptance have not been fulfilled, then FPL shall deliver a written notice to such effect to Contractor describing in reasonable detail the deficiencies noted and corrective action recommended, including projected target dates for the completion of such incomplete or remedial Work. Contractor shall promptly act to correct any such deficiencies. The procedure set forth in this Section 10.8, shall be repeated as necessary, until the earlier of: (i) the date on which Contractor has fulfilled the requirements for the issuance of the Final Acceptance Certificate and FPL executes such certificate; or (ii) termination of this Agreement.

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10.9 CHANGES IN GUARANTEED DATES

Except as otherwise set forth herein, no action by FPL or Contractor (unless FPL specifically agrees to the contrary) required or permitted under this Article shall affect the Guaranteed Provisional Acceptance Date or any other scheduled date described or defined under the terms of the Project Schedule or other Contract Document.

10.10 REVENUES

Any revenues generated by the Project during the performance of any start-up, synchronization, operation and testing or otherwise shall be paid to and for the benefit of FPL.

ARTICLE XI.
CONTRACTOR GUARANTEES AND LIQUIDATED DAMAGES

11.1 COMPLETION GUARANTEE.

11.1.1 Contractor hereby guarantees that Provisional Acceptance will occur no later than the Guaranteed Provisional Acceptance Date and that Final Acceptance will occur no later than *** (subject to delay for Force Majeure Events or FPL Caused Delay).

11.1.2 Subject to FPL's other rights as set forth in this Agreement and subject to the provisions of this Section 11.1, in the event that Provisional Acceptance occurs after the Guaranteed Provisional Acceptance Date, Contractor shall pay and FPL shall accept as its sole remedy for each and every day of such delay after the Guaranteed Provisional Acceptance Date the Schedule Liquidated Damages described in Section 11.2, Schedule Liquidated Damages.

11.1.3 If and in the event Contractor fails to achieve Provisional Acceptance within *** (other than as a result of FPL Caused Delay or a Force Majeure Event), then:

(a) Contractor shall be considered in default, and this Agreement may, at FPL's sole and exclusive discretion, be terminated in accordance with Article XV, TERMINATION; and

(b) Contractor shall continue to pay the Schedule Liquidated Damages described in Section 11.2, Schedule Liquidated Damages, until the exhaustion of the aggregate amount of liquidated damages, payable by Contractor hereunder in accordance with Section 11.5.3, Aggregate Liquidated Damages.

11.2 SCHEDULE LIQUIDATED DAMAGES.

11.2.1 FPL and Contractor acknowledge and agree that any failure to achieve Provisional Acceptance for the Project by the Guaranteed Provisional Acceptance Date or any failure of the Project, between the Provisional Acceptance Date and Final Acceptance, to operate at or above the Minimum Performance Level will directly cause substantial damage to FPL, which damage cannot be ascertained with reasonable certainty. Accordingly, if Contractor shall fail to achieve Provisional Acceptance for the Project by the Guaranteed Provisional Acceptance Date, or if at any time between the Provisional Acceptance Date and Final Acceptance the performance of the Project falls below the Minimum Performance Level (other than as a result of FPL's improper operation of the Project, FPL Caused Delay or a Force Majeure Event), subject to Section 11.5.3, Aggregate Liquidated Damages, it shall pay to FPL, as liquidated and agreed damages and not as a penalty, an amount (collectively, the "Schedule Liquidated Damages") equal to $*** for each Day that:

(a) Provisional Acceptance is delayed beyond the Guaranteed Provisional Acceptance Date, commencing with the first Day following the Guaranteed Provisional Acceptance Date; and

(b) Performance of the Project falls below Minimum Performance Level between the Provisional Acceptance Date and Final Acceptance (other than as a result of FPL's improper operation of the Project, FPL Caused Delay or a Force Majeure Event).

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11.2.2 It is understood and agreed between the Parties that the terms, conditions and amounts fixed pursuant to this Article as Schedule Liquidated Damages are reasonable, considering the damages that FPL would sustain, and that these amounts are agreed upon and fixed as liquidated damages because of the difficulty of ascertaining the exact amount of damages that would be sustained by FPL. Payment of Schedule Liquidated Damages are the exclusive remedies for delays if and in the event the Project ultimately achieves Provisional Acceptance before the aggregate amount of liquidated damages is exhausted. Further, subject to the last sentence of this paragraph and provided Contractor:

(a) Has not otherwise materially breached the Agreement; and

(b) Is paying the assessed Schedule Liquidated Damages,

the failure to achieve Provisional Acceptance by the applicable Guaranteed Provisional Acceptance Date shall not be considered an event of default under the Contract Documents.

Notwithstanding anything contained herein to the contrary, in the event that Contractor has not achieved Provisional Acceptance but has reached its maximum liability hereunder for payment of liquidated damages in accordance with Section 11.5.3, Aggregate Liquidated Damages, Contractor shall be considered in default, and this Agreement may, at FPL's sole and exclusive discretion, be terminated in accordance with Article XV, TERMINATION.

11.2.3 Although Schedule Liquidated Damages are FPL's sole and exclusive remedy and Contractor's sole and exclusive obligation for Contractor's delay in achieving Provisional Acceptance, such exclusivity shall in no event affect FPL's rights and remedies set forth in Article XV Article XV, TERMINATION.

11.2.4 Notwithstanding anything herein to the contrary, if Contractor selects option (b) of Section 10.5.1 as and when applicable, no additional Schedule Liquidated Damages shall accrue thereafter.

11.3 FINAL ACCEPTANCE PERFORMANCE LEVEL; GUARANTEED PERFORMANCE LEVEL.

Contractor guarantees to FPL that the peak Net Energy Output of the Plant during the period from the Provisional Acceptance Date to the Final Acceptance Date will be equal to or greater than the Expected Energy Output (which for purposes of clarity is based on a 25,000 kW net AC capacity at Guarantee Design Conditions) (the "Net Energy Output Guarantee"); provided, however, that (i) for purposes of satisfaction of clause (c)(i) of the definition of "Final Acceptance", Net Energy Output shall be equal to or greater than the Final Acceptance Performance Level; (ii) in the event that Contractor makes the election provided for in Section 10.5.1(b), "Net Energy Output Guarantee" shall thereafter be deemed to equal the peak Net Energy Output of the Plant as determined by the Final Acceptance Performance Level that has been achieved by the last Guaranteed Performance Test performed (and during which the Noise Guarantee was simultaneously satisfied) when corrected to the Guarantee Design Conditions contained in the Scope of Work; and (iii) ***.

11.4 ***.

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11.5 PAYMENT OF LIQUIDATED DAMAGES.

11.5.1 Schedule Liquidated Damages, if any, under this Article shall accrue on a daily basis for each Day (or portion thereof) of delay. Contractor shall pay any Schedule Liquidated Damages pursuant to this Article within seven (7) Days after receipt of demand therefor.

11.5.2 Except as provided in Section 11.5.3, Aggregate Liquidated Damages, Contractor's obligation to pay Schedule Liquidated Damages when and as provided in this Article is an absolute and unconditional obligation, and shall not be released, discharged, diminished, or in any way affected by:

(a) Any default by FPL in the performance or observance of any of its obligations hereunder, provided that FPL has paid all undisputed amounts due to Contractor hereunder;

(b) The assignment by FPL of the Contract Documents to the Financing Parties or any other Person; or

(c) Any other circumstances, happening, condition or event.

(d) Contractor shall pay such liquidated damages without deduction, set-off, reduction or counterclaim.

11.5.3 *Aggregate Liquidated Damages*. Notwithstanding anything contained herein to the contrary, the aggregate amount of Schedule Liquidated Damages payable by Contractor hereunder shall not exceed *** percent (***%) of the Contract Price.

11.5.4 FPL shall have the right to offset any amounts owing to FPL under this Article against amounts owing to Contractor under this Agreement and to exercise its rights against any security provided by or for the

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benefit of Contractor, in such order as FPL may elect in its sole discretion. In addition, FPL, in its sole discretion, may collect Schedule Liquidated Damages by drawing on the Letter of Credit if not timely paid by Contractor.

11.6 DETERMINATION OF PERFORMANCE.

11.6.1 Contractor's compliance with the Minimum Performance Level for purposes of achieving Provisional Acceptance shall be determined on the basis of the Tests conducted in accordance with Article X, SYNCHRONIZATION, TESTS, MECHANICAL COMPLETION, PROVISIONAL ACCEPTANCE AND FINAL ACCEPTANCE, and Appendix HH, and the results of such Tests shall be conclusive for such purpose. The Net Energy Output of the Plant shall be determined pursuant to the Guaranteed Performance Test and shall be measured while the Plant is operating in compliance with the Noise Guarantee (excluding for this purpose all waivers and variances permitted under Applicable Permits).

11.6.2 Contractor's compliance with the Minimum Performance Level and the Guaranteed Performance Level, or the extent of its failure to comply therewith, for purposes of achieving Final Acceptance shall be determined on the basis of the Tests conducted in accordance with Article X, SYNCHRONIZATION, TESTS, MECHANICAL COMPLETION, PROVISIONAL ACCEPTANCE AND FINAL ACCEPTANCE, and Appendix HH, and the results of such tests shall be conclusive for such purpose. The Net Energy Output of the Plant shall be determined pursuant to the Guaranteed Performance Test and shall be measured while the Plant is operating in compliance with the Noise Guarantee (excluding for this purpose all waivers and variances permitted under Applicable Permits).

11.7 ABSOLUTE OBLIGATIONS

The Parties understand and agree that Contractor's obligation to achieve the Minimum Performance Level simultaneously with achievement of the Noise Guarantee, is an absolute obligation, which must be achieved. Notwithstanding anything contained herein to the contrary, after the Project has achieved Provisional Acceptance and during the time period prior to Final Acceptance, the Project shall be capable of being operated in accordance with all of the Plant's operating procedures and all Applicable Laws, Applicable Permits and the other requirements of the Contract Documents, and all operating conditions specified in the Scope of Work, excluding for this purpose all waivers and variances permitted under Applicable Permits. The obligations set forth in this Section 11.7 are absolute obligations of Contractor regardless of the amounts and expenses required to be incurred by Contractor to satisfy such obligation, and notwithstanding that such amounts may exceed the Contract Price.

11.8 ***

ARTICLE XII.
CONTRACTOR'S WARRANTIES

12.1 WARRANTIES.

12.1.1 Contractor warrants to FPL that all Equipment shall:

(a) Be new and of good quality;

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(b) Be free from improper workmanship and Defects;

(c) Comply with all applicable requirements of all Applicable Laws and all Applicable Permits; and

(d) Be fit for FPL's use in and as a photovoltaic solar power generation facility.

Contractor's warranty above expressly excludes (i) photovoltaic modules that have been subjected to misuse, abuse, neglect, alteration, improper application or removal by any party other than Contractor, (ii) cosmetic defects stemming from normal wear and tear of photovoltaic module materials, and (iii) Defects caused by FPL's failure to comply with the operation and maintenance manuals and manufacturers' guidelines applicable to the Equipment.

12.1.2 Contractor warrants to FPL that the Work will be performed in a good and workmanlike manner, and that the Plant will:

(a) Conform to and be designed, engineered and constructed in accordance with the Drawings, Scope of Work, all Applicable Laws and Applicable Permits, Prudent Utility Practices and other requirements of the Contract Documents;

(b) Conform with, and be designed and engineered according to professional standards and skill, expertise and diligence of design professionals regularly involved in major solar power projects similar to the Project; and

(c) Contain the Equipment, supplies and materials described in the Scope of Work.

Contractor's warranty above expressly excludes (i) photovoltaic modules that have been subjected to misuse, abuse, neglect, alteration, improper application or removal by any party other than Contractor, (ii) cosmetic defects stemming from normal wear and tear of photovoltaic module materials, and (iii) Defects caused by FPL's failure to comply with the operation and maintenance manuals and manufacturers' guidelines applicable to the Equipment.

12.1.3 Contractor warrants to FPL that: ***

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All of the foregoing warranties provided for in this Section 12.1.3 expressly exclude (i) photovoltaic modules that have been subjected to misuse, abuse, neglect, alteration, improper application or removal by any party other than Contractor and (ii) Defects caused by FPL's failure to comply with the operation and maintenance manuals and manufacturers' guidelines applicable to the Equipment. Furthermore, the warranty provided for in clause (b) of this Section 12.1.3 shall also expressly exclude cosmetic defects stemming from normal wear and tear of photovoltaic module materials.

12.1.4 *Warranty Period*. Except as expressly stated herein to the contrary, Contractor warrants that it shall remedy, in accordance with Section 12.2, Repair of Nonconforming Work, any Defects or breaches of warranty which appear prior to the expiration of: (a) *** with respect to the warranties set forth in Sections 12.1.1 and 12.1.2, as such period may be extended in accordance with the terms hereof (the "Initial Warranty Period"), (b) the period commencing on the Final Acceptance Date and ending on *** (the "Plant Warranty Period") with respect to the warranties set forth in Section 12.1.3(a) and (c) the period commencing on *** and ending on *** (the "Module Warranty Period") with respect to the warranties set forth in Section 12.1.3(b) (each of the Initial Warranty Period, the Plant Warranty Period and the Module Warranty Period, a "Warranty Period", and collectively, the "Warranty Periods").

The provisions of this Section apply to Work performed by Subcontractors and Vendors as well as Work performed directly by Contractor. If and in the event FPL notifies Contractor of a Defect or breach of warranty, as applicable, within the given Warranty Period, Contractor, at Contractor's expense, shall immediately respond to the notification and commence all Work with due diligence to remedy the Defect or breach of warranty. The repair or replacement Work performed by Contractor to accomplish to remedy a Defect or breach of warranty set forth in Sections 12.1.1 and 12.1.2 shall be subject to (a) ***. Contractor's obligations to remedy any Defects or breaches of

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warranty, as applicable, surfacing after the given Warranty Period shall be limited to the proceeds, if any, of any applicable insurance policy. Contractor agrees to reasonably cooperate with FPL to effect the collection of any such insurance proceeds.

12.1.5 ***

12.1.6 If, prior to or during the given Warranty Period for any warranty provided hereunder (as the same may be extended hereunder), *** percent (***%) or more of any type of component of the Work fails (for purposes hereof, a component shall be deemed to have failed if it contains a Defect or is in breach of other warranty set forth in Section 12.1, WARRANTIES, as applicable), then Contractor shall perform or cause to be performed a root-cause analysis with respect to such extensive component failure and, unless Contractor proves to FPL's sole satisfaction that the failure is not due to a design fault in such component, such component or components shall be re-designed and retrofitted for the Plant, subject fully in each case to the warranties set forth in Section 12.1, WARRANTIES, for a period of *** (***) months beginning on each date of the completion of the re-installation of such new component. If Contractor proves to FPL's sole satisfaction that the failure is not due to a design fault in such component, then the given Warranty Period applicable for all such component or components in the Plant shall be automatically extended for (a) an additional *** (***) months commencing on the date, in the case of each such component, when the failure occurred that caused the percentage of failures of components of that type to equal or exceed *** percent (***%) if such failure occurred at any time prior to *** and or (b) an additional *** (***) months commencing on the date, in the case of each such component, when the failure occurred that caused the percentage of failures of components of that type to equal or exceed *** percent (***%) if such failure occurred at any time on or after ***.

12.1.7 THE WARRANTIES OF CONTRACTOR SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING AND USAGE OF TRADE). The foregoing sentence is not intended to disclaim any other obligations of Contractor set forth herein.

12.2 Repair of Nonconforming Work.

12.2.1 If, during the given Warranty Period for any warranty provided hereunder, the Work or the Plant is found to contain Defects or Contractor is otherwise in breach of any of the warranties set forth in Section 12.1, Warranties, as applicable, Contractor shall at its expense correct, repair or replace such Defect or otherwise cure such breach as promptly as practicable upon being given notice thereof. FPL shall provide Contractor with reasonable access to the Plant in order to perform its obligation under this Article and the Parties shall schedule such corrections or replacements as necessary so as to minimize disruptions to the operation of the Plant. Contractor shall bear all costs and expenses associated with correcting any Defect or breach of warranty, including, without limitation, necessary disassembly, transportation, reassembly and retesting, as well as reworking, repair or replacement of such Work, disassembly and reassembly of piping, ducts, machinery, Equipment or other Work as necessary to give access to improper, defective or non-conforming Work and correction, removal or repair of any damage to other work or property that arises from the Defect or breach of warranty. If Contractor is obligated to repair, replace or renew any Equipment, item or portion of the Work hereunder, Contractor will undertake a technical analysis of the problem and correct the "root cause" unless Contractor can demonstrate to FPL's reasonable satisfaction that there is not a risk of the reoccurrence of such problem. Contractor's obligations under this Section shall not be impaired or otherwise adversely affected by any actual or possible legal obligation or duty of any Vendor or Subcontractor to Contractor or FPL concerning any Defect or breach of warranty. No such correction or cure, as the case may be, shall be considered complete until FPL shall have reviewed and accepted such remedial Work.

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12.2.2 If Contractor fails to commence to complete the correction of any Defect or cure of any breach of warranty as required herein within five (5) days after receipt of notice from FPL to perform such obligations or thereafter fails to diligently continue to complete such corrections or cure, then FPL may correct (or cause to be corrected) such Defect or cure (or cause to be cured) such breach of warranty and Contractor shall be liable for all reasonable costs, charges, and expenses incurred by FPL in connection therewith (including attorneys' and other consultants' fees), and Contractor shall, within fifteen (15) days after request therefor, pay to FPL an amount equal to such costs, charges, and expenses. Any such request by FPL shall be accompanied by proper documentation evidencing such costs, charges and expenses. Such correction of a Defect or cure of a breach of warranty by FPL (or caused by FPL) shall be deemed performed by Contractor and the Warranty Period applicable thereto for such corrected or cured Work shall be extended in accordance with Section 12.1.4.

12.2.3 If, during the a given Warranty Period, Contractor shall change, repair or replace any Major Equipment item or component, FPL, in its reasonable discretion, may require Contractor to conduct and satisfactorily complete any test required by FPL with respect to the affected Equipment; provided, however, in connection with any performance of a test pursuant to this Section 12.2.3, appropriate allowance with respect to the performance of such Equipment shall be made for the fact that such Equipment may have operated prior thereto. If after running such test pursuant to this Section, the results indicate a degradation in the performance of the Project (as measured against the test results used to satisfy the requirements of Section 12.1.3) or the Project fails to satisfy any other Test, then Contractor shall repair, correct or replace such affected Equipment and re-run such test until the Project performs at a level consistent with the performance of the Project immediately prior to the change, repair or replacement of such Equipment.

12.3 PROPRIETARY RIGHTS

Without limiting any of the provisions of this Agreement, if FPL or Contractor is prevented from completing the Plant, the Work or any part thereof, or from the use, operation, or enjoyment of the Plant, the Work or any part thereof as a result of a claim, action or proceeding by any Person for unauthorized disclosure, use, infringement or misappropriation of any Intellectual Property Right arising from Contractor's performance (or that of its Subcontractors or Vendors) under the Contract Documents, including, without limitation, the Work, Equipment, the Contractor Deliverables or other items and services provided by Contractor or any Subcontractor or Vendor hereunder, Contractor shall promptly, but in no event later than thirty (30) days from the date of any action or proceeding, take all actions necessary to remove such impediment, including:

12.3.1 Secure termination of the injunction and procure for FPL or its Affiliates or assigns, as applicable, the right to use such materials, Equipment or Contractor Deliverables in connection with the operation and maintenance of the Project, without obligation or liability; or

12.3.2 Replace such materials, Equipment or Contractor Deliverables, with a non-infringing equivalent, or modify same to become non-infringing,

All at Contractor's sole expense, but subject to all the requirements of the Contract Documents.

12.4 REPAIRS AND TESTING BY FPL.

12.4.1 During the Warranty Period, without prior notice to Contractor and without affecting the warranties of Contractor hereunder, FPL shall be permitted to:

(a) Make repairs or replacements on Equipment so long as the repair or replacement involves the correct installation of spare parts and is otherwise conducted in accordance with the operation and maintenance manuals, the manufacturer specifications and the Procedures Manual; and

(b) Adjust or test Equipment as outlined in the instruction manuals provided by Contractor or any Subcontractor or Vendor.

12.4.2 In the event of an emergency and if, in the reasonable judgment of FPL, the delay that would result from giving notice to Contractor could cause serious loss or damage which could be prevented by immediate action, any action (including correction of Defects) may be taken by FPL or a third party chosen by FPL, without giving prior notice to Contractor, and in the case of a Defect, the reasonable cost of correction shall

be paid by Contractor. In the event such action is taken by FPL, Contractor shall be promptly notified within five (5) Business Days after correction efforts are implemented, and shall assist whenever and wherever possible in making the necessary corrections.

12.5 VENDORS AND SUBCONTRACTORS

Contractor shall, for the protection of Contractor and FPL, obtain from the Vendors and Subcontractors such guarantees and warranties with respect to Work performed and Equipment supplied, used and installed hereunder as are reasonably obtainable, which guarantees and warranties shall equal or exceed those set forth in Section 12.1, Warranties, and shall be made available and assignable to FPL and the Financing Parties to the full extent of the terms thereof upon the expiration of Contractor's warranty hereunder. FPL shall be an express third party beneficiary of all such guarantees and warranties. All such warranties obtained shall be in addition to, and shall not alter the warranties of, Contractor. Upon FPL's request, Contractor shall use all reasonable efforts to force Subcontractors to honor warranties including, but not limited to, filing suit to enforce same. To the extent available, FPL shall have the right to require Contractor to secure additional warranty or extended guarantee protection pursuant to a Change Order issued in accordance with the provisions of Article VI, CHANGE ORDERS. Upon the earlier of the Provisional Acceptance Date or termination of this Agreement, Contractor shall deliver to FPL copies of all relevant contracts providing for such guarantees and warranties.

12.6 ASSIGNMENT OF WARRANTIES

Upon the expiration of all of the Warranty Periods or termination of this Agreement, Contractor shall assign to FPL all warranties received by it from Subcontractors and Vendors or otherwise obtained under Section 12.5, Vendors and Subcontractors (or the Plant or Work in the event of termination of this Agreement). Such assignment of warranties to FPL must also allow FPL to further assign such warranties. However, in the event that FPL makes any warranty claim against Contractor with respect to Equipment or services supplied in whole or in part by any Subcontractor or Vendor, and Contractor fulfills its obligations with respect to such claim by FPL, Contractor shall be entitled to enforce for its own benefit any warranty given by such Subcontractor or Vendor with respect to such Equipment and services.

12.7 SURVIVAL OF WARRANTIES

The provisions of this Article shall survive the expiration or termination of this Agreement.

ARTICLE XIII.
REPRESENTATIONS

13.1 REPRESENTATIONS AND WARRANTIES.

13.1.1 Contractor represents and warrants to FPL that:

(a) Contractor is a corporation, duly organized, validly existing, and in good standing under the laws of the State of Delaware and is duly authorized and qualified to conduct business in the State of Florida;

(b) Contractor has all requisite power and authority to conduct its business, own its properties and execute and deliver this Agreement and perform its obligations hereunder in accordance with the terms hereof;

(c) The execution, delivery, and performance of the Contract Documents have been duly authorized by all requisite corporate action and this Agreement constitutes the legal, valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms;

(d) Neither the execution, delivery or performance of the Contract Documents conflicts with, or results in a violation or breach of the terms, conditions or provisions of, or constitutes a default under, the organizational documents of Contractor or any agreement, contract, indenture or other instrument under which Contractor or its assets are bound, nor violates or conflicts with any Applicable Law or any judgment, decree, order, writ, injunction or award applicable to Contractor;

(e) Contractor is not in violation of any Applicable Law or Applicable Permit, which violations, individually or in the aggregate, would affect its performance of its obligations under the Contract Documents;

(f) Except as described in Section 18.21, Contractor's License, Contractor is the holder of all governmental consents, licenses, permissions and other authorizations and Applicable Permits required to operate and conduct its business now and as contemplated by the Contract Documents, other than Contractor Permits and FPL Permits which will be obtained in accordance with the terms of the Contract Documents;

(g) There is no pending controversy, legal action, arbitration proceeding, administrative proceeding or investigation instituted, or to the best of Contractor's knowledge threatened, against or affecting, or that could affect, the legality, validity and enforceability of the Contract Documents or the performance by Contractor of its obligations under the Contract Documents, nor does Contractor know of any basis for any such controversy, action, proceeding or investigation;

(h) Contractor has examined this Agreement, including all Appendices attached hereto, thoroughly and become familiar with all its terms and provisions;

(i) Contractor, by itself and through its Subcontractors and Vendors, has the full experience and proper qualifications to design and perform the Work and to construct the Plant in accordance with the terms of the Contract Documents;

(j) Contractor has visited and examined the Property Site and is fully familiar with such Property Site and surrounding area and based on such visit and examination has no reason to believe that Contractor will be unable to complete the Work in accordance with the Contract Documents;

(k) To the best of its knowledge, Contractor has reviewed all other documents and information necessary and available to Contractor in order to ascertain the nature, location and scope of the Work, the character and accessibility of the Property Site, the existence of obstacles to construction of the Plant and performance of the Work, the availability of facilities and utilities, and the location and character of existing or adjacent work or structures;

(l) Contractor owns or has the right to use all patents, trademarks, service marks, tradenames, copyrights, licenses, franchises, permits and intellectual property rights necessary to perform the Work without conflict with the rights of others;

(m) Each of Contractor and *** is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under this Agreement;

(n) FPL may provide or may have provided Contractor with copies of certain studies, reports or other information (including oral statements) and Contractor represents and acknowledges that:

(i) All such documents or information have been or will be provided as background information and as an accommodation to Contractor;

(ii) FPL makes no representations or warranties with respect to the accuracy of such documents or the information (including oral statements) or opinions therein contained or expressed; and

(iii) It is not relying on FPL for any information, data, inferences, conclusions, or other information with respect to the Job Site (other than the boundary survey referred to in Section 4.7, Description of Property Site), including the surface conditions of the Job Site and the surrounding areas;

(o) All Persons who will perform any portion of the Work have and will have all business and professional certifications required by Applicable Law to perform their respective services under this Agreement;

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(p) The access rights granted to or obtained by Contractor to the Job Site are adequate for the performance of the Work and operation of the Plant; and

(q) The Plant will be designed and constructed to achieve or exceed the Net Energy Output Guarantee.

13.1.2 FPL represents and warrants to Contractor that:

(a) FPL is a corporation, duly organized, validly existing, and in good standing under the laws of Florida and is duly authorized and qualified to conduct business in the State of Florida;

(b) FPL has all requisite power and authority to conduct its business, own its properties and execute and deliver the Contract Documents and perform its obligations hereunder in accordance with the terms hereof;

(c) The execution, delivery, and performance of the Contract Documents have been duly authorized by all requisite corporation action and this Agreement constitutes the legal, valid and binding obligation of FPL, enforceable against FPL in accordance with its terms;

(d) Neither the execution, delivery or performance of the Contract Documents conflicts with, or results in a violation or breach of the terms, conditions or provisions of, or constitutes a default under, the organizational documents of FPL or any agreement, contract, indenture or other instrument under which FPL or its assets are bound, nor violates or conflicts with any Applicable Law or any judgment, decree, order, writ, injunction or award applicable to FPL;

(e) FPL is not in violation of any Applicable Law or Applicable Permit, which violations, individually or in the aggregate, would affect its performance of its obligations under the Contract Documents; and

(f) FPL is the holder of all governmental consents, licenses, permissions and other authorizations and Applicable Permits required to operate and conduct its business now and as contemplated by the Contract Documents, other than FPL Permits which will be obtained in accordance with the terms of the Contract Documents.

13.2 Survival of Representations and Warranties

The representations and warranties of the Parties herein shall survive execution and termination of this Agreement.

ARTICLE XIV.
FORCE MAJEURE AND FPL CAUSED DELAY

14.1 Definition of Force Majeure Event

14.1.1 As used herein, the term “Force Majeure Event” shall mean any event or circumstance, or combination of events or circumstances, that arises after the date hereof, is beyond the reasonable control of the Party claiming the Force Majeure Event, is unavoidable or could not be prevented or overcome by the reasonable efforts and due diligence of the Party claiming the Force Majeure Event and has an impact which will actually, demonstrably, adversely and materially affect such Party’s ability to perform its obligations in accordance with the terms of the Contract Documents or has an impact which will actually, demonstrably, adversely and materially affect the Critical Path of the Work and performance of its obligations in accordance with the terms of the Contract Documents. Without limiting the generality of the foregoing, events that may give rise to a Force Majeure Event include, without limitation:

(a) Acts of God;

(b) Natural disasters;

(c) Fires;

(d) Earthquakes;

(e) Lightning;

(f) Floods;

(g) Storms;

(h) Civil disturbances;

(i) Terrorism;

(j) Riots;

(k) War; and

(l) The action of or failure to act on the part of any Government Authority having or asserting jurisdiction that is binding upon the Parties and has been opposed by all reasonable means,

In each case, that meet the definition of Force Majeure Event as set forth above.

14.1.2 Notwithstanding the foregoing, the term "Force Majeure Event" does not include, without limitation:

(a) Strikes, work stoppages (or deteriorations), slowdowns or other labor actions, unless such strike, work stoppage or other labor action is a result of strike, work stoppage or other labor action originated by employees of the Party not claiming the Force Majeure Event;

(b) Any labor or manpower shortages;

(c) Unavailability, late delivery, failure, breakage or malfunction of equipment or materials or events that affect the cost of equipment or materials;

(d) Economic hardship (including lack of money);

(e) Perils of sea;

(f) Delays in transportation (including delays in clearing customs) other than delays in transportation resulting from accidents or closure of roads or other transportation route by Government Authorities;

(g) Changes in Applicable Laws;

(h) ***;

(i) Actions of a Government Authority with respect to Contractor's compliance with Applicable Laws or Applicable Permits;

(j) Any failure by Contractor to obtain and/or maintain any Applicable Permit it is required to obtain and/or maintain hereunder;

(k) Any other act, omission, delay, default or failure (financial or otherwise) of a Subcontractor or Vendor; or

(l) Any surface or subsurface conditions at the Property Site (subject to Contractor's rights as provided in Section 3.4.4, Differing Condition, of Article III, CERTAIN OBLIGATIONS AND RESPONSIBILITIES OF CONTRACTOR).

14.1.3 Notwithstanding the foregoing and solely for the purpose of conducting the acceptance testing provided for in Section 2 of Appendix HH – Acceptance Testing, the term "Force Majeure Event" includes solar conditions that do not meet the express criteria set forth in in Section 2 of Appendix HH – Acceptance

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Testing, subject however to the other requirements for an event or occurrence to be Force Majeure Event and the other requirements set forth in this Article.

14.2 NOTICE OF FORCE MAJEURE EVENT

The Party claiming a Force Majeure Event shall within five (5) Business Days after it knows or should have known of the occurrence of the Force Majeure Event (or in any event, no later than twenty (20) days after the commencement of the Force Majeure Event), give the other Party written notice describing the details of the cause and nature of the Force Majeure Event, the anticipated length of delay due to the Force Majeure Event and any other affect on the Party's performance of its obligations hereunder; provided that if the Force Majeure Event results in a breakdown of communications rendering it not reasonably practicable to give notice within the applicable time limit specified herein, then the Party claiming a Force Majeure Event shall give such notice as soon as reasonably practicable after the reinstatement of communications, but no later than five (5) Business Days after such reinstatement. Within fifteen (15) days after initial notification, such Party shall provide sufficient proof of the occurrence and duration of such Force Majeure Event to the other Party and shall thereafter provide the other Party with periodic supplemental updates to reflect any change in information given to the other Party as often as requested by the other Party. The Party claiming the Force Majeure Event shall give notice to the other Party of: (i) the cessation of the relevant Force Majeure Event; and (ii) the cessation of the effects of such Force Majeure Event on the performance by it of its obligations under the Contract Documents as soon as practicable after becoming aware thereof. No Force Majeure Event shall relieve any Party from performing those of its obligations that are not affected by the Force Majeure Event.

14.3 DELAY FROM FORCE MAJEURE EVENT

14.3.1 So long as the conditions set forth in this Section 14.3 are satisfied, and subject to Section 14.7, Performance Not Excused, neither Party shall be responsible or liable for, or deemed in breach of this Agreement because of, any failure or delay in complying with its obligations under or pursuant to the Contract Documents to the extent that such failure has been caused, or contributed to, by one or more Force Majeure Events or its effects or by any combination thereof, and in such event:

(a) Except as otherwise provided herein, the performance by the Party claiming the Force Majeure Event of its obligations hereunder shall be suspended, and in the event that such Party is required to start or complete an action during a specific period of time, such start date or period for completion shall be extended, on the condition that:

(i) Such suspension of performance and extension of time shall be of no greater scope and of no longer duration than is required by the effects of the Force Majeure Event;

(ii) The Party claiming the Force Majeure Event complies with Section 14.2, Notice of Force Majeure Event; and

(iii) The Party claiming the Force Majeure Event continually uses commercially reasonable efforts to alleviate and mitigate the cause and effect of the Force Majeure Event and remedy its inability to perform; and

(b) In the event Contractor desires to claim a Force Majeure Event, it must submit a request for Changes pursuant to Section 6.2, Change Orders Requested by Contractor, of Article VI, CHANGE ORDERS.

14.3.2 Solely with respect to a Force Majeure Event described in Section 14.1.3, if such Force Majeure Event continues for sixty (60) consecutive days from the commencement of acceptance testing, then, solely for purposes of Section 11.2, FPL shall deem Contractor to have satisfied the Minimum Performance Level and Schedule Liquidated Damages shall not be payable. In such event, Contractor shall not be deemed to have achieved Provisional Acceptance until solar conditions exist that meet the express criteria set forth in in Section 2 of Appendix HH – Acceptance Testing and the Minimum Performance Level is achieved in accordance with Section 11.6.

14.3.3 Contractor's failure to comply with this Section 14.3, shall constitute a waiver of any claims as a result of a Force Majeure Event.

14.4 REMOVAL OF FORCE MAJEURE

If, within a reasonable time after a Force Majeure Event that has caused Contractor to suspend or delay performance of the Work, action to be undertaken at the expense of FPL has been identified and recommended to Contractor, and Contractor has failed within five (5) days after receipt of notice thereof from FPL to take such action as Contractor could lawfully and reasonably initiate to remove or relieve either the Force Majeure Event or its direct or indirect effects, FPL may, in its sole discretion and after notice to Contractor, initiate such reasonable measures as will be designed to remove or relieve such Force Majeure Event or its direct or indirect effects and thereafter require Contractor to resume full or partial performance of the Work. To the extent Contractor's failure to take such measures results in expense in addition to what FPL would have paid to Contractor (whether as part of the original Contract Price or as additional compensation to the extent the requested measures constituted a Change Order altering the scope of the Work) had Contractor taken such measures, such additional expense shall be for Contractor's account.

14.5 NOTICE OF FPL CAUSED DELAY

14.5.1 In the event Contractor desires to claim an FPL Caused Delay, Contractor shall within five (5) Business Days after it knows or should have known of the occurrence of the FPL Caused Delay, give FPL written notice describing the details of the FPL Caused Delay, the anticipated length of such delay and any other affect on Contractor's performance of its obligations hereunder. Within fifteen (15) days after initial notification, Contractor shall:

(a) Provide to FPL demonstrable proof of the occurrence and duration of such FPL Caused Delay and, if requested by FPL, such proof shall be provided, and in any event verified, by an independent third party reasonably acceptable to FPL and Contractor at the sole cost and expense of Contractor; and

(b) Thereafter provide FPL with periodic supplemental updates to reflect any change in information given to FPL as often as requested by FPL.

14.5.2 In the event that Contractor claims an FPL Caused Delay in violation of this provision, FPL shall be entitled to set-off against any payments due to Contractor or draw upon any security provided by Contractor (including the Letter of Credit) to compensate FPL for all costs (including reasonable attorneys' and other consultants' fees) incurred in enforcing this Section 14.5.

14.6 DELAY FROM FPL CAUSED DELAY

14.6.1 So long as the conditions set forth in this Section 14.6, are satisfied and subject to Section 14.7, Performance Not Excused, Contractor shall not be responsible or liable for, or deemed in breach of the Contract Documents because of, any failure or delay in completing the Work in accordance with the Project Schedule or achieving Provisional Acceptance by the Guaranteed Provisional Acceptance Date to the extent that such failure has been caused by one or more FPL Caused Delays, and in such event, except as otherwise provided herein, the start date or period for completion of any portion of the Work shall be extended, on the condition that:

(a) Such suspension of performance and extension of time shall be of no greater scope and of no longer duration than is required by the effects of the FPL Caused Delay;

(b) Contractor complies with Section 14.5, Notice of FPL Caused Delay; and

(c) Contractor provides all assistance reasonably requested by FPL for the elimination or mitigation of the FPL Caused Delay.

14.6.2 In the event Contractor desires to claim an FPL Caused Delay, it must submit a request for Changes pursuant to Section 6.2, Change Orders Requested by Contractor, of Article VI, CHANGE ORDERS, and Contractor shall be entitled to suspension of performance or extension of time (including an extension of the Guaranteed Provisional Acceptance Date) together with demonstrated, justified and

reasonable additional costs incurred by reason of such delay to the extent agreed upon by both Parties pursuant to a Change Order in accordance with Section 6.2, Change Orders Requested by Contractor, of Article VI, CHANGE ORDERS. Failure to comply with the terms of this Section 14.6, shall constitute a waiver of any claims for an increase in the Project Schedule or the Contract Price as a result of an FPL Caused Delay.

14.7 PERFORMANCE NOT EXCUSED

The payment of money owed shall not be excused because of a Force Majeure Event or FPL Caused Delay. In addition, a Party shall not be excused under this Article from timely performance of its obligations hereunder to the extent that the claimed Force Majeure Event or FPL Caused Delay was caused by any negligent or intentional acts, errors, or omissions, or for any breach or default of the Contract Documents by such Party. Furthermore, no suspension of performance or extension of time shall relieve the Party benefiting therefrom from any liability for any breach of the obligations that were suspended or failure to comply with the time period that was extended to the extent such breach or failure occurred prior to the occurrence of the applicable Force Majeure Event or FPL Caused Delay. Notwithstanding anything contained herein to the contrary, Contractor shall not withdraw Contractor's Equipment and personnel from the Job Site or otherwise demobilize without the prior authorization of FPL. Contractor shall not be entitled to receive reimbursement for its costs of demobilization and/or remobilization as a result of any Force Majeure Event.

ARTICLE XV.
TERMINATION

15.1 CONTRACTOR EVENTS OF DEFAULT

The occurrence of any of the following events shall constitute an event of default by Contractor (each a "Contractor Event of Default"):

15.1.1 The failure of Contractor, subject to the grace period provided in Section 11.1, Completion Guarantee, of Article XI, CONTRACTOR GUARANTEES AND LIQUIDATED DAMAGES, to achieve Provisional Acceptance by the Guaranteed Provisional Acceptance Date;

15.1.2 Intentionally Deleted.

15.1.3 The failure of Contractor to achieve Final Acceptance within *** (***) days after the Guaranteed Provisional Acceptance Date;

15.1.4 The failure of the Plant to continue to operate at Minimum Performance Level after Provisional Acceptance and prior to Final Acceptance, unless such failure is caused by FPL's failure to properly operate and maintain the Plant in accordance with Contractor's written instructions provided hereunder;

15.1.5 The Plant, during the period of time between Provisional Acceptance and Final Acceptance, is not capable of being operated in accordance with Plant operating procedures and all Applicable Laws and Applicable Permits, and other requirements of the Agreement, and all operating conditions specified in the Scope of Work;

15.1.6 The failure by Contractor to pay liquidated damages as required herein;

15.1.7 Any failure by Contractor to make any other payment or payments required to be made to FPL under the Contract Documents within five (5) Business Days after receipt of written notice from FPL of Contractor's failure to make such other payment or payments (except, in the case of payments other than Schedule Liquidated Damages, to the extent Contractor disputes such other payment or payments in good faith and in accordance with the terms of this Agreement);

15.1.8 Any of the following occurs:

(a) Contractor fails to supply sufficient skilled workers or suitable materials or equipment;

(b) Contractor fails to make prompt payments when due to Subcontractors or Vendors for labor, materials or equipment;

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(c) Contractor suspends performance of a material portion of the Work (other than as provided in: (i) Article XIV, FORCE MAJEURE AND FPL CAUSED DELAY; (ii) Section 15.4.1, Suspension by FPL for Convenience, (iii) Section 15.7, Termination by Contractor Due to FPL Default; or (iv) pursuant to a Change Order); or

(d) Contractor fails to comply with any provision of any Applicable Law,

and if in each paragraph (a) through (d) of this Section, such condition remains unremedied for thirty (30) days following written notice thereof by FPL, or for such longer period, not to exceed sixty (60) days, during which time Contractor diligently pursues the cure of such material breach, if such material breach is capable of being cured;

15.1.9 The failure by Contractor to deliver any recovery plan described in Section 5.3.3, of Section 5.3, Project Schedule, of Article V, PROJECT SCHEDULE, within thirty (30) days after the date such recovery plan is due pursuant to the terms of such Section, or following approval of a recovery plan pursuant to such Section, the failure of Contractor to meet the schedule set forth in such recovery plan;

15.1.10 Any breach by Contractor of any representation or warranty made by Contractor in Article XIII, REPRESENTATIONS;

15.1.11 Any breach by Contractor of any obligation, covenant or agreement of Contractor hereunder other than those breaches specified in this Section 15.1, and:

(a) Such breach is not cured by Contractor within fifteen (15) days after notice thereof from FPL; or

(b) If such breach is not capable of being cured within such fifteen (15) day period (as determined by FPL in its sole discretion), Contractor fails to:

(i) Commence to cure such breach within such fifteen (15) day period;

(ii) Thereafter diligently proceed to cure such breach in a manner satisfactory to FPL in its sole discretion;

(iii) Cure such breach within ninety (90) days after notice thereof from FPL;

15.1.12 Any of the following occurs:

(a) Contractor *** consents to the appointment of or taking possession by, a receiver, a trustee, custodian, or liquidator of itself or of a substantial part of its assets, or fails or admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors;

(b) Contractor *** files a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any applicable bankruptcy or insolvency laws or an answer admitting the material allegations of a petition filed against it in any such proceeding, or seeks relief by voluntary petition, answer or consent, under the provisions of any now existing or future bankruptcy, insolvency or other similar law providing for the liquidation, reorganization, or winding up of corporations, or providing for an agreement, composition, extension, or adjustment with its creditors;

(c) A substantial part of Contractor's *** assets is subject to the appointment of a receiver, trustee, liquidator, or custodian by court order and such order shall remain in effect for more than thirty (30) days; or

(d) Contractor *** is adjudged bankrupt or insolvent, has any property sequestered by court order and such order shall remain in effect for more than thirty (30) days, or has filed against it a petition under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and such petition shall not be dismissed within thirty (30) days of such filing;

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15.1.13 The dissolution of Contractor, except for the purpose of merger, consolidation or reorganization where the successor expressly assumes Contractor's obligations hereunder and such assignment and assumption does not materially adversely affect the ability of the successor to perform its obligations under the Contract Documents *** remains in full force and effect for the obligations of such successor;

15.1.14 The transfer by Contractor of all or a substantial portion of the:

(a) Rights and/or obligations of Contractor hereunder, except for an assignment permitted hereunder; or

(b) Assets or obligations of Contractor, except where the transferee expressly assumes the transferred obligations and such transfer does not materially adversely affect the ability of Contractor or the transferee, as applicable, to perform its obligations under the Contract Documents, as determined by FPL in its sole discretion;

15.1.15 ***;

15.1.16 Any failure by Contractor to maintain the insurance coverages required of it in accordance with Article IX, INSURANCE;

15.1.17 Any failure of Contractor to maintain the Letter of Credit in accordance with Section 7.5, Letters of Credit, of Article VII, CONTRACT PRICE; PAYMENTS TO CONTRACTOR, ***; unless the available amount thereunder *** has been drawn in full in accordance with the terms thereof;

15.1.18 Any abandonment of the Work by Contractor, where "Abandonment" for the purposes of this Section shall mean that Contractor has substantially reduced personnel at the Job Site or removed required equipment from the Job Site such that, in the opinion of an experienced construction manager, Contractor would not be capable of completing the Critical Milestones in accordance with the Project Schedule; or

15.1.19 ***.

15.2 TERMINATION BY FPL DUE TO CONTRACTOR DEFAULT; OTHER REMEDIES.

15.2.1 Upon the occurrence of a Contractor Event of Default, FPL may, at its option, terminate this Agreement, without prejudice to any other rights and remedies available to FPL under this Agreement, by giving written notice thereof to Contractor, which termination shall be effective upon the giving of such notice by FPL.

15.2.2 In the event of a termination by FPL under this Section 15.2, FPL shall have the right to take possession of and use all of the Contractor Equipment located at the Job Site on the date of such termination for the purpose of completing the Work and may employ any other Person to complete the Work by whatever method that FPL may deem necessary. In addition, FPL may make such expenditures as in FPL's sole judgment will accomplish the timely completion of the Work in accordance with the terms hereof.

15.2.3 In the event of termination by FPL under this Section 15.2, Contractor shall not be entitled to receive any further payments under the Contract Documents (other than undisputed payments owed and payable to Contractor hereunder prior to the date of such termination).

15.2.4 In the event of termination by FPL under this Section 15.2, Contractor shall be responsible for and shall reimburse FPL for the following amounts:

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(a) All reasonable costs and expenses incurred by FPL to engage a substitute contractor to complete (or cure deficiencies in) the Work, including, without limitation, overhead and legal, engineering and other professional expenses;

(b) All reasonable costs and expenses incurred in connection with the termination of the Contract Documents, including costs and expenses incurred in connection with the obligations set forth under Section 15.9, OBLIGATIONS UPON TERMINATION;

(c) The amount by which:

(i) The cost reasonable to complete (or cure deficiencies in) the Work, exceeds

(ii) The balance of the Contract Price unpaid at the time of the termination; and

(d) All actual damages occasioned by reason of said default, except that Parties agree that Schedule Liquidated Damages shall apply in lieu of delay damages for late completion.

15.2.5 Upon the occurrence and during the continuance of a Contractor Event of Default but prior to termination of this Agreement by FPL, FPL may, without prejudice to any of its other rights or remedies:

(a) ***;

(b) Seek equitable relief to cause Contractor to take action or to refrain from taking action pursuant to this Agreement, or to make restitution of amounts improperly received under this Agreement;

(c) Make such payments or perform such obligations as are required to cure such Contractor Event of Default, and then draw on or make a claim against the Letter of Credit or other security provided pursuant to this Agreement for the cost of such payment or performance and/or offset the cost of such payment or performance against payments otherwise due to Contractor under this Agreement; provided that FPL shall be under no obligation to cure any such Contractor Event of Default;

(d) Seek damages as provided in Section 15.2.4, including proceeding against any bond, guarantee, letter of credit, or other security given by or for the benefit of Contractor for its performance under this Agreement;

(e) Require direct payment or co-payment to Subcontractors or Vendors and any such payments or co-payments shall be credited against amounts due to Contractor under the Agreement; or

(f) Assign to FPL any agreement or purchase order with a Subcontractor or Vendor, provided that:

(i) FPL shall assume the obligations under such agreement or purchase order accruing after the date of such assignment;

(ii) If requested by FPL, Contractor shall remain responsible for administering and managing such agreement or purchase order (including enforcing the warranty obligations thereunder); and

(iii) In no event shall Contractor be relieved of its obligation to achieve Provisional Acceptance or Final Acceptance as a result of such assignment.

15.3 TERMINATION BY FPL FOR CONVENIENCE.

15.3.1 FPL may terminate this Agreement at any time for any reason in its sole discretion by giving written notice thereof to Contractor, which termination shall be effective upon the giving of such notice by FPL. Upon receiving any such notice of termination, Contractor shall stop performing the Work and, except as otherwise directed by FPL, shall cancel as quickly as possible all orders placed by it with Subcontractors and Vendors and shall use all reasonable efforts to minimize cancellation charges and other costs and expenses associated with the termination of the Agreement. Contractor shall also promptly assign all subcontracts and purchase orders which FPL wishes to retain in accordance with Section 15.9, OBLIGATIONS UPON TERMINATION.

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15.3.2 In the event of a termination by FPL under Section 15.3.1, Contractor shall be entitled to receive, as its sole and exclusive remedy for such termination, a termination payment ("Termination Payment") equal to the termination amount as set forth in the Termination Payment Schedule.

15.3.3 Intentionally Deleted.

15.3.4 In addition to FPL's right to terminate set forth in Section 15.3.1 above, FPL may terminate this Agreement because any of the following occurs pursuant to the Power Plant Siting Act, § 403.501-518, Florida Statutes and/or Chapter 62-17, Part I, (§ 62-17.011-62-17.293) of the Florida Administrative Code, the procedural rule implementing the act or otherwise:

(a) FPL does not select the Project pursuant to the "Request for Proposals";

(b) The Siting Board does not issue a "Land Use Order" for the Project;

(c) The Siting Board does not issue a "Final Certification Order";

(d) The Florida Department of Environmental Protection does not issue the "Air Construction Permit";

(e) The State of Florida Public Service Commission does not issue a "Need Order" for the Project;

(f) The Project is unable to obtain the applicable local, county, state or federal permits not covered by the Power Plant Siting Act;

(g) The administrative law judge responsible for recommending the Project to the Governor fails to recommend the Project;

(h) The Governor fails to approve the Project;

(i) Any other Government Authority whose approval or recommendation is necessary for the Project to be constructed fails to grant such approval or give such recommendation; or

(j) As a condition of obtaining any of the foregoing approvals or recommendations, FPL is required to materially amend the proposal for the Project (as determined in FPL's sole discretion);

then Contractor shall not be entitled to receive any further payments under the Contract Documents, except for the applicable Termination Payment.

15.3.5 Any amount owed pursuant to this Section 15.3, shall be subject to adjustment to the extent any Work contains Defects.

15.4 SUSPENSION BY FPL FOR CONVENIENCE.

15.4.1 FPL may suspend all or a portion of the Work to be performed under the Contract Documents at any time for any reason in its sole discretion by giving written notice thereof to Contractor. Such suspension, not to exceed 90 days individually and 180 days total while this Agreement is in effect, shall continue for the period specified in the notice of suspension; provided that Contractor agrees to resume performance of the Work promptly upon receipt of notice from FPL. Upon receiving any such notice of suspension, unless the notice requires otherwise, Contractor shall:

(a) Immediately discontinue the Work on the date and to the extent specified in the notice;

(b) Place no further orders or subcontracts for Equipment, services or facilities with respect to suspended Work, other than to the extent required in the notice;

(c) Promptly make every reasonable effort to obtain suspension, with terms reasonably satisfactory to FPL, of all orders, subcontracts and rental agreements to the extent they relate to performance of suspended Work;

(d) Continue to protect and maintain the Work performed, including those portions on which Work has been suspended; and

(e) Take any other reasonable steps to minimize costs and expenses associated with such suspension.

15.4.2 Except as provided in Section 15.4.3, below, as full compensation for any suspension under this Section, Contractor will be reimbursed by FPL for the costs, as reasonably incurred, without duplication of any item, to the extent that such costs directly result from such suspension of the Work and to the extent that they do not reflect reimbursement for Contractor's, Vendors' or Subcontractors' anticipated profit from unperformed Work, including all necessary and reasonable costs incurred in connection with demobilization and remobilization of Contractor's facility and Labor and Contractor Equipment, plus an amount equal to ***% of such amounts.

15.4.3 Upon delivery of notice by FPL to Contractor to resume suspended Work, Contractor shall, as promptly as reasonably possible, resume performance under the Contract Documents to the extent required in the notice. Contractor may request a Change Order as a result of a suspension of Work under this Section within fourteen (14) days after receipt of notice to resume the suspended Work; provided that such suspension was not due to Contractor's negligence, willful misconduct or noncompliance with the terms of this Agreement. Contractor shall submit to FPL a request for Changes in accordance with Article VI, CHANGE ORDERS, and such request shall be accompanied by sufficient documentation setting forth the schedule impact and monetary extent of such claim in sufficient detail to permit thorough analysis by FPL; provided that if such information is not available within such fourteen (14) day period, Contractor shall notify FPL of such within such fourteen (14) day period and provide an expected date (which shall be as soon as reasonably practicable) for providing such information. If Contractor does not submit a request for Changes within such fourteen (14) day period and provide the information regarding schedule and monetary impact as required above within such fourteen (14) day period (or by the expected date if not possible during such fourteen (14) day period), Contractor shall not be entitled to any additional consideration or other amendments hereto and shall be deemed to have waived all claims and offsets against FPL as a result of the suspension of Work. Contractor shall permit access by FPL to pertinent records for purposes of reviewing the claims by Contractor of schedule and monetary impact.

15.4.4 Contractor shall not have any recourse to the provisions of Sections 15.4.2 or 15.4.3 if and to the extent that any suspension by FPL under this Section 15.4.1 occurs contemporaneously with any Force Majeure Event, FPL Caused Delay or a breach of Contractor's obligations under this Agreement.

15.5 [INTENTIONALLY DELETED]

15.6 FPL EVENTS OF DEFAULT

The occurrence and continuation of any of the following events shall constitute an event of default by FPL (each, an "FPL Event of Default"):

15.6.1 A failure by FPL to make payment of any undisputed amount when due, and such breach is not cured by FPL within fifteen (15) days after FPL's receipt of notice thereof from Contractor; or

15.6.2 Any breach by FPL of any representation or warranty made by FPL in Article XIII, REPRESENTATIONS;

15.6.3 Any of the following occurs:

(a) FPL consents to the appointment of or taking possession by, a receiver, a trustee, custodian, or liquidator of itself or of a substantial part of its assets, or fails or admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors;

(b) FPL files a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any applicable bankruptcy or insolvency laws or an answer admitting the material allegations of a petition filed against it in any such proceeding, or seeks relief by voluntary petition, answer or consent, under the provisions of any now existing or future bankruptcy, insolvency or other similar law providing for the liquidation, reorganization, or winding up of corporations, or providing for an agreement, composition, extension, or adjustment with its creditors;

(c) A substantial part of FPL's assets is subject to the appointment of a receiver, trustee, liquidator, or custodian by court order and such order shall remain in effect for more than thirty (30) days; or

(d) FPL is adjudged bankrupt or insolvent, has any property sequestered by court order and such order shall remain in effect for more than thirty (30) days, or has filed against it a petition under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and such petition shall not be dismissed within thirty (30) days of such filing.

15.6.4 Any breach by FPL of any obligation, covenant or agreement of FPL hereunder other than those breaches specified in this Section 15.6, and:

(a) Such breach is not cured by FPL within fifteen (15) days after notice thereof from Contractor; or

(b) If such breach is not capable of being cured within such fifteen (15) day period (as determined by Contractor in its sole discretion), FPL fails to:

(i) Commence to cure such breach within such fifteen (15) day period;

(ii) Thereafter diligently proceed to cure such breach in a manner satisfactory to Contractor in its sole discretion; or

(iii) Cure such breach within ninety (90) days after notice thereof from Contractor.

15.6.5 The dissolution of FPL, except for the purpose of merger, consolidation or reorganization where the successor expressly assumes FPL's obligations hereunder and such assignment and assumption does not materially adversely affect the ability of the successor to perform its obligations under the Contract Documents.

15.6.6 The transfer by FPL of all or a substantial portion of the:

(a) Rights and/or obligations of FPL hereunder, except for an assignment permitted hereunder; or

(b) Assets or obligations of FPL, except where the transferee expressly assumes the transferred obligations and such transfer does not materially adversely affect the ability of FPL or the transferee, as applicable, to perform its obligations under the Contract Documents, as determined by Contractor in its sole discretion;

15.6.7 Any failure by FPL to maintain the insurance coverages required of it in accordance with Article IX, INSURANCE;

15.7 TERMINATION BY CONTRACTOR DUE TO FPL DEFAULT.

15.7.1 Subject to Section 15.7.2, below, upon the occurrence and during the continuance of an FPL Event of Default beyond the applicable grace period, Contractor may terminate this Agreement thirty (30) Days after giving written notice thereof to FPL so long as the amount owed by FPL (other than any amount disputed in accordance with the terms of this Agreement) is not paid within such period.

15.7.2 In the event of such termination, Contractor shall be entitled to receive an amount equal to the Termination Payment as its sole and exclusive remedy for such termination.

15.8 CONTINUING OBLIGATIONS AND REMEDIES DURING EVENT OF DEFAULT

In the event of the occurrence of any default hereunder:

15.8.1 Neither Party shall be relieved of any of its liabilities or obligations hereunder, unless and until such liabilities and obligations are terminated in accordance with the provisions hereof; and

15.8.2 Each Party shall have the right to pursue any right or remedy available to it, hereunder.

15.9 OBLIGATIONS UPON TERMINATION

Upon a termination of this Agreement pursuant to Section 15.2:

15.9.1 Contractor shall leave the Job Site and remove from the Job Site all Contractor Equipment, waste, rubbish and Hazardous Material as FPL may request;

15.9.2 FPL shall take possession of the Job Site and of the Equipment (whether at the Job Site, in transit or otherwise);

15.9.3 Contractor shall promptly assign to FPL or its designee any contract rights (including warranties, licenses, patents and copyrights) that it has to any and all Equipment and the Work, including, without limitation, contracts with Subcontractors and Vendors, and Contractor shall execute such documents as may be reasonably requested by FPL to evidence such assignment, subject to FPL's assumption of same and, if required, FPL's adequate assurance to such Subcontractors or Vendors regarding FPL's ability to pay;

15.9.4 Contractor shall promptly furnish FPL with copies of all Drawings and, to the extent available, Final Plans, and copies of all computer files containing Drawings or Final Plans;

15.9.5 Contractor hereby grants FPL and its designee with the right to use, free of charge, all patented, copyrighted and other proprietary information relating to the Work that FPL deems necessary to complete the Work, and Contractor shall execute such documents as may be reasonably requested by FPL to evidence such right;

15.9.6 Contractor shall assist FPL in preparing an inventory of all Equipment in use or in storage at the Job Site;

15.9.7 Contractor shall perform all Remediation Work requested by FPL; and

15.9.8 Contractor shall take such other action as required hereunder upon termination of this Agreement.

15.10 **Termination and Survival of Terms**

Upon termination of this Agreement pursuant to this Article, the rights and obligations of the Parties hereunder shall terminate, except for the rights and obligations:

15.10.1 Accrued as of the date of termination;

15.10.2 Arising out of events occurring prior to the date of termination; and

15.10.3 Of the Parties which survive termination, including the rights and obligations forth in Articles XII, CONTRACTOR'S WARRANTIES, and XIII, REPRESENTATIONS.

ARTICLE XVI.
INDEMNIFICATION

16.1 **Contractor Indemnification**

Contractor agrees to reimburse, indemnify, defend and hold FPL, the Financing Parties and their Affiliates and each of their respective directors, officers, employees, representatives, agents, advisors, consultants, counsel and assigns harmless from and against, on an After-Tax Basis, any and all losses, claims, obligations, demands, assessments, penalties, liabilities, costs, damages and expenses (including reasonable attorneys' fees and expenses) (collectively, "Damages") asserted against or incurred by such indemnitees by reason of or resulting from any and all of the following:

16.1.1 Any bodily injury, death or damage to property caused by any act or omission (including strict liability) or willful misconduct relating to or arising out of the performance of the Work or any curative action under any warranty following performance of the Work, of Contractor or any Affiliate thereof, any Subcontractor or Vendor, or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable;

16.1.2 Any third party claims resulting in bodily or property damage arising out of defective and/or nonconforming Work relating to or arising out of the performance of the Work;

16.1.3 Claims by any Government Authority for any Contractor Taxes;

16.1.4 Any pollution or contamination which originates from sources in Contractor's or its Subcontractors' or Vendors' possession, use or control or caused by the release by Contractor or its Subcontractors or Vendors

(excluding Pre-Existing Hazardous Material other than as provided in (e) below), including, without limitation, from Hazardous Material, toxic waste, industrial hazards, sanitary waste, fuel, lubricant, motor oil, paint, solvent, bilge and garbage;

16.1.5 Any release or exacerbation of Pre-Existing Hazardous Materials or rendering removal or remediation of Pre-Existing Hazardous Materials more costly, which in any of such events is caused by any negligent act or omission of Contractor or any Affiliate thereof, any Subcontractor or Vendor, or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable;

16.1.6 To the extent FPL has paid all undisputed amounts due pursuant to the Contract Documents, any Lien, as set forth in Section 3.25, Claims and Liens for Labor and Materials, of Article III, CERTAIN OBLIGATIONS AND RESPONSIBILITIES OF CONTRACTOR, on the Equipment, the Job Site or any fixtures or personal property included in the Work (whether or not any such Lien is valid or enforceable) created by, through or under, or as a result of any act or omission (or alleged act or omission) of, Contractor or any Subcontractor, Vendor or other Person providing labor or materials in connection with the Work;

16.1.7 Any claim, action or proceeding by any Person for unauthorized disclosure, use, infringement or misappropriation of any Intellectual Property Right arising from:

(a) Contractor's performance (or that of its Affiliates, Subcontractors or Vendors) under the Contract Documents, including, without limitation, the Work, Equipment, Drawings, Final Plans or other items and services provided by Contractor or any Subcontractor or Vendor hereunder;

(b) The use or ownership of any Contractor Deliverable;

(c) Any license granted hereunder; or

(d) The design, engineering, construction, use, operation or ownership of the Plant or any portion thereof;

(e) (Without limiting the provisions of Section 12.3, Proprietary Rights, of Article XII, CONTRACTOR'S WARRANTIES, if FPL is enjoined from completing the Project or any part thereof, or from the use, operation or enjoyment of the Project or any part thereof, as a result of such claim or legal action or any litigation based thereon, Contractor shall promptly use its best efforts to have such injunction removed at no cost to FPL.)

16.1.8 Any vitiation of any insurance policy procured under Article IX, INSURANCE, as a result of Contractor's failure to comply with any of the requirements set forth in such policy or any other act by Contractor or any Subcontractor or Vendor;

16.1.9 Any failure of the Project, as designed, constructed or completed by Contractor, to comply with, or be capable of operating in compliance with, Applicable Laws or the conditions or provisions of Applicable Permits;

16.1.10 Any failure of Contractor to comply with Applicable Laws or the conditions or provisions of Applicable Permits; and

16.1.11 Any claims with respect to employer's liability or worker's compensation filed by any employee of Contractor or any of its Subcontractors or Vendors.

16.2 FPL INDEMNIFICATION

FPL agrees to reimburse, indemnify, defend and hold Contractor and its Affiliates and each of their respective directors, officers, employees, representatives, agents, advisors, consultants and counsel harmless from and against, on an After-Tax Basis, any and all Damages asserted against or incurred by such indemnitees by reason of or resulting from any and all of the following:

16.2.1 Any bodily injury, death or damage to property caused by (a) any act or omission (including strict liability) or willful misconduct of FPL or its agents or employees or others under FPL's direct control or (b) a breach by FPL of its obligations hereunder;

16.2.2 Claims by any Government Authority for any FPL Taxes;

16.2.3 Any Pre-Existing Hazardous Material on the Property Site, except to the extent covered by Section 16.1.5, Contractor Release or Exacerbation; and

16.2.4 Any claims with respect to employer's liability or worker's compensation filed by any employee of FPL.

16.3 CONDITIONS OF INDEMNIFICATION

The respective rights and obligations of the Parties and the other indemnitees under this Article with respect to claims resulting from the assertion of liability by third parties shall be subject to the following terms and conditions:

16.3.1 *Notice of Proceedings*. Within fourteen (14) days (or such earlier time as might be required to avoid prejudicing the indemnifying Party's position) after receipt of notice of commencement of any legal action or of any claims against such indemnitee in respect of which indemnification will be sought, the Person claiming to be indemnified under the terms of this Section (the "Indemnified Person") shall give the Party from which indemnification is sought (the "Indemnifying Party") written notice thereof, together with a copy of such claim, process or other legal pleading. Failure of the Indemnified Person to give such notice will not reduce or relieve the Indemnifying Party of liability hereunder unless and to the extent that the Indemnifying Party was precluded from defending such claim, action, suit or proceeding as a result of the failure of the Indemnified Person to give such notice. In any event, the failure to so notify shall not relieve the Indemnifying Party from any liability that it may have to the Indemnified Person otherwise than under this Article.

16.3.2 *Conduct of Proceedings*. Each Party and each other indemnitee shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against it arising out of any matter in respect of which it is entitled to be indemnified hereunder and the reasonable costs and expenses thereof (including reasonable attorneys' fees and expert witness fees) shall be subject to the said indemnity; provided that the indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding at its expense upon its giving written notice thereof to the Indemnified Person. The Indemnified Person shall provide reasonable assistance to the Indemnifying Party, at the Indemnifying Party's expense, in connection with such claim, action, suit or proceeding. Upon such assumption, the Indemnifying Party shall reimburse the Indemnified Person for the reasonable costs and expenses previously incurred by it prior to the assumption of such defense by the Indemnifying Party. The Indemnifying Party shall keep the Indemnified Person informed as to the status and progress of such claim, action, suit or proceeding. Except as set forth in paragraph (c) below, in the event the Indemnifying Party assumes the control of the defense, the Indemnifying Party will not be liable to the Indemnified Person under this Article for any legal fees or expenses subsequently incurred by the Indemnified Person in connection with such defense. The Indemnifying Party shall control the settlement of all claims over which it has assumed the defense; provided, however, that the Indemnifying Party shall not agree to or conclude any settlement that affects the Indemnified Person without the prior written approval of the Indemnified Person, (whose said approval shall not be unreasonably withheld).

16.3.3 *Representation*. In the event the Indemnifying Party assumes control of the defense, the Indemnified Person shall have the right to employ its own counsel and such counsel may participate in such claim, action, suit or proceeding, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person, when and as incurred, unless the:

(a) Employment of counsel by such Indemnified Person has been authorized in writing by the Indemnifying Party;

(b) Indemnified Person shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Person in the conduct of the defense of such action; or

(c) Indemnified Person shall have reasonably concluded and specifically notified the Indemnifying Party either that there may be specific defense available to it which are different from or additional to those available to the Indemnifying Party.

If any of the preceding clauses (a) through (c) shall be applicable, then counsel for the Indemnified Person shall have the right to direct the defense of such claim, action, suit or proceeding on behalf of the Indemnified Person and the reasonable fees and expenses of such counsel shall be reimbursed by the Indemnifying Party.

16.4 CONTRIBUTORY NEGLIGENCE

Except as provided in Section 16.2.2, above, if the joint, concurring, comparative or contributory fault, negligence or willful misconduct of the Parties gives rise to Damages for which a Party is entitled to indemnification under this Article, then such Damages shall be allocated between the Parties in proportion to their respective degrees of fault, negligence or willful misconduct contributing to such Damages.

16.5 REMEDIES NOT EXCLUSIVE

The rights under this Article shall not be exclusive with respect to any other right or remedy provided for in the Contract Documents.

16.6 PAYMENT

All payments required to be made under this Article shall be made on an After-Tax Basis and within thirty (30) days of demand therefor.

16.7 SURVIVAL OF INDEMNIFICATION

The provisions of this Article shall survive the Final Acceptance Date and the termination of this Agreement.

ARTICLE XVII.
DISPUTE RESOLUTION

17.1 FRIENDLY CONSULTATION

In the event of any dispute, controversy or claim between the Parties arising out of or relating to the Contract Documents, or the breach, termination or invalidity thereof (collectively, a "Dispute"), the Parties shall attempt in the first instance to resolve such Dispute through friendly consultations between the Parties. If such consultations do not result in a resolution of the Dispute within thirty (30) days after notice of a Dispute is delivered by either Party, then either Party may pursue all of its remedies available pursuant to the Contract Documents. The Parties agree to attempt to resolve all Disputes arising hereunder promptly, equitably and in a good faith manner. The Parties further agree to provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to such Dispute.

17.2 LITIGATION.

17.2.1 If a Dispute cannot be resolved pursuant to Section 17.1, Friendly Consultation, and in the event of litigation arising hereunder, the Parties agree that the venue for such litigation shall be the courts of the State of Florida in Miami-Dade County or Palm Beach County, Florida or the United States District Court for the Southern District of Florida, unless such other location or forum is mutually agreed. The Parties irrevocably waive any objection which any of them may now or hereafter have to the bringing of any such action or proceeding in such respective jurisdictions, including any objection to the laying of venue based on the grounds of forum non conveniens and any objection based on the grounds of lack of in personam jurisdiction. To facilitate the comprehensive resolution of related disputes, and upon the sole discretion and request of FPL, Contractor agrees and will stipulate in any proceeding to the consolidation of any litigation or other proceeding arising out of or relating to this Agreement with any other litigation or other proceeding arising out of or relating to any other agreement relating to the Project.

17.2.2 IN ANY LITIGATION ARISING FROM OR RELATED TO THE CONTRACT DOCUMENTS, THE PARTIES HERETO EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THE

CONTRACT DOCUMENTS, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY TO THE CONTRACT DOCUMENTS. THIS PROVISION IS A MATERIAL INDUCEMENT FOR FPL AND CONTRACTOR TO ENTER INTO THIS AGREEMENT.

17.2.3 The rights and obligations of the Parties under this Article shall not be impaired, reduced or otherwise affected as a result of any of the following the:

(a) Receipt by a Party from any third party of any amounts in reimbursement of Damages that are the subject of the Dispute; or

(b) Assignment or transfer by either Party of any or all of its rights and/or obligations under the Contract Documents as permitted hereunder.

17.2.4 In the event of any Dispute pursuant to this Article XVII, Dispute Resolution, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection therewith.

17.3 CONTINUING OBLIGATIONS AND RIGHTS

When any Dispute occurs and is the subject of friendly consultations or litigation, Contractor shall continue the Work in accordance with the Project Schedule and the terms hereof and FPL shall continue to make payments of undisputed amounts in accordance with the Contract Documents, and the Parties shall otherwise continue to exercise their rights, and fulfill their respective obligations, under the Contract Documents.

17.4 TOLLING STATUTE OF LIMITATIONS

All applicable statutes of limitation and defenses based upon the passage of time and similar contractual limitations shall be tolled while the procedures specified in this Article are pending. The Parties will take such action, if any, required to effectuate such tolling. Without prejudice to the procedures specified in this Article, a Party may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defenses. Despite such action, the Parties will continue to participate in good faith in the procedures specified in this Article.

17.5 AUDIT RIGHTS

In the event of a claim by FPL under this Agreement involving an amount greater than Fifty Thousand Dollars ($50,000), Contractor shall grant audit rights to FPL with respect to all relevant documentation pertaining to such claim

ARTICLE XVIII.
MISCELLANEOUS

18.1 ASSIGNMENT.

18.1.1 Except as expressly permitted in the Contract Documents, Contractor may not assign this Agreement, the Contract Documents or any portion hereof, or any of the rights or obligations hereunder, without the prior written consent of FPL, which consent shall not be unreasonably delayed. This Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the Parties.

18.1.2 FPL shall be entitled to assign this Agreement, the Contract Documents and its rights and obligations hereunder (a) to any Affiliate, without the consent of Contractor and (b) to any other Person, with the consent of Contractor, which consent shall not be unreasonably withheld or delayed, and Contractor shall release FPL from all obligations hereunder upon any such assignment; provided, however, that notwithstanding any assignment pursuant to clause (a) above, FPL shall remain responsible for all financial obligations under this Agreement. In addition, Contractor hereby consents to the granting of a security interest in and an assignment by FPL of the Contract Documents and its rights herein to the Financing

Parties and their successors, assigns and designees. In furtherance of the foregoing, Contractor acknowledges that the Financing Parties may under certain circumstances assume the interests and rights of FPL under the Contract Documents.

18.1.3 Contractor acknowledges that the Financing Parties may under certain circumstances foreclose upon and sell, or cause FPL to sell or lease the Project and cause any new lessee or purchaser of the Plant to assume all of the interests, rights and obligations of FPL arising under the Contract Documents. In such event, Contractor agrees to the assignment by FPL and the Financing Parties of the Contract Documents and its rights herein to such purchaser or lessee and shall release FPL and the Financing Parties from all obligations hereunder upon any such assignment.

18.2 GOOD FAITH DEALINGS; AUTHORSHIP

The Parties undertake to act fairly and in good faith in relation to the performance and implementation of the Contract Documents and to take such other reasonable measures as may be necessary for the realization of its purposes and objectives. The Parties collectively have prepared the Contract Documents, and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of the Contract Documents or any part hereof.

18.3 CONFIDENTIALITY.

18.3.1 For purposes of this Agreement, "Confidential Information" shall mean:

(a) The contents of the Contract Documents;

(b) Any information relating to the negotiations or performance of the Contract Documents; and

(c) Any information provided pursuant to the Contract Documents relating to the Project, Plant, FPL, Contractor or their Affiliates which:

(i) The disclosing Party designates in writing as confidential, proprietary or the like and which is received by the other Party;

(ii) By its nature is such that the receiving Party should reasonably conclude that possession of such information is of material commercial or competitive value to the disclosing Party;

(iii) Relates to the configuration, operation, management processes or profitability of the Plant; or

(iv) Relates to Project partners or prospective Project partners of FPL, including the names thereof.

18.3.2 Information shall be Confidential Information for the purposes hereof regardless of:

(a) The form in which it is communicated or maintained (whether oral, written, electronic or visual);

(b) Whether of a business, financial, legal, technical, managerial or other nature; and

(c) Whether prepared by the disclosing Party or otherwise.

18.3.3 Each Party agrees to hold all Confidential Information in confidence and not disclose it other than to its Affiliates, contractors (or potential contractors), subcontractors, vendors, consultants, advisors, Financing Parties (or potential Financing Parties), employees, directors, officers, agents, advisors or representatives (collectively, the "Personnel") for purposes of the Project or to any purchaser of the Project or a direct or indirect interest in Owner. Each Party agrees that only Personnel who need to have access to Confidential Information in order to perform their duties will be authorized to receive the same, and then only to the extent needed and provided such Personnel have been advised of the obligations and restrictions set forth in this Section 18.3. Each Party shall be responsible for any breach of this Agreement by its Personnel.

18.3.4 Notwithstanding the foregoing, information shall not be deemed to be Confidential Information where it:

(a) Is or becomes public information or otherwise generally available to the public through no act of or failure to act by the receiving Party;

(b) Was, prior to the date of this Agreement, already in the possession of the receiving Party and was not received by such Party directly or indirectly from the other Party;

(c) Is rightfully received by the receiving Party from a third party who is not prohibited from disclosing it to such Party and is not breaching any agreement by disclosing it to such Party;

(d) Is independently developed by the receiving Party without benefit of Confidential Information received from the other Party;

(e) Is the property of the Party disclosing such information;

(f) Is necessary or advisable for FPL to exercise its Intellectual Property Rights under this Agreement; or

(g) Is necessary or advisable to disclose such information for the purpose of enforcing or exercising the disclosing Party's rights hereunder.

Specific information shall not be deemed to be within the foregoing exceptions merely because it is embraced by more general information within such exceptions, nor shall a combination of features be deemed to be within such exceptions merely because the individual features are within such exceptions.

18.3.5 If a Party is required by Applicable Law or any Government Authority to disclose any Confidential Information, such Party shall promptly notify the other Party of such requirement prior to disclosure so that the other Party may seek an appropriate protective order and/or waive compliance with the terms of this Section 18.3. If such protective order or other remedy is not obtained, then such Party shall furnish only that portion of the Confidential Information which is legally required to be furnished by the Applicable Law or Government Authority; provided, however, that prior to making any such disclosure, such Party will:

(a) Minimize the amount of Confidential Information to be provided consistent with the interests of the other Party; and

(b) Make every reasonable effort (which shall include participation by the other Party in discussions with the Government Authority involved) to secure confidential treatment of the Confidential Information to be provided.

If efforts to secure confidential treatment are not successful, the other Party shall have the prior right to revise such information in a manner consonant with its interests and the requirements of the Government Authority involved.

18.3.6 Each Party acknowledges that the other Party would not have an adequate remedy at law for money damages if the covenants contained in this Section 18.3 were breached and that any such breach would cause the other Party irreparable harm. Accordingly, each Party also agrees that in the event of any breach or threatened breach of this Section 18.3 by such Party or its Personnel, the other Party, in addition to any other remedies it may have at law or in equity, shall be entitled, without the requirement of posting a bond or other security, to equitable relief, including injunctive relief and specific performance.

18.3.7 All right and title to, and interest in, FPL's Confidential Information shall remain with FPL. Subject to Section 3.32, all Confidential Information obtained, developed or created by or for Contractor exclusively for the Project, including copies thereof, is the exclusive property of FPL whether delivered to FPL or not. No right or license is granted to Contractor or any third party respecting the use of Confidential Information owned by FPL by virtue of this Agreement, except to the extent required for Contractor's performance of its obligations hereunder. Except for that Confidential Information which FPL requires to construct, operate, and/or maintain the Project and its power generation facilities, which Confidential Information shall not be subject to any obligation of return by FPL, at any time upon written request by a disclosing Party, the other Party shall promptly return to the disclosing Party all its Confidential Information,

including all copies thereof, and shall promptly purge all electronic copies of such Confidential Information; provided that the other Party shall be entitled to keep one (1) copy of such Confidential Information for its legal records. The return of Confidential Information to the disclosing Party, the purging of electronic copies of Confidential Information or the retention of a copy of Confidential Information for legal records shall not release a Party from its obligations hereunder with respect to such Confidential Information.

18.3.8 Contractor shall coordinate with FPL with respect to, and provide advance copies to FPL for review of, the text of any proposed announcement or publication that include any non-public information concerning the Work prior to the dissemination thereof to the public or to any Person other than Subcontractors, Vendors, the Financing Parties or advisors of Contractor, in each case, who agree to keep such information confidential. If FPL delivers written notice to Contractor rejecting any such proposed announcement or publication within two (2) Business Days after receiving such advance copies, Contractor shall not make such public announcement or publication; provided, however, that Contractor may disseminate or release such information in response to requirements of Government Authorities.

18.4 NOTICE

18.4.1` Whenever a provision of the Contract Documents requires or permits any consent, approval, notice, request, or demand from one Party to another, the consent approval, notice, request, or demand must be in writing and delivered in accordance with this Section in order to be effective. Any such consent approval, notice, request or demand shall be delivered and received if:

(a) Personally delivered or if delivered by telegram or courier service, when actually received by the Party to whom notice is sent;

(b) Delivered by telex or facsimile, on the first Business Day following the day transmitted (with confirmation of receipt);

(c) Delivered by mail (whether actually received or not), at the close of business on the third Business Day following the day when placed in the mail, postage prepaid, certified or registered, addressed to the appropriate Party,

In each case, at the address and/or facsimile numbers of such Party set forth below (or at such other address as such Party may designate by written notice to the other Party in accordance with this Section):

(i) If to Contractor:

SunPower Corporation, Systems
1414 Harbour Way South
Richmond, California 94804
Attention: President
Fax: (510) 540-0552

With a copy to:

Latham & Watkins LLP
Sears Tower, Suite 5800
233 S. Wacker Drive
Chicago, IL 60606
Attention: Mark P. Ramsey
Fax: (312) 993-9767

(ii) If to FPL:

Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida
Attention: E. N. Scoville II
Director – Construction
Fax: (561) 694-3960

With a copy to:

Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida
Attention: General Counsel
Fax: (561) 691-7305

18.4.2 Any Party may change its address, facsimile number or e-mail number for the purposes of this Agreement by giving notice thereof to the other Party in the manner provided herein.

18.5 WAIVER

No delay, failure or refusal on the part of any Party to exercise or enforce any right under the Contract Documents shall impair such right or be construed as a waiver of such right or any obligation of another Party, nor shall any single or partial exercise of any right hereunder preclude other or further exercise of any right. The failure of a Party to give notice to the other Parties of a breach of the Contract Documents shall not constitute a waiver thereof. Any waiver of any obligation or right hereunder shall not constitute a waiver of any other obligation or right, then existing or arising in the future. Each Party shall have the right to waive any of the terms and conditions of the Contract Documents that are for its benefit. To be effective, a waiver of any obligation or right must be in writing and signed by the Party waiving such obligation or right.

18.6 SEVERABILITY

If any provision of the Contract Documents is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable; the Contract Documents shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of the Contract Documents; and the remaining provisions of the Contract Documents shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from the Contract Documents. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of the Contract Documents a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

18.7 GOVERNING LAW

The Contract Documents, and the rights and obligations of the Parties under or pursuant to the Contract Documents, shall be interpreted and construed according to the substantive laws of the State of Florida (regardless of any other jurisdiction's choice of law rules).

18.8 ENTIRE AGREEMENT; AMENDMENTS

The Contract Documents contain the entire understanding of the Parties with respect to the subject matter hereof and supersede all prior agreements, arrangements, discussions and undertakings between the Parties (whether written or oral) with respect to the subject matter hereof. The Contract Documents may only be amended by written instrument signed by all the Parties.

18.9 EXPENSES AND FURTHER ASSURANCES

Each Party shall pay its own costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of the Contract Documents. Each Party shall, from time to time on being requested to do so by, and at the cost and expense of, the other Party, do all such acts and/or execute and deliver all such

instruments and assurances as are reasonably necessary for carrying out or giving full effect to the terms of the Contract Documents.

18.10 No Third Party Beneficiary

Except with respect to the rights of the Financing Parties, permitted successors and assigns and as provided above and the rights of indemnitees under Article XVI, INDEMNIFICATION:

18.10.1 Nothing in the Contract Documents nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any Person that is not a Party;

18.10.2 No person that is not a Party shall have any rights or interest, direct or indirect, in the Contract Documents or the services to be provided hereunder; and

18.10.3 The Contract Documents are intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to the Contract Documents or the services to be provided hereunder.

18.11 Offset

Notwithstanding any other provision hereof, any and all amounts owing or to be paid by FPL to Contractor hereunder or otherwise, shall be subject to offset and reduction in an amount equal to any amounts that may be owing at any time by Contractor to FPL. Further, for the avoidance of doubt, with respect to any provision of this Agreement that allows FPL to offset, set-off or draw against the Letter of Credit any amount then owed to Contractor, FPL shall have the express right to include in the amount offset, set-off or drawn under the Letter of Credit all of the reasonable costs and expenses it incurs in connection with enforcing such provision (including attorneys' and other consultants' fees).

18.12 Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

18.13 Limitations of Liability

18.13.1 Contractor's maximum liability under this Agreement shall be limited to (x) prior to the Provisional Acceptance Date, *** and (y) after the Provisional Acceptance Date, ***, less the amount of Liquidated Damages previously paid by Contractor; provided, however, that such limitation of liability shall not apply to (i) Contractor's indemnification obligations under the Agreement related to claims of third parties; (ii) costs incurred by Contractor (and in the event of Contractor default, FPL) in achieving Provisional Acceptance and Final Acceptance (including the amount of any reduction in the Contract Price in the event that Contractor makes the election provided for in Section 10.5.1(b)); or (iii) any loss or damage arising out of any tort (including negligence and strict liability) or connected with Contractor's fraud, willful misconduct or illegal or unlawful acts. Contractor's limitations of liability shall not be reduced by the amount of insurance proceeds available to Contractor. FPL's maximum liability under this Agreement shall be limited to *** prior to the Provisional Acceptance Date and *** after the Provisional Acceptance Date, except with respect to any payment due and payable pursuant to Section 7.1,Contract Price; provided however, that such limitation of liability shall not apply to any loss or damage arising out of any tort (including negligence and strict liability) or connected with FPL's fraud, willful misconduct or illegal or unlawful acts. FPL's limitations of liability shall not be reduced by the amount of insurance proceeds available to FPL.

18.13.2 Except as expressly set forth in this Agreement, and notwithstanding anything else in this Agreement to the contrary, Contractor and FPL waive claims against each other for any indirect, special or consequential damages arising out of or relating to this Agreement. This mutual waiver includes:

18.13.3 Damages incurred by FPL for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity, or the services of such persons;

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18.13.4 Damages incurred by Contractor for principal office expenses, including the compensation of personnel stationed there, for loss of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the work; and

18.13.5 This mutual waiver is applicable, without limitation, to all consequential damages due to either Party's termination in accordance with Article XV, TERMINATION.

The foregoing waiver shall not preclude or limit recovery (i) of Schedule Liquidated Damages, (ii) of damages payable by Contractor to FPL pursuant to Section 15.2.4, Amounts Due FPL, of Article XV, TERMINATION, (iii) of the Termination Payment; or (iv) under any indemnity or reimbursement obligation hereunder related to claims of third parties.

18.14 TIME IS OF THE ESSENCE

Contractor acknowledges that timely achievement by Contractor of Mechanical Completion, Provisional Acceptance and Final Acceptance by the applicable scheduled date therefore is essential to FPL, and therefore TIME IS OF THE ESSENCE in performing all of Contractor's obligations set forth herein.

18.15 RECORDS RETENTION

Contractor agrees to retain for a period of five (5) years from the Final Acceptance Date all records relating to its performance of the Work or Contractor's warranty obligations herein, and to cause all Subcontractors and Vendors engaged in connection with the Work or the performance by Contractor of its warranty obligations herein to retain for the same period all their records relating to the Work.

18.16 SUCCESSORS AND ASSIGNS

Subject to Section 18.1, Assignment, this Agreement shall be binding on the Parties hereto and on their respective successors and assigns.

18.17 FINANCING PARTIES' REQUIREMENTS

Contractor acknowledges that FPL may borrow certain funds from the Financing Parties for the construction of the Plant and that, as a condition to making loans to FPL, the Financing Parties may from time to time require certain documents from, and agreements by, Contractor and its Subcontractors and Vendors. In connection therewith, Contractor agrees to furnish to the Financing Parties, and to cause its Subcontractors and Vendors to furnish to the Financing Parties, such written information, certificates, copies of invoices and receipts, lien waivers (upon payment), affidavits, consents to assignment of the Contract Documents and other like documents as the Financing Parties may reasonably request. In addition, Contractor agrees to accept all revisions or amendments to the Contract Documents which are reasonably requested by the Financing Parties in order to facilitate Financial Closing, provided that such revisions or amendments are of a nature typically obtained by financing parties in non-recourse financing. Upon the request of the Financing Parties, as a condition precedent to Financial Closing, Contractor shall state in writing whether or not it is satisfied with FPL's performance to that date.

18.18 ***

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18.19 WAIVER OF CLAIMS.

18.19.1 In the event that this Agreement is terminated by FPL in accordance with its terms, and FPL subsequently signs an agreement to complete the Work (or any portion thereof) with any Person, then Contractor shall and shall cause its Affiliates, ***, to waive the right to make any claims (other than claims by Contractor with respect to amounts specifically provided herein to be paid to Contractor in the event of a termination hereunder) against FPL or any Person with whom FPL negotiates or executes an agreement for completion of any portion of the Work based upon:

(a) Such termination;

(b) Any subsequent negotiations with any Person; and

(c) Execution of such agreement and performance thereunder.

Such waiver includes, without limitation, a waiver of any claims against FPL and any Person with whom FPL negotiates or executes an agreement for completion of any portion of the Work, for tortious interference with business relationships.

18.19.2 Contractor agrees to reimburse, indemnify, defend and hold FPL, the Financing Parties and their Affiliates and each of their respective directors, officers, employees, representatives, agents, advisors, consultants, counsel and assigns harmless from and against, on an After-Tax Basis, any and all losses, claims, obligations, demands, assessments, penalties, liabilities, costs, damages and expenses (including attorneys' fees and expenses) for any claim made by Contractor or any of the above entities pursuant to paragraphs (a), (b) or (c) of Section 18.19.1, above. Contractor expressly agrees that any Person with whom FPL negotiates or executes an agreement for completion of any portion of the Work is an express third party beneficiary of this Section.

18.20 ACCEPTANCE OR REJECTION IN BANKRUPTCY.

18.20.1 Notwithstanding anything contained in this Agreement to the contrary, if an order for relief under Chapter 11 of the Bankruptcy Code is entered with respect to Contractor during the term of the Agreement, then Contractor acknowledges and agrees that it will, subject to Bankruptcy Court approval, formally assume or reject, subject to the requirements of 11 U.S.C. §365, the Agreement within seven (7) days of delivery of written request for such action by FPL. If Contractor fails to timely move for approval or rejection of the Agreement, it acknowledges and agrees that:

(a) It will not contest or in any way otherwise take any action to oppose such a motion filed by FPL or the lifting of the automatic stay of 11 U.S.C§362 to permit FPL to enforce its rights under the Agreement (the "Lift Stay Order");

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(b) It waives all rights it may have under 11 U.S.C. §362(f);

(c) It hereby consents to the ex parte entry of the Lift Stay Order pursuant to 11 U.S.C. §362(f); and

(d) At the option of FPL, it hereby agrees that it will execute an agreed Lift Stay Order on forty-eight (48) hours' notice.

18.20.2 Contractor acknowledges and represents to FPL and agrees that:

(a) It is familiar with the Agreement and the importance of completing its obligations under the Agreement on time and in accordance with its terms; and

(b) Based upon such familiarity, it is critical to performance of its obligations under the Agreement that FPL have prompt and immediate access (in accordance with the requirements of this Agreement) to its contractual remedies under the Agreement in the event of a Contractor Event of Default.

18.21 CONTRACTOR'S LICENSE

Contractor hereby states and FPL acknowledges that Contractor does not presently hold a license as a qualified business entity under Fla. Stat. Chapter 489 (a "Florida Contractor's License"), but that an application for such qualification has been submitted to the Florida Department of Business and Professional Regulation for processing. FPL further acknowledges its full knowledge of Contractor's failure to have a Florida Contractor's License status and hereby agrees that FPL shall not challenge the enforceability of this Agreement based on Contractor's failure to have a Contractor's License as of the date of the execution of this Agreement. In order to satisfy the requirements of this Agreement, Contractor hereby covenants, warrants and agrees that it shall receive all proper licenses required to perform the work more particularly described herein prior to beginning physical work on the Project, including but not limited to a Florida Contractor's License.

IN WITNESS WHEREOF the Parties have executed and delivered this Agreement as of the date first above written.

SUNPOWER CORPORATION, SYSTEMS		**FLORIDA POWER & LIGHT COMPANY**	
BY:	**/s/ Howard Wenger**	**BY:**	**/s/ William Yeager**
NAME:	**Howard Wenger**	**NAME:**	**William Yeager**
TITLE:	**Executive Vice President**	**TITLE:**	**Vice President**
DATE:	**3 July 2008**	**DATE:**	**7/3/08**

Appendix A
SCOPE OF WORK

***

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APPENDIX B
PROJECT CONTROLS REQUIREMENTS

PROJECT CONTROL REQUIREMENTS

1.0 GENERAL PROGRAM REQUIREMENTS

1.1 Provide adequate methods and tools for budget control, scheduling, tracking, trending, and reporting of work in progress for the engineering, procurement and construction activities related to the Project. Owner's intent is to monitor the Agreement at the Project level.

1.2 Identify Contractor's organization.

1.3 Develop and implement a standardized method of invoicing and payment process for work performed.

2.0 SCHEDULE GENERAL REQUIREMENTS

2.1 Bid /Proposal Submittal Requirements

Contractor shall submit a summary schedule with his proposal. This schedule shall be a drafted time-scaled logic diagram that indicates completion of all major activities. Contractor should clearly indicate each contractual milestone submittal date and FPL's deliveries along with Contractors planned completion date, clearly indicating relationships between major activities. Contractor is encouraged to plan for earlier completion dates than the contractual completion dates provided such dates do not interfere with the planned activities of other Contractors or FPL.

2.2 Project Execution Schedule

a. Contractor shall provide an electronic copy (in the most current version of MicroSoft(MS) Project) of Contractor's Construction schedule to FPL within 10 days of Contract award for FPL's approval. The schedule shall be prepared with the understanding that the Contractor's schedule is the Project Master Schedule.

b. Weekly and monthly updates shall be provided to FPL with cut-off dates and submittal dates as determined by FPL. FPL reserves the right of review and approval for the Project Execution Schedule.

c. The schedule shall allow each activity to be assigned to:

- Work Package (No. 1, 2, 3, or 4),
- Area (Unit 3, Unit 4 or Common), and
- Responsibility (Contractor, Engineer, or FPL)

2.3 Schedule Project Progress Reporting (included with Monthly Report)

Within ten (10) days after each calendar month, Contractor shall submit a brief report describing progress from the previous month, an update of the schedule, any commercial or technical issues that remain open, and a matrix of the contract milestones containing the contract date, current scheduled/actual date, and variance between the two.

2.4 Project Schedule Development

a. Contractor's schedule shall be based on FPL's Milestones and Key Dates provided over the course of the Contract.

b. Contractor shall retain responsibility for development and implementation of the schedule covering the scope of work. Contractor retains sole responsibility for meeting schedule Finish Dates.

c. Contractor's Project schedule will include manpower requirements and commodity installation plans. Commodity Installation curves to be developed at a minimum for earthwork, concrete, cable, terminations, panel and support structure installation.

2.5 Project Schedule Integration

a. Contractor shall maintain the project master schedule and integrate other contractor schedules with the mechanical schedule. Also, Contractor shall integrate activities provided by Engineering and FPL for the project into the project master schedule. Contractor schedules shall have a level of detail equivalent to a Level 2 schedule (approximately 100 to 300 activities).

b. The testing, startup of components and systems, and the performance testing shall be integrated by the Contractor into the project master schedule. Contractor shall review the logic to validated correctness of sequence and time durations for all activities in the project master schedule.

3.0 SCHEDULE/PROGRESS MEASUREMENT

3.1 Weekly Progress And Schedule Review

FPL and Contractor representatives shall meet weekly to review the Work progress and update the Work completion schedule. Contractor's representative shall present the following:

a. The current status of their Job Progress.

b. A detailed three week look-ahead schedule

c. Project Milestones current status update and forecast vs. baseline schedule

d. Their current and projected manpower by craft.

e. The material delivery status.

f. The status of drawings and other submittals.

g. Any changes in the Work.

h. The status of "As-Built" Drawings (if required).

i. Problem areas or concerns.

3.2 Progress review meetings will be held weekly at FPL's Jobsite offices.

3.3 Productivity Meetings – Any T&M or Target Price Contractor shall also participate in a weekly productivity meeting with FPL.

3.4 Three Week Look Ahead Schedules

a. Contractor shall develop a 3-week daily work schedule as shown in Attachment 1, Three Week Look Ahead Schedule Example. Generally the schedule shall be submitted to FPL with a copy to all other affected Contractors by the close of business Monday. Any submittals received after 9:00 AM each Tuesday morning shall be considered non-compliant. The exact timing of development may be modified by FPL after commencement of field mobilization.

b. The Three-Week Look Ahead Schedule (3WLAS) will be a bar chart containing activities and durations, area designations, and restraints. Activities shall be planned and scheduled overall consistent with the Project Schedule. The schedule shall be grouped by area.

c. The level of detail required for the 3WLAS shall be determined by the current status of the work and its complexity and coordination with FPL or other Contractors.

d. The key Contractor personnel who will be responsible for working closely with FPL's staff to achieve efficient execution of the Contract shall have the authority to represent Contractor.

3.5 Contractor's three week look-ahead schedule shall:

a. Indicate all planned work and testing that is to be accomplished during the current week and the next two week period all in support of, and in accordance with, Contractor's Construction Schedule.

b. Include major construction equipment requirements

c. Highlight any material or drawing needs from either FPL or Contractor.

d. Reflect the planned and actual activities of the previous week.

e. Include any activities that are required to be accomplished by others that would impact and/or prevent Contractor from starting and/or accomplishing its planned work.

f. Be presented in the level of detail sufficient to direct the efforts of the craft on a day-to-day basis.

4.0 COST REPORTING REQUIREMENTS

4.1 Cost Management Report - Contractor shall provide at a minimum on a bi-weekly basis the Claims, Changes or extra work, delays or accelerations, interferences and the like known to Contractor that have occurred or may be claimed to have occurred since project onset. This information is required to be provided in Microsoft Excel. The report is referred to as the Cost Management Report and will include current status of aforementioned items, initiated dates, dollar exposure amounts (incremental to the executed contract amount), drawing references, subcontractor documentation, etc. as required to establish an understanding of the issues. If there are no known Claims, Changes, etc the Cost Management Report shall still be issued bi-weekly stating NONE. The most recent Cost Management Report shall be attached to each Contractor invoice.

4.2 Contractor shall invoice per the conditions of the contract terms. Additionally at the request of the Owner, Contractor is required to provide an estimate of the next invoice within two business days of the request. It is understood that this request in only an estimate and may be revised with issuance of the formal invoice.

4.3 Contractor shall develop a Work Breakdown Structure (WBS) assigning cost codes encompassing the entire Scope of Work in an adequate level of detail to provide the outlined reporting requirements contained herein. Ultimately, the WBS should be developed in sufficient detail to permit assignment and allocation of costs to the functional classifications specified in the Owner Property Retirement Unit Catalog.

5.0 MATERIAL STATUS

5.1 Contractor shall maintain an updated Materials List and Shipment Origin and Profile Report for materials procured.

5.2 Contractor shall provide a weekly update of the Materials List and Shipment Origin and Profile Report to FPL.

5.3 Contractor, during the Weekly Progress and Schedule Review Meeting, shall provide a list of shortages and late deliveries that could negatively affect construction and installation if not received in a timely manner.

5.4 Contractor shall provide a composite Materials List and Shipment Origin and Profile Report for all FPL procured materials.

6.0 CONTRACTOR'S DAILY REPORT

6.1 Contractor shall submit to FPL's designated field representative prior to 10:00 a.m. each day, starting from the day Contractor mobilizes at the site, a completed and signed Contractor's Daily Force Report utilizing the form provided as Attachment 2, Daily Force Report, hereto. The Daily Force Report shall contain a listing of Contractor and Contractor manpower, including personnel by responsibility, craft, and remarks concerning the daily field activities.

7.0 TIME AND MATERIALS (T&M) WORK

7.1 Any Contract with a T&M contract or an incentive based contract shall fully report progress and expended man-hours at the individual line item level of FPL's EVMS.

7.2 This includes work performed by any Contractor doing Extra Work Order work on a T&M basis.

8.0 MONTHLY PROGRESS REPORT REQUIREMENTS

8.1 Brief narrative overview of Project status.

8.2 Brief narrative of identified critical issues.

8.3 Brief narrative of short term look ahead activities.

8.4 Updated organization chart for the Project.

8.5 Safety and environmental issues/status.

8.6 Project Milestones current status update and forecast vs. baseline schedule

8.7 Contractor Project schedules shall be updated and submitted in adobe acrobat format (pdf). These schedules shall show current status and the projected completion dates of all Project phases against the current planned schedule.

8.8 An electronic copy (data file) of the most recently updated complete MS Project integrated Project Schedule network.

8.9 Cost Management Report

8.10 Manpower curves (manpower plan with actual and forecast to go over time)

8.11 Progress curves (% Complete progress versus time).

8.12 Construction commodity curves (actual vs. original baseline and current plan) as identified in Section 2.4c above. A variance explanation and/or recovery plan shall be provided by Contractor should progress monitored on fall behind the plan.

8.13 Procurement Status Report. A complete listing of all equipment and materials to be procured by the Contractor, including status of the procurement process (bid, evaluate & award). The information included in this report shall be consistent and support the Project Schedule.

Attachments

Attachment 1 - Three Week Look Ahead Schedule Example

Attachment 2 - Daily Force Report

Project Name Here
Project Number Here
Prepared By:

Exhibit B, Attachment 1 - Three Week Look Ahead Schedule Example

Date: ________

		Last Week Beginning:							Current Week Beginning:							Week 2 Beginning:							Week 3 Beginning:								
ACTIVITY ID	ACTIVITY DESCRIPTION	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	P3 Target Completion Date	COMMENTS
	Manpower																														
	Foreman																														
	Pipefitters																														
	Laborers																														
	Total																														

Exhibit B
PROJECT CONTROLS REQUIREMENTS
(continued)

Attachment 2 - Daily Force Report

Contract No. _____ Date _____

Contractor	Project	
Days/Week	Shifts	Hours/Shift
Weather	Temperature a.m. p.m.	Work Days on Job

Personnel	General Foreman	Foreman	Journeyman	Helper	Total	M/Hr Today	Absent	Equipment	No.
Boilermakers								Trucks-Pickup	
Ironworkers-Struct								Trucks-Dump, Flatbed	
Ironworkers-Rebar								Air Compressors	
Millwrights								Tractors	
Oper. Engineers								Crawler-Backhoe	
Testers								Tractor-Backhoe	
Pipefitters								Welding Mach.-Elec	
Carpenters								Welding Mach.-Comb.	
Cement Finishers								Office Trailer	
Laborers								Winch Trucks	
Bricklayers								Cranes Cap	
Electricians								Cranes Cap	
Painters								Cranes Cap	
Insulators								Other	
Sheet Metalworkers									
Roofers									
Clerical Help									
Engineering Asst									
QC Inspectors									
NDE Technicians									
Superintendent									
TOTALS								TOTALS	

COMMENTS: _____

Signature: _____

APPENDIX C

CRITICAL MILESTONES & MILESTONES

DESOTO

1.	**Mobilize for Construction**	*******
2.	**Begin Concrete Pedestals**	*******
3.	**Concrete Pedestals 50% Complete**	*******
4.	**Electrical Interconnection Complete**	*******
5.	**Concrete Pedestals Complete**	*******
6.	**Torque Arms Installed Complete**	*******
7.	**PV Modules 100% Delivered**	*******
8.	**Communications Infrastructure for DAS Complete**	*******
9.	**Tracker Erection Complete**	*******
10.	**PV Modules Installed Complete**	*******
11.	**Electrical Construction Complete**	*******
12.	**Provisional Acceptance**	*******

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APPENDIX D
Construction and Milestone Payment Schedule

Schedule of Values for Progress Payments *

Milestone Activities	Cumulative % Owed	% Owed	Scheduled Completion
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***

* Each item will be billed when complete which may be earlier than the schedule above.

Note:

Notwithstanding any amount otherwise billed, due or payable pursuant to this schedule, prior to January 1, 2009, in no event shall FPL have any obligation to pay more than $*** to Contractor under the Agreement. Unless FPL terminates the Agreement prior to January 1, 2009, in which case FPL shall pay to Contractor the Termination Payment, on and after January 1, 2009, FPL shall pay to Contractor all amounts owed pursuant to the terms of the Agreement. If FPL issues a Notice to Proceed before January 1, 2009, the parties will consider, in their sole discretion, amending by mutual agreement the dates stated in this Appendix D.

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*** CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Appendix E

***

*** CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

APPENDIX F

FORM OF REQUEST FOR PAYMENT

TO: Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408

ATTN:

APPLICATION FOR MILESTONE PAYMENT

FPL Purchase Order No.: _____ DATE: _____
Supplier's Invoice No.: _____

Milestone Number	Milestone Description	Total Activity Value	Activity Value Requested for Payment

Total This Application $_____

ORIGINAL CONTRACT PRICE	$	
Net Change By Change Order	$	
CONTRACT PRICE TO DATE	$	
Less Payments by Owner to Subcontractors	$	
Less Prior Applications for Payment	$	
CURRENT APPLICATION FOR PAYMENT	$	
Less Retention	$	
Net Current Payment	$	
BALANCE OF CONTRACT PRICE	$	

APPENDIX G

Form of Final Acceptance Certificate
(Page 1 of 2)

Date: _____

1. Unless otherwise defined herein, the capitalized terms used throughout this certificate shall have the meanings ascribed to same in the Turnkey Engineering, Procurement and Construction Agreement for Solar Photovoltaic Generating Facility dated as of June [__], 2008 (as the same may be amended, modified and supplemented from time to time, the "Agreement") by and between Florida Power & Light Company, a Florida corporation ("FPL") and SunPower Corporation, Systems, a Delaware Corporation ("Contractor").

2. Contractor certifies and represents that the following statements are true as of the date of delivery hereof to FPL:

   a) The Contractor has satisfied all of the requirements for the achievement of Final Acceptance in accordance with the Agreement.

   b) Contractor has delivered this form, completed except for signature by FPL, to FPL's duly authorized representative referred to in Section 4.11 of the Agreement on the above date.

3. The person signing below is authorized to submit this form to FPL for and on behalf of Contractor.

SunPower Corporation, Systems,
as Contractor

By: _____
Name: _____
Title: _____

FPL to cross through one (1) of the following statements:

A. FPL agrees that Final Acceptance has been achieved. This Certificate was received by FPL on the date first written above and is effective as of that date.

B. FPL does not agree that Final Acceptance has been achieved by the Contractor due to the following:

_____

_____

_____

_____

FPL:

The person signing below is authorized to sign the Final Acceptance Certificate for and on behalf of FPL.

By: _____ Date: _____
Name: _____
Title: _____

APPENDIX H

FORM OF CONTRACTOR CERTIFICATE FOR PARTIAL WAIVER OF LIENS

This CONTRACTOR'S PARTIAL LIEN WAIVER AND RELEASE ("Contractor's Partial Lien Waiver and Release") is made by SunPower Corporation, Systems, a Delaware corporation ("Contractor"), on behalf of itself, its successors and assigns, and those acting by or through any of the foregoing, for and in consideration of the sum of [AMOUNT OF PARTIAL PAYMENT REQUEST] DOLLARS ($[_____]) (the "Progress Payment") and other good and valuable consideration, in hand paid, the receipt and sufficiency of which are hereby acknowledged, as full payment on account of all labor, services, materials, equipment and other work performed through the ___ day of _____, 200_ (the "Release Date"), for Florida Power & Light Company, a Florida corporation ("Owner"), in connection with the construction of a solar photovoltaic electric generation facility, and all services and utilities related thereto, in De Soto County, Florida (such facility, together with the property on which such facility is located, the "Project"), pursuant to that certain TURNKEY ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT FOR SOLAR PHOTOVOLTAIC GENERATING FACILITY, dated as of June [__], 2008, between Owner and Contractor, as the same may be amended from time to time (as the same may be amended, modified and supplemented from time to time, the "Agreement").

Solely with respect to the Work performed by the Contractor relating to the Project on or prior to the Release Date, the Contractor does hereby unconditionally and irrevocably waive, release, remise, relinquish and quit-claim (collectively, the "Release") all actions, claims, demands, liens, lien rights and claims of lien, of any kind whatsoever (collectively, "Claims"), which Contractor ever had or now has, known or unknown, against the Project or against Owner, its parents, subsidiaries and affiliates, at all tiers, and its and their insurers, sureties, employees, officers, directors, representatives, shareholders, agents, and all parties acting for any of them (collectively, the "Released Entities"), including, without limitation, all claims related to, in connection with, or arising out of, all facts, acts, events, circumstances, changes or extra work, constructive or actual delays or accelerations, interferences and the like, which have occurred or may be claimed to have occurred. The foregoing Release shall only be effective with respect to Claims arising in connection with the portion of the work performed by Contractor prior to the Release Date.

The Contractor warrants and represents, solely with respect to all Work completed through the Release Date that (a) the Contractor has not assigned or pledged any rights or claims in any amount due or to become due from Owner in connection with the Project; (b) payment has been or will be made to all subcontractors, laborers and material suppliers, at all tiers, for all labor, services, materials and equipment furnished by or through the Contractor for the Project, including all payroll taxes and contributions required to be made; (c) no claims from subcontractors, vendors, mechanics or materialmen against the Released Entities have been submitted to Contractor with respect to the Project or remain unsatisfied as of the date hereof; (d) no mechanics' or materialmen's liens have been filed with respect to the Project that have not been discharged or for which a bond has not been posted in accordance with the Agreement; and (e) payment of all amounts due has been made to all consultants, employees, subcontractors, laborers and material suppliers, at all tiers, and all other entities, for all labor, services, materials and equipment furnished by or through Contractor for the Project, including, without limitation, all payroll taxes and contributions required to be made and all wages, overtime pay, premium pay, holiday pay, sick pay, personal leave pay, severance pay, fees, fringe benefits, commissions

and reimbursable expenses required to be paid and all deductions for dues, fees or contributions required to be made in connection with all collective bargaining agreements in existence, if any, which affect any worker(s) providing services for the Project.

Solely with respect to all Work for the Project completed through the Release Date, the Contractor agrees to defend, indemnify and hold the Released Entities harmless from and against any and all actions, causes of action, losses or damages of whatever kind, including, without limitation, reasonable attorneys' fees and costs in arbitration and at the pre-trial, trial and appellate levels, which the Released Entities may suffer by reason of (a) any claim made against the Project or any of the Released Entities relating to labor, services, materials or equipment furnished by or through the Contractor in connection with the Project, or (b) any breach of any representation or warranty made by the Contractor to Owner in connection with the Project, including the representations and warranties included herein, any false statement made in this Contractor's Partial Lien Waiver and Release or any misrepresentation or omission made to Owner by the Contractor.

The Contractor acknowledges and agrees that (a) Owner is relying upon the representations and warranties made herein as a material inducement for Owner to make the Progress Payment to the Contractor; (b) this Contractor's Partial Lien Waiver and Release is freely and voluntarily given by the Contractor, and the Contractor has had the advice of counsel in connection herewith and is fully informed as to the legal effects of this Contractor's Partial Lien Waiver and Release, and the Contractor has voluntarily accepted the terms herein for the consideration recited above; and (c) the tendering of the Progress Payment by Owner and the receipt of the Progress Payment and the execution of this Contractor's Partial Lien Waiver and Release by the Contractor shall not, in any manner whatsoever, release the Contractor from (i) its continuing obligations with respect to the completion of any work at the Project that remains incomplete, including warranty work or guaranty work, or the correction of defective or non-conforming work; (ii) any contractual, statutory or common law obligations of the Contractor with respect to the Released Entities in connection with the Project; or (iii) any other obligations of the Contractor with respect to Released Entities in connection with the Project.

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Dated this ___day of _____, 200__.

SUNPOWER CORPORATION, SYSTEMS:

WITNESSES:

_____

Name: _____

_____

Name: _____

By: _____

Name: _____

Title _____

Address: _____

_____

_____

NOTARIAL ACKNOWLEDGMENT

STATE OF _____)

) ss:

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 200__, by _____, the _____ of SunPower Corporation, Systems, a Delaware corporation, who executed the foregoing instrument on behalf of said corporation, and who is personally known to me or who produced _____ as identification.

_____

Name: _____

Notary Public, State of [Florida]

[If notarized in a State other than Florida, Signatory shall comply with the notary requirements of such State.]

Commission No. _____

My Commission expires: _____

(Seal)

APPENDIX H-1

FORM OF SUBCONTRACTOR CERTIFICATE FOR PARTIAL WAIVER OF LIENS

This SUBCONTRACTOR'S PARTIAL LIEN WAIVER AND RELEASE is made by **[_____]**, a [_____] (the "Releasor"), subcontractor to SunPower Corporation, Systems, a Delaware corporation ("Contractor"), on behalf of Releasor, its successors and assigns, and those acting by or through any of the foregoing, for and in consideration of the sum of Ten and No/100 DOLLARS ($10.00) and other good and valuable consideration, in hand paid, the receipt and sufficiency of which are hereby acknowledged, as full payment on account of all labor, services, materials, equipment and other work furnished through the ___ day of _____, 200_ (the "Release Date"), for work in connection with the construction of a solar photovoltaic electric generation facility, and all services and utilities related thereto, in De Soto County, Florida (such facility, together with the property on which such facility is located, the "Project") by Contractor on behalf of Florida Power & Light Company, a Florida corporation ("Owner").

Solely with respect to the work performed by the Releasor on or prior to the Release Date in connection with the Project, the Releasor does hereby unconditionally and irrevocably waive, release, remise, relinquish and quit-claim (collectively, the "Release") all actions, claims, demands, liens, lien rights and claims of lien, of any kind whatsoever (collectively, "Claims"), which Releasor ever had or now has, known or unknown, against the Project or against Owner or Contractor, their partners, parents, subsidiaries and affiliates, at all tiers, and their insurers, sureties, employees, officers, directors, representatives, shareholders, agents, and all parties acting for any of them (collectively, the "Released Entities"), including, without limitation, all claims related to, in connection with, or arising out of, all facts, acts, events, circumstances, changes or extra work, constructive or actual delays or accelerations, interferences and the like, which have occurred or may be claimed to have occurred. The foregoing Release shall only be effective with respect to Claims arising in connection with the portion of the work performed by Releasor prior to the Release Date.

The Releasor warrants and represents, solely with respect to all work by Releasor completed for the Project through the Release Date, that (a) the Releasor has not assigned or pledged any rights or claims in any amount due or to become due from Contractor in connection with the Project; (b) payment has been or will be made to all of its subcontractors, laborers and material suppliers, at all tiers, for all labor, services, materials and equipment furnished by or through the Releasor for the Project, including all payroll taxes and contributions required to be made; (c) no claims from any of its subcontractors, vendors, mechanics or materialmen against the Released Entities in connection with the Project have been submitted to Releasor with respect to the Project or remain unsatisfied as of the date hereof; (d) no mechanics' or materialmen's liens have been filed with respect to the Project that have not been discharged; and (e) payment of all amounts due has been made to all consultants, employees, subcontractors, laborers and material suppliers, at all tiers, and all other entities, for all labor, services, materials and equipment furnished by or through Releasor for the Project, including, without limitation, all payroll taxes and contributions required to be made and all wages, overtime pay, premium pay, holiday pay, sick pay, personal leave pay, severance pay, fees, fringe benefits, commissions and reimbursable expenses required to be paid and all deductions for dues, fees or contributions required to be made in connection with all collective bargaining agreements in existence, if any, which affect any worker(s) providing services for the Project.

Solely with respect to all work by Releasor in connection with the Project completed through the Release Date, the Releasor agrees to defend, indemnify and hold the Released Entities harmless from and against any and all actions, causes of action, losses or damages of whatever kind, including, without limitation, reasonable attorneys' fees and costs in arbitration and at the pre-trial, trial and appellate levels, which the Released Entities may suffer by reason of (a) any claim made against the Project or any of the Released Entities relating to labor, services, materials or equipment furnished by or through the Releasor, or (b) any breach of any representation or warranty made by the Releasor to the Released Entities, including the representations and warranties included herein, any false statement made in this Subcontractor's Partial Lien Waiver and Release, or any misrepresentation or omission made to the Released Entities by the Releasor.

The Releasor acknowledges and agrees that (a) the Contractor and Owner are relying upon the representations and warranties made herein as a material inducement for the Contractor to make payment to the Releasor; (b) this Subcontractor's Partial Lien Waiver and Release is freely and voluntarily given by the Releasor and the Releasor has had the advice of counsel in connection herewith and is fully informed as to the legal effects of this Subcontractor's Partial Lien Waiver and Release and the Releasor has voluntarily accepted the terms herein for the consideration recited above; and (c) the tendering of payment by the Contractor and the receipt of payment and the execution of this Subcontractor's Partial Lien Waiver and Release by the Releasor shall not, in any manner whatsoever, release the Releasor from (i) its continuing obligations with respect to the completion of any work at the Project that remains incomplete, including warranty work or guaranty work, or the correction of defective or non-conforming work; (ii) any contractual, statutory or common law obligations of the Releasor with respect to any of the Released Entities in connection with the Project; or (iii) any other obligations of the Releasor with respect to any of the Released Entities in connection with the Project.

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SIGNATURES APPEAR ON FOLLOWING PAGE.]

Dated this ___day of _____, 200__.

WITNESSES:

_____

Name: _____

_____

Name: _____

Subcontractor:

By: _____

Name: _____

Title: _____

Address: _____

NOTARIAL ACKNOWLEDGMENT

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 200__, by _____, the _____ of_____, a _____, who executed the foregoing instrument on behalf of said corporation, and who is personally known to me or who produced _____ as identification.

_____

Name: _____

Notary Public, State of [Florida] **[If notarized in a State other than Florida, Signatory shall comply with the notary requirements of such State.]**

Commission No. _____

My Commission expires: _____

(Seal)

*** CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

APPENDIX I

***

*** CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Appendix J

Option Pricing

FPL may elect to purchase any, all or none of the options listed below, subject to maximum annual quantities, in the column entitled "Option Description" (each an "Option", collectively the "Options"). The price of each of the Options for the Project is set forth in the column entitled "Option Price", which price shall be paid at the same percentages upon achievement of the same milestones set forth in the Construction and Payment Milestone Schedule attached to the Agreement.[1] In the event FPL notifies Contractor of its exercise of a given Option, upon FPL's delivery of a Final Notice to Proceed with respect to the associated commencement of Work, an additional Letter of Credit shall be issued pursuant to the requirements of Section 7.5 with a face amount equal to *** percent (***%) of the related Option Price through the final acceptance date, after which the face amount of such Letter of Credit shall equal *** percent (***%) of the Option Price until ***.

The notice to proceed date (s), critical milestone dates, guaranteed provisional acceptance and final acceptance dates, construction and milestone payment dates, and termination payment dates shall be mutually agreed by the Parties at the time of Option exercise. In order to choose any of the Options, FPL must notify Contractor on or before the date set forth in the column entitled "Option Date". In the event FPL exercises an Option set forth herein, such Option(s) shall thereafter be considered part of the Work, and Contractor shall promptly commence and diligently pursue to completion such additional Work.

Option Description	Option Price	Option Date
1) *** MW (net) capacity increase.	$***	***
2) *** MW (net) capacity increase. FPL may exercise this option up to five times, for a total of *** MW (net) capacity increase.	$*** for each *** MW option selected	***
3) *** MW (net) capacity increase.	$***	***
4) *** MW (net) capacity increase. FPL may exercise this option up to five times, for a total of *** MW (net) capacity increase.	$*** for each *** MW option selected	***

*** CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

[1] The Option Price assumes the Driven Pier Design (as defined in Section 7.1 of the Agreement) is implemented. In the event that Contractor elects not to effect the Driven Pier Design, the Parties will mutually agree on appropriate revisions to the Option Price.

***

*** CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Appendix K – Module Warranty

SUNPOWER LIMITED WARRANTY FOR PV MODULES
SPR-315E-xxx-x, SPR-300E-xxx-x, SPR-305-xxx-x, SPR-290-xxx-x, SPR-230-xxx-x, SPR-225-xxx-x, SPR-220-xxx-x, SPR-217-xxx-x, SPR-215-xxx-x, SPR-210-xxx-x, SPR-205-xxx-x, SPR-200-xxx-x, SPR-90-xxx-x ("xxx-x" define product variants)

1. Limited Product Warranty – Ten (10) Year Repair, Replacement or Refund Remedy

SunPower Corporation with offices at 3939 North First Street, San Jose, CA 95134 ("SunPower") warrants that for ten (10) years from the date of delivery, its Photovoltaic modules ("PV modules") shall be free from defects in materials and workmanship under normal application, installation, use and service conditions. If the PV modules fail to conform to this warranty, then for a period ending ten (10) years from date of delivery to the original end-customer ("the Customer"), SunPower will, at its option, either repair or replace the product, or refund the purchase price as paid by the Customer ("Purchase Price"). The repair, replacement or refund remedy shall be the sole and exclusive remedy provided under the Limited Product Warranty and shall not extend beyond the ten (10) year period set forth herein. This Limited Product Warranty does not warrant a specific power output, which shall be exclusively covered under clause 2 hereinafter (Limited Power Warranty).

2. Limited Power Warranty

a) SunPower additionally warrants: If, within twelve (12) years from date of delivery to the Customer any PV module(s) exhibits a power output less than 90% of the Minimum Peak Power[2] as specified at the date of delivery in SunPower's Product datasheet, provided that such loss in power is determined by SunPower (at its sole and absolute discretion) to be due to defects in material or workmanship SunPower will replace such loss in power by either providing to the Customer additional PV modules to make up such loss in power or by providing monetary compensation equivalent to the cost of additional PV modules required to make up such loss in power or by repairing or replacing the defective PV modules, at the option of SunPower

b) SunPower additionally warrants: If, within twenty five (25) years from date of delivery to the Customer any PV module(s) exhibits a power output less than 80% of the Minimum Peak Power[1] as specified at the date of delivery in SunPower's Product datasheet, provided that such loss in power is determined by SunPower (at its sole and absolute discretion) to be due to defects in material or workmanship SunPower will replace such loss in power by either providing to the Customer additional PV modules to make up such loss in power or by providing monetary compensation equivalent to the cost of additional PV modules required to make up such loss in power or by repairing or replacing the defective PV modules, at the option of SunPower.

3. Exclusions and limitations

a) Warranty claims must in any event be filed within the applicable Warranty period.
b) Warranty claims may only be made by, or on the behalf of, the original end customer or a person to whom title has been transferred for the PV Modules.
c) The Limited Warranties do not apply to any of the following:
   1. PV modules which in SunPower's absolute judgment have been subjected to: misuse, abuse, neglect or accident; alteration, improper installation, application or removal (including but not

[2] *"Minimum Peak Power" = Peak power minus the Peak power tolerance (as specified in SunPower's Product datasheet). "Peak power" is the power in peak watts that a PV module generates at STC (Standard Test conditions: Irradiance of 1000 W/m², light spectrum AM 1.5g and a cell temperature of 25 degrees C)*

limited to installation, application or removal by any party other than a SunPower authorized dealer; non-observance of SunPower's installation, users and/or maintenance instructions; repair or modifications by someone other than an approved service technician of SunPower; power failure surges, lightning, flood, fire, accidental breakage or other events outside SunPower's control.

2. Cosmetic defects stemming from normal wear and tear of PV module materials.
3. PV modules installed in locations, which in SunPower's absolute judgment may be subject to direct contact with salt water.

d) The Limited Warranties do not cover any transportation costs for return of the PV modules, or for reshipment of any repaired or replaced PV modules, or cost associated with installation, removal or reinstallation of the PV modules.

e) When used on a mobile platform of any type, the Limited Power Warranty, applying to any of the PV modules shall be limited to twelve (12) years as per the provisions of clause 2(a) hereof.

f) Warranty claims will not apply if the type or serial number of the PV modules is altered, removed or made illegible.

4. Limitation of Warranty Scope

SUBJECT TO THE LIMITIATIONS UNDER APPLICABLE LAW, THE LIMITED WARRANTIES SET FORTH HEREIN ARE EXPRESSLY IN LIEU OF AND EXCLUDE ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR PARTICULAR PURPOSE, USE, OR APPLICATION, AND ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF SUNPOWER, UNLESS SUCH OTHER WARRANTIES, OBLIGATIONS OR LIABILITIES ARE EXPRESSLY AGREED TO IN WRITING SIGNED AND APPROVED BY SUNPOWER. SUNPOWER SHALL HAVE NO RESPONSIBILITY OR LIABILITY WHATSOEVER FOR DAMAGE OR INJURY TO PERSONS OR PROPERTY OR FOR OTHER LOSS OR INJURY RESULTING FROM ANY CAUSE WHATSOEVER ARISING OUT OF OR RELATED TO THE PRODUCT, INCLUDING, WITHOUT LIMITATION, ANY DEFECTS IN THE MODULE, OR FROM USE OR INSTALLATION. UNDER NO CIRCUMSTANCES SHALL SUNPOWER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, HOWSOEVER CAUSED. LOSS OF USE, LOSS OF PROFITS, LOSS OF PRODUCTION, LOSS OF REVENUES ARE THEREFORE SPECIFICALLY BUT WITHOUT LIMITATION EXCLUDED.

SUNPOWER'S AGGREGATE LIABILITY, IF ANY, IN DAMAGES OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE PAID TO SUNPOWER BY THE CUSTOMER, FOR THE UNIT OF PRODUCT OR SERVICE FURNISHED OR TO BE FURNISHED, AS THE CASE MAY BE, WHICH GAVE RISE TO THE WARRANTY CLAIM.

SOME STATES DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OF DAMAGES SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.

5. Obtaining Warranty Performance

If you feel you have a justified claim covered by this Limited Warranty, immediately notify the (a) Installer, who sold the PV-modules, or (b) any authorized SunPower distributor, of the claim in writing, or (c) send such notification to SunPower Corporation, 3939 North First Street, San Jose, CA 95134, directly. In addition, please enclose evidence of the date of delivery of the PV module. If applicable, your installer or distributor will give advice on handling the claim. If further assistance is required, please write to SunPower for instructions. The return of any PV-modules will not be accepted unless prior written authorization has been given by SunPower.

DeSoto Solar Project
List of Permits/Authorizations/Action Items

APPENDIX M
FPL Permits

	Task	Responsible Agency	Responsible Party	Target Completion Date	Comments
1	Environmental Resource Permit	FDEP	FPL	11/1/08	ACOE not required because no impact to wetlands.
2	Conduct Threatened and Endangered (T&E) Species Survey	FDEP	FPL	5/28/08	Complete.
3	Gopher Tortoise Relocation	FFWCC	FPL	10/15/08	Need final site layout before relocation, if needed.
4	Conduct a Phase 1 cultural assessment on areas that have not been previously surveyed	SHPO	FPL	8/4/08	
5	Federal, State and Local easements	site specific	FPL	TBD	
6	Determination of 'no hazard to air navigation'	FAA	FPL	7/30/08	
7	Spill Prevention Control and Counter Measures (SPCC) Plan	EPA	FPL	TBD	Post Construction if needed.
8	Conditional Use Permit	County	FPL	5/8/08	Complete.
9	Site Plan Approval	County	FPL	10/15/08	Need final site layout from Contractor.
10	Zoning/Land Use Amendment	County	FPL	5/8/08	Complete.
11	Water well permits (consumptive)	County or WMD	FPL	12/30/08	N/A for Construction. Needed for Operation.
12	Submit Wetland Jurisdictional Determination Application	FDEP	FPL	5/1/08	Complete.

APPENDIX N
Schedule of Termination of Values

Termination Dollars Due*	% Owed of Total Contract Price	If Terminated After:
***	***	***
***	***	***
***	***	***
***	***	***
***	***	***
***	***	***
***	***	***
***	***	***
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***	***	***
***	***	***
***	***	***
***	***	***

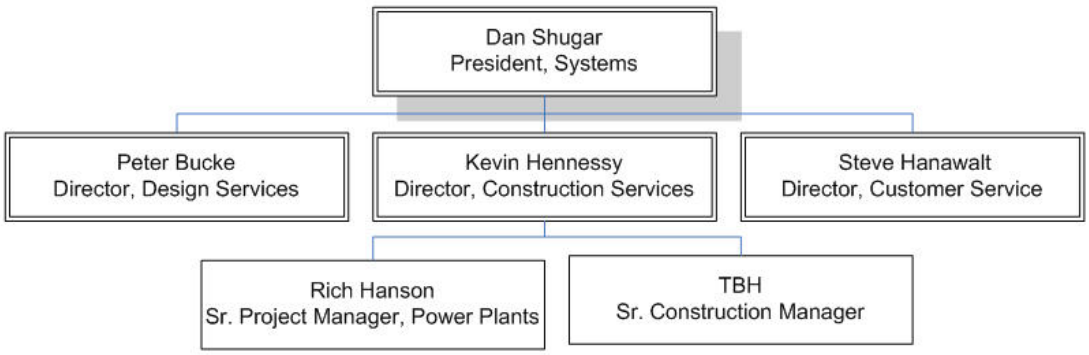
*Termination values are based on a Contract Price of $***. If the Contract Price is adjusted pursuant to the Agreement, the termination values shall be adjusted to the product of the adjusted Contract Price and the applicable "% Owed of Total Contract Price" for a given termination value.

Note:
The Termination Payment due and payable upon a termination on or prior to January 1, 2009, shall be the applicable amount provided for under the column "Termination Dollars Due" for a termination on or after a date specified under the column "If Terminated After" less the aggregate amount of the Contract Price paid by FPL to Contractor as of such date. The Termination Payment due and payable upon a termination after January 1, 2009 shall be the greater of: (1) the applicable amount provided for under the column "Termination Dollars Due" for a termination on or after a date specified under the column "If Terminated After" less the aggregate amount of the Contract Price paid by FPL to Contractor as of such date and (2) the aggregate amount of outstanding approved and unpaid Requests for Payment made pursuant to the Agreement which entitle Contractor to payment in accordance with the Construction and Milestone Payment Schedule. If FPL issues a Notice to Proceed before January 1, 2009, the parties will consider, in their sole discretion, amending by mutual agreement the dates stated in this Appendix N.

*** CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

APPENDIX O

Project Management Team



TBH – To be hired, subject to the approval requirements of Section 3.12.1 of the Agreement

Biographical Information:

Daniel S. Shugar, President, SunPower Systems

Mr. Shugar leads Supply Chain, Manufacturing, Product Development, and Project Engineering and Construction. Since January 1996, Mr. Shugar has overseen the installation of over 200 MW of solar PV projects. He has been active in solar power since 1988. Mr. Shugar has a B.S. in Electrical Engineering from Rensselaer Polytechnic University, and an MBA from Golden Gate University in San Francisco.

Kevin Hennessy, Director, Construction Services

Mr. Hennessy is a Professional Engineer with over 25 years of commercial construction experiences. He has extensive knowledge of design and construction methods of all types of building systems and has developed projects all over the globe. He is responsible for the Design and Construction groups in the Systems Group at SunPower. This team has been responsible for implementation of the largest Solar PV Energy projects throughout the world, including several projects over 20MW's. Kevin is a California licensed Civil Engineer and has a M.S. in Civil Engineering from Stanford University.

Peter Buecke, Director Design Services

Mr. Buecke is an architect who has led the design and construction division for several national home builders. He is responsible for all activities related to the design and engineering of large ground-mounted and roof-top solar projects. He has over 20 years of experience on project planning with success in setting and meeting project design milestones. He has a B.S in Design from the College of Architecture at Arizona State University.

Steve Hanawalt, Director, Customer Service

Mr. Hannawalt leads the Customer Service and O&M Group for SunPower Systems. His energy facility operations and management experience includes start-up engineering, performance engineering, operations management, and asset optimization. Prior to joining SunPower, he was Vice President of

Plant Optimization at Calpine Corporation, a large independent power producer. In that capacity his group provided the 25,000 MW fleet with system commissioning services, performance and reliability engineering, and real-time performance monitoring and diagnostic services. Plant Optimization provided the performance, reliability, and cost structure inputs to System Dispatch to optimize the economic dispatch of the generating units. Mr. Hanawalt received his B.S. in Mechanical Engineering from the University of California, Berkeley and is currently pursuing his MBA.

Rich Hanson, Senior Project Manager

Mr. Hanson has been involved as a project manager of utility size power plants since joining SunPower Corp . Most recently he was responsible for completing a 14 MW ground mounted tracking system at Nellis Air Force Base in Las Vegas, NV. Prior to joining SunPower, Rich was Director of Construction for a Construction Management firm in the California Central Valley, specializing in design/build management of medical office buildings, airport construction, and regional shopping centers.

APPENDIX P

LEGAL DESCRIPTION OF PROPERTY SITE

A tract of land located in Desoto County and more particularly described as follows:

The northwest quarter and the west half of the northeast quarter and the north half of the southwest quarter and the southeast quarter of Section 27, Township 36 South, Range 25 East; And the south half of the northeast quarter and the west half of the southwest quarter and the southeast quarter of Section 26, Township 36 South, Range 25 East; And Section 35, Township 36 South, Range 25 East; And the west half of the northeast quarter of Section 2, Township 37 South, Range 25 East.

APPENDIX Q

Intentionally Deleted

APPENDIX R

FORM OF CONTRACTOR CERTIFICATE FOR FINAL WAIVER OF LIENS

This CONTRACTOR'S FULL LIEN WAIVER AND RELEASE ("Contractor's Full Lien Waiver and Release") is made by SunPower Corporation, Systems, a Delaware corporation ("Contractor"), on behalf of itself, its successors and assigns, and those acting by or through any of the foregoing, for and in consideration of [AMOUNT OF FINAL PAYMENT REQUEST] DOLLARS ($[_____]) and other good and valuable consideration, in hand paid, the receipt and sufficiency of which are hereby acknowledged, as full and final payment on account of all labor, services, materials, equipment and other work performed for Florida Power & Light Company ("Owner"), in connection with the construction of a solar photovoltaic electric generation facility, and all services and utilities related thereto, in De Soto County, Florida (such facility, together with the property on which such facility is located, the "Project"), pursuant to that certain TURNKEY ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT FOR SOLAR PHOTOVOLTAIC GENERATING FACILITY, dated as of June [__], 2008, between Owner and Contractor, as the same may be amended from time to time (the "Agreement").

Contractor does hereby unconditionally and irrevocably waive, release, remise, relinquish and quit-claim all actions, claims, demands, liens, lien rights and claims of lien, of any kind whatsoever, which Contractor ever had, now has, or may have in the future, known or unknown, against the Project or against Owner, its parents, subsidiaries and affiliates, at all tiers, and its and their insurers, sureties, employees, officers, directors, representatives, shareholders, agents, and all parties acting for any of them related to or arising from the Project (collectively, the "Released Entities"), including, without limitation, all claims related to, in connection with, or arising out of, all facts, acts, events, circumstances, changes or extra work, constructive or actual delays or accelerations, interferences and the like, which have occurred or may be claimed to have occurred.

The Contractor warrants and represents that (a) the Contractor has not assigned or pledged any rights or claims in any amount due or to become due from Owner related to or arising from the Project; (b) payment has been or will be made to all subcontractors, laborers and material suppliers, at all tiers, for all labor, services, materials and equipment furnished by or through the Contractor for the Project, including all payroll taxes and contributions required to be made; (c) no claims from subcontractors, vendors, mechanics or materialmen against the Released Entities have been submitted to Contractor with respect to the Project or remain unsatisfied as of the date hereof; (d) no mechanics' or materialmen's liens have been filed with respect to the Project that have not been discharged or for which a bond has not been posted in accordance with the Agreement; (e) payment of all amounts due has been made to all consultants, employees, subcontractors, laborers and material suppliers, at all tiers, and all other entities, for all labor, services, materials and equipment furnished by or through Contractor for the Project, including, without limitation, all payroll taxes and contributions required to be made and all wages, overtime pay, premium pay, holiday pay, sick pay, personal leave pay, severance pay, fees, fringe benefits, commissions and reimbursable expenses required to be paid and all deductions for dues, fees or contributions required to be made in connection with all collective bargaining agreements in existence, if any, which affect any worker(s) providing services for the Project; and (f) all contracts with consultants and subcontractors employed, used or engaged by Contractor in connection with the Project have been completed or have been terminated.

The Contractor agrees to defend, indemnify and hold the Released Entities harmless from and against any and all actions, causes of action, losses or damages of whatever kind, including, without limitation, reasonable attorneys' fees and costs in arbitration and at the pre-trial, trial and appellate levels, which the Released Entities may suffer by reason of (a) any claim made against the Project or any of the Released Entities relating to labor, services, materials or equipment furnished by or through the Contractor related to or arising from the Project, or (b) any breach of any representation or warranty made by the Contractor to Owner related to or arising from the Project, including the representations and warranties included herein, any false statement made in this Contractor's Full Lien Waiver and Release or any misrepresentation or omission made to Owner by the Contractor.

The Contractor acknowledges and agrees that (a) Owner is relying upon the representations and warranties made herein as a material inducement for Owner to make payment to the Contractor; (b) this Contractor's Full Lien Waiver and Release is freely and voluntarily given by the Contractor, and the Contractor has had the advice of counsel in connection herewith and is fully informed as to the legal effects of this Contractor's Full Lien Waiver and Release, and the Contractor has voluntarily accepted the terms herein for the consideration recited above; and (c) the tendering of payment by Owner and the receipt of payment and the execution of this Contractor's Full Lien Waiver and Release by the Contractor shall not, in any manner whatsoever, release the Contractor from (i) its continuing obligations with respect to the completion of any work at the Project that remains incomplete, including warranty work or guaranty work, or the correction of defective or non-conforming work; (ii) any contractual, statutory or common law obligations of the Contractor with respect to the Released Entities related to or arising from the Project; or (iii) any other obligations of the Contractor with respect to Released Entities related to or arising from the Project.

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SIGNATURES APPEAR ON FOLLOWING PAGE.]

Dated this ___day of _____, 200__.

SUNPOWER CORPORATION, SYSTEMS:

WITNESSES:

Name: _____

Name: _____

By: _____
Name: _____
Title: _____
Address: _____

NOTARIAL ACKNOWLEDGMENT

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 200__, by _____, the _____ of SunPower Corporation, Systems, a Delaware corporation, who executed the foregoing instrument on behalf of said corporation, and who is personally known to me or who produced _____ as identification.

Name: _____
Notary Public, State of [Florida]
[If notarized in a State other than Florida, Signatory shall comply with the notary requirements of such State.]
Commission No. _____
My Commission expires: _____
(Seal)

APPENDIX R-1

FORM OF SUBCONTRACTOR CERTIFICATE FOR FINAL WAIVER OF LIENS

This SUBCONTRACTOR'S FULL LIEN WAIVER AND RELEASE ("Subcontractor's Full Lien Waiver and Release") is made by **[_____]**, a [_____] (the "Releasor"), subcontractor to SunPower Corporation, Systems, a Delaware corporation ("Contractor"), on behalf of Releasor, its successors and assigns, and those acting by or through any of the foregoing, for and in consideration of the sum of Ten and No/100 DOLLARS ($10.00) and other good and valuable consideration, in hand paid, the receipt and sufficiency of which are hereby acknowledged, as full and final payment on account of all labor, services, materials, equipment and other work furnished in connection with the construction of a solar photovoltaic electric generation facility, and all services and utilities related thereto, in De Soto County, Florida (such facility, together with the property on which such facility is located, the "Project") by Contractor on behalf of Florida Power & Light Company, a Florida corporation ("Owner").

Releasor does hereby unconditionally and irrevocably waive, release, remise, relinquish and quit-claim all actions, claims, demands, liens, lien rights and claims of lien, of any kind whatsoever, which Releasor ever had, now has, or may have in the future, known or unknown, against the Project, or against Owner or Contractor, their partners, parents, subsidiaries and affiliates, at all tiers, and their insurers, sureties, employees, officers, directors, representatives, shareholders, agents, and all parties acting for any of them related to or arising from the Project (collectively, the "Released Entities"), including, without limitation, all claims related to, in connection with, or arising out of, all facts, acts, events, circumstances, changes or extra work, constructive or actual delays or accelerations, interferences and the like, which have occurred or may be claimed to have occurred.

The Releasor warrants and represents that (a) the Releasor has not assigned or pledged any rights or claims in any amount due or to become due from Contractor related to or arising from the Project; (b) payment has been or will be made to all of its subcontractors, laborers and material suppliers, at all tiers, for all labor, services, materials and equipment furnished by or through the Releasor for the Project, including all payroll taxes and contributions required to be made; (c) no claims from any of its subcontractors, vendors, mechanics or materialmen against the Released Entities have been submitted to Releasor with respect to the Project or remain unsatisfied as of the date hereof; (d) no mechanics' or materialmen's liens have been filed with respect to the Project that have not been discharged; (e) payment of all amounts due has been made to all consultants, employees, subcontractors, laborers and material suppliers, at all tiers, and all other entities, for all labor, services, materials and equipment furnished by or through Releasor for the Project, including, without limitation, all payroll taxes and contributions required to be made and all wages, overtime pay, premium pay, holiday pay, sick pay, personal leave pay, severance pay, fees, fringe benefits, commissions and reimbursable expenses required to be paid and all deductions for dues, fees or contributions required to be made in connection with all collective bargaining agreements in existence, if any, which affect any worker(s) providing services for the Project; and (f) all contracts with consultants and subcontractors employed, used or engaged by Releasor in connection with the Project have been completed or have been terminated.

The Releasor agrees to defend, indemnify and hold the Released Entities harmless from and against any and all actions, causes of action, losses or damages of whatever kind, including, without limitation, reasonable attorneys' fees and costs in arbitration and at the pre-trial, trial and

appellate levels, which the Released Entities may suffer by reason of (a) any claim made against the Project or any of the Released Entities relating to labor, services, materials or equipment furnished by or through the Releasor related to or arising from the Project, or (b) any breach of any representation or warranty made by the Releasor to the Released Entities related to or arising from the Project, including the representations and warranties included herein, any false statement made in this Subcontractor's Full Lien Waiver and Release, or any misrepresentation or omission made to the Released Entities by the Releasor.

The Releasor acknowledges and agrees that (a) the Contractor and Owner are relying upon the representations and warranties made herein as a material inducement for the Contractor or Owner to make payment to the Releasor; (b) this Subcontractor's Full Lien Waiver and Release is freely and voluntarily given by the Releasor and the Releasor has had the advice of counsel in connection herewith and is fully informed as to the legal effects of this Subcontractor's Full Lien Waiver and Release and the Releasor has voluntarily accepted the terms herein for the consideration recited above; and (c) the tendering of payment by the Contractor and the receipt of payment and the execution of this Subcontractor's Full Lien Waiver and Release by the Releasor shall not, in any manner whatsoever, release the Releasor from (i) its continuing obligations with respect to the completion of any work at the Project that remains incomplete, including warranty work or guaranty work, or the correction of defective or non-conforming work related to or arising from the Project; (ii) any contractual, statutory or common law obligations of the Releasor with respect to any of the Released Entities related to or arising from the Project; or (iii) any other obligations of the Releasor with respect to any of the Released Entities related to or arising from the Project.

[**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;**
SIGNATURES APPEAR ON FOLLOWING PAGE.]

Dated this ___day of _____, 200__.

WITNESSES:

Name: _____

Name: _____

Subcontractor:

By: _____
Name: _____
Title: _____
Address: _____

NOTARIAL ACKNOWLEDGMENT

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 200__, by _____, the _____ of_____, a _____, who executed the foregoing instrument on behalf of said corporation, and who is personally known to me or who produced _____ as identification.

Name: _____
Notary Public, State of [Florida]
[If notarized in a State other than Florida, Signatory shall comply with the notary requirements of such State.]
Commission No. _____
My Commission expires: _____
(Seal)

CHANGE ORDER FORM
Florida Power & Light Company
CONTRACT CHANGE ORDER NO.

Contractor: SunPower Corporation, Systems **Title:** **Date:**

CONTRACT CHANGE: (Detail)	**Amount (Circle Credits)**
This Change Order No. [___], effective [_____], is issued to amend the *Turnkey Engineering, Procurement and Construction Agreement for Solar Photovoltaic Generating Facility Between Florida Power & Light Company and SunPower Corporation, Systems dated July [__], 2008* (the "Agreement") as specified below. The initial capitalized terms used herein, unless otherwise defined in this Change Order, shall have the meanings ascribed to them in the Agreement.	
Contract Start Date: **No change** **Total Authorized Amount This Change Order** **Contract Completion Date**: **No change**	
Schedule of Prices: **Lump Sum Fixed Price**	
WORK/SERVICE START DATE: **WORK/SERVICE END DATE**:	

It is hereby understood that, if this Change Order is executed by FPL, the Contractor shall implement the above-referenced change(s). If this Change Order is executed by FPL, the changes to the Work, Contract Price, time requirements and/or any other provisions of the Agreement described in this document are considered an amendment to the Agreement. Except as otherwise set forth in this document, the change(s) described in this document do not relieve FPL or the Contractor of their responsibilities described in the Agreement. If this Change Order is executed by FPL, this document constitutes a full and complete settlement with respect to change(s) to the Work, Contract Price, time requirements and/or any other provisions of the Agreement described in this document, including the settlement of compensation to Contractor, for the change(s) described in this document.

_____
Project Manager

COST HISTORY		**Primary Cause of Change (Check One)**	**SCHEDULE**
Original Contract Price	**$**	☐ **Variance from Quantity Estimate**	☐ **Change Does Not Affect**
Total Previous Changes Auth.		☐ **Regulatory Requirements**	**Guaranteed Provisional**
This Change (Net Amount)		☐ **Construction Changes**	**Acceptance Date**
☐ **Firm** ☐ **Estimate**		☐ **Engineering Changes**	
Total Contract Price (Including this change)	**$**	☐ **Other Department Requests**	☐ **Change Wll Affect**
		☐ **Vendor Caused (Identify Back Charges)**	**Guaranteed Provisional**
Could this CCO Impact Other Contracts?		☐ **Constructability**	**Acceptance Date**
☐ **Yes** ☐ **No**		☐ **Other (Specify)**	

Accepted by:
_____

Signature: _____
Name (Print) _____
Title (Print) _____
Date: _____

Authorization:
FLORIDA POWER & LIGHT COMPANY

Signature: _____
Name (Print) _____
Title (Print) _____
Date: _____

APPENDIX T

Intentionally Deleted

WELLS FARGO BANK, N.A.
TRADE SERVICES DIVISION - STANDBY LETTER OF CREDIT UNIT
One Front Street, 21st Floor, San Francisco, California 94111
Phone: (800) 798-2815 Option 1. E-Mail: sftrade@wellsfargo.com

APPENDIX U
Form of Letter of Credit

Florida Power & Light Company
700 Universe Blvd
Juno Beach, FL
Attention: Project General Manager

Re: Irrevocable Standby Letter of Credit No.

Gentlemen:

We hereby establish in your favor this Irrevocable Standby Letter of Credit No. _____ (the "Letter of Credit") for the account of SunPower Corporation, Systems, a Delaware corporation ("Contractor"), effective immediately and expiring on ***.

We have been informed by the Applicant, but do not independently verify, that this Letter of Credit is issued pursuant to the terms of that certain Turnkey Engineering, Procurement and Construction Agreement for Solar Photovoltaic Generating Facility dated as of June [__], 2008, between Florida Power & Light Company, a Florida corporation ("Beneficiary"), and Contractor, as the same may be amended (the "Agreement").

1. Stated Amount. The amount of funds available for drawing under this Letter of Credit shall be U.S. $*** (*** United States Dollars) (the "Stated Amount").

2. Drawings. A drawing hereunder may be made by you on any Business Day on or prior to the date this Letter of Credit expires by delivering to Wells Fargo Bank, N.A., at any time during its business hours on such Business Day, at One Front Street 21st Floor, San Francisco, CA 94111, a copy of this Letter of Credit together with (i) a Draw Certificate executed by an authorized person substantially in the form of Attachment A hereto (the "Draw Certificate"), appropriately completed and purportedly signed by your authorized officer and (ii) your draft substantially in the form of Attachment B hereto (the "Draft"), appropriately completed and purportedly signed by your authorized officer. Partial drawings and multiple presentations may be made under this Letter of Credit. Draw Certificates and Drafts under this Letter of Credit may be sent by overnight delivery or courier to Wells Fargo Bank, N.A., at its address set forth above Attention: Standby Letter of Credit Unit. Drawings may also be presented to us via telefacsimile to our telefacsimile no. (415) 296-8905 (each such drawing, a "Fax Drawing"); *provided however* that you confirm our receipt of any Fax Drawing by telephone to our telephone no. 1-800-798-2815 (option 1). In the event of a presentation by facsimile transmission, the original of such documents shall be sent to address set forth in the preceding sentence, as aforesaid, by overnight courier for receipt by us within one (1) Business Day of the date of such facsimile transmission.

3. Time and Method for Payment. We hereby agree to honor a drawing hereunder made in compliance with this Letter of Credit by transferring in immediately available funds the amount

*** CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

specified in the Draft delivered to us in connection with such drawing to such account at such bank in the United States as you may specify in your Draw Certificate. If the Draw Certificate is presented to us at such address by 10:00 a.m., California time on any Business Day, payment will be made not later than 3:00 p.m., California time on the next day and if such Draw Certificate is so presented to us after 10:00 a.m., California time on any Business Day, payment will be made on the second Business Day. In clarification, we agree to honor the Draw Certificate upon receipt thereof, without regard to the truth or falsity of the assertions made therein.

4. Non-Conforming Demands. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefore and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may correct any such non-conforming demand.

5. Expiration. This Letter of Credit shall automatically expire at the close of business on *** or such earlier date on which we receive a Cancellation Certificate in the form of Attachment C hereto purportedly executed by your authorized officer upon which this Letter of Credit shall be cancelled (the "Expiration Date").

6. Rollover. The Letter of Credit shall be deemed automatically extended without amendment for one additional period of one (1) year from the present expiration date, unless at least sixty (60) Business Days prior to such expiration date we shall notify you by registered mail or overnight courier at the above address (or such other address as may be designated by you as contemplated by numbered paragraph 9) that we elect not to consider this Letter of Credit extended for such additional one year period; provided, however, in any event this Letter of Credit shall expire on ***.

7. Business Day. As used herein, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in the State of California.

8. Governing Law. Except as far as otherwise expressly stated herein, this Letter of Credit is subject to the International Standby Practices ("ISP98"), except for Rule 3:14(a), International Chamber of Commerce Publication No. 590. As to matters not addressed by the ISP98, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of California and applicable U.S. federal law.

9. Notices. All communications to you in respect of this Letter of Credit shall be in writing and shall be delivered to the address shown for you herein before or such other address as may from time to time be designated by you in a written notice to us. All documents to be presented to us hereunder and all other communications to us in respect of this Letter of Credit, which other communications shall be in writing, shall be delivered to the address for us indicated on the signature page hereof, or such other address as may from time to time be designated by us in a written notice to you.

10. Irrevocability. This Letter of Credit is irrevocable.

11. Transferability. We shall not authorize any transfer of this Letter of Credit until a transfer certificate, substantially in the form of Attachment D hereto, is completed to our satisfaction and received by us. All transfer charges shall be for the account of the Contractor. This Letter of

*** CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Credit may not be transferred to any person with whom U.S. persons are prohibited from doing business under U.S. Foreign Asset Control Regulations or other applicable U.S. laws and regulations. Transfer of the Letter of Credit may not change the place of expiration from our above office.

12. Complete Agreement. This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for the ISP-98 and Attachments A, B, C, and D hereto and the notices referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above.

SINCERELY,

WELL FARGO BANK, N.A.

_____

(Authorized Signature)

ATTACHMENT A

FORM OF DRAW CERTIFICATE

The undersigned hereby certifies to Wells Fargo Bank N.A. (the "Issuer"), with reference to Irrevocable Letter of Credit No. _____ (the "Letter of Credit") issued by Issuer in favor of the undersigned ("Beneficiary") (capitalized terms used herein and not defined herein shall have the respective meanings set forth in the Letter of Credit), as follows:

(1) The undersigned is the _____ of Beneficiary and is duly authorized by Beneficiary to execute and deliver this Certificate on behalf of Beneficiary.

(2) Beneficiary hereby makes demand against the Letter of Credit by Beneficiary's presentation of the draft accompanying this Certificate, for payment of _____ dollars (U.S.$_____), such amount, when aggregated together with any amount not drawn down, is not in excess of the Stated Amount (as in effect of the date hereof).

(3) Beneficiary is entitled to draw the amount set forth in paragraph 2 hereof because:

[Check applicable provision(s)]

£ The conditions for a drawing pursuant to the Agreement have been met.

£ The rating of the outstanding unsecured indebtedness of the bank or trust company that issued the Letter of Credit has fallen below a rating of A-, as determined by Standard and Poor's Corporation, or a rating of A-3, as determined by Moody's Investors Services, Inc., and Contractor has failed, within ten (10) days after receipt of written notice (copy attached) thereof by the Beneficiary to replace such Letter of Credit with another Letter of Credit issued by a financial institution acceptable to Beneficiary on the same terms as the Letter of Credit being replaced.

£ The Contractor has failed to renew the Letter of Credit within sixty (60) Business Days prior to the expiration thereof.

(4) You are hereby directed to make payment of the requested drawing to: (insert wire instructions)

Beneficiary Name and Address

By: _____
Title: _____
Date: _____

ATTACHMENT B

DRAWING UNDER IRREVOCABLE LETTER OF CREDIT NO. ----------

Date:

ON: If the Draw Certificate is presented by 10:00 a.m., California time on any Business Day, payment will be made not later than 3:00 p.m., California time on the next day and if such Draw Certificate is so presented to us after 10:00 a.m., California time on any Business Day, payment will be made on the second Business Day.

PAY TO: Florida Power & Light Company

$_____U.S.

FOR VALUE RECEIVED AND CHARGE TO THE ACCOUNT OF LETTER OF CREDIT NO. _____.

Florida Power & Light Company

By: _____

Title: _____

Date: _____

ATTACHMENT C

CANCELLATION CERTIFICATE

Irrevocable Letter of Credit No. _____

The undersigned, being authorized by the undersigned ("Beneficiary"), on behalf of Beneficiary hereby certifies to Wells Fargo Bank N.A. ("Issuer"), with reference to Irrevocable Letter of Credit No. _____issued by Issuer to Beneficiary (the "Letter of Credit"; capitalized terms used herein and not defined herein shall have the respective meanings set forth or referenced in the Letter of Credit), that either (i) thirty (30) days have passed since the expiration of the Warranty Period (as defined in the Agreement) and Contractor has satisfied all obligations under the Agreement or (ii) the Agreement has been terminated and Contractor has performed all obligations and paid all amounts remaining due by Contractor following such termination. Pursuant to Section 5 thereof, the Letter of Credit shall expire upon Issuer's receipt of this certificate. Attached hereto is the Letter of Credit marked "Canceled".

Beneficiary Name.

By: _____

Title: _____

Date: _____

ATTACHMENT D
TRANSFER CERTIFICATE

Irrevocable Letter of Credit No. _____

The undersigned Beneficiary hereby certifies to Wells Fargo Bank N.A. ("Issuer"), with reference to Irrevocable Standby Letter of Credit No. _____ (the "Letter of Credit"; capitalized terms used herein and not defined herein shall have the respective meanings set forth in the Letter of Credit), that for value received Beneficiary hereby irrevocably transfers to _____ (the "Transferee") all rights of the undersigned under the Letter of Credit, including all rights of the undersigned to draw under the Letter of Credit and to execute and deliver drafts and draw certificates with respect hereto.

Beneficiary hereby certifies that the Transferee has agreed in writing for Contractor's benefit to be bound by the provisions set forth herein.

By this transfer, all rights of Beneficiary under the Letter of Credit are transferred to Transferee and Transferee shall have sole rights with respect to the Letter of Credit relating to any amendments thereof and any notices thereunder; and all references to "Beneficiary" or "Owner" in the Letter of Credit, any drawing certificate in the form of Attachment A or the other Attachments to the Letter of Credit shall be deemed to mean the Transferee. All amendments are to be advised directly to the Transferee without necessity of any consent of or notice to the undersigned. Simultaneous with delivery of this notice to Issuer, a copy of this notice is being transmitted to Transferee.

The Letter of Credit is returned herewith and Issuer is requested to endorse the transfer on the reverse thereof and forward it with your customary notice of transfer directly to the Transferee at the following address:

Florida Power & Light Company
(or its permitted transferee in interest)

By: _____

Title: _____

Date: _____

SIGNATURE GUARANTEED
The First Beneficiary's signature(s) with title(s) conforms with that on file with us and such is/are authorized for the execution of this instrument.

_____
(Name of Bank)

_____
(Bank Address)

_____
(City, State, Zip Code)

_____
(Telephone Number)

_____
(Authorized Name and Title)

_____
(Authorized Signature)

APPENDIX V

Contractor’s Exclusions

None.

APPENDIX W

Intentionally Deleted

APPENDIX X

Intentionally Deleted

****

*** CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

*** CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

Appendix II

***

*** CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

EXHIBIT 10.2

CONFIDENTIAL TREATMENT REQUESTED
--
CONFIDENTIAL PORTIONS OF THIS DOCUMENT HAVE BEEN REDACTED AND HAVE BEEN SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION

EXECUTION COPY

AMENDMENT NO. 1 TO INGOT SUPPLY AGREEMENT

This Amendment No. 1 to Ingot Supply Agreement (this "Amendment") is entered into as of August 4, 2008 by and between Woongjin Energy Co., Ltd., a company organized and existing under the laws of the Republic of Korea with its office located at I 3-16 Block, Techno Valley, Daedeok, Gwanpyeong-dong, Yuseoung-gu, Daejeon, Korea ("***Supplier***"), and SunPower Corporation, a company organized under the laws of the State of Delaware, United States of America, with it principal office located at 3939 North First Street, San Jose, California 95134, United States of America ("***Purchaser***"). Supplier and Purchaser may be referred to herein individually as a "***Party***" or collectively as the "***Parties***."

RECITALS

A. Supplier and Purchaser entered into certain Ingot Supply Agreement dated as of December 22, 2006 ("ISA").

B. Following the execution of the ISA, the Parties recognized certain required amendments to the ISA that would be required to make the ISA consistent with the Parties' intent to reduce the purchase price for SP Polysilicon Based Products set forth in Schedule 3.1(a) of the ISA.

C. The Parties wish to amend the ISA to reflect the Parties' intent.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions

1.1 The terms defined hereinabove shall have the meanings set forth therein.

1.2 Except as otherwise defined in this Amendment, the terms used but not defined herein shall have the respective meanings ascribed to them in the ISA.

2. Amendments to the Schedule 3.1(a) of the ISA

The Schedule 3.1(a) of the ISA shall be replaced in its entirety with the following.

[Purchase Price for SP Polysilicon Based Products]

The purchase price for SP Polysilicon Based Products per kilogram shall be determined based on (a) the year in which such SP Polysilicon Based Products are ordered, (b) the price per kilogram actually paid by Supplier for the polysilicon used to make such SP Polysilicon Based Products ("***Poly Price***"), and (c) the amount of any Cost Savings (as defined below), in accordance with the Ingot Price Formula in the following table.

Year	Ingot Price Formula	Poly Price	Ingot Price	Price Effective Period
1st Year (2008)	*** X Poly Price + $*** - Cost Savings - $***	$***	$***	~July 31, 2008
2nd Year (2009)	*** X Poly Price + $*** - Cost Savings - $***	$***	$***	~July 31, 2009
3rd Year (2010)	*** X Poly Price + $*** - Cost Savings - $***	$***	$***	~July 31, 2010
4th Year (2011)	*** X Poly Price + $*** - Cost Savings - $***	$***	$***	~July 31, 2011
5th Year (2012)	*** X Poly Price + $*** - Cost Savings - $***	$***	$***	~July 31, 2012

As used in this Schedule, the term "***Cost Savings***" shall mean ***% of the quotient obtained by dividing (a) the sum of (i) the product of (A) the aggregate number of crucibles of Supplier in the then prior calendar month and (B) the amount, if any, by which the average monthly quartz crucible costs of Supplier for the then prior calendar month is less than $*** per crucible and (ii) the product of (A) the aggregate number of hot zones of Supplier in the then prior calendar month and (B) the amount, if any, by which the average monthly hot zone costs of Supplier for the then prior calendar month is less than $*** per hot zone, by (b) the aggregate weight, expressed in kilograms, of all Products manufactured by Supplier during the then prior calendar month.

3. Effect of Amendment and Continuing Effect of ISA

3.1 Effectiveness of Amendment. The ISA shall be deemed to have been revised and amended in accordance with this Amendment as of the date of the ISA.

3.2 Continuing Effect of the ISA. Except as expressly amended and modified by this Amendment, the ISA (including all rights and obligations of the parties thereunder existing prior to the execution and delivery of this Amendment) shall continue to be, and shall remain, in full force and effect in accordance with the terms thereof.

3.3 References to the ISA. Each reference, whether direct or indirect, in the ISA to the ISA (including, without limitation, references to “this Agreement” in the ISA) shall mean and be a reference to the ISA, as amended by this Amendment.

3.4 Conflicts. To the extent that there are any inconsistencies or ambiguities between this Amendment and the ISA, the terms of this Amendment shall supersede the ISA.

4. Miscellaneous

4.1 Governing Law. This Amendment and all disputes arising out of or in connection with this Amendment shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the Republic of Korea without regard to conflicts of laws principles. The dispute resolution provisions in the ISA (including the arbitration provision) are hereby incorporated into this Amendment, *mutatis mutandis*.

*** CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

4.2 Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed as an original, but all of which together shall constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment No. 1 to Ingot Supply Agreement to be executed by their respective representatives thereunto duly authorized as of the date first set forth above.

WOONGJIN ENERGY CO., LTD.
/s/ Dr. Hakdo Yoo
Name Dr. Hakdo Yoo
Title Chief Executive Officer

SUNPOWER CORPORATION
/s/ Emmanuel T. Hernandez
Name Emmanuel T. Hernandez
Title Chief Financial Officer

EXHIBIT 10.3

CONFIDENTIAL TREATMENT REQUESTED

--

CONFIDENTIAL PORTIONS OF THIS DOCUMENT HAVE BEEN REDACTED AND HAVE BEEN SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION

EXECUTION COPY

AMENDMENT NO. 2 TO POLYSILICON SUPPLY AGREEMENT

This Amendment No. 2 to Polysilicon Supply Agreement (this "Amendment") is entered into as of August 4, 2008 by and between SunPower Philippines Manufacturing, Ltd., a company organized under the laws of the Philippines and having its principal office located at #100 East Main Street, Special Export Processing Zone, Laguna Techno Park, Binan Laguna, Philippines ("***SunPower***"), and Woongjin Energy Co., Ltd., a company organized under the laws of Korea and having its principal office located at 1316 Gwanpyeong-dong, Yuseoung-gu, Daejeon, Korea (the "***JVC***"). SunPower and the JVC may be referred to herein individually as a "***Party***" or collectively as the "***Parties***."

RECITALS

A. SunPower and the JVC entered into certain Polysilicon Supply Agreement dated as of December 22, 2006 and certain Amendment thereto dated as of January 9, 2008 (said Polysilicon Supply Agreement as amended by the said Amendment is hereinafter called as the "PSA").

B. Following the execution of the PSA, the Parties recognized certain required amendments to the PSA that would be required to make the PSA consistent with the Parties' intent to revise the purchase price of the Products set forth in Schedule 2 of the PSA.

C. The Parties wish to amend the PSA to reflect the Parties' intent.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions

1.1 The terms defined hereinabove shall have the meanings set forth therein.

1.2 Except as otherwise defined in this Amendment, the terms used but not defined herein shall have the respective meanings ascribed to them in the PSA.

2. Amendments to the Schedule 2 of the PSA

The table in the Schedule 2 of the PSA shall be replaced in its entirety with the following.

Year	Poly Price
1st Year (2008)	$***
2nd Year (2009)	$***
3rd Year (2010)	$***
4th Year (2011)	$***
5th Year (2012)	$***

3. Effect of Amendment and Continuing Effect of PSA

3.1 Effectiveness of Amendment. The PSA shall be deemed to have been revised and amended in accordance with this Amendment as of the date of the PSA.

3.2 Continuing Effect of the PSA. Except as expressly amended and modified by this Amendment, the PSA (including all rights and obligations of the parties thereunder existing prior to the execution and delivery of this Amendment) shall continue to be, and shall remain, in full force and effect in accordance with the terms thereof.

3.3 References to the PSA. Each reference, whether direct or indirect, in the PSA to the PSA (including, without limitation, references to "this Agreement" in the PSA) shall mean and be a reference to the PSA, as amended by this Amendment.

3.4 Conflicts. To the extent that there are any inconsistencies or ambiguities between this Amendment and the PSA, the terms of this Amendment shall supersede the PSA.

4. Miscellaneous

4.1 Governing Law. This Amendment and all disputes arising out of or in connection with this Amendment shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the Republic of Korea without regard to conflicts of laws principles. The dispute resolution provisions in the PSA (including the arbitration provision) are hereby incorporated into this Amendment, *mutatis mutandis*.

4.2 Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed as an original, but all of which together shall constitute one and the same instrument.

[Signature Page Follows]

*** CONFIDENTIAL MATERIAL REDACTED AND SEPARATELY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment No. 2 to Polysilicon Supply Agreement to be executed by their respective representatives thereunto duly authorized as of the date first set forth above.

SUNPOWER PHILIPPINES MANUFACTURING, LTD.
By: /s/ Emmanuel T. Hernandez
Name: Emmanuel T. Hernandez
Title: Director

WOONGJIN ENERGY CO., LTD.
By: /s/ Dr. Hakdo Yoo
Name: Dr. Hakdo Yoo
Title: Chief Executive Officer

FOURTH AMENDMENT TO LEASE

THIS FOURTH AMENDMENT TO LEASE (this "Fourth Amendment") is dated as of May 1, 2008 and is made between CYPRESS SEMICONDUCTOR CORPORATION, as Landlord, and SUNPOWER CORPORATION, as Tenant, to be a part of that certain Office Lease Agreement and all exhibits thereto, dated for reference purposes only as of May 15, 2006 (the "Original Lease"), concerning approximately 43,732 rentable square feet ("RSF"), located within the Premises stated in the Original Lease. The Premises are located within the Building commonly known as Building #3, (the"Building"), located at 3939 N. First Street (the "Land") as shown on the floor plan on **Exhibit A** to the Original Lease.

Landlord and Tenant now desire to modify the Original Lease and, in consideration of the mutual promises contained herein and for the other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, Landlord and tenant hereby agree, intending to be bound thereby, that the Original Lease is modified and supplemented in accordance with the terms and conditions set forth below:

1. Basic Terms Item #9 of the Original Lease is hereby amended to state in its entirety as follows:

Lease Months	**Monthly Base Rent / SF**	**Rentable Square Feet**	**Monthly Base**
1-2	$0.00 / SF	43,732	$ -
3-8	$2.16 / SF	43,732	$94,461
9-12	$2.16 / SF	45,840	$99,014
13-14	$2.25 / SF	45,840	$103,140
15-24	$2.25 / SF	51,228	$115,263
25-36	$2.34 / SF	55,594	$130,190
37-48	$2.43 / SF	55,594	$135,093
49-60	$2.53 / SF	55,594	$140,653

2. The monthly Base Rent remains unchanged through the 8th month (or December 31, 2006) as per Original Lease. However, Article 2, Section 2.1, is hereby amended such that the monthly Base Rent shall be adjusted to include the additional space added pursuant to Section 1 of this Fourth Amendment. Effective during the 9th month of the term (or January 1, 2007), the monthly Base Rent shall be adjusted to include the additional 2,108 RSF, effective during the 15th month of the term (or July 1, 2007), the monthly Base Rent shall be adjusted to include the additional 5,388 RSF and, effective during the 25th month of the term (or May 1, 2008), the monthly Base Rent shall be adjusted to include the additional 4,366 RSF, in each case as shown in the Base Rent Table in Basic Terms Item #9 as amended by this Fourth Amendment.

3. Article 3, Section 3.3 shall be amended to state the adjustment of Tenant's Prorata Share of Excess Operating Expenses as follows:

"**Tenant's Prorata Share of Excess Operating Expenses**" (based on the rentable square footage of the Premises divided by 61,975 the total rentable square footage of the Building), shall mean 92% of the Excess Operating Expenses for the applicable calendar year. Landlord agrees to credit Tenant $1,134 for SLM's office electrical use and $1,746 for Landlord's data center electrical use per month against Tenant's Prorata Share of Excess Operating Expenses for the Electric and N. Gas line items outlined Exhibit C. These two credits are estimates and may be adjusted from time to time based on varying electric loads.

4. Exhibit "A", the Floor Plan of the Original Lease shall be amended as shown in Exhibit A-1 of this Fourth Amendment.

5. In the event of any inconsistency between this Fourth Amendment and the Original Lease, the terms in this Fourth Amendment shall prevail. Except as modified herein, the Original Lease remains in full force and effect.

6. The Original Lease, as amended by this Fourth Amendment, constitutes the entire agreement between the parties and supersedes any previous agreements between the parties with respect to the subject matter of this Fourth Amendment. If any provision of this Fourth Amendment is held to be illegal, invalid or unenforceable, in whole or in part, such provision will be modified to the minimum extent necessary to make it legal, valid and enforceable, and the legality, validity and enforceability of the remaining provisions will not be affected thereby.

IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment as of the date first set forth above.

CYPRESS SEMICONDUCTOR CORP:

By: /s/Neil Weiss

Name Neil Weill
Title Sr. Vice President Treasurer
Date 8/12/08

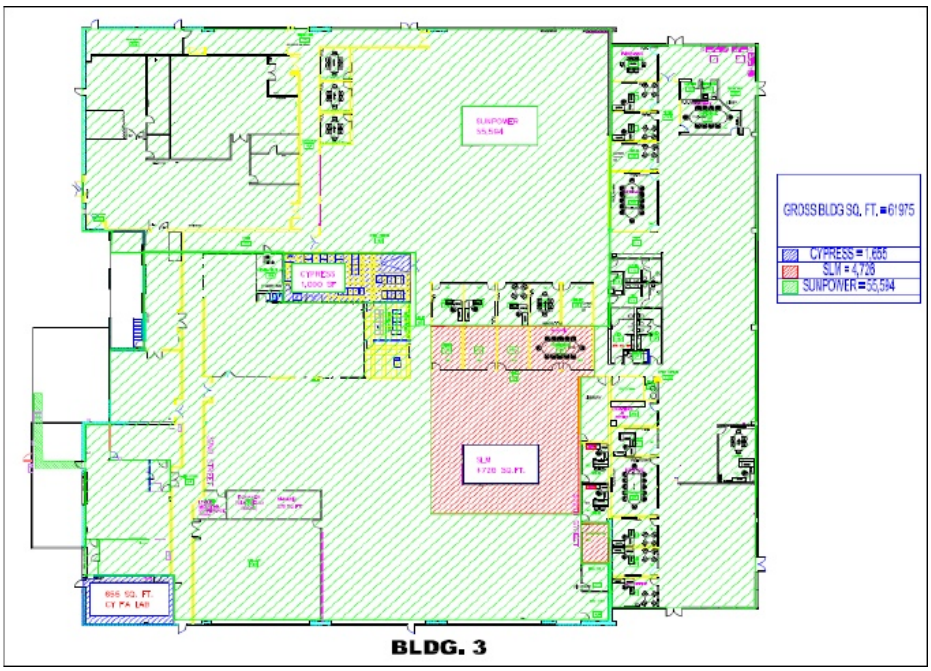
SUNPOWER CORPORATION

By: /s/ E. Hernandez

Name E. Hernandez
Title CFO
Date 6/10/08

EXHIBIT A-1

(FOURTH AMENDMENT TO LEASE)



SUNPOWER CORPORATION

MANAGEMENT CAREER TRANSITION PLAN

Preamble

The Board of Directors of SunPower Corporation and its Compensation Committee believe that it is in the best interest of the Company and its wholly-owned subsidiaries (collectively, the "Company") to provide additional security to (a) the Chief Executive Officer of the Company and those employees who have been employed by the Company for at least six (6) months and who report directly to the Chief Executive Officer ("Executives") and (b) other key employees within the Company who are recommended for participation in the Plan (as defined below) by the Chief Executive Officer of the Company ("Key Managers" and, collectively with the Executives, "Plan Participants").[1]

Accordingly, in order to (a) induce the Plan Participants to remain in the employ of the Company and (b) facilitate the hiring of new executive officers and key employees, the Company adopts the plan hereinafter set forth (the "Plan") for the payment of certain benefits in the event that any Plan Participant's employment is terminated either by the Company without Cause or by the Plan Participant for Good Reason.

The Plan is an employee welfare benefit plan subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). This Plan document is also the summary plan description of the Plan.

Plan Provisions

1. Termination of Employment.

1.1 Participation in Plan. A Plan Participant shall be entitled to participate in this Plan upon the termination of his or her employment (a) by reason of death or Disability or (b) by the Company without Cause or by the Plan Participant for Good Reason, in either case other than in Connection with a Change of Control. In the event a Plan Participant's employment agreement, if any, is not renewed (i.e. terminated) upon the expiration of its term, under no circumstances shall such non-renewal/termination qualify as a termination of employment for purposes of triggering the compensation payable under Section 2 below.

1.2 Compensation. The compensation payable under the circumstances set forth in Section 1.1 shall be as described in Section 2.

1.3 Voluntary Termination for Good Reason. A termination of employment by a Plan Participant shall be deemed to be for Good Reason so long as one or more events qualifying as Good Reason has occurred, notwithstanding that the Plan Participant may have other reasons for terminating employment, including employment by another employer that the Plan Participant desires to accept.

[1] Notwithstanding the foregoing, Marty Neese will not be considered a Plan Participant until July 2, 2009. Until such date, Marty Neese's severance provisions will be stated exclusively in his Employment Agreement dated August 28, 2008.

2. Payments Upon Termination. Provided that the Plan Participant has executed (and not revoked within any applicable period) a release of claims against the Company in a form acceptable to the Company and submitted such release of claims to the Company within forty-five (45) days of the Date of Termination, upon a termination under the circumstances stated in Section 1.1, the Plan Participant shall be paid as follows:

2.1 Termination by Death or Disability. In the event a Plan Participant's termination of employment occurs as a result of his or her death or Disability, the Company shall pay such Plan Participant or his or her estate within sixty (60) days following the Date of Termination an amount equal to the sum of (a) the Plan Participant's accrued and unpaid Base Salary through the Date of Termination and (b) any accrued and unpaid paid time-off ("PTO") earned by such Plan Participant through the Date of Termination. For this purpose, this Plan shall be enforceable by the Plan Participant's personal or legal representatives, executors, administrators, successors, heirs, distributes, devisees and legatees. The Company's payment obligations under this Section 2.1 shall supersede the Company's obligations set forth in Sections 2.2 and 2.3 in the event of a Plan Participant's death or Disability.

2.2 Key Managers.

(a) **Termination Other Than in Connection with a Change of Control.** In the event a Key Manager's employment is terminated either by the Company or its successors without Cause other than in Connection with a Change of Control and such termination constitutes a "separation from service" within the meaning of Section 409A of the Code, the Company shall pay such Key Manager an amount equal to the sum of:

(i) ***Accrued Base Salary.*** Such Key Manager's accrued and unpaid Base Salary through the Date of Termination; plus

(ii) ***Accrued Bonus***. In the event the Termination Date follows a completed fiscal year for which such Key Manager's annual bonus relating to such prior completed fiscal year has not been paid as of the Termination Date, a payment equal to the actual bonus that would have been paid for such completed fiscal year; plus

(iii) ***Paid Time-Off.*** Any accrued and unpaid PTO earned by such Key Manager through the Date of Termination; plus

(iv) ***Additional Base Salary.*** Such Key Manager's monthly Base Salary in effect on the Determination Date multiplied by six (6); plus

(v) ***Pro Rata Target Bonus.*** Such Key Manager's annual target bonus in effect on the Determination Date divided by twelve (12) and multiplied by the number of whole calendar months between the commencement of the then current fiscal year and the Date of Termination; plus

(b) ***Medical and Dental Benefits.*** Continuation coverage for such Key Manager and his or her eligible dependents under the Company's Benefit Plans for a period of six (6) months following the Date of Termination, or, if earlier, until such Key Manager is eligible for similar benefits from another employer (provided such Key Manager validly elects to continue coverage

under applicable law and assumes the cost, on an after-tax basis, for such continuation coverage); plus

(i) ***Benefit Plans Make-Up Payment.*** Except as provided in Section 3.4, on or about January 31 of the year following the year in which the Date of Termination occurs and continuing on or about January 31 of the next succeeding year, if necessary, the Company will make a payment to the Key Manager (the "Benefit Plans Make-Up Payment") such that after payment of all taxes incurred by the Key Manager, the Key Manager receives an amount equal to the amount the Key Manager paid during the immediately preceding calendar year for the Benefit Plans' coverage described in this Section.

(c) **COBRA Coverage.** The continuation of the Key Manager's coverage under the Company's Benefit Plans under Section 2.2(a)(vi) shall not in any manner extend the applicable coverage period for the Key Manager under the Consolidated Omnibus Reconciliation Act of 1985, as amended ("COBRA").

2.3 Executives.

(a) **Termination Other Than in Connection with a Change of Control.** In the event an Executive's employment is terminated either by the Company or its successors without Cause other than in Connection with a Change of Control and such termination constitutes a "separation from service" within the meaning of Section 409A of the Code, the Company shall pay such Executive an amount equal to the sum of:

(i) ***Accrued Base Salary.*** Such Executive's accrued and unpaid Base Salary through the Date of Termination; plus

(ii) ***Accrued Bonus.*** In the event the Termination Date follows a completed fiscal year for which such Executive's annual bonus relating to such prior completed fiscal year has not been paid as of the Termination Date, a payment equal to the actual bonus that would have been paid for such completed fiscal year; plus

(iii) ***Paid Time-Off.*** Any accrued and unpaid PTO earned by such Executive through the Date of Termination; plus

(iv) ***Additional Base Salary.*** Such Executive's monthly Base Salary in effect on the Determination Date multiplied by (i) twenty-four (24) if the Executive is the Chief Executive Officer of the Company and (ii) twelve (12) for each Executive other than the Chief Executive Officer of the Company; plus

(v) ***Pro Rata Target Bonus.*** Such Executive's annual target bonus in effect on the Determination Date divided by twelve (12) and multiplied by the number of whole calendar months between the commencement of the then current fiscal year and the Date of Termination; plus

(vi) ***Medical and Dental Benefits.*** Continuation coverage for such Executive and such Executive's eligible dependents under the Company's Benefit Plans for a period of (i) twenty-four (24) months following the Date of Termination if such

Executive is the Chief Executive Officer of the Company and (ii) twelve (12) months following the Date of Termination if such Executive is not the Chief Executive Officer of the Company, or, if earlier, until such Executive is eligible for similar benefits from another employer (provided such Executive validly elects to continue coverage under applicable law and assumes the cost, on an after-tax basis, for such continuation coverage); plus

(vii) ***Benefit Plans Make-Up Payment.*** Except as provided in Section 3.4, on or about January 31 of the year following the year in which the Date of Termination occurs and continuing on or about each January 31 until the year following the last year of Executive's Benefit Plans' coverage pursuant to this Section, the Company will make a payment to Executive (the "Benefit Plans Make-Up Payment") such that after payment of all taxes incurred by Executive, Executive receives an amount equal to the amount Executive paid during the immediately preceding calendar year for the Benefit Plans' coverage described in this Section.

(b) **COBRA Coverage.** The continuation of Executive's coverage under Section 2.3(a)(vi) shall not in any manner extend the applicable coverage period for the Executive under COBRA.

3. Payment Mechanics.

3.1 Except as otherwise required by applicable law and as provided in Section 3.4, the Plan Participant shall receive the aggregate payments identified in Section 2.1, 2.2 or 2.3 (as applicable) in a single lump sum payment on the sixtieth (60th) day following the Date of Termination, subject to Sections 2, 3.3 and 3.4.

3.2 The Plan Participant shall not be required to mitigate the amount of any payment provided for in Sections 2.2 or 2.3 by seeking other employment or otherwise, nor shall the amount of any such payment be reduced by any compensation earned by the Plan Participant as the result of employment by another employer after the Date of Termination (except as described in Sections 2.2(a)(vi) and 2.3(a)(vi)), or otherwise.

3.3 All amounts payable under this Plan shall be subject to (and reduced by) any applicable required tax withholdings.

3.4 Timing of Payments. To the extent necessary to avoid taxes and penalties under Section 409A of the Code, if, as of the Date of Termination, Plan Participant is a "specified employee," within the meaning of Treasury Regulation § 1.409A and using the identification methodology selected by the Company from time to time, the lump-sum payments specified in Sections 2.2 and 2.3 and, if it would otherwise be paid before the date specified in Section 2.2 or 2.3, the first Benefit Plans Make-Up Payment, shall be paid on the first business day of the seventh month after the Termination Date, or, if earlier, upon Plan Participant's death. Any payments that are deferred pursuant to this Section 3.4 shall be credited with interest at the short-term Applicable Federal Rate with annual compounding, as announced by the Internal Revenue Service for the month in which the Termination Date occurs.

4. Duration and Amendment.

4.1 This Plan shall become effective on August 28, 2008 (the "Effective Date") and shall terminate on the third anniversary thereof unless, prior thereto, a Change of Control shall have occurred, in which case the Plan shall terminate immediately after the consummation of the Change of Control.

4.2 The Company expressly reserves the right to amend in any manner or terminate this Plan during its term at any time.

5. Section 280G Limitation. If any payment or benefit a Plan Participant would receive pursuant to the Plan (collectively, the "Payment") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the "Code"), and (ii) be subject to the excise tax imposed by Section 4999 of the Code or any interest or penalties payable with respect to such excise tax (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the "Excise Tax"), then Plan Participant's benefits under this Plan shall be either: (1) delivered in full, or (2) delivered as to such lesser extent which would result in no portion of such benefits being subject to the Excise Tax, whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the Excise Tax, results in the receipt by Plan Participant on an after-tax basis, of the greatest amount of benefits, notwithstanding that all or some portion of such benefits may be taxable under Section 4999 of the Code. Any reduction under this Section 5 shall be applied first to Payments that constitute "deferred compensation" (within the meaning of Section 409A of the Code and the regulations thereunder). If there is more than one such Payment, then such reduction shall be applied on a *pro rata* basis to all such Payments.

The accounting firm engaged by the Company for general audit purposes as of the day prior to the effective date of the Change of Control shall perform the foregoing calculations. If the accounting firm so engaged by the Company is also serving as accountant or auditor for the individual, entity or group which will control the Company upon the occurrence of a Change of Control, the Company shall appoint a nationally recognized accounting firm other than the accounting firm engaged by the Company for general audit purposes to make the determinations required hereunder. The Company shall bear all expenses with respect to the determinations by such accounting firm required to be made hereunder.

The accounting firm engaged to make the determinations hereunder shall provide its calculations, together with detailed supporting documentation, to the Company and Plan Participant within thirty (30) calendar days after the date on which such accounting firm has been engaged to make such determinations or such other time as requested by the Company or Plan Participant. Any good faith determinations of the accounting firm made hereunder shall be final, binding, and conclusive upon the Company and Plan Participant.

6. Benefits Implications.

6.1 All benefits to be provided hereunder shall be in addition to any pension, disability, worker's compensation, or other Company benefit plan distribution that the Plan Participant has accrued at his or her Date of Termination. The receipt of severance pay under

this Plan shall have no effect on the Plan Participant's right, if any, to benefits under any other employee pension or welfare benefit plan, except that this Plan supersedes and replaces all prior negotiations and agreements, proposed or otherwise, whether written or oral, concerning severance payments and benefits in the event of the termination of employment of a Plan Participant not in connection with a Change of Control.

7. Definitions. The capitalized terms used in this Plan have the following meanings for purposes of the Plan:

7.1 "Base Salary" means the base salary of a Plan Participant for the applicable period, without regard to bonus, car allowance, incentive payments, equity incentives, or commission payments.

7.2 "Benefit Plans" means plans, policies, or arrangements that the Company sponsors (or participates in) and that, immediately prior to Plan Participant's termination of employment, provide medical, dental, or vision benefits for Plan Participants and their eligible dependents. Benefit Plans do not include any other type of benefit (including, but not by way of limitation, financial counseling, disability, life insurance, or retirement benefits). A requirement that the Company provide Plan Participant and Plan Participant's eligible dependents with (or reimburse for) coverage under the Benefit Plans will not be satisfied unless the coverage is no less favorable than that provided to Plan Participant and Plan Participant's eligible dependents immediately prior to Plan Participant's termination of employment; provided, however, that the Company may reduce coverage under the Benefit Plans if such reduction is applicable to all other senior executives of SunPower Corporation. Subject to the immediately preceding sentence, the Company may, at its option, satisfy any requirement that the Company provide (or reimburse for) coverage under any Benefit Plan by instead providing (or reimbursing for) coverage under a separate plan or plans providing coverage that is no less favorable.

7.3 "Cause" means the occurrence of any of the following, as determined by the Company in good faith: (i) acts or omissions constituting gross negligence or willful misconduct on the part of Plan Participant with respect to Plan Participant's obligations or otherwise relating to the business of Company, (ii) Plan Participant's (A) felony conviction of, or felony plea of nolo contendere to, crimes involving fraud, misappropriation or embezzlement, or a felony crime of moral turpitude, or (B) conviction of crimes involving fraud, misappropriation or embezzlement, (iii) Plan Participant's violation or breach of any fiduciary duty (whether or not involving personal profit) to the Company, or willful violation of a published policy of the Company governing the conduct of it executives or other employees, or (iv) Plan Participant's violation or breach of any contractual duty to the Company which duty is material to the performance of the Plan Participant's duties or results in material damage to the Company or its business; provided that if any of the foregoing events is capable of being cured, the Company will provide notice to Plan Participant describing the nature of such event and Plan Participant will thereafter have thirty (30) days to cure such event.

7.4 "Change of Control" means (i) a sale of all or substantially all of the assets of the Company, (ii) any merger, consolidation, or other business combination transaction of the Company with or into another corporation, entity, or person, other than a transaction in which the holders of at least a majority of the shares of voting capital stock of the Company outstanding

immediately prior to such transaction continue to hold (either by such shares remaining outstanding or by their being converted into shares of voting capital stock of the surviving entity) a majority of the total voting power represented by the shares of voting capital stock of the Company (or the respective surviving entity) outstanding immediately after such transaction, (iii) the direct or indirect acquisition (including by way of a tender or exchange offer) by any person, or persons acting as a group, of beneficial ownership or a right to acquire beneficial ownership of shares representing a majority of the voting power of the then outstanding shares of capital stock of the Company, (iv) a contested election of directors, as a result of which or in connection with which the persons who were directors before such election or their nominees cease to constitute a majority of the Board, or (v) a dissolution or liquidation of the Company. Notwithstanding anything herein to the contrary, any (1) pro rata distribution (or retirement and pro rata issuance) of shares of the Company's stock held by Cypress Semiconductor Corporation ("Cypress") to the then existing public shareholders of Cypress (in proportion to their shareholdings of Cypress), (2) repurchase by the Company of the shares of the Company's stock held by Cypress, or (3) acquisition, merger, consolidation, or other business combination transaction of Cypress with or into the Company shall not itself constitute a Change of Control.

7.5 "Code" means the Internal Revenue Code of 1986, as amended.

7.6 "Date of Termination" means the date on which Plan Participant incurs a "separation from service" within the meaning of Section 409A of the Code.

7.7 "Determination Date" means the date during the 12-month period preceding the Date of Termination on which the sum of Plan Participant's annual Base Salary plus his annual target bonus was highest.

7.8 "Disability" shall have the same defined meaning as in the Company's long-term disability plan.

7.9 "Good Reason" means the occurrence of any of the following without Plan Participant's express prior written consent: (i) a material reduction in Plan Participant's position or duties after the Effective Date, (ii) a material breach of this Plan, (iii) a material reduction in Plan Participant's aggregate target compensation, including Executive's Base Salary and target bonus on a combined basis, excluding a reduction that is applied to substantially all of SunPower Corporation's other senior executives; provided, however, that for purposes of this clause (iii) whether a reduction in target bonus has occurred shall be determined without any regard to any actual bonus payments made to Executive, or (iv) a relocation of Plan Participant's primary place of business for the performance of his duties to the Company to a location that is more than forty-five (45) miles from the Company's business location in which Plan Participant works as of the Effective Date. A Plan Participant shall be considered to have Good Reason hereunder only if, no later than ninety (90) days following an event otherwise constituting Good Reason under this Section 7.8, Plan Participant gives notice to the Company of the occurrence of such event and the Company fails to cure the event within thirty (30) days following its receipt of such notice from Plan Participant, and the Plan Participant terminates services within one hundred eighty (180) days following the initial existence of such event.

7.10 "in Connection with a Change of Control" means a termination of Plan Participant's employment with the Company during the period beginning three (3) months prior to a Change of Control and ending twenty-four (24) months following a Change of Control.

8. General.

8.1 Time Limits: All time limits refer to calendar days. If the expiration of any time limit falls on a weekend or a holiday observed by the Company, the time limit will be deemed to end on the next workday.

8.2 Source of Benefits: The Plan is unfunded. The benefits provided under the Plan are payable solely from the Company's general assets.

8.3 Expenses: The expenses of operating and administering the Plan shall be borne entirely by the Company.

8.4 Plan Sponsor and Administrator. The Company is the "Plan Sponsor" and the "Administrator" of the Plan, as such terms are defined in ERISA, unless the Company designates a fiduciary to serve as the Administrator of the Plan in Exhibit B (the entity or individual serving as Administrator of the Plan shall be referred to herein as the "Plan Administrator"). The Company shall appoint a Claims Fiduciary (as such term is defined in Exhibit A) to review adverse benefit determinations as described in Exhibit A.

The Plan Administrator shall make any and all determinations required to be made in connection with the operation and administration of the Plan, including (without limitation) the determination of all questions relating to eligibility for benefits and the amount of any benefits payable hereunder. The Plan shall be interpreted in accordance with its terms and their intended meanings. However, the Plan Administrator shall have the discretion to interpret or construe ambiguous, unclear, or implied (but omitted) terms in any fashion it deems to be appropriate in its sole discretion, and to make any findings of fact needed in the administration of the Plan. The validity of any such interpretation, construction, decision, or finding of fact shall not be subject to *de novo* review if challenged in court, by arbitration, or in any other forum, and shall be upheld unless clearly arbitrary or capricious.

8.5 Errors in Drafting: If, due to errors in drafting, any Plan provision does not accurately reflect its intended meaning, as demonstrated by consistent interpretations or other evidence of intent, or as determined by the Plan Administrator in its sole discretion, the provision shall be considered ambiguous and shall be interpreted by the Plan Administrator in a fashion consistent with its intent, as determined in the sole discretion of the Plan Administrator. The Company shall amend the Plan retroactively to cure any such ambiguity.

8.6 Named Fiduciary: The Plan Administrator is the "named fiduciary" of the Plan within the meaning of ERISA, including the "named fiduciary" with the power to act with respect to the review of initial claims for benefits under the Plan.

8.7 Allocation and Delegation of Responsibilities: The Plan Administrator may allocate any of its responsibilities for the operation and administration of the Plan to any officer or other employee of the Company. It may also delegate any of its responsibilities under the

Plan by designating, in writing, another person to carry out such responsibilities. Any such written designation shall become effective when executed by an officer of the Company, and the designated person shall then be responsible for carrying out the responsibilities described in such writing.

8.8 No Individual Liability: It is the express purpose of the Company that no individual liability whatsoever shall attach to, or be incurred by, any director, officer, employee, representative, or agent of the Company under, or by reason of, the operation of the Plan.

8.9 This Plan Supersedes All Other Severance Pay Arrangements for Plan Participants: This Plan constitutes and contains the entire agreement and understanding between the Company and Plan Participants and supersedes and replaces all prior negotiations and agreements, proposed or otherwise, whether written or oral, concerning severance payments and benefits in the event of the termination of employment of a Plan Participant (other than the Chief Executive Officer) not in connection with a Change of Control. For the Chief Executive Officer, this Plan and his written Employment Agreement constitute and contain the entire agreement and understanding between the Company and the Chief Executive Officer and supersede and replace all prior negotiations and agreements, proposed or otherwise, whether written or oral, concerning severance payments and benefits in the event of the termination of the Chief Executive Officer's employment not in connection with a Change of Control.

8.10 Claims and Review Procedures: Any Plan participant (or his or her authorized representative) who believes he or she has not received the proper benefit under the Plan (a "Claimant") may file a formal claim, in writing, with the Plan Administrator. Any such formal claim must be filed within ninety (90) days after the date the Claimant first knew or should have known of the facts on which the claim is based, unless the Company in writing consents otherwise. The Company has adopted procedures for considering claims (which are set forth in Exhibit A), which it may amend from time to time, provided that the Company shall notify Plan Participants of any such amendment. These procedures shall comply with all applicable legal requirements. The right to receive benefits under this Plan is contingent on a Claimant using the prescribed claims process to resolve any claim. On request, the Company shall provide a Claimant with a copy of the then-current claims procedures.

8.11 Notices: For the purposes of this Plan, notices and all other communications provided for in the Plan shall be in writing and shall be deemed to have been duly given when delivered or mailed by certified or registered mail, return receipt requested, postage prepaid, addressed: (a) if to a Plan Participant, to his or her latest address as reflected on the Company's employment records, or to him at his or her place of employment, if known; and (b) if to the Company, to SunPower Corporation, 3939 N. 1st Street, San Jose, California 95134 Attention: Vice President, Human Resources, or to such other address as the Company may furnish to each Plan Participant in writing with specific reference to the Plan and the importance of the notice, except that notice of change of address shall be effective only upon receipt.

8.12 Governing Law. This Plan is a welfare plan subject to ERISA and it shall be interpreted, administered, and enforced in accordance with that law.

8.13 Invalid or Unenforceable Provisions: The invalidity or unenforceability of any provision of this Plan shall not affect the validity or enforceability of any other provision of this Plan, which shall remain in full force and effect. If a court or arbitrator concludes that there is an invalid or unenforceable provision, it, he, or she shall replace that provision with one that is valid and enforceable and that, as closely as possible, achieves the same result as the invalid or unenforceable provision.

8.14 409A Compliance: Each payment and the provision of each benefit under this Plan will be considered a separate payment and not one of a series of payments for purposes of Section 409A of the Code. It is intended that this Plan comply with the provisions of Section 409A of the Code. This Plan will be administered in a manner consistent with such intent.

8.15 Right to Amend or Discontinue: The Company reserves the right at any time, and without prior or other approval of any employee or former employee, and without prior notice, to change, modify, amend, terminate, or discontinue this Plan for any or no reason, except that no such action shall reduce an employee's benefits under the Plan that already have accrued by reason of the employee's prior termination of employment.

WHEREFORE, SunPower Corporation has caused this plan to be executed by its undersigned duly authorized representative on August 28, 2008.

SUNPOWER CORPORATION

By: /s/ Thomas H. Werner

Thomas H. Werner
Chief Executive Officer

Exhibit A

DETAILED CLAIMS PROCEDURES

1. Initial Claims

Any Plan Participant (or his or her authorized representative) who believes he or she has not received the proper benefit under the Plan must file a written claim with the Plan Administrator. The Plan Administrator will review the claim and notify the employee of its decision in writing within a reasonable period of time, but no later than 90 days after receiving the claim. Notwithstanding the foregoing, if the Plan Administrator determines that special circumstances require an additional period of time for processing the claim, the Plan Administrator may extend the determination period for up to an additional 90 days by giving the Claimant written notice prior to the end of the initial 90-day period, which notice shall indicate the special circumstances requiring the extension and the date by which the Plan expects to render the benefit determination. Any claim that the Claimant does not pursue in good faith through the initial claims stage shall be treated as having been irrevocably waived.

If the claim is granted in full, the benefits or relief the Claimant seeks shall be provided. If the Plan Administrator makes an adverse benefit determination, in whole or in part, the Plan Administrator shall provide the Claimant with written notice of the adverse benefit determination, setting forth, in a manner calculated to be understood by the Claimant: (1) the specific reason or reasons for the adverse benefit determination; (2) specific references to the provisions of the Plan on which the adverse benefit determination is based; (3) a description of any additional material or information necessary for the Claimant to perfect the claim, together with an explanation of why the material or information is necessary; and (4) an explanation of the procedures for appealing the adverse benefit determination and the time limits applicable to such procedure, including a statement of the Claimant's right to bring a civil action under ERISA following an adverse benefit determination on review**.**

An "adverse benefit determination" is a denial, reduction, termination of, or failure to make payment of a benefit (in whole or in part), including any such denial, reduction, termination of or failure to make payment of a benefit that is based on a determination of a Claimant's eligibility to participate in the Plan.

2. Reviews of Adverse Benefit Determinations

If the Claimant believes the adverse benefit determination is improper, the Claimant (or the Claimant's authorized representative) may file a written request for a full review of the claim by a review official appointed by the Company (which official may be a person, committee or other entity) (such official, the "Claims Fiduciary"). A request for review must be filed with the Claims Fiduciary within 60 days after the employee receives the notice of adverse benefit determination. The request for review should set forth all of the grounds upon which it is based, all facts in support of the request, and any other matters the Claimant (or the Claimant's authorized representative) deems pertinent.

The Claimant (or the Claimant's authorized representative) may submit written comments, documents, records or other information relating to the claim and such information will be taken into account on review without regard to whether such information was submitted or considered in the initial benefit determination. The Claimant (or the Claimant's authorized representative) will be provided, upon request, and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claim. Any claim the Claimant does not pursue in good faith through the review stage, such as by failing to file a timely request for review, shall be treated as having been irrevocably waived.

The Claims Fiduciary will notify the employee in writing of the final decision within a reasonable period of time, but no later than 60 days after receipt of the written request for review. Notwithstanding the foregoing, if the Claims Fiduciary determines that special circumstances require an additional period of time for processing the claim, the Claims Fiduciary may extend the review period for up to an additional 60 days by giving the Claimant written notice prior to the end of the initial 60-day period, which notice shall indicate the special circumstances requiring the extension and the date by which the Plan expects to render the determination on review. If the Claims Fiduciary denies the appeal, in whole or in part, the decision shall be set forth in a manner calculated to be understood by the Claimant, and shall include specific reasons for the decision, specific references to the provisions on which the decision is based, if applicable, a statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents records and other information relevant to the claim, and a statement of the Claimant's right to bring a civil action under ERISA.

Exhibit B

ADDITIONAL INFORMATION

RIGHTS UNDER ERISA

Each Plan Participant is entitled to certain rights and protections under ERISA. ERISA provides that all Plan Participants will be entitled to:

Receive Information About The Plan and Plan Benefits

1. Examine, without charge, at the Plan Administrator's office and at certain Company offices, all documents governing the Plan, including collective bargaining agreements, and a copy of the latest annual report (Form 5500 Series) filed by the Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefits Security Administration ("EBSA").

2. Obtain, upon written request to the Plan Administrator, copies of documents governing the operation of the Plan, including collective bargaining agreements, and a copy of the latest annual report (Form 5500 Series) and an updated summary plan description, if any. The Plan Administrator may make a reasonable charge for the copies.

3. Receive a summary of the Plan's annual financial report. The Plan Administrator is required by law to furnish each Plan Participant with a copy of this summary annual report.

Prudent Actions by Plan Fiduciaries

In addition to creating rights for Plan Participants, ERISA imposes duties upon the people who are responsible for the operation of the Plan. The people who operate the Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in the interest of all Plan Participants and beneficiaries. No one, including the Company or any other person, may fire or otherwise discriminate against any Plan Participant to prevent a Plan Participant from obtaining a benefit or exercising any right under ERISA.

Enforcing Plan Participants' Rights

1. If a Plan Participant's claim for benefits is denied or ignored, in whole or in part, the Plan Participant has a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

2. Under ERISA, there are steps a Plan Participant can take to enforce the above rights. For instance, if a Plan Participant requests a copy of the Plan documents or the latest annual report from the Plan and does not receive them within 30 days, the Plan Participant may file suit in a federal court. In such a case, the court may require the Plan Administrator to provide the materials and pay up to $110 a day until the Plan Participant receives them, unless the materials were not sent because of reasons beyond the control of the Plan Administrator. If a

Plan Participant's claim for benefits under the Plan is denied or ignored, in whole or in part, the Plan Participant may file suit in state or federal court**.**

3. A Plan Participant who believes he or she has been discriminated against for asserting rights under ERISA may seek assistance from the U.S. Department of Labor or may file suit in federal court**.** The court will decide who should pay court costs and legal fees. If a Plan Participant is successful the court may order the person sued by the Plan Participant to pay these costs and fees. If the Plan Participant loses, the court may order the Plan Participant to pay these costs and fees, for example, if the court finds a claim is frivolous.

Assistance with Plan Participants' Questions

A Plan Participant with questions about the Plan or its application should contact the Plan Administrator.

A Plan Participant with questions about this statement or about his/her rights under ERISA, or who needs assistance in obtaining documents from the Plan Administrator, should contact the nearest office of the EBSA, United States Department of Labor, listed in the telephone directory and at the EBSA website, or the Division of Technical Assistance and Inquires, EBSA, United States Department of Labor, 200 Constitution Avenue N. W., Washington, D. C. 20210. The Plan Participant may also obtain certain publications about rights and responsibilities under ERISA by calling the publications hotline of the EBSA.

ADMINISTRATIVE INFORMATION

Name of Plan:	SunPower Corporation Management Career Transition Plan
Plan Identification Number	601
Plan Sponsor	SunPower Corporation 3939 N. 1st Street San Jose, California 95134
Plan Administrator:	Vice President, Human Resources SunPower Corporation 3939 N. 1st Street San Jose, California 95134
Type of Administration:	Self-Administered
Type of Plan:	Welfare Benefit Plan that provides for severance pay and certain fringe benefits, including subsidized health benefit coverage

Federal Employer Identification Number:	94-3008969
Direct Questions Regarding the Plan to:	Vice President, Human Resources SunPower Corporation 3939 N. 1st Street San Jose, California 95134
Agent for Service of Legal Process:	Bruce Ledesma, Esq. General Counsel SunPower Corporation 1414 Harbour Way South Richmond, CA 94804
Plan Year:	SunPower Corporation's Fiscal Year

EXPLANATORY NOTE

Each of the named executive officers and other executive officers entered into an employment agreement with SunPower Corporation or, in the case of Mr. Daniel Shugar, its subsidiary SunPower Corporation, Systems. Each officer's employment agreement was substantially similar to the form being filed with this Quarterly Report on Form 10-Q and as appended hereto, with the following exceptions:

Mr. Werner

1. Section 7(a) provides for a lump-sum payment equal to 36 months (instead of 24 months) of base salary, a lump-sum payment equal to the target annual bonus multiplied by three (instead of two), continuation of health benefits for up to 36 months (instead of 24 months).

2. Section 8(a) grants accelerated vesting of awards, regardless of whether termination or resignation is in Connection with a Change of Control (instead of only in Connection with a Change of Control). However, it specifies that vesting is not accelerated with respect to performance-based equity awards which are subject to achievement of specified milestones that are not achieved as of the Termination Date.

3. Section 9(e) requires Mr. Werner's agreement not to compete for a period of twelve months following the Termination Date if his employment is terminated by the company without Cause or by him for Good Reason, and is not in Connection with a Change of Control.

Messrs. Dinwoodie, Ledesma, Wenger, Shugar

1. The agreements become effective on November 1, 2008 (instead of August 28, 2008), when the officers' pre-existing employment agreements expire, and the new agreements expire on August 28, 2011.

2. Section 10(f) cites the company's current business location in Richmond, California (instead of San Jose, California) as the original location for determining whether the officers' primary place of business is moved more than 45 miles from their current primary place of business.

Mr. Neese

1. Section 7(a) provides that Mr. Neese only becomes eligible for certain benefits as of July 2, 2009, and that prior to July 2, 2009 Mr. Neese is entitled to a lump-sum payment equal to $1,500,000 if his employment is terminated by the company without Cause.

SUNPOWER CORPORATION

[NAME OF EXECUTIVE]

EMPLOYMENT AGREEMENT

This Employment Agreement (this "Agreement") is entered into as of [_____], 200_ (the "Effective Date") by and between SunPower Corporation (the "Company") and [Name of Executive] ("Executive").

1. Duties and Scope of Employment.

(a) Positions and Duties. As of the Effective Date, Executive will serve as [Title]. Executive will render such business and professional services in the performance of his duties, consistent with Executive's position within the Company, as will reasonably be assigned to him by the Chief Executive Officer of the Company (the "Supervisor"). The period of Executive's employment under this Agreement is referred to herein as the "Employment Term."

(b) Obligations. During the Employment Term, Executive will devote Executive's full business efforts and time to the Company. Executive acknowledges that the performance of his duties may require reasonable business travel. For the duration of the Employment Term, Executive agrees not to actively engage in any other employment, occupation, or consulting activity for any direct or indirect remuneration without the prior approval of the Supervisor; provided, however, that Executive may, without the approval of the Supervisor, serve in any capacity with any civic, educational, or charitable organization, provided such services do not interfere with Executive's obligations to, or compliance with the policies of, the Company.

2. At-Will Employment. Executive and the Company agree that Executive's employment with the Company constitutes "at-will" employment. Executive and the Company acknowledge that, notwithstanding the term described in Section 3, this employment relationship may be terminated at any time, upon written notice to the other party, with or without good cause or for any or no cause, at the option either of the Company or Executive. Executive agrees to resign from all positions that he holds with the Company (other than his position, if any, as a member of the Board of Directors (the "Board") of the Company) immediately following the termination of his employment if the Supervisor so requests.

3. Term of Agreement. This Agreement will have an initial term of three years commencing on the Effective Date. On the third anniversary of the Effective Date, and on each three-year anniversary thereafter, this Agreement will automatically renew for an additional three-year term unless the Company provides Executive with written notice of non-renewal at least 120 days prior to the date of automatic renewal. In the event this Agreement is not renewed (i.e. terminated) upon the expiration of its Term, under no circumstances shall such non-renewal/termination trigger any entitlement to severance or any other benefits set forth in Sections 7 and 8 of this Agreement.

4. Compensation.

(a) Base Salary. The Company will pay Executive a base salary as compensation for Executive's services (the "Base Salary"). The Base Salary will be paid periodically in accordance with the Company's normal payroll practices and be subject to the usual, required withholdings and to deductions authorized by Executive. Executive's salary will be subject to review, and adjustments will be made based upon the Company's standard practices.

(b) Annual Bonus. Executive's target bonus will be determined from time to time by the Board and/or its compensation committee ("Target Bonus"). The actual bonus paid may be higher or lower than the Target Bonus for over- or under-achievement of goals as determined by the Board and/or its compensation committee in its or their sole discretion.

(c) Equity Compensation. Executive may be entitled to participate in the Company's equity incentive programs, as determined from time to time by the Board and/or its compensation committee.

5. Executive Benefits. During the Employment Term, Executive will be eligible to participate in accordance with the terms of all Benefit Plans that are applicable to other senior executives of the Company, as such Benefit Plans may exist from time to time.

6. Expenses. The Company will reimburse Executive for reasonable travel, entertainment, and other expenses incurred by Executive in the furtherance of the performance of Executive's duties hereunder, in accordance with the Company's expense reimbursement and other policies as in effect from time to time. Any such reimbursement under this Section 6 shall be for expenses incurred by Executive during his employment by the Company and such reimbursement shall be made not later than the last day of the calendar year following the calendar year in which Executive incurs the expense. In no event will the amount of expenses so reimbursed by the Company in one year affect the amount of expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year.

7. Severance in Connection with Change of Control.

(a) Termination Without Cause or Resignation for Good Reason. If Executive's employment is terminated by the Company without Cause or by Executive for Good Reason, and the termination constitutes a "separation from service" within the meaning of Section 409A of the Code and is in Connection with a Change of Control, then, subject to Section 9, Executive will receive: (i) a lump-sum payment equal to Executive's Base Salary at the monthly rate in effect on the Determination Date multiplied by twenty-four (24), (ii) in the event the Termination Date follows a completed fiscal year for which Executive's annual bonus relating to such prior completed fiscal year has not been paid as of the Termination Date, a lump-sum payment equal to the actual bonus that would have been paid for such completed fiscal year, (iii) a lump-sum payment equal to Executive's Target Bonus at the annual rate in effect on the Determination Date multiplied by two, (iv) continuation of Executive's and Executive's eligible dependents' coverage under the Company's Benefit Plans for twenty-four (24) months, or, if earlier, until Executive is eligible for similar benefits from another employer (provided

Executive validly elects to continue coverage under applicable law and assumes the cost, on an after-tax basis, for such continuation coverage), (v) a lump-sum payment equal to Executive's accrued and unpaid Base Salary and paid time off earned by the Executive through the Termination Date, (vi) reimbursement of up to $15,000 for the services of an outplacement firm mutually acceptable to the Company and Executive, provided that Executive incurs such outplacement services no later than the last day of the second year following the year in which Executive's Termination Date occurs, and (vii) except as provided in Section 7(c), on or about January 31 of the year following the year in which the Termination Date occurs and continuing on or about each January 31 until the year following the last year of Executive's Benefit Plans' coverage pursuant to this Section, the Company will make a payment to Executive (the "Benefit Plans Make-Up Payment") such that after payment of all taxes incurred by Executive, Executive receives an amount equal to the amount Executive paid during the immediately preceding calendar year for the Benefit Plans' coverage described in this Section. The Company shall provide the reimbursement provided in clause (vii) no later than the last day of the third year following the year in which Executive's Termination Date occurs. Except as provided in Section 7(c), or as earlier required by applicable law, the Company shall pay the lump sum payments prescribed by Section 7(a) on the sixtieth (60th) day following the Termination Date.

(b) Sole Right to Severance. This Agreement is intended to represent Executive's sole entitlement to severance payments and benefits in the event of a termination of his employment in connection with a Change of Control.

(c) Timing of Payments. To the extent necessary to avoid taxes and penalties under Section 409A of the Code, if, as of the Termination Date, Executive is a "specified employee," within the meaning of Treasury Regulation §1.409A and using the identification methodology selected by the Company from time to time, the lump-sum payments specified in Sections 7(a) and, if it would otherwise be paid before the date specified in this Section 7(c), the first Benefit Plans Make-Up Payment, shall be paid on the first business day of the seventh month after the Termination Date, or, if earlier, upon Executive's death. Any payments that are deferred pursuant to this Section 7(c) shall be credited with interest at the short-term Applicable Federal Rate with annual compounding, as announced by the Internal Revenue Service for the month in which the Termination Date occurs.

8. Acceleration of Vesting in Connection with Change of Control.

(a) If Executive's employment is terminated by the Company without Cause or by Executive for Good Reason, and the termination constitutes a "separation from service" within the meaning of Section 409A of the Code and is in Connection with a Change of Control, then, subject to Section 9, (x) all of such Executive's unvested options, shares of restricted stock and restricted stock units will become fully vested and (as applicable) exercisable as of the Termination Date and remain exercisable for the time period otherwise applicable to such equity awards following such Termination Date pursuant to the applicable equity incentive plan and equity award agreement and (y) all provisions regarding forfeiture, restrictions on transfer, and the Company's or its Affiliate's (as applicable) rights of repurchase, in each case otherwise applicable to shares of restricted stock or restricted stock units held by such Executive, shall lapse as of the Termination Date.

(b) Section 280G Limitation. If any payment or benefit Executive would receive pursuant to Section 7 and/or Section 8(a) (collectively, the "Payment") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the "Code"), and (ii) be subject to the excise tax imposed by Section 4999 of the Code or any interest or penalties payable with respect to such excise tax (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the "Excise Tax"), then Executive's benefits under this Agreement shall be either: (1) delivered in full, or (2) delivered as to such lesser extent which would result in no portion of such benefits being subject to the Excise Tax, whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the Excise Tax, results in the receipt by Executive on an after-tax basis, of the greatest amount of benefits, notwithstanding that all or some portion of such benefits may be taxable under Section 4999 of the Code. Any reduction under this Subsection (b) shall be applied first to Payments that constitute "deferred compensation" (within the meaning of Section 409A of the Code and the regulations thereunder). If there is more than one such Payment, then such reduction shall be applied on a *pro rata* basis to all such Payments.

(c) The accounting firm engaged by the Company for general audit purposes as of the day prior to the effective date of the Change of Control shall perform the foregoing calculations. If the accounting firm so engaged by the Company is also serving as accountant or auditor for the individual, entity or group which will control the Company upon the occurrence of a Change of Control, the Company shall appoint a nationally recognized accounting firm other than the accounting firm engaged by the Company for general audit purposes to make the determinations required hereunder. The Company shall bear all expenses with respect to the determinations by such accounting firm required to be made hereunder.

(d) The accounting firm engaged to make the determinations hereunder shall provide its calculations, together with detailed supporting documentation, to the Company and Executive within thirty (30) calendar days after the date on which such accounting firm has been engaged to make such determinations or such other time as requested by the Company or Executive. Any good faith determinations of the accounting firm made hereunder shall be final, binding, and conclusive upon the Company and Executive.

9. Conditions to Receipt of Severance; No Duty to Mitigate.

(a) Separation Agreement and Release of Claims. The receipt of any severance pursuant to Section 7 or acceleration of equity awards pursuant to Section 8 will be subject to Executive signing and not revoking a separation agreement and release of claims in the form attached as Annex A hereto, which separation agreement and release of claims must be delivered to Executive within seven (7) days after the Termination Date and must be signed and submitted by Executive within forty-five (45) days of Executive's receipt of the separation agreement and release of claims. No severance will be paid or provided until the separation agreement and release of claims becomes effective.

(b) Nonsolicitation. In the event of a termination of Executive's employment that otherwise would entitle Executive to the receipt of severance pursuant to Section 7, Executive agrees that, during the one (1) year period following the Termination Date, Executive,

directly or indirectly, whether as employee, owner, sole proprietor, partner, director, member, consultant, agent, founder, co-venturer or otherwise, will (i) not solicit, induce, or influence any person to modify his or her employment or consulting relationship with the Company or its Affiliates (the "No-Inducement"), and (ii) shall not use the Company's confidential or proprietary information to solicit business from any of the Company's or its Affiliates' substantial customers and users (the "No-Solicit"). If Executive breaches the No-Inducement or the No-Solicit, all continuing payments and benefits to which Executive otherwise may be entitled pursuant to Section 7 and/or Section 8(a) will cease immediately and the Company and its Affiliates may pursue all other available remedies against Executive. As used in this Agreement, "Affiliate" means any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the Company.

(c) Nondisparagement. In the event of a termination of Executive's employment that otherwise would entitle Executive to the receipt of severance pursuant to Section 7, Executive agrees to refrain from any disparagement, criticism, defamation, or slander of the Company or its Affiliates, or their respective directors, executive officers, or employees, and to refrain from tortious interference with the contracts and relationships of the Company or its Affiliates. The foregoing restrictions will not apply to any statements that are made truthfully in response to a subpoena or other compulsory legal process.

(d) No Duty to Mitigate. Executive will not be required to mitigate the amount of any payment contemplated by this Agreement, nor will any earnings that Executive may receive from any other source reduce any such payment.

10. Definitions.

(a) Benefit Plans. For purposes of this Agreement, "Benefit Plans" means plans, policies, or arrangements that the Company sponsors (or participates in) and that immediately prior to Executive's Termination Date provide Executive and Executive's eligible dependents with medical, dental, or vision benefits. Benefit Plans do not include any other type of benefit (including, but not by way of limitation, financial counseling, disability, life insurance, or retirement benefits). A requirement that the Company provide Executive and Executive's eligible dependents with (or reimburse for) coverage under the Benefit Plans will not be satisfied unless the coverage is no less favorable than that provided to Executive and Executive's eligible dependents immediately prior to Executive's Termination Date; provided, however, that the Company may reduce coverage under the Benefit Plans if such reduction is applicable to all other senior executives of the Company. Subject to the immediately preceding sentence, the Company may, at its option, satisfy any requirement that the Company provide (or reimburse for) coverage under any Benefit Plan by instead providing (or reimbursing for) coverage under a separate plan or plans providing coverage that is no less favorable.

(b) Cause. For purposes of this Agreement, "Cause" means the occurrence of any of the following, as determined by the Company in good faith: (i) acts or omissions constituting gross negligence or willful misconduct on the part of Executive with respect to Executive's obligations or otherwise relating to the business of Company, (ii) Executive's conviction of, or plea of guilty or nolo contendere to, crimes involving fraud, misappropriation or embezzlement, or a felony crime of moral turpitude, (iii) Executive's violation or breach of

any fiduciary duty (whether or not involving personal profit) to the Company, except to the extent that his violation or breach was reasonably based on the advice of the Company's outside counsel, or willful violation of a published policy of the Company governing the conduct of it executives or other employees, or (iv) Executive's violation or breach of any contractual duty to the Company which duty is material to the performance of the Executive's duties or results in material damage to the Company or its business; provided that if any of the foregoing events is capable of being cured, the Company will provide notice to Executive describing the nature of such event and Executive will thereafter have thirty (30) days to cure such event.

(c) Change of Control. For purposes of this Agreement, "Change of Control" means (i) a sale of all or substantially all of the assets of the Company, (ii) any merger, consolidation, or other business combination transaction of the Company with or into another corporation, entity, or person, other than a transaction in which the holders of at least a majority of the shares of voting capital stock of the Company outstanding immediately prior to such transaction continue to hold (either by such shares remaining outstanding or by their being converted into shares of voting capital stock of the surviving entity) a majority of the total voting power represented by the shares of voting capital stock of the Company (or the respective surviving entity) outstanding immediately after such transaction, (iii) the direct or indirect acquisition (including by way of a tender or exchange offer) by any person, or persons acting as a group, of beneficial ownership or a right to acquire beneficial ownership of shares representing a majority of the voting power of the then outstanding shares of capital stock of the Company, (iv) one or more contested elections of directors during a period of 36 consecutive months, as a result of which or in connection with which the persons who were directors before the first of such elections or their nominees cease to constitute a majority of the Board, or (v) a dissolution or liquidation of the Company. Notwithstanding anything herein to the contrary, any (1) pro rata distribution (or retirement and pro rata issuance) of shares of the Company's stock held by Cypress Semiconductor Corporation ("Cypress") to the then existing public shareholders of Cypress (in proportion to their shareholdings of Cypress), (2) repurchase by the Company of the shares of the Company's stock held by Cypress, or (3) acquisition, merger, consolidation, or other business combination transaction of Cypress with or into the Company shall not itself constitute a Change of Control, provided in the case of Clause (3) that Cypress assumes this Agreement in writing and is thereafter deemed to be the "Company" for all purposes under this Agreement.

(d) Code. For purposes of this Agreement, "Code" means the Internal Revenue Code of 1986, as amended.

(e) Determination Date. For purposes of this Agreement, "Determination Date" means the date during the 12-month period preceding the Termination Date on which the sum of Executive's annual Base Salary plus his annual Target Bonus was highest.

(f) Good Reason. For purposes of this Agreement, "Good Reason" means the occurrence of any of the following without Executive's express prior written consent: (i) a material reduction in Executive's position or duties after the Effective Date, (ii) a material breach of this Agreement, (iii) a material reduction in the Executive's aggregate target compensation, including Executive's Base Salary and Target Bonus on a combined basis, excluding a reduction that is applied to substantially all of the Company's other senior executives; provided, however,

that for purposes of this clause (iii) whether a reduction in Target Bonus has occurred shall be determined without any regard to any actual bonus payments made to Executive, or (iv) a relocation of Executive's primary place of business for the performance of his duties to the Company to a location that is more than forty-five (45) miles from the Company's current business location in San Jose, California. Executive shall be considered to have Good Reason hereunder only if, no later than ninety (90) days following an event otherwise constituting Good Reason under this Section 10(f), Executive gives notice to the Company of the occurrence of such event and the Company fails to cure the event within thirty (30) days following its receipt of such notice from Executive, and the Executive terminates service within twenty-four (24) months following a Change of Control.

(g) In Connection with a Change of Control. For purposes of this Agreement, a termination of Executive's employment with the Company is "in Connection with a Change of Control" if Executive's employment terminates during the period beginning three (3) months prior to a Change of Control and ending twenty-four (24) months following a Change of Control.

(h) Termination Date. For purposes of this Agreement, "Termination Date" means the date on which Executive incurs a "separation from service" within the meaning of Section 409A of the Code.

11. Indemnification and Insurance. Executive will be covered under the Company's insurance policies and, subject to applicable law, will be provided indemnification to the maximum extent permitted by the Company's bylaws and Articles of Incorporation, with such insurance coverage and indemnification to be in accordance with the Company's standard practices for senior executive officers but on terms no less favorable than provided to any other Company senior executive officer or director.

12. Confidential Information. Executive acknowledges that the Agreement Concerning Proprietary Information and Inventions between Executive and the Company (the "Confidential Information Agreement") will continue in effect. During the Employment Term, Executive agrees to execute any updated versions of the Company's form of Confidential Information Agreement (any such updated version also referred to as the "Confidential Information Agreement") as may be required of substantially all of the Company's executive officers.

13. Assignment. This Agreement will be binding upon and inure to the benefit of (a) the heirs, executors, and legal representatives of Executive upon Executive's death, and (b) any successor of the Company. Any such successor of the Company will be deemed substituted for the Company under the terms of this Agreement for all purposes. For this purpose, "successor" means any person, firm, corporation, or other business entity which at any time, whether by purchase, merger, or otherwise, directly or indirectly acquires all or substantially all of the assets or business of the Company. None of the rights of Executive to receive any form of compensation payable pursuant to this Agreement may be assigned or transferred except by will or the laws of descent and distribution. Any other attempted assignment, transfer, conveyance, or other disposition of Executive's right to compensation or other benefits will be null and void.

14. Notices. All notices, requests, demands, and other communications called for hereunder will be in writing and will be deemed given (a) on the date of delivery if delivered personally, (b) one day after being sent by a well established commercial overnight service, or (c) four days after being mailed by registered or certified mail, return receipt requested, prepaid and addressed to the parties or their successors at the following addresses, or at such other addresses as the parties may later designate in writing:

If to the Company:

Attn: Chief Executive Officer
SunPower Corporation
3939 North First Street
San Jose, CA 95134

If to Executive, at the last known residential address on file with the Company.

15. Severability. If any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, this Agreement will continue in full force and effect without said provision.

16. Arbitration. The Parties agree that any and all disputes arising out of the terms of this Agreement, their interpretation, and any of the matters herein released, shall be subject to binding arbitration in San Francisco, California before a retired judge then employed by the Judicial Arbitration and Mediation Service (JAMS) under its employment arbitration rules and procedures, supplemented by the California Code of Civil Procedure. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. **The Parties hereby agree to waive their right to have any dispute between them resolved in a court of law by a judge or jury.** This paragraph will not prevent either party from seeking preliminary injunctive relief (or any other provisional remedy) in aid of arbitration from any court having jurisdiction over the Parties under applicable state laws.

17. Integration and Existing Agreement. This Agreement, together with the Confidential Information Agreement, Executive's equity award agreements and any indemnification agreement between Executive and the Company, represents the entire agreement and understanding between the parties as to the subject matter herein and supersedes all prior or contemporaneous agreements, whether written or oral (but excluding the Confidential Information Agreement, Executive's equity award agreements and any indemnification agreement between Executive and the Company). In the event of any conflict between this Agreement and the Confidential Information Agreement or Executive's equity award agreements, this Agreement shall prevail. No waiver, alteration, or modification of any of the provisions of this Agreement will be binding unless in writing that specifically references this Section and is signed by duly authorized representatives of the parties hereto. Notwithstanding the preceding sentence, both the Company and Executive agree to amend this Agreement with respect to the timing of payments if the Board determines that an amendment is necessary to prevent the imposition of additional tax liability under Section 409A of the Internal Revenue Code of 1986, as amended.

18. Waiver of Breach. The waiver of a breach of any term or provision of this Agreement, which must be in writing, will not operate as or be construed to be a waiver of any other previous or subsequent breach of this Agreement.

19. Survival. The Confidential Information Agreement, and the Company's and Executive's responsibilities under Sections 6 through 22 will survive the termination of this Agreement.

20. Headings. All captions and Section headings used in this Agreement are for convenient reference only and do not form a part of this Agreement.

21. Tax Withholding. All payments made pursuant to this Agreement will be subject to withholding of applicable taxes.

22. Governing Law. This Agreement will be governed by the laws of the State of California (with the exception of its conflict of laws provisions).

23. Acknowledgment. Executive acknowledges that he has had the opportunity to discuss this matter with and obtain advice from his private attorney, has had sufficient time to, and has carefully read and fully understands all the provisions of this Agreement, and is knowingly and voluntarily entering into this Agreement.

24. Counterparts. This Agreement may be executed in counterparts, and each counterpart will have the same force and effect as an original and will constitute an effective, binding agreement on the part of each of the undersigned.

25. Section 409A of the Code. Each payment and the provision of each benefit under this Agreement will be considered a separate payment and not one of a series of payments for purposes of Section 409A of the Code. It is intended that this Agreement comply with the provisions of Section 409A of the Code. This Agreement will be administered in a manner consistent with such intent.

* * * * *

IN WITNESS WHEREOF, each of the parties has executed this Agreement, in the case of the Company by a duly authorized officer, as of the Effective Date.

COMPANY:	EXECUTIVE
By:	
Name:	Print Name
Its:	

- -

ANNEX A **DATE**

SUNPOWER CORPORATION
SEPARATION AGREEMENT AND RELEASE OF CLAIMS

This Separation Agreement and Release of Claims (hereinafter referred to as "Agreement") is made and entered into by and between **Executive Name** (hereinafter referred to as "Employee"), and SunPower Corporation (hereinafter referred to as "Company"). It is hereby agreed by and between the parties as follows:

1. The last day of Employee's work for the Company and termination date will be **DATE**.

2. As separate consideration for this Agreement, the Company agrees to pay to Employee the amounts required pursuant to Section 7, and accelerate the vesting of equity awards pursuant to Section 8, of that certain Employment Agreement between the Company and Employee in effect as of the date hereof (the "Employment Agreement").

Employee agrees that the foregoing shall constitute an accord and satisfaction and a full and complete settlement of Employee's claims, shall constitute the entire amount of monetary consideration provided to Employee under this Agreement except as provided herein, and that Employee will not seek any further compensation for any other claimed damage, costs or attorneys' fees in connection with the matters encompassed in this Agreement.

Employee acknowledges and agrees that the Company has made no representations to Employee regarding the tax consequences of any amounts received by Employee pursuant to this Agreement. Other than withholdings as provided for herein, Employee agrees to pay any additional federal or state taxes which are required by law to be paid with respect to this Agreement.

3. The Company agrees that Employee will receive any sums due and owing to Employee as unpaid wages, salary and/or computed commissions, as may be applicable to Employee, to the extent Employee is owed such compensation as of Employee's termination date, less legally required withholdings as in effect for Employee on the termination date of Employee's employment.

4. The Company agrees that Employee will receive any sums due and owing to Employee under the Company's PTO policy to the extent Employee is owed accrued PTO pay as of Employee's termination date, less legally required withholdings as in effect for Employee on the termination date of Employee's employment.

5. Employee represents that Employee has not filed any complaint, claims or actions against the Company, its affiliated companies, or their officers, agents, directors, supervisors, employees or representatives with any state, federal or local agency or court and that Employee will not do so at any time hereafter.

6. Employee hereby agrees that all rights Employee may have under section 1542 of the Civil Code of the State of California are hereby waived by Employee. Section 1542 provides as follows:

A. "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

7. Notwithstanding the provisions of section 1542 of the Civil Code of the State of California, Employee without limitation hereby irrevocably and unconditionally releases and forever discharges the Company, and its affiliated companies, their officers, agents, directors, supervisors, employees, representatives, successors and assigns, and all persons acting by, through, under, or in concert with any of them from any and all charges, complaints, claims, causes of action, debts, sums of money, controversies, agreements, promises, damages and liabilities of any kind or nature whatsoever, both at law and equity, known or unknown, suspected or unsuspected (hereinafter referred to as "claim" or "claims"), arising from conduct occurring on or before the date of this Agreement, including without limitation any claims incidental to or arising out of Employee's employment with the Company or the termination thereof. It is expressly understood by Employee that among the various rights and claims being waived in this release are those arising under the Age Discrimination in Employment Act of 1967 (29 U.S.C. § 621. et seq.), including the Older Workers' Benefit Protection Act (29 U.S.C. § 626(f)). This provision is intended by the parties to be all encompassing and to act as a full and total release of any claim, whether specifically enumerated herein or not, that Employee might have or has had, that exists or ever has existed on or to the date of this Agreement, to the extent permitted by law. However, this Section 7 shall not apply to (a) any claim that may not be released under applicable law and (b) any claim to be indemnified for any losses, damages or costs arising from any action or omission as a director, officer or employee of the Company or a parent or subsidiary of the Company.

8. The parties understand the word "claim" or "claims" to include without limitation all actions, claims and grievances, whether actual or potential, known or unknown, related, incidental to or arising out of Employee's employment with the Company and the termination thereof. All such claims, including related attorneys' fees and costs, are forever barred by this Agreement and without regard to whether those claims are based on any alleged breach of a duty arising in contract or tort; any alleged unlawful act, any other claim or cause of action; and regardless of the forum in which it might be brought.

9. Employee agrees that Employee will now and forever keep the terms and monetary settlement amount of this Agreement completely confidential, and that Employee shall not disclose such to any other person directly or indirectly. As an exception to the foregoing, and the only exception, Employee may disclose the terms and monetary settlement amount of this Agreement to Employee's attorney, tax advisor, accountant and immediate family (defined as and limited to spouse and children) who shall be advised of its confidentiality. Notwithstanding the foregoing, Employee may make such disclosures of the terms and monetary settlement amount of this Agreement as are required by law or as necessary for legitimate enforcement or

compliance purposes. Employee agrees that the failure to comply with the terms of this paragraph shall amount to a material breach of this Agreement which will subject Employee to the liability for all damages the Company might incur. In the event of such a breach, the Company will be entitled to all legal and equitable remedies available, including, but not limited to, injunctive relief and its attorneys' fees to obtain said relief.

10. Employee has no recall to employment rights with respect to the Company or its affiliated companies, and this Agreement severs the employment relationship between Employee and the Company on Employee's termination date. While Employee may apply for future employment with the Company or its affiliated companies pursuant to employment policies then in effect, the Company and its affiliated companies may in their discretion without cause decline the re-employment of Employee.

11. No later than Employee's termination date, Employee will deliver to the Company all property of the Company, proprietary documents, proprietary data and proprietary information of any nature pertaining to the Company or its affiliated companies, and will not take from the Company or its affiliated companies any documents or data of any description or any reproduction containing or pertaining to any proprietary information nor utilize same.

12. Employee acknowledges and agrees to comply with the provisions of the Employment Agreement, including but not limited to Sections 9(b) and (c) thereof.

13. Employee agrees that Employee will not hold Employee out as an agent of the Company or its affiliated companies, or as having any authority to bind the Company or its affiliated companies.

14. Employee understands and agrees that Employee:

a. Has had the opportunity of a full twenty-one (21) days within which to consider this Agreement before signing it, and that if Employee has not taken that full time period that Employee has failed to do so knowingly and voluntarily.

b. Has carefully read and fully understands all of the provisions of this Agreement.

Is, through this Agreement, releasing the Company, its affiliated companies, and their officers, agents, directors, supervisors, employees, representatives, successors and assigns and all persons acting by, through, under, or in concert with any of them, from any and all claims Employee may have against the Company or such individuals.

Knowingly and voluntarily agrees to all of the terms set forth in this Agreement.

Knowingly and voluntarily intends to be legally bound by the same.

Was advised and hereby is advised in writing to consider the terms of this Agreement and consult with an attorney of Employee's choice prior to signing this Agreement.

Has a full seven (7) days following the execution of this Agreement to revoke this Agreement, and has been and hereby is advised in writing that this Agreement, all of its terms, and all of the obligations of the Company contained herein, shall not become effective or enforceable until the revocation period has expired.

That rights or claims under the Age Discrimination in Employment Act of 1967 (29 U.S.C. § 621, et seq.) that may arise after the date this Agreement is signed are not waived.

15. Employee expressly acknowledges that Employee has had the opportunity of a full twenty-one (21) days within which to consider this Agreement before signing it, and that if Employee has not taken that full time period, that Employee expressly waives this time period and will not assert the invalidity of this Agreement or any portion thereof on this basis.

16. This Agreement and compliance with this Agreement shall not be construed as an admission by the Company of any liability whatsoever, or as admission by the Company of any violation of the rights of Employee, violation of any order, law, statute, duty or contract whatsoever.

17. The parties hereto represent and acknowledge that in executing this Agreement they do not rely and have not relied upon any representation or statement made by any of the parties or by any of the parties' agents, attorneys or representatives with regard to the subject matter or effect of this Agreement or otherwise, other than those specifically stated in this written Agreement.

18. This Agreement shall be binding upon the parties hereto and upon their heirs, administrators, representatives, executors, successors, and assigns, and shall inure to the benefit of said parties and each of them and to their heirs, administrators, representatives, executors, successors, and assigns. Employee expressly warrants that Employee has not transferred to any person or entity any rights or causes of action, or claims released by this Agreement.

19. Should any provision of this Agreement be declared or be determined by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity and enforceability of the remaining parts, terms or provisions shall not be effected thereby and said illegal, unenforceable, or invalid term, part or provision shall be deemed not to be a part of this Agreement.

20. With the exception of the Employment Agreement and any agreement with the Company or its affiliated companies pertaining to proprietary, trade secret or other confidential information and/or the ownership of inventions, all of which shall remain in full force and effect and are unaffected by this Agreement, this Agreement sets forth the entire agreement between the parties hereto and fully supersedes any and all prior agreements and understandings, written or oral, between the parties hereto pertaining to the subject matter hereof. This Agreement may only be amended or modified by a writing signed by the parties hereto. Any waiver of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement unless expressly so indicated otherwise.

21. This Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the parties hereto.

22. The Parties agree that any and all disputes arising out of the terms of this Agreement, their interpretation, and any of the matters herein released, shall be subject to binding arbitration in San Francisco, California before a retired judge then employed by the Judicial Arbitration and Mediation Service (JAMS) under its employment arbitration rules and procedures, supplemented by the California Code of Civil Procedure. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. **The Parties hereby agree to waive their right to have any dispute between them resolved in a court of law by a judge or jury.** This paragraph will not prevent either party from seeking preliminary injunctive relief (or any other provisional remedy) in aid of arbitration from any court having jurisdiction over the Parties under applicable state laws.

23. This Agreement may be executed in counterparts and each counterpart, when executed, shall have the efficacy of a second original. Photographic or facsimile copies of any such signed counterparts may be used in lieu of the original for any said purpose.

For Employee:

Dated: _____

For SunPower Corporation:

Dated: _____ By: _____

SUNPOWER CORPORATION

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (this "Agreement") is entered into as of _____ ___, 20__ (the "Effective Date"), by and between SunPower Corporation, a Delaware corporation (the "Company"), and _____ ("Indemnitee").

RECITALS

A. Indemnitee is either a member of the board of directors of the Company (the "Board of Directors") or an officer of the Company, or both, and in such capacity or capacities, or otherwise as an Agent (as hereinafter defined) of the Company, is performing a valuable service for the Company.

B. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that he or she be indemnified as herein provided.

C. It is intended that Indemnitee shall be paid promptly by the Company all amounts necessary to effectuate in full the indemnity provided herein.

NOW, THEREFORE, in consideration of the premises and the covenants in this Agreement, and of Indemnitee continuing to serve the Company as an Agent and intending to be legally bound hereby, the parties hereto agree as follows:

1. Services by Indemnitee. Indemnitee agrees to serve (a) as a director or an officer of the Company, or both, so long as Indemnitee is duly appointed or elected and qualified in accordance with the applicable provisions of the Certificate of Incorporation and bylaws of the Company, and until such time as Indemnitee resigns or fails to stand for election or is removed from Indemnitee's position, or (b) as an Agent of the Company. Indemnitee may from time to time also perform other services at the request or for the convenience of, or otherwise benefiting, the Company. Indemnitee may at any time and for any reason resign or be removed from such position (subject to any other contractual obligation or other obligation imposed by operation of law), in which event the Company shall have no obligation under this Agreement to continue Indemnitee in any such position.

2. Indemnification. Subject to the limitations set forth herein and in Section 7 hereof, the Company hereby agrees to indemnify Indemnitee as follows:

(a) Except as otherwise specifically provided herein, the Company shall, with respect to any Proceeding (as hereinafter defined) associated with Indemnitee's being an Agent of the Company, indemnify Indemnitee to the fullest extent permitted by applicable law and the Certificate of Incorporation of the Company in effect on the date hereof or as such law or Certificate of Incorporation may from time to time be amended (but, in the case of any such amendment, only to the extent such amendment permits the Company to provide broader indemnification rights than the law or Certificate of Incorporation permitted the Company to provide before such amendment).

(b) The Company shall indemnify Indemnitee if Indemnitee is or was a party or is threatened to be made a party to any threatened, pending or completed Proceeding (other than an action by or in the right of the Company) by reason of the fact that Indemnitee is or was a director, officer, employee or agent of the Company, or any subsidiary of the Company, or by reason of the fact that Indemnitee is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against Expenses (as hereinafter defined) or Liabilities (as hereinafter defined), actually and reasonably incurred by Indemnitee in connection with such Proceeding if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe Indemnitee's conduct was unlawful.

(c) The Company shall indemnify Indemnitee if Indemnitee was or is a party or is threatened to be made a party to any threatened, pending or completed Proceeding by or in the right of the Company or any subsidiary of the Company to procure a judgment in its favor by reason of the fact that Indemnitee is or was a director, officer, employee or agent of the Company, or any subsidiary of the Company, or by reason of the fact that Indemnitee is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against Expenses and, to the fullest extent permitted by law, Liabilities if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, except that no indemnification shall be made in respect of any claim, issue or matter as to which Indemnitee shall have been adjudged to be liable to the Company unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery of the State of Delaware or such other court shall deem proper.

(d) The right to indemnification conferred herein and in the Certificate of Incorporation shall be presumed to have been relied upon by Indemnitee in serving or continuing to serve the Company as an Agent and shall be enforceable as a contract right.

3. Advancement of Expenses. All reasonable Expenses incurred by or on behalf of Indemnitee (including costs of enforcement of this Agreement) shall be advanced from time to time by the Company to Indemnitee within twenty (20) days after the receipt by the Company of a written request for an advance of Expenses, whether prior to or after final disposition of a Proceeding (except to the extent that there has been a Final Adverse Determination (as hereinafter defined) that Indemnitee is not entitled to be indemnified for such Expenses), including, without limitation, any Proceeding brought by or in the right of the Company. The written request for an advancement of any and all Expenses under this paragraph shall contain reasonable detail of the Expenses incurred by Indemnitee. In the event that such written request shall be accompanied by an affidavit of counsel to Indemnitee to the effect that such counsel has reviewed such Expenses and that such Expenses are reasonable in such counsel's view, then such expenses shall be deemed reasonable in the absence of clear and convincing evidence to the contrary. By execution of this Agreement, Indemnitee shall be deemed to have made whatever undertaking as may be required by law at the time of any advancement of Expenses with respect to repayment to the Company of such Expenses. In the event that the Company shall breach its obligation to advance Expenses under this Section 3, the parties hereto agree that Indemnitee's remedies available at law would not be adequate and that Indemnitee would be entitled to specific performance.

4. Surety Bond.

(a) In order to secure the obligations of the Company to indemnify and advance Expenses to Indemnitee pursuant to this Agreement, the Company shall obtain at the time of any Change in Control (as hereinafter defined) a surety bond (the "Bond"). The Bond shall be in an appropriate amount not less than one million dollars ($1,000,000), shall be issued by a commercial insurance company or other financial institution headquartered in the United States
having assets in excess of $10 billion and capital according to its most recent published reports equal to or greater than the then applicable minimum capital standards promulgated by such entity's primary federal regulator and shall contain terms and conditions reasonably acceptable to Indemnitee. The Bond shall provide that Indemnitee may from time to time file a claim for payment under the Bond, upon written certification by Indemnitee to the issuer of the Bond that (i) Indemnitee has made written request upon the Company for an amount not less than the amount Indemnitee is drawing under the Bond and that the Company has failed or refused to provide Indemnitee with such amount in full within thirty (30) days after receipt of the request, and (ii) Indemnitee believes that he or she is entitled under the terms of this Agreement to the amount that Indemnitee is drawing upon under the Bond. The issuance of the Bond shall not in any way diminish the Company's obligation to indemnify Indemnitee against Expenses and Liabilities to the full extent required by this Agreement.

(b) Once the Company has obtained the Bond, the Company shall maintain and renew the Bond or a substitute Bond meeting the criteria of Section 4(a) during the term of this Agreement so that the Bond shall have an initial term of five (5) years, be renewed for successive five-year terms, and always have at least one (1) year of its term remaining.

5. Presumptions and Effect of Certain Proceedings. Upon making a request for indemnification, Indemnitee shall be presumed to be entitled to indemnification under this Agreement and the Company shall have the burden of proof to overcome that presumption in reaching any contrary determination. The termination of any Proceeding by judgment, order, settlement, arbitration award or conviction, or upon a plea of nolo contendere or its equivalent shall not affect this presumption or, except as determined by a judgment or other final adjudication adverse to Indemnitee, establish a presumption with regard to any factual matter relevant to determining Indemnitee's rights to indemnification hereunder. If the person or persons so empowered to make a determination pursuant to Section 6 hereof shall have failed to make the requested determination within thirty (30) days after any judgment, order, settlement, dismissal, arbitration award, conviction, acceptance of a plea of nolo contendere or its equivalent, or other disposition or partial disposition of any Proceeding or any other event that could enable the Company to determine Indemnitee's entitlement to indemnification, the requisite determination that Indemnitee is entitled to indemnification shall be deemed to have been made.

6. Procedure for Determination of Entitlement to Indemnification.

(a) Whenever Indemnitee believes that Indemnitee is entitled to indemnification pursuant to this Agreement, Indemnitee shall submit a written request for indemnification to the Company. Any request for indemnification shall include sufficient documentation or information reasonably available to Indemnitee for the determination of entitlement to indemnification. In any event, Indemnitee shall submit Indemnitee's claim for indemnification within a reasonable time, not to exceed five (5) years after any judgment, order, settlement, dismissal, arbitration award, conviction, acceptance of a plea of nolo contendere or its equivalent, or final determination, whichever is the later date for which Indemnitee requests indemnification. The Secretary or other appropriate officer shall, promptly upon receipt of Indemnitee's request for indemnification, advise the Board of Directors in writing that Indemnitee has made such request. Determination of Indemnitee's entitlement to indemnification and, if so entitled, full payment of Indemnitee's claim for indemnification shall be made not later than thirty (30) days after the Company's receipt of Indemnitee's written request for such indemnification, provided that any request for indemnification for Liabilities, other than amounts paid in settlement, shall have been made after a determination thereof in a Proceeding.

(b) The Company shall be entitled to select the forum in which Indemnitee's entitlement to indemnification will be heard; provided, however, that if there is a Change in Control of the Company, Independent Legal Counsel (as hereinafter defined) shall determine whether Indemnitee is entitled to indemnification. The forum shall be any one of the following:

(i) a majority vote of Disinterested Directors (as hereinafter defined), even though less than a quorum;

(ii) by a committee of Disinterested Directors designated by majority vote of the Disinterested Directors, even though less than a quorum; or

(iii) Independent Legal Counsel, whose determination shall be made in a written opinion.

7. Specific Limitations on Indemnification. Notwithstanding anything in this Agreement to the contrary, the Company shall not be obligated under this Agreement to make any payment to Indemnitee with respect to any Proceeding:

(a) To the extent that payment is actually made to Indemnitee under any insurance policy, or is made to Indemnitee by the Company or an affiliate otherwise than pursuant to this Agreement. Notwithstanding the availability of such insurance, Indemnitee also may claim indemnification from the Company pursuant to this Agreement by assigning to the Company any claims under such insurance to the extent Indemnitee is paid by the Company;

(b) Provided there has been no Change in Control, for Liabilities in connection with Proceedings settled without the Company's consent, which consent, however, shall not be unreasonably withheld;

(c) For an accounting of profits made from the purchase or sale by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or similar provisions of any state statutory or common law;

(d) To the extent it would be otherwise prohibited by law, if so established by a judgment or other final adjudication adverse to Indemnitee; or

(e) In connection with a Proceeding commenced by Indemnitee (other than a Proceeding commenced by Indemnitee to enforce Indemnitee's rights under this Agreement) unless the commencement of such Proceeding was authorized by the Board of Directors.

8. Fees and Expenses of Independent Legal Counsel. The Company agrees to pay the reasonable fees and expenses of Independent Legal Counsel should such Independent Legal Counsel be retained to make a determination of Indemnitee's entitlement to indemnification pursuant to Section 6(b) of this Agreement, and to fully indemnify such Independent Legal Counsel against any and all expenses and losses incurred by it arising out of or relating to this Agreement or its engagement pursuant hereto.

9. Remedies of Indemnitee.

(a) In the event that (i) a determination pursuant to Section 6 hereof is made that Indemnitee is not entitled to indemnification, (ii) advances of Expenses are not made pursuant to this Agreement, (iii) payment has not been timely made following a determination of entitlement to indemnification pursuant to this Agreement or (iv) Indemnitee otherwise seeks enforcement of this Agreement, Indemnitee shall be entitled to a final adjudication in the Court of Chancery of the State of Delaware of the remedy sought. Alternatively, unless court approval is required by law for the indemnification sought by Indemnitee, Indemnitee at Indemnitee's option may seek an award in arbitration to be conducted by a single arbitrator pursuant to the commercial arbitration rules of the American Arbitration Association now in effect, which award is to be made within thirty (30) days following the filing of the demand for arbitration. The Company shall not oppose Indemnitee's right to seek any such adjudication or arbitration award. In any such proceeding or arbitration, Indemnitee shall be presumed to be entitled to indemnification and advancement of Expenses under this Agreement and the Company shall have the burden of proof to overcome that presumption.

(b) In the event that a determination that Indemnitee is not entitled to indemnification, in whole or in part, has been made pursuant to Section 6 hereof, the decision in the judicial proceeding or arbitration provided in paragraph (a) of this Section 9 shall be made *de novo* and Indemnitee shall not be prejudiced by reason of a determination that Indemnitee is not entitled to indemnification.

(c) If a determination that Indemnitee is entitled to indemnification has been made pursuant to Section 6 hereof, or is deemed to have been made pursuant to Section 5 hereof or otherwise pursuant to the terms of this Agreement, the Company shall be bound by such determination in the absence of a misrepresentation or omission of a material fact by Indemnitee in connection with such determination.

(d) The Company shall be precluded from asserting that the procedures and presumptions of this Agreement are not valid, binding and enforceable. The Company shall stipulate in any such court or before any such arbitrator that the Company is bound by all of the provisions of this Agreement and is precluded from making any assertion to the contrary.

(e) Expenses reasonably incurred by Indemnitee in connection with Indemnitee's request for indemnification under, seeking enforcement of or to recover damages for breach of this Agreement shall be borne by the Company when and as incurred by Indemnitee irrespective of any Final Adverse Determination that Indemnitee is not entitled to indemnification.

10. Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of the costs, judgments, penalties, fines, liabilities or Expenses actually and reasonably incurred in connection with any action, suit or proceeding (including an action, suit or proceeding brought by or on behalf of the Company), but not, however, for all of the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion of such costs, judgments, penalties, fines, liabilities and Expenses actually and reasonably incurred to which Indemnitee is entitled.

11. Maintenance of Insurance. Upon the Company's purchase of directors' and officers' liability insurance policies covering its directors and officers, then, subject only to the provisions within this Section 11, the Company agrees that so long as Indemnitee shall have consented to serve or shall continue to serve as a director or officer of the Company, or both, or as an Agent of the Company, and thereafter so long as Indemnitee shall be subject to any possible Proceeding (such periods being hereinafter sometimes referred to as the "Indemnification Period"), the Company will use all reasonable efforts to maintain in effect for the benefit of Indemnitee one or more valid, binding and enforceable policies of directors' and officers' liability insurance from established and reputable insurers, providing, in all respects, coverage both in scope and amount which is no less favorable than that provided by such preexisting policies. Notwithstanding the foregoing, the Company shall not be required to maintain said policies of directors' and officers' liability insurance during any time period if during such period such insurance is not reasonably available or if it is determined in good faith by the then directors of the Company either that:

(a) The premium cost of maintaining such insurance is substantially disproportionate to the amount of coverage provided thereunder; or

(b) The protection provided by such insurance is so limited by exclusions, deductions or otherwise that there is insufficient benefit to warrant the cost of maintaining such insurance.

Anything in this Agreement to the contrary notwithstanding, to the extent that and for so long as the Company shall choose to continue to maintain any policies of directors' and officers' liability insurance during the Indemnification Period, the Company shall maintain similar and equivalent insurance for the benefit of Indemnitee during the Indemnification Period (unless such insurance shall be less favorable to Indemnitee than the Company's existing policies).

12. Modification, Waiver, Termination and Cancellation. No supplement, modification, termination, cancellation or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver.

13. Subrogation. In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

14. Notice by Indemnitee and Defense of Claim. Indemnitee shall promptly notify the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any matter, whether civil, criminal, administrative or investigative, but the omission so to notify the Company will not relieve it from any liability that it may have to Indemnitee if such omission does not prejudice the Company's rights. If such omission does prejudice the Company's rights, the Company will be relieved from liability only to the extent of such prejudice. Notwithstanding the foregoing, such omission will not relieve the Company from any liability that it may have to Indemnitee otherwise than under this Agreement. With respect to any Proceeding as to which Indemnitee notifies the Company of the commencement thereof:

(a) The Company will be entitled to participate therein at its own expense; and

(b) The Company jointly with any other indemnifying party similarly notified will be entitled to assume the defense thereof, with counsel reasonably satisfactory to Indemnitee; provided, however, that the Company shall not be entitled to assume the defense of any Proceeding if there has been a Change in Control or if Indemnitee shall have reasonably concluded that there may be a conflict of interest between the Company and Indemnitee with respect to such Proceeding. After notice from the Company to Indemnitee of its election to assume the defense thereof, the Company will not be liable to Indemnitee under this Agreement for any Expenses subsequently incurred by Indemnitee in connection with the defense thereof, other than reasonable costs of investigation or as otherwise provided below. Indemnitee shall have the right to employ Indemnitee's own counsel in such Proceeding, but the fees and expenses of such counsel incurred after notice from the Company of its assumption of the defense thereof shall be at the expense of Indemnitee unless:

(i) the employment of counsel by Indemnitee has been authorized by the Company;

(ii) Indemnitee shall have reasonably concluded that counsel engaged by the Company may not adequately represent Indemnitee due to, among other things, actual or potential differing interests; or

(iii) the Company shall not in fact have employed counsel to assume the defense in such Proceeding or shall not in fact have assumed such defense and be acting in connection therewith with reasonable diligence; in each of which cases the fees and expenses of such counsel shall be at the expense of the Company.

(c) The Company shall not settle any Proceeding in any manner that would impose any penalty or limitation on Indemnitee without Indemnitee's written consent; provided, however, that Indemnitee will not unreasonably withhold his or her consent to any proposed settlement.

15. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if (a) delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, (b) delivered by facsimile with telephone confirmation of receipt or (c) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed:

(i) If to Indemnitee, to the address or facsimile number set forth on the signature page hereto.

(ii) If to the Company, to:

SunPower Corporation
3939 North First Street
San Jose, California 95134
Attn: Corporate Secretary

or to such other address as may have been furnished to Indemnitee by the Company or to the Company by Indemnitee, as the case may be.

16. Nonexclusivity. The rights of Indemnitee hereunder shall not be deemed exclusive of any other rights to which Indemnitee may be entitled under applicable law, the Company's Certificate of Incorporation or bylaws, or any agreements, vote of stockholders, resolution of the Board of Directors or otherwise, and to the extent that during the Indemnification Period the rights of the then existing directors and officers are more favorable to such directors or officers than the right currently provided to Indemnitee thereunder or under this Agreement, Indemnitee shall be entitled to the full benefits of such more favorable rights.

17. Certain Definitions.

(a) "Agent" shall mean any person who is or was, or who has consented to serve as, a director, officer, employee, agent, fiduciary, joint venturer, partner, manager or other official of the Company or a subsidiary or an affiliate of the Company, or any other entity (including without limitation, an employee benefit plan) either at the request of, for the convenience of, or otherwise to benefit the Company or a subsidiary of the Company.

(b) "Change in Control" shall mean the occurrence of any of the following:

(i) Both (A) any "person" (as defined below) is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing at least twenty percent (20%) of the total voting power represented by the Company's then outstanding voting securities and (B) the beneficial ownership by such person of securities representing such percentage has not been approved by a majority of the "continuing directors" (as defined below);

(ii) Any "person" is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing at least fifty percent (50%) of the total voting power represented by the Company's then outstanding voting securities;

(iii) A change in the composition of the Board of Directors occurs, as a result of which fewer than two-thirds of the incumbent directors are directors who either (A) had been directors of the Company on the "look-back date" (as defined below) (the "Original Directors") or (B) were elected, or nominated for election, to the Board of Directors with the affirmative votes of at least a majority in the aggregate of the Original Directors who were still in office at the time of the election or nomination and directors whose election or nomination was previously so approved (the "continuing directors");

(iv) The stockholders of the Company approve a merger or consolidation of the Company with any other corporation, if such merger or consolidation would result in the voting securities of the Company outstanding immediately prior thereto representing (either by remaining outstanding or by being converted into voting securities of the surviving entity) fifty percent (50%) or less of the total voting power represented by the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation; or

(v) The stockholders of the Company approve (A) a plan of complete liquidation of the Company or (B) an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets.

For purposes of Subsection (i) above, the term "person" shall have the same meaning as when used in Sections 13(d) and 14(d) of the Exchange Act, but shall exclude (x) a trustee or other fiduciary holding securities under an employee benefit plan of the Company or of a parent or subsidiary of the Company or (y) a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of the common stock of the Company.

For purposes of Subsection (iii) above, the term "look-back date" shall mean the later of (x) the Effective Date and (y) the date twenty-four (24) months prior to the date of the event that may constitute a "Change in Control."

Any other provision of this Section 17(b) notwithstanding, the term "Change in Control" shall not include a transaction, if undertaken at the election of the Company, the result of which is to sell all or substantially all of the assets of the Company to another corporation (the "surviving corporation"); provided that the surviving corporation is owned directly or indirectly by the stockholders of the Company immediately following such transaction in substantially the same proportions as their ownership of the Company's common stock immediately preceding such transaction; and provided, further, that the surviving corporation expressly assumes this Agreement.

(c) "Disinterested Director" shall mean a director of the Company who is not or was not a party to or otherwise involved in the Proceeding in respect of which indemnification is being sought by Indemnitee.

(d) "Expenses" shall include all direct and indirect costs (including, without limitation, attorneys' fees, retainers, court costs, transcripts, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, all other disbursements or out-of-pocket expenses and reasonable compensation for time spent by Indemnitee for which Indemnitee is otherwise not compensated by the Company or any third party) actually and reasonably incurred in connection with either the investigation, defense, settlement or appeal of a Proceeding or establishing or enforcing a right to indemnification under this Agreement, applicable law or otherwise; provided, however, that "Expenses" shall not include any Liabilities.

(e) "Final Adverse Determination" shall mean that a determination that Indemnitee is not entitled to indemnification shall have been made pursuant to Section 6 hereof and either (1) a final adjudication in the Court of Chancery of the State of Delaware or decision of an arbitrator pursuant to Section 9(a) hereof shall have denied Indemnitee's right to indemnification hereunder, or (2) Indemnitee shall have failed to file a complaint in a Delaware court or seek an arbitrator's award pursuant to Section 9(a) for a period of one hundred twenty (120) days after the determination made pursuant to Section 6 hereof.

(f) "Independent Legal Counsel" shall mean a law firm or a member of a firm selected by the Company and approved by Indemnitee (which approval shall not be unreasonably withheld) or, if there has been a Change in Control, selected by Indemnitee and approved by the Company (which approval shall not be unreasonably withheld), that neither is presently nor in the past five (5) years has been retained to represent: (i) the Company or any of its

subsidiaries or affiliates, or Indemnitee or any corporation of which Indemnitee was or is a director, officer, employee or agent, or any subsidiary or affiliate of such a corporation, in any material matter, or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Legal Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's right to indemnification under this Agreement.

(g) "Liabilities" shall mean liabilities of any type whatsoever including, but not limited to, any judgments, fines, ERISA excise taxes and penalties, penalties and amounts paid in settlement (including all interest assessments and other charges paid or payable in connection with or in respect of such judgments, fines, penalties or amounts paid in settlement) of any Proceeding.

(h) "Proceeding" shall mean any threatened, pending or completed action, claim, suit, arbitration, alternate dispute resolution mechanism, investigation, administrative hearing or any other proceeding whether civil, criminal, administrative or investigative, that is associated with Indemnitee's being an Agent of the Company.

18. Binding Effect; Duration and Scope of Agreement. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), spouses, heirs and personal and legal representatives. This Agreement shall continue in effect during the Indemnification Period, regardless of whether Indemnitee continues to serve as an Agent.

19. Severability. If any provision or provisions of this Agreement (or any portion thereof) shall be held to be invalid, illegal or unenforceable for any reason whatsoever:

(a) the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby; and

(b) to the fullest extent legally possible, the provisions of this Agreement shall be construed so as to give effect to the intent of any provision held invalid, illegal or unenforceable.

20. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware, as applied to contracts between Delaware residents entered into and to be performed entirely within the State of Delaware, without regard to conflict of laws rules.

21. Consent to Jurisdiction. The Company and Indemnitee each irrevocably consent to the jurisdiction of the courts of the State of Delaware for all purposes in connection with any action or proceeding that arises out of or relates to this Agreement and agree that any action instituted under this Agreement shall be brought only in the state courts of the State of Delaware.

22. Entire Agreement. This Agreement represents the entire agreement between the parties hereto, and there are no other agreements, contracts or understandings between the parties hereto with respect to the subject matter of this Agreement, except as specifically referred to herein or as provided in Section 16 hereof.

23. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the Company has caused this Agreement to be executed by a duly authorized officer and Indemnitee has executed this Agreement as of the date first above written.

SUNPOWER CORPORATION
a Delaware corporation

By:

Printed Name: Thomas H. Werner
Title: CEO

INDEMNITEE

Signature:

Printed Name:

Address:

Telephone:
Facsimile:
E-mail:

EXHIBIT 31.1

CERTIFICATIONS

1. I have reviewed this Quarterly Report on Form 10-Q of SunPower Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 7, 2008

/S/ THOMAS H. WERNER

Thomas H. Werner
Chief Executive Officer
(Principal Executive Officer)

EXHIBIT 31.2

CERTIFICATIONS

1. I have reviewed this Quarterly Report on Form 10-Q of SunPower Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 7, 2008

/S/ EMMANUEL T. HERNANDEZ
Emmanuel T. Hernandez
Chief Financial Officer
(Principal Financial and Accounting Officer)

EXHIBIT 32.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the quarterly report of SunPower Corporation (the "Company") on Form 10-Q for the period ended September 28, 2008 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of Thomas H. Werner, Chief Executive Officer, and Emmanuel T. Hernandez, Chief Financial Officer, of the Company, certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge and belief:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Dated: November 7, 2008

/S/ THOMAS H. WERNER
Thomas H. Werner
Chief Executive Officer
(Principal Executive Officer)

/S/ EMMANUEL T. HERNANDEZ
Emmanuel T. Hernandez
Chief Financial Officer
(Principal Financial and Accounting Officer)

The foregoing certification is being furnished solely pursuant to 18 U.S.C. Section 1350 and is not being filed as part of the Report or as a separate disclosure statement.